

## The Criminal Law Policy Regarding the Death Penalty in Renewing of Indonesian Criminal Law

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### Abstract.

*This study aims to examine in depth the criminal law policy regarding the death penalty in the renewal of Indonesian criminal law. This research was expected to contribute ideas in the realm of literature in the field of Islamic law as well as input for observers and law enforcers to determine policies related to the death penalty law. To achieve this goal, this research was conducted by observing events or facts deemed relevant to the research, by collecting primary data and secondary data through a juridical-normative approach with qualitative analysis methods. The study with this theme can be concluded that the choice or stipulation of the death penalty as a means to tackle crime is essentially a policy choice. The concept of the draft Criminal Code issues the death penalty from the main criminal system and lists it as a special principal crime or as an exception (special) punishment. These laws are made to maintain the balance of human life in order to create harmony and order.*

*Keywords: Criminal; Death; Penalty; Policy; Reform.*

### 1. Introduction

In this modern era, the development of science tends to look at all the symptoms in society with the glasses of psychology. It is often heard that a government action is said: according to common sense it is right, but psychologically not right; or vice versa according to ordinary thoughts less true but psychologically satisfying. The point of these remarks is that more attention should be paid to the impressions of individuals on certain government actions. Thus, there is a tendency to prioritize things that were too easy to call "subjective" or "non-objective". The influence of this kind of scientific development can also be seen in matters of criminal law.<sup>1</sup>The Criminal Code (KUHP), previously known as Wetboek van Strafrecht (WvS), regulates the types of crimes consisting of: main and additional crimes. One of the types of punishment included in the main punishment is the death penalty; in addition to imprisonment, imprisonment, fines and liability. The death penalty is the heaviest legal sanction after a life sentence.

Efforts to reform the Criminal Code which in recent years are being disseminated in the academic world require critical thinking and constructive comparative studies. This tendency is carried out by the call for a value-oriented approach, both human values, cultural identity values, and religious values and moral values.<sup>2</sup>The Criminal Procedure Code (KUHAP), known as Act No. 8/1981, State Gazette No. 76, came into force on December 31, 1981. The Criminal Procedure

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<sup>1</sup>Wirjono Prodjodikoro, (2003). *Asas-Asas Hukum Pidana Di Indonesia*, Cet. I, Bandung : PT. Refika Aditama, p.174

<sup>2</sup>Muladi. "Pengembangan Hukum Pidana Dalam konteks Negara Kebangsaan". in Arifin, Jaenal., & Salim, M Arskal (ed). (2001). *Pidana Islam Di Indonesia Peluang, Prospek, dan Tantangan*. Jakarta: Firdaus Library. p. 24-25.

Code contains provisions regarding procedures, procedures, and the requirements that must be complied with and implemented in an effort to uphold law and justice and protect human rights.<sup>3</sup>In Indonesia, a person commits a crime of premeditated murder. In the case of committing the act, the perpetrator has a deliberate will to take the life of another person. Without thinking about the impact it will have. In this case, the crime of premeditated murder can occur if there is a deliberate will.<sup>4</sup>

In the Criminal Code, the heaviest sanction is the death penalty as the main crime, because its implementation is related to human rights as human beings. Actually only God can give someone death, then become a pro and con in various circles of society and even in the world has also become a debate for human rights activists, depending on how the groups view the death penalty. In addition, the death penalty has the weakness that it cannot be repaired if it has been executed.<sup>5</sup>

The death penalty has the status of a principal crime, it is a type of crime that contains pros and cons. At the international level, this type of crime is prohibited from being imposed on the convict. The United Nations (UN) encourages the elimination of the application of this type of crime based on the Universal Declaration of Human Rights adopted on December 10, 1948, by guaranteeing the right to life and protection against torture. Likewise, the guarantee of the right to life is contained in Article 6 of the International Covenant on Civil and Political Rights (ICCPR) which was adopted in 1966 and ratified by Act No. 12 of 2005 concerning Ratification of the ICCPR.<sup>6</sup>

