



The Death Penalty for Terrorism Offenders in Indonesia: A Comparative Study of Criminal and Islamic Law

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Abstract

This study conducts a limited comparative analysis of Indonesian criminal law and Islamic law concerning the death penalty for acts of terrorism. The objective was to critically examine how the death penalty is regulated for those committing terrorist offenses from both Indonesian criminal and Islamic law perspectives, aiming to identify the similarities, differences, and implications for law enforcement. This normative study employed a comparative approach to analyze specific legal texts, sources of fiqh or judicial interpretations, legal journals, and laws related to the implementation of the death penalty. The findings indicate that, under Indonesian criminal law, the imposition of the death penalty for acts of terrorism is governed by Law No. 5 of 2018, which addresses the Eradication of Criminal Acts of Terrorism. In Islamic jurisprudence, terrorism is not explicitly addressed in the traditional texts of fiqh. However, it is often analogized with the concept of *jarimah hirabah* because of their analogous characteristics, thereby justifying the imposition of the death penalty on individuals convicted of terrorism. Both Islamic criminal law and secular legal systems classify terrorism as an extraordinary crime that poses a significant threat to human safety, warranting the application of the death penalty to its perpetrators. While both legal systems acknowledge the unique and significant nature of terrorism, they differ in how they define its legal elements. The difference lies in the elements; Islamic criminal law does not require the consequences of the action to be widespread and does not mention the motive of the perpetrator. Meanwhile, Indonesian criminal law states that terrorism must fulfill elements such as causing widespread consequences. In addressing terrorism in Indonesia, the government must judiciously balance preventive strategies with law-enforcement actions. The death penalty should be considered a measure of last resort and executed with utmost caution to ensure compliance with human rights principles.

Keywords: Death Penalty, Criminal Acts, Islamic Law, Terrorism

Abstrak

Penelitian ini melakukan analisis komparatif terbatas antara hukum pidana Indonesia dan hukum Islam terkait penerapan hukuman mati terhadap tindak pidana terorisme. Tujuan penelitian ini adalah untuk mengkaji secara kritis bagaimana hukuman mati diatur bagi



pelaku kejahatan terorisme dari perspektif hukum pidana Indonesia dan hukum Islam, dengan tujuan mengidentifikasi persamaan, perbedaan, serta implikasinya terhadap penegakan hukum. Penelitian normatif ini menggunakan pendekatan komparatif untuk menganalisis teks-teks hukum tertentu, sumber-sumber fikih atau interpretasi yurisprudensi, jurnal hukum, serta peraturan perundang-undangan yang berkaitan dengan pelaksanaan hukuman mati. Hasil penelitian menunjukkan bahwa dalam hukum pidana Indonesia, penerapan hukuman mati terhadap pelaku tindak pidana terorisme diatur dalam Undang-Undang Nomor 5 Tahun 2018 tentang Pemberantasan Tindak Pidana Terorisme. Dalam hukum Islam, tindak pidana terorisme tidak secara eksplisit dibahas dalam teks-teks klasik fikih. Namun, perbuatan tersebut sering dianalogikan dengan konsep *jarimah hirābah* karena memiliki karakteristik yang serupa, sehingga dapat dijadikan dasar pembenaran bagi penerapan hukuman mati terhadap pelaku terorisme. Baik hukum pidana Islam maupun hukum positif sama-sama mengklasifikasikan terorisme sebagai kejahatan luar biasa (*extraordinary crime*) yang mengancam keselamatan manusia, sehingga penerapan hukuman mati terhadap pelakunya dianggap dapat dibenarkan. Meskipun kedua sistem hukum tersebut mengakui sifat luar biasa dan ancaman serius dari kejahatan terorisme, keduanya memiliki perbedaan dalam mendefinisikan unsur-unsur hukumnya. Perbedaannya terletak pada unsur tindak pidana: hukum pidana Islam tidak mensyaratkan akibat yang meluas serta tidak menyinggung motif pelaku, sedangkan hukum pidana Indonesia menegaskan bahwa tindak pidana terorisme harus memenuhi unsur-unsur seperti menimbulkan akibat yang meluas. Dalam penanganan terorisme di Indonesia, pemerintah perlu menyeimbangkan secara bijak antara strategi pencegahan dan penegakan hukum. Hukuman mati seharusnya dipandang sebagai upaya terakhir (*ultima ratio*) dan dilaksanakan dengan kehati-hatian penuh untuk memastikan kesesuaiannya dengan prinsip-prinsip hak asasi manusia.

Kata Kunci: Hukuman Mati, Tindak Pidana, Hukum Islam, Terorisme

Introduction

Indonesia frequently experiences terrorist attacks, resulting in numerous innocent casualties, including local residents and international visitors. Notable incidents, such as the suicide bombings in Legian, Kuta, Bali—commonly referred to as the Bali Bombings I and II—claimed lives from several nations, including Australia, the United States, Germany, the United Kingdom, among others. Additional bombing events have taken place at various locations, including the Atrium Senen Shopping Mall in Jakarta, the Jakarta Stock Exchange Building, a McDonald's in Makassar, the J W Marriott Hotel in Jakarta, the Philippine Embassy, the Australian Embassy, and bombings at Sarinah, the JW Marriott Hotel, the Ritz Carlton, and numerous other sites.¹ The bombings have led to the destruction of buildings and spread fear among Indonesians and expatriates living in Indonesia for numerous reasons.

In 2017, there were 44 cases involving death penalty charges and sentences in Indonesia alone. Of these 44 cases, there were 38 death penalty charges requested by prosecutors, 27 death penalty verdicts handed down by judges, whether or not prosecutors had requested the death penalty, and 24 verdicts in which both prosecutors and judges

¹ I Gusti Putu Bagus Pradana and Rere Cika Ihza Pamesti, "Terrorist Attacks in Indonesia: Does Terrorism Work?," *Jurnal Ilmu Kepolisian* 18, no. 2 (2024): 206–220.

requested and handed down the death penalty.² Based on monitoring data from the Institute for Criminal Justice Reform (ICJR), there has been an increase in death penalty charges and sentences due to the government's strong commitment to eradicating certain crimes in Indonesia, particularly narcotics and terrorism-related crimes.³

Terrorist attacks in Indonesia have elicited both sympathy and pressure from the international community, urging action against Indonesian terrorist organizations. The United Nations responded by issuing two resolutions, including Resolution No. 1438 of 2002, which unequivocally condemned the bombings in Bali and conveyed profound sorrow and sympathy to the Indonesian government and people, as well as to the victims and their families.⁴ Resolution No. 1373 of 2002 advocates collaboration, support, and assistance to the Indonesian government in apprehending and ensuring fair trials for individuals involved in acts of terrorism in Indonesia.

Indonesia has transitioned from being merely a "stopover" or training location for individuals involved in terrorist activities to a direct target for such acts. It is crucial for the Indonesian government to implement comprehensive, systematic, integrated, and ongoing strategies to prevent and combat terrorism. The government must dismantle terrorist networks and impede all platforms used by these groups to propagate their doctrines and ideologies.

Terrorist organizations in Indonesia frequently recruit members and individuals, often referred to as "brides" of bombings, by exploiting religious doctrines. They promise that those who participate in such acts will attain a place in heaven. Within the context of Islam, these organizations frequently misinterpret the concept of jihad to persuade these "brides" to willingly engage in suicide bombing. Many individuals attribute the root cause of terrorism to an extremist interpretation or ideology associated with a specific religion. This perspective suggests that radical beliefs motivate terrorist organizations to engage in various violent acts, including murder, destruction, kidnapping, robbery, suicide bombings, and other criminal activities.

To combat terrorism, the Indonesian government has adopted a repressive approach by imposing maximum punishment on perpetrators of terrorist crimes. However, the application of the death penalty to perpetrators of terrorist crimes has not reduced the incidence of terrorism in Indonesia. The abundance of propaganda circulating on the Internet and the increasing number of terrorism cases in Indonesia indicate that terrorist networks and their sympathizers still exist in Indonesia in various factions, groups, and organizations. Therefore, this study analyzes the application of the death penalty for terrorism from two aspects: Indonesian positive criminal law and Islamic criminal law, and the extent of its effectiveness.

² Ifitahsari et al., *Report on the 2023 Situation of Death Penalty Policy in Indonesia: Automatic Commutation of the Death Penalty Mandated by the New Criminal Code* (Institute for Criminal Justice Reform, 2024).1-41

³ Vidya Prahassacitta, "The Concept of Extraordinary Crime in Indonesia Legal System: is The Concept an Effective Criminal Policy?," *Humaniora* 7, no. 4 (2024): 513-521.

⁴ Mahdi Abdullah Syihab and Muhammad Hatta, "Metode Penanggulangan Tindak Pidana Terorisme Di Indonesia," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 1, no. 1 (2023): 13-27.

The uniqueness of this study lies in its comparative analysis of Indonesian criminal law and Islamic law to examine the death penalty for terrorism, using *the maqāsid al-sharī'ah* as an innovative analytical perspective. The urgency of this study is underscored by ongoing debates regarding the death penalty for terrorism, which is often criticized for infringing upon human rights values. This study aims to enhance the legitimacy of the legal framework at both the national and international levels by advocating for the prudent and equitable application of the death penalty in terrorism cases.

This study employs a legalistic, doctrinal, and normative approach. The purpose of normative research is to identify, clarify, analyze, and systematically present facts, principles, concepts, theories, and laws. The aim was to uncover new insights and ideas that could be proposed for change or reform.⁵ This study comprehensively examines all documents, references, facts, theories, doctrines, and legal frameworks pertaining to the concept of capital punishment and its implementation in cases of terrorist crimes in Indonesia.

In legal research, various methodologies can be employed in normative or legalistic studies, such as statutory, historical, case law, and comparative methods.⁶ In this study, a comparative analysis is conducted between Indonesian criminal law and Islamic law, examining specific legal texts, sources of fiqh or judicial interpretations, legal journals, and statutes related to the enforcement of the death penalty for individuals guilty of terrorist offenses.

This study employs secondary data sources using data collection techniques derived from the literature or document studies. Secondary data were used for a thorough examination and analysis, applying a documentation study method. This method involves an extensive review of reference materials, including books, journal articles, legal statutes, court rulings, and other pertinent legal documents related to the research topic.⁷ The systematic analytical framework of this study incorporated conceptual analysis techniques. This approach is employed to compare legal systems, pinpoint their similarities and differences, and comprehend the reasons for these variations, aiming for either harmonization or a deeper understanding of the laws related to the topic.

Defining Terrorism: Historical Origins and Contemporary Interpretations

Several scholars assert that the notion of "terrorism" was first recognized and rose to prominence in the 18th century. At that time, France was in the midst of the "French Revolution," during which violent actions were employed to instill fear in the citizenry, thereby securing their obedience and loyalty to the ruling government of the day.⁸ Some scholars assert that the term "terrorist" first appeared in the Académie Française dictionary in

⁵ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparioe Law Journal (ACLJ)* 4, no. 1 (2023): 1-9, <http://dx.doi.org/10.22219/aclj.v4i1.24855>.

⁶ Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 94-112, <https://doi.org/10.35973/jidh.v7i2.3154>.

⁷ Yira Dianti, "Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif," *Angewandte Chemie International Edition*, 6(11), 951-952., 2020, 5-24.

⁸ M. Juergensmeyer, *Terorisme Para Pembela Agama*, Amien Roza (Tarawang Press, 2023).30

1798, where it was described as a "system or rule of terror." According to Chailiand, Blin, and Laqueur, terrorism emerged as a global concern during the "French Revolution" in 1793-1794, a period often called the "reign of terror."⁹ In 1934, the League of Nations took a pivotal step in addressing terrorism on a global scale by considering a draft convention focused on its prevention and punishment. Both the League of Nations Convention and the United Nations have since recognized terrorism as a significant issue on the international agenda.¹⁰

Juergensmeyer notes that the word "terrorism" is derived from the Latin term *terrere*, which translates to "to cause to tremble."¹¹ In English, those who engage in terrorism are called "terrorists," a term associated with fear, horror, and dread. According to the *Dictionnaire de la langue Francaise*, terrorism is described as *attitude d'intimidation*, which refers to a stance and actions that evoke fear.¹² Black's Law Dictionary defines terrorism as actions involving violence or threats to human life, aimed at frightening civilians, shaping government policies, and impacting state governance through acts such as kidnapping or murder. Similarly, Webster's New World College Dictionary (1996) describes terrorism as the use of force or threats to demoralize, intimidate, and subjugate.¹³

Muladi characterizes terrorism as acts of violence or threats that are inherently political. These acts may manifest as piracy, hijacking, or hostage-taking and can be perpetrated by individuals, groups or nation-states. The primary objectives are to instill fear, achieve extortion, effect radical political change, advocate for human rights and fundamental freedoms for innocent parties, and fulfill other political demands.¹⁴ A.C. Manullang asserts that terrorism functions as a strategy for acquiring power from rival groups. This strategy is often instigated by a variety of factors, including religious, ideological, and ethnic tensions; economic disparities; breakdowns in communication between citizens and governmental bodies; and separatist and extremist ideologies.¹⁵

There is no standard and definitive understanding of the term "terrorist" Even the United States, which has long had terrorism laws, has yet to systematically define the term "terrorist" either academically or legally. According to Siti Mumun Muniroh and Maghfur Ahmad, terminologically, there is still no consensus on the meaning and significance of

⁹ G. Chailiand and A. Blin, *The History of Terrorism from Antiquity to Al-Qaeda* (University of California Press, 2022).35

¹⁰ Robert A. Pape, "The Strategic Logic of Suicide of Terrorism," *American Political Science Review* 97, no. 3 (2023): 343-61, <https://doi.org/10.2307/3117613.45>

¹¹ James A. Lewis, *Assessing the Risks of Cyber Terrorism, Cyber War and Other Cyber Threats*, in *Center for Strategic and International Studies*, no. December (2022).50

¹² Muladi, "Hakekat Terorisme Dan Beberapa Prinsip Pengaturan Dalam Kriminalisasi," *Jurnal Kriminologi Indonesia* 2, no. III (2002): 1-13.

¹³ Edy Syahputra and Zora A. Sukabdi, "Deradikalisasi Mantan Narapidana Terorisme: Studi Kasus MW Alias WG," *Journal of Terrorism Studies* 3, no. 2 (2021): 1-21, <https://doi.org/10.7454/jts.v3i2.1036>.

¹⁴ Imam Mustofa and Nurul Mahmudah, "Terorisme, Jihad, Dan Prinsip Hukum Islam: Alternatif Upaya Deradikalisasi," *Jurnal Wawasan Yuridika* 6, no. 1 (2022).

¹⁵ Muhammad Hasbi et al., "Deradikalisasi: Upaya Pemerintah Sebagai Pemangku Kebijakan Dalam Menjaga Perdamaian Negara Menurut Persektif Fikih Jihad," *Mitsaqan Ghalizan: Jurnal Hukum Keluarga Dan Pemikiran Hukum Islam* 2, no. 1 (2022): 1-15.

terrorism.¹⁶ Bassiouni argues that it is not easy to create an identical and universally accepted definition of terrorism. Brian Jenkins states that terrorism is a subjective view and that each country has a different perspective in defining it.

Notably, Malaysia lