



# CORRELATION ANALYSIS OF THE DEATH PENALTY ON MURDERERS, DRUGS AND CORRUPTION

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## ABSTRACT

*This study aims to analyze the correlation between the death penalty for murder, narcotics, and corruption (a legal approach to jinayah, qishash, hudud, and ta'zir), and aims to look more deeply into the implementation of punishments that use a legal basis or arguments that are general in nature and specific argument. This research uses descriptive qualitative. Data were collected through interviews, observation, and documentation. This study uses data analysis techniques, which consist of stages of data collection, data reduction, data presentation, and drawing conclusions. The results of the study show that legal settlements from the Juridical-Empirical study include makers, dealers, sellers and buyers as well as users, as well as victims of the same status before the law, because they both violate the law, they must be sentenced to death, in the context of crimes against the loss of human life. , in this case the similarity of the punishment of Qishash with the Criminal Code is the same, as in the case of intentional murder that is not condoned by the victim's family. Therefore, the death penalty of Qishash only applies if the intentional killing that is not condoned by the victim's family, as well as corruption of humanitarian funds can be punished by death.*

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## 1. INTRODUCTION

Indonesia is currently ongoing in an effort to renew the product of legislation. So based on the order of the law, it is clear that the government has a responsibility to respect, protect, and enforce the security of its citizens. The state must intervene actively in efforts to provide protection for victims. Deprivation of life or murder is regulated in the Criminal Code CHAPTER XIX concerning Crimes Against Life. Murder is regulated in Article 338 of the Criminal Code which states, "Anyone who deliberately takes another person's life is threatened with murder with a maximum imprisonment of fifteen years. From the facts show that murder is increasing with various modes that continue to grow.

This fact certainly places citizens in a potential danger to their security and survival. These facts also show that even though this criminal law is applied, crimes against humans by taking lives still continue to occur in Indonesia, where the majority of the people are Muslim. Islam offers an important concept on the issue of crimes against human life, by mentioning that the crime of murder (al-qatl) is called al-jinayah 'ala al-insaniyyah (crimes against the human soul), this designation is the same as the meaning of murder in positive law.

The madaniyah verse is related to the obligation of prayer, the prohibition of killing souls, the prohibition of drinking liquor, the prohibition of adultery, and the prohibition of consuming other people's property in an improper way. The purpose of Islamic law is in line with the purpose of human life and the potential that exists within him and the potential that comes from outside himself for the benefit of humans. This goal can be achieved by taking everything that has benefit and rejecting everything that is destructive in order to reach the pleasure of Allah in accordance with the principle of monotheism.

Article 2 paragraph (2) of the UUTPK regulates the threat of capital punishment for perpetrators of corruption carried out under certain circumstances. Certain circumstances are a burden for perpetrators of criminal acts of corruption. The criteria for weighting are if the criminal act of corruption is carried out at a time when the

country is in a state of danger in accordance with the applicable law; in the event of a national natural disaster; as a repetition of a criminal act of corruption; or when the country is in a state of economic and monetary crisis. In eradicating corruption led by the KPK, 2018 was the year where the most prosecutions in the history of the KPK. KPK data, prior to the KPK's arrest operation (OTT) against PUPR Ministry officials on Friday, December 28 2018, there were 91 corruption cases involving members of the legislature and 28 cases involving active regional heads. The case is the result of 30 KPK OTTs and case development (Media Indonesia, 2019). Hand arrest operations throughout 2019 were carried out 21 times in 14 regions, with 76 suspects (Corruption Eradication Commission, 2019). The data shows a decrease in KPK OTT from 30 cases in 2018, to 21 cases in 2019. The number of actions taken is a dilemma. One side is a positive performance from the KPK, but the other side indicates that corruption is increasing in quantity. Increasing the quantity of corruption is a failure of the state in tackling corruption. Corruption does not only occur in the center of government, but has spread to the regions, even to rural areas.

The pros and cons of the death penalty for perpetrators of criminal acts in Indonesia are being discussed again, even though similar debates have repeatedly occurred in previous years. A few moments ago, in August 2016, the death penalty for drug offenders was carried out after one year earlier, on January 18 2015, to be exact, the same sentence was also handed down to six perpetrators of drug crimes in Nusakambangan and Boyolali. In the first execution, a wave of protests against the implementation of the death penalty was widely called by groups who were against the issue. Human rights activist groups, for example, protested against the implementation of the death penalty which was considered contrary to human rights.

Therefore they demanded the Indonesian government to abolish the death penalty in Indonesia. The voices of protest did not only come from within the country, Indonesia, but also from neighboring countries whose citizens were subject to the death penalty such as Australia. The Kangaroo country even threatened to ban its citizens from going to Indonesia if Indonesia continued to apply the death penalty. Different attitudes towards the implementation of the death penalty have actually existed for a long time and exist in several countries. In Indonesia, for example, the implementation of the death penalty is still legally recognized and applied, although its intensity fluctuates. Until 2006 there were 11 laws and regulations that still carry the death penalty, such as: the Criminal Code, the Narcotics Law, the Anti-Corruption Law, the Anti-Terrorism Law, and the Human Rights Court Law. This list could get longer with the Intelligence Bill and State Secrets Bill.

## 2. RESEARCH METHOD

This research is a type of library research. What is called library research or often also called literature study is a series of activities related to methods of collecting library data, reading and taking notes and processing research materials.

In this study, the author applies the library research method because at least there are several underlying reasons. First, that data sources cannot only be obtained from the field. Sometimes data sources can only be obtained from libraries or other documents in written form, either from journals, books or other literature. Second, literature study is needed as a way to understand new symptoms that occur that cannot be understood, and then with this literature study it will be possible to understand these symptoms. So that in overcoming a symptom that occurs, the author can formulate a concept to solve a problem that arises. The third reason is that library data remains reliable to answer the research questions. However, information or empirical data that has been collected by other people, whether in the form of books, scientific reports or research reports, can still be used by library researchers. Even in certain cases the field data is still not significant enough to answer the research questions that will be carried out.

The stages that must be taken by the author in library research are as follows: a. Collect research materials. Because this research is a library research, the material collected is in the form of information or empirical data sourced from books, journals, results of official and scientific research reports and other literature that supports the theme of this research. b. Read bibliography. Reading activities for research purposes is not a passive job. Readers are asked to simply absorb all "knowledge" information in reading material, but rather a "hunt" activity that requires active and critical involvement of the reader in order to obtain maximum results. In reading research materials, readers must dig deeply into reading materials that allow them to find new ideas related to the research title. c. Make research notes. The activity of recording research materials is arguably the most important stage and perhaps also the heaviest culmination of the entire series of library research. Because in the end all the material that has been read must be drawn a conclusion in the form of a report. d. Processing research notes. All materials that have been read are then processed or analyzed to get a conclusion drawn up in the form of a research report.

Content analysis or content study is a research methodology that utilizes a set of procedures to draw valid conclusions from a book or document. Meanwhile, Harold D. Lasswell stated that content analysis is research that is an in-depth discussion of the content of written or printed information in the mass media. From the explanation above, it can be concluded that content analysis is a research method with certain stages to extract the essence of an



idea or information and then draw a conclusion. The author uses data analysis techniques in the form of content analysis because this type of research is a type of library research, where the data source is in the form of books and documents as well as literature in other forms.

### 3. RESULTS AND ANALYSIS

Criminal acts in terms of Islamic law are called jināyah, but fiqh scholars also use Jarīmah. Al-Mawardi defines Jarīmah (jināyah) with syara' prohibitions which are threatened by Allah SWT with had or ta'zīr punishments. In the definition put forward by al-Mawardi, it does not appear that there are criminal acts that are threatened with qiṣāḍiyāt punishment, what is illustrated is only criminal acts that are threatened with had and ta'zīr punishments.

Ta'zīr is part of 'uqubat (punishment) in Islamic criminal law or a reply to something jarimah (error) in the form of a disobedience that has been committed by someone. There are several forms of 'uqubat in Islamic criminal law: first; Jarimah hudud, second; Jarimah diyat or qisas, and third; Jarimah ta'zīr. Ta'zīr is the punishment that has been determined for the jarimah ta'zīr. The forms vary, but the determination is left to the government or the authorities, namely the legislative body or judges (waliyul amri or imam). According to Al-Mawardi: "ta'zīr is an educational punishment for sinful acts (immorality) whose punishment has not been determined by syara".

According to 'Abd Qadir 'Audah, the notion of jināyah is an act that is prohibited by syara', whether the act is about the soul or property or others. But he said that most fiqh scholars use the word jināyah in a special sense, namely for actions that affect a person's soul or limbs, such as killing, injuring and hitting. Meanwhile, Wahbah al-Zuhaili defines jināyah as a form of sin or evil or any form of criminal act (crime) committed by a person. He said that the notion of jināyah at the syar'i level of meaning includes two meanings, namely general principles and specific principles. General principles are the overall principles of Islamic law that are universal, specific principles are the principles of each branch of Islamic law<sup>1</sup>.

The results of the research are summarized in the discussion of this paper, with the aim of looking more deeply into the implementation of punishments that use a legal basis or arguments that are general in nature and arguments that are specific in nature. Therefore, the focus of this research is to look at several problematic aspects of legal settlement from the Juridical-Empirical side of the study, including:

#### 1. *Controversy on the Death Penalty of Narcotics Perpetrators.*

The search results of various supporting literatures seem that narcotics perpetrators are sentenced to death specifically for narcotics dealers, while users, couriers and victims are only given light sentences. This is not in line with the fact that eradication efforts are sometimes hampered. Narcotics perpetrators are not only a matter of business and abuse, but what can be studied more deeply is that narcotics can be life-threatening. In this case, the application of the death penalty specifically for Narcotics Dealers is threatened with the death penalty based on Law Number 35 of 2009 Article 113 paragraph (2), and Article 114 paragraph (2), regarding the imposition of the death penalty when viewed from the positive law of Indonesia. Contrary to human rights as stated in Article 4 of Law Number 39 of 1999 concerning human rights. Meanwhile, Article 10 of the Criminal Code determines the types of crimes, one of which in Article 1 letter (a) number 1 explains that one of the crimes is the death penalty. Meanwhile, according to experts, "that the death penalty is justified if the perpetrator of a crime (crime) shows from his actions that he is an individual who is very dangerous to society. However, in Article 1 paragraph (3) of the Regulation of the Head of the Indonesian National Police. Number 12 of 2010 concerning procedures for implementing the Death Penalty. if analyzed more specifically and in depth from the point of view of fiqh law regarding the implementation of the law it is very ineffective and unfair, it should be seen from a causal relationship, the makers, dealers, sellers and buyers as well as users, as well as the victims are equal before the law. Because they both violate the law, they must be sentenced to death as in Article 113 paragraph (2) and Article 114 paragraph (2). Because based on the explanation in the verse of the Qur'an it only regulates in general. Q.S. Al-Baqarah verse 219.

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<sup>1</sup> Umar Anwar, "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, no. 03 (2016): 241–52.

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ ۖ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ  
وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا ۚ وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ ۗ قُلِ الْعَفْوَ كَذَلِكَ  
يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ﴿٢١٩﴾﴾

Translation:

“They ask you about alcohol and gambling. Say: "In both of them there is a great sin and some benefit to people, but the sin of both is greater than its benefit." and they ask you what they earn. Say: "which is more than necessary?" Thus Allah explains His verses to you so that you think

## 2. *Death Penalty for Murderers.*

Similarities and Differences in the Death Penalty in the Criminal Code, and the Death Penalty of Qishash. as described in QS. Al-Baqarah verse 178

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۗ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ  
بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۗ فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ  
إِلَيْهِ بِإِحْسَانٍ ۗ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ ۗ فَمَنْ أَعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ  
عَذَابٌ أَلِيمٌ

Translation:

“You who believe, qishaash is required of you regarding those who are killed; free man for free, slave for servant, and woman for woman. So whoever gets forgiveness from his brother, let (forgiving) follow in a good way, and let (who is forgiven) pay (diat) to those who forgive in a good way (also). That is a relief from your Lord and a mercy. Whoever transgresses after that, then for him is a very painful torment.”

Based on the explanation of the verse, it should be understood that in the context of crimes against the loss of human life, in this case the equation for the punishment of Qishash with the Criminal Code is the same, as in the case of intentional murder that is not condoned by the victim's family. Therefore, the death penalty of Qishash only applies to one point, namely; "intentional murder that is not condoned by the victim's family".

- a. The death penalty in the Criminal Code is imposed for several serious crimes, including:
  1. Article 140 paragraph (3), treason against the king or the head of friendly countries that is planned and results in death.
  2. Article 340 paragraph (4), premeditated murder
  3. Article 365 or (4), the thief with violence resulting in serious injury or death.
  4. Article 368 paragraph (2) extortion with violence resulting in serious injury or death.
  5. Article 444, piracy in the sea, coast and river that results in death<sup>2</sup>.
- b. From the explanation of the article, there is a correlation between the Qishash punishment and the KHUP Article 340, namely:
 

"Anyone who deliberately and premeditated takes the life of another person, is threatened with premeditated murder, with a death penalty or life imprisonment or a maximum imprisonment of twenty years"<sup>3</sup>.

<sup>2</sup> Burlian, *Implementasi Konsep Hukuman Qishash di Indonesia*.

<sup>3</sup> Solahuddin, *Kitab Undang-Undang Hukum Pidana, Acara Pidana, dan Perdata ( KUHP, KUHPA, dan KUHP (Jakarta: Visi Media, 2008).*



- c. While Article 365, Article 368 paragraph (2), and Article 444, are related to the law of qat'u al-tariq and hirabah whose punishment is different from qishash.
- d. Corruption and humanity can be sentenced to death

If state policy supports a change in the article that tightens and does not provide space for perpetrators of corruption in humanitarian funds, it is necessary to standardize examples of perpetrators of misuse of state funds (corruption) worth 50 million which are threatened not with criminal penalties, but only charged to perpetrators in good faith to return the corruption money to the state. According to the author, this is a legal vacuum and will open up great opportunities for repeats and cannot create a deterrent effect for corruptors. In the study of the Qur'an, an act committed by someone who can harm many people must be given a penalty in the category of stealing the rights of many people so that it can be punished by cutting off hands. QS. Al-Maidah verse 38

وَمَنْ أَظْلَمُ مِمَّنْ افْتَرَى عَلَى اللَّهِ كَذِبًا أُولَئِكَ يُعْرَضُونَ عَلَى رَبِّهِمْ وَيَقُولُ الْأَشْهَادُ هَؤُلَاءِ الَّذِينَ كَذَبُوا عَلَى رَبِّهِمْ إِلَّا لَعْنَةُ اللَّهِ عَلَى الظَّالِمِينَ

Translation:

"And who is more unjust than one who invents a lie against Allah? They will be brought before their Lord, and the witnesses will say: "These are the ones who have lied against their Lord". Remember, Allah's curse (falls on) on the wrongdoers".

Based on several explanations of the death penalty law or death penalty in statutory regulations as well as in verses of the Qur'an and Hadith regarding the settlement of cases of a general and specific nature, this is closely related to the legal imposition of using Maslahah al-Mursalah, namely the benefit whose existence not supported by syara' nor canceled or rejected by syara' in detail. This benefit is needed by the situation because there are things that come after the break of revelation and the syara' does not stipulate the law and does not cancel it, this is called a general benefit that is not regulated in the texts.

## CONCLUSION

The application of a special death penalty for Narcotics dealers is threatened with the death penalty based on Law Number 35 of 2009 Article 113 paragraph (2), and Article 114 paragraph (2), concerning the imposition of the death penalty if viewed from Indonesia's positive law contrary to human rights as stated in Article 4 of Law Number 39 of 1999, concerning human rights. From the explanation of the article, there is a correlation between the death penalty of Qishash against the Narcotics Dealer.

In the explanation of the article, there is a correlation between the Qishash punishment and the KHUP Article 340, namely: "Whoever deliberately and premeditated takes the life of another person, is threatened with premeditated murder, with the death penalty or life imprisonment or imprisonment for a certain period of time. Twenty years at most".

Based on the explanation of the verse, it should be understood that in the context of crimes against the loss of human life, in this case the equation for the punishment of Qishash with the Criminal Code is the same, as in the case of intentional murder that is not condoned by the victim's family. Therefore, the death penalty of Qishash only applies to one point, namely; "intentional murder that is not condoned by the victim's family". While Article 365, Article 368 paragraph (2), and Article 444, are related to the law of qat'u al-tariq and hirabah whose punishment is different from qishash.

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