The reform of criminal law must indeed be in accordance with national insight and the nation's ideology, namely Pancasila, then only be adapted to international legal instruments. So that the aspired criminal law is achieved and in accordance with the values adopted by the community.<sup>7</sup> The essence of the purpose of sentencing in the upcoming National Criminal Code Bill, the purpose of which the punishment must first be understood or understood is to use a multi-dimensional approach that is fundamental in nature to the impact of criminal acts. So that the purpose of punishment is to repair individual and social damages. Maintaining community solidarity is also included in the purpose of sentencing and sentencing must also be directed to maintain and maintain community unity (to maintain social cohesion intact).<sup>8</sup>

Article 100 paragraph (1) of the Draft Criminal Code states that a judge can impose a death penalty with a probationary period of 10 (ten) years, if (a) the death convict shows remorse and there is hope for improvement; (b) The role of the accused in the crime is not too important or (c) there are mitigating reasons. With a

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<sup>3</sup>L&J Law Firm, *Bila Anda Menghadapi Masalah Hukum (Pidana)*, Forum Sahabat, (2009).p. 3

<sup>4</sup>Moeljatno, (2000), *Asas-asas Hukum Pidana*, Cet. VI ;Jakarta: PT Rineka Cipta, p.171

<sup>5</sup>Ludiana, Tia, *Eksistensi Pidana Mati Dalam Pembaharuan Hukum Pidana (Kajian Terhadap Pidana Mati Dalam RUU KUHP)*; JURNAL LITIGASI (e-Journal), Vol. 21.p.61.

<sup>6</sup>Eva Achjani Zulfa, (2007), *Menakar Kembali Keberadaan Pidana Mati (Suatu Pergeseran Paradigma Pemidanaan Di Indonesia)*, Jakarta: Lex Journalica, 4(2), p. 94

<sup>7</sup>Christianto, H., (2017). *Pembaharuan Makna Asas Legalitas*. *Jurnal Hukum & Pembangunan*, Vol.39, (No.3). p.150-159

<sup>8</sup>Soponyono, E. (2012). *Kebijakan Perumusan Sistem Pemidanaan yang Berorientasi Pada Korban*. *Masalah – Masalah Hukum*, Vol.41, (No.1), p. 30

probationary period of ten years, those sentenced to death have the opportunity to improve themselves. Furthermore, with a probationary period of ten years, the convict does not have to bear the psychological burden of being unclear when the death penalty will be executed against the person concerned.

Based on the description above, the objectives of the research compiled in this legal journal are to describe and analyze criminal law policies regarding capital punishment in current positive law, describe and analyze criminal law policies in the renewal of Indonesian criminal law and describe and analyze capital punishment in Islamic law.

## **2. Research Methods**

The approach method used in this research was normative juridical. Specifications of this research was descriptive qualitative. Sources of data used in the preparation of this research writing were: primary data, and secondary data. The data collection technique used in this study was done through a literature study.

## **3. Results and Discussion**

### **3.1. Criminal Law Policy Regarding the Death Penalty in Current Positive Law**

The death penalty is a type of severe sanction that is always discussed in the criminal system. The sentencing system is a statutory rule relating to criminal sanctions and sentencing. With this understanding, all laws and regulations regarding material or substantive criminal law, formal criminal law and criminal law enforcement can be seen as a unified criminal system. If limited to substantive criminal law the entire regulatory system legislation-invitations ("statutory rules") that exist in the Criminal Code (as the main general rule) and special laws outside the Criminal Code are essentially a unified criminal system. Overall legislation-laws in the field of criminal law substantive It consists of general rules and special rules. General rules are contained in the Criminal Code (book I) while special rules are contained in both the Criminal Code (books I1 and 111) and in general, special laws outside the Criminal Code - these special rules, in general, in addition to containing the formulation of certain criminal acts, can also contain special rules that deviate from general rules.<sup>9</sup>

The characteristic of special criminal law is that it regulates material and formal criminal law which is outside the codification. This special criminal law contains norms, sanctions and legal principles that are specially formulated to deviate because of the community's need for criminal law which contains unconventional crime regulations and elements. The position of the special criminal law in the criminal law system is a complement to the criminal law codified in the Criminal Code.

The implementation of the death penalty in Indonesia is not solely aimed at reducing or completely eliminating human rights. However, in practice, it is the responsibility of the State to protect its citizens. Every action taken by a citizen, if the act deviates from the applicable law, that person will receive a punishment as stated in the applicable law.

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<sup>9</sup>Barda Nawawi Arief, (2010), *Kapita Selekta Hukum Pidana*, Bandung: Citra Aditya Bakti, p:141-142

Juridically the application of the death penalty in Indonesia is justified and does not constitute a violation of human rights, because in its implementation the death penalty system is carried out with extra care and should not be carried out at will, but must go through fairly strict and careful stages as mentioned below:

- The perpetrators of these crimes have met the requirements that have been determined, which are reasonable and have matured.
- There is an element of intention to the perpetrator when committing the crime.
- In committing the crime, free from the element of coercion.
- This shows that all actions that are done because of mistakes, forgetfulness and compulsion will not be held accountable as crimes and constitute a sin violation.
- Must avoid doubtful problems.
- Has received a judge's decision from an authoritative Court.

If the five elements above have been fulfilled by every criminal, then the death penalty must be carried out consistently for the sake of creating security, order and guaranteeing the safety of human life still be punished according to the deeds he did. The purpose of implementing the death penalty is to provide a deterrent effect for criminals. From the humanitarian aspect, the death penalty is needed to protect the community from the actions of bad people. The death penalty is a manifestation of Islamic teachings that highly value and uphold human life. In Muslim-majority countries, the death penalty is never debated because it is fully believed to come from God.

Therefore, the application of the death penalty to perpetrators of serious crimes such as narcotics dealers, perpetrators of corruption, premeditated murder is not a violation of human rights but it is the narcotics dealers (perpetrators of serious crimes) who have violated the human rights of others. , because the impact of his actions has destroyed the younger generations to come. The definition of the death penalty can be interpreted as a very basic problem and should not be associated with the type of crime committed by the perpetrator. Once linked, the death penalty is based on whether the act was very cruel, lacking, or not sadistic, lacking, or inhumane, lacking or not, and so on.

Death Penalty in Customary Law and Islamic Law The death penalty has been recognized by almost all ethnic groups in Indonesia. Various kinds of offenses committed are punishable by the death penalty. The choice or stipulation of the death penalty as a means of tackling crime is essentially a policy choice.

In setting a policy, people may argue for or against the death penalty. However, after the policy is taken/decided and then formulated (formulated) in a law, then from the point of view of criminal law policy/politics (penal policy) and criminal policy (criminal policy), the death penalty formulation policy is certainly expected to be applied to application stage.<sup>10</sup>The content of the decision of the Constitutional Court Number 2-3/PUUV/2007 states that the death penalty is not contrary to the constitution because the right to life in the spirit of the 1945 Constitution and the history of the Indonesian constitution is not intended as an absolute and underogable right or a right that can be limited. However, the Court later in the decision gave directions for the construction of the death penalty.

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<sup>10</sup>Barda Nawawi Arief, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, Bandung: PT. Citra Aditya Bakti, (2011), p.306

Regarding the existence of the death penalty in Indonesia until now, this is a discussion that is both pro and contra, because there are still many experts who question it based on different views. Legal experts review the issue of capital punishment from a dogmatic juridical perspective and from the development of criminal law that is oriented to various aspects of social science, including the objectives of religion, human rights and life beliefs.

There are some groups who do not agree with the death penalty, while others still agree with the implementation of the death penalty. Those who agreed put forward the opinion that only Allah has the right to take people's lives and that the death penalty be abolished. Some argue that in certain cases, the death penalty can be justified, namely if the perpetrator has shown from his actions that he is an individual who is very dangerous to society, and therefore must be made harmless by being expelled from society or social life. .

It is very interesting when the pros and cons of the existence of the death penalty are related to human rights. As it is known that on the one hand every human being has the right to live, while on the other hand humans must be faced with the threat of capital punishment for a crime whose provisions have been stipulated in the legislation. The right to life as contained in the general statement of human rights, namely the Universal Declaration of Human Rights which was stipulated by the UN General Assembly on December 10, 1948, which was later ratified by Act No. 5 of 1998 by the Republic of Indonesia on October 28, 1998, it was stated that the right to life is one of human rights.

Various kinds of regulations that protect human rights do not mean making human rights a tool to be able to do anything arbitrarily. Although human rights cannot be contested by anyone. In Indonesia, until now the death penalty is still applied with the main reference being the Criminal Code, but Indonesia has also issued a law that regulates human rights issues, namely in Act No. 39 of 1999 concerning Human Rights which in Article 1 point 1 states Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law and government.

### **3.2. Criminal Law Policy Regarding the Death Penalty in Renewing Indonesian Criminal Law**

The use of capital punishment in Indonesia cannot be separated from the soul of Indonesian criminal law as a means of imposing criminal penalties for violations that occur regardless of the purpose of the death penalty itself. The Constitutional Court through its decision stated that the imposition of a criminal/death penalty is not against the constitution.

The death penalty in the concept of the Criminal Code is an effort to rationally reform the law through a criminal law policy (penal policy). The death penalty is based on the ideas / values and principles that underlie it. These values and principles are then conceptualized into a legal norm that was born through a criminal law policy (penal policy). Criminal law policy is part of criminal policy (criminal policy). Where criminal policy is an integral or inseparable part of the policy of protecting the community (social defense policy) and the policy of



protecting the community itself is an integral part of the social policy of the public itself (social policy).

Although colored by dissenting opinions and the limited scope of decisions in judicial reviews of narcotics crimes, these decisions are seen as having a representative value for the views of the wider community. Several criminal acts which are classified as extraordinary crimes, such as terrorism, narcotics and corruption, deserve the death penalty. Not only because the modus operandi of the crime is highly organized, but the widespread negative impact has become the main trigger that is felt by the community the most.

As a juridical step that determines the existence of a criminal/death penalty in Indonesia, the decision of the Constitutional Court gets a representative appreciation. With the decision of the Constitutional Court, it further strengthens the position of the death penalty as a means of imposing criminal penalties. In the 2015 national RKUHP it is known that the death penalty is not positioned as the main punishment but as an alternative punishment. The death penalty is included in a separate article to show that this type of punishment is truly special and is the most severe type of punishment. The death penalty is not included in the main criminal order but is determined in a separate article to show that the type of death penalty is truly special as a last resort to protect and protect the community. The death penalty is the heaviest punishment and must always be threatened with an alternative type of life imprisonment or a maximum imprisonment of 20 (twenty) years. The death penalty can also be imposed conditionally, by giving a probationary period so that within the grace period for self-improvement, so that the death penalty does not need to be carried out.

Death convicts also have the right to apply for clemency if there are mitigating reasons or the death row convict shows deep remorse. If the request for clemency of the death convict is rejected and the death penalty is not carried out for 10 (ten) years not because the convict has fled, then the death penalty can be changed to life imprisonment by Presidential Decree in accordance with Article 90 of the Draft Criminal Code. Theoretically, the death penalty is included in absolute punishment. Because it is seen that there are elements of absolute characteristics, namely having committed a crime that absolutely endangers society, there are absolute mistakes and the perpetrator is considered absolutely as if it cannot be repaired.<sup>11</sup>

The death penalty is not rooted in the philosophy of revenge, but comes from the proportionality between the perpetrator's actions and the punishment that deserves to be received. According to Prof. Barda Nawawi Arief in his book entitled *Criminal Law Reform in the Perspective of Comparative Studies*, he said that the death penalty is essentially not the main or principal means to regulate, discipline, and improve individuals in society. The death penalty is only a means of exception which in essence is only an exception as a last resort.

In the Criminal Code Bill, the death penalty is still included as a criminal sanction. However, the Draft Criminal Code states that the death penalty is a special criminal sanction. This provision is contained in Article 6 which reads "The death penalty is a special principal crime and is always threatened with alternatives".

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<sup>11</sup> Barda Nawawi Arief, (2010), *Kapita Selekta Hukum Pidana*, Bandung: PT. Citra Aditya Bakti, P.298

Regarding the provision of the death penalty, there are pros and cons among the public. There are those who agree with the punishment for various reasons. One of them is to be able to provide a deterrent effect for others, so that other people do not join in doing the act.

On the other hand, there are also those who say they reject the death penalty, of course this is based on various reasons as well. One of them is for humanitarian reasons, they view that the implementation of the death penalty is inhumane and violates a person's human rights. They also think that the provision of the death penalty is contrary to our constitution, the 1945 Constitution, which states that a person's right to life is an inviolable right, so it is not appropriate for the state to make rules or instruments that allow the death penalty. In connection with the above facts, the draft Criminal Code draft excludes the death penalty from the main criminal system and lists it as a special principal crime or as an exception (special) crime.

### 3.3. Death Penalty in Islamic Law

In the world of Islamic thought, the term shari'ah democracy is known, which is a term used to facilitate understanding of the products of Islamic thought based on critical, contextual and historical studies. The product of this thought in general has the ambition to restore the fundamental spirit of Islam, which has been manipulated and reduced by classical Islamic thinkers and codified in the form of holy *fiqh*, and accepted by Islamic society without conditions. The product of thought based on the principle of progressive revelation with a liberal interpretation is the shari'ah of democracy. Democratic sharia is sharia that can be accepted in the socio-political context of a nation and at a time.

Lawmakers do not compose the legal provisions of the Shari'a without any purpose. But there are certain broad goals. Thus, to understand the importance of a provision, it is necessary to know what the purpose of that provision is.

In Islamic law, the manifestation of legal values can be (1) universal; (2) humanity; and (3) morals. The value of law is universal, meaning that the law is truly capable of protecting and protecting the purpose of the law itself, namely the value of humanitarian law meaning that the law truly respects the position and position, both individually and in society, and the legal value is moral, meaning that the law really have the moral strength for all levels of law users to submit and obey orders and prohibitions because the Prophet Muhammad was sent only to perfect a noble character.<sup>12</sup>

From an Islamic point of view, the death penalty has been practiced for a long time. Those who receive the death penalty are those who commit crimes of murder. This kind of crime in Islamic law is called *Qisas*. Apart from murder, several other crimes are categorized as facade *fil ardh* or doing mischief on earth. Well, in this case there are also various interpretations, for example, such as betrayal, rape, adultery, homosexual behavior, or things that are apostate.

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<sup>12</sup> Tono, Sidik. (1993). "Elaborasi Nilai Hukum Pidana Islam dalam Perspektif Sosio-Kultural Bangsa Indonesia", Makalah dalam Jurnal *al-Mawarid* Edisi Indonesia. Yogyakarta: UII Press, September-December. p. 8-9

Punishment in Islam is very determined by its intent and purpose, as stated above, punishment is carried out - including this death penalty (*Qisas*) - as a form of strengthening faith, a form of accountability from the perpetrator, reparation for the victim, and social improvement. Individual rights and state rights have important relations and differences to emphasize in order to position individual rights and where the rights of the state to protect its people.<sup>13</sup>

In the Qur'an, the death penalty has also been explained. As stated in the QS. Al-Baqarah verse 178 which means:

"O you who believe, qishaash is required for you regarding those who were killed; free people with free people, slaves with slaves, and women with women. So whoever gets forgiveness from his brother, let (forgiving) follow in a good way, and let (who are 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 very painful torment."

Although Islam does enforce the death penalty, that doesn't mean it doesn't have limitations. Similar to applicable law in general, even in Islam, criminal matters like this also have the principles of justice, legal certainty, and expediency. Where those who give punishments should also consider the principle of benefit, both from the person sentenced and the wider community. Determination of the type of capital punishment is still needed, because in its formulation, sentencing and sentencing is intended as a function of controlling/controlling or influencing and justifying perpetrators of system crimes.<sup>14</sup>

Apart from that, in Islam it is also not allowed to impose the death penalty if it is not based on the word of Allah SWT and the sunnah of His Messenger. Those who deserve the death penalty in Islam, as explained earlier, are murder, adultery, and apostasy.

"It is not lawful for the blood of a Muslim who has testified that there is no god but Allah and I am His Messenger, unless it is caused by one of three things, namely a person who has married and then commits adultery (adulterous muhsan), a person who is sentenced to death for murder, and people who leave their religion and separate themselves from the congregation (apostates)." (Narrated by Bukhari and Muslim)

In essence, the death penalty in Islam can be applied if it is related to the *hudud* law, which consists of *Qisas*, *hudud*, and *ta'zir*. If not, then the death penalty is not justified in Islam.

Both *syara'* and positive law hold the principle of "Legality", there is no punishment, other than the strength of the criminal rules in the texts (laws). However, in the application of these principles there are some differences between *syara'* and positive law.

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<sup>13</sup>Santoso, Topo. (2003). *Pribumisasi Hukum Pidana Islam Penegakan Syari'at dalam Wacana dan Agenda*. Jakarta: Gema Insani Press, p. 104

<sup>14</sup> Arief, Barda Nawawi "Ide-ide Dasar (Pokok-pokok Pemikiran) Perubahan/Pemabaharuan KUHP" *Makalah dipresentasikan dalam Diskusi Publik RUU KUHP dan Kebebasan Pers*, Fak. Atma Hukum Jaya. Yogyakarta, June 16, 2005.



- The period of application of the principle of legality, where Islamic law had applied this principle before it was known and applied by positive law twelve centuries earlier.
- How to apply the principle of legality: in Islamic law there are three ways to apply the principle of legality.
  - In cases that are serious and which greatly affect the security and tranquility of the community, namely those of *hudud*, *Qisas* and *diat*, the principle of legality is carried out very carefully, where each finger and its law are listed one by one.
  - In the less numerous cases, namely *ta'zir* fingers, in general, *syara'* provides leniency in the application of the principle of legality from a legal point of view, whereas for these laws, *syara'* only provides a number of punishments to be chosen by the judge, the punishment which is for the incident. - the events he faced.
  - For *ta'zir jarimahs* who are threatened with punishment because they are for the public benefit, *syara'* gives leeway in the application of the principle of legality in terms of determining the type of *jarimah*, because *shari'a* only covers by making a text (stipulation) that is very general and which can cover every act that interfere with the interests and peace of society.

However, there are positive laws on how to apply the principle of legality to all the same finger, something that has led to criticisms against it. At first positive law used the first method (in *syara'*), for all *jarimah*, and this caused the jury members and judges not to want to impose heavy sentences on non-critical *jarimah* and led to the acquittal of many defendants in various criminal cases.

Therefore, positive laws take the second way (in *syara'*) by narrowing the power of judges in choosing punishments and in determining the amount. However, this method is also applied in general, and one of the consequences is that the serious crimes that occur are increasingly dangerous, because the judges only impose light sentences on those fingers which are allowed by their power in choosing punishment. The second method is now used in most positive criminal law systems. However, some positive legal systems such as German and Danish laws also adopt a third way (in *syara'*) for certain fingers. Of course, the method of determining the principle of legality in Islamic law is more thorough, more elastic and more able to guarantee the security and tranquility of the community.

### 3.3.1. In terms of finger determination

In Islamic law, the texts that determine the type of *jarimah* are general and very elastic, so they can accommodate all events. Then in the *hudud* and *Qisas* fingers, the generality is somewhat limited. However, for the other *jarimah*, the generality applies fully. As in the usual *ta'zir jarimahs* for *ta'zir* punishments because to realize the general benefit, the texts that determine the actions of *jarimah* are more elastic, so it is enough to mention their characteristics. Therefore, an act cannot be known as a finger, unless it has already occurred. In generality and elasticity, these texts have a great influence on the ability of Islamic law to deal with every situation and environment. However, in positive laws, each finger is mentioned in detail by determining its material elements. Therefore, the acts of *jarimah* that can be included in a criminal code are very limited, and each time a new

event arises, it means that it requires changes in the criminal provisions and it is no longer difficult for the finger maker to avoid being prosecuted for criminal law. This situation has prompted legal scholars to say that criminal rules must be comprehensive and elastic, so as to enable him to take action against any event.

### 3.3.2. *In terms of punishment*

Basically, the Shari'a determines the type of punishment clearly, so that it is impossible for judges to create punishments from themselves, and the provisions of such punishments apply to *hudud jarimah*, and *Qisas diyat*, namely fingers that greatly disturb the security and peace of society. In *jarimah ta'zir* with all kinds of *syara'* only determines a set of punishments, then it is left to the judge to impose one or more appropriate penalties or impose a sentence that lies between the highest and lowest limits, stop the execution of the sentence (*Janggalan*) or order the execution quick.

However, in positive laws, for each *jarimah* provided one or two kinds of punishment which has the highest and lowest limits. Then the judge can impose two sentences or one sentence that lies between the two limits. Judges can also delay the execution of the sentence or undermine it. In certain cases, positive laws require punishments of not less than a certain limit, and also prohibit the execution of punishments. This generally applies to very dangerous fingers.

From the category of *jarimah* as described above, it appears that criminal acts (*jarimah*) which have been categorized as *hudud* are permanent and cannot be changed or negotiated anymore because they are classified as Allah's rights. *Qisas* can be replaced with *diyat* or even abolished based on the forgiveness of the victim. *Ta'zir* punishment is also not God's right because it is determined by the policy holder.

Islamic jurists classify the broad objectives of the Shari'a as follows:

- Guarantee safety  
Ensuring the security of the necessities of life is the first and foremost goal of the Shari'a. These are things that are important in human life and cannot be separated. If these needs are not guaranteed, there will be chaos and disorder everywhere. These five primary necessities of life in Islamic law are called *Al-Maqasid Al-Shari'ah Al-Khamsah* (the goals of Sharia), namely preserving religion, preserving the soul, nurturing offspring, maintaining reason and looking after property.
- Guarantee the necessities  
Cover secondary requirements. This concerns matters that are important to the provision of various facilities for residents and facilitate their hard work and responsibilities. In other words these needs consist of things that remove difficulties from society and make life easy for them.
- Making repairs  
The third objective of Islamic legislation is to make improvements, namely to make things that can adorn social life and make humans able to do and live better things.

The death penalty in Indonesia must still exist and be even more effective in its implementation, as mandated by Allah SWT. Corruption crime, narcotics and psychotropic crime, human rights crime, and terrorism crime; Apart from

premeditated and sadistic murder, betrayal of the existence of the state is a type of crime that is very detrimental and disrupts the stability of the normal life of people and deserves the death penalty.<sup>15</sup>

Basically Islamic laws came to be a mercy for humans, even for the whole world. These laws are made to maintain the balance of human life in order to create harmony and order. So that grace will not be realized unless Islamic law can really be applied for the benefit and happiness of humans. Any religious sanctions are basically also for the benefit of human life in general, not for a few groups of people.

#### 4. Conclusion

The death penalty is one of the main crimes in the Criminal Code and is included in other laws outside the Criminal Code since its birth until now it is still a matter of controversy. The pros try to survive on the grounds that the capital punishment is in accordance with the religious teachings (Islam) of the 1945 Constitution, the Constitution and Pancasila. While the contra argue that the death penalty is inhumane, contrary to human rights, and does not provide an opportunity for the convict to do good, or rehabilitate the perpetrator, or to correct the possibility of the judge making a wrong decision. In the perspective of Islamic law, the death penalty reflects justice and balance with the actions committed by the perpetrator against the victim, as is the application of *Qisas* for intentional murder.

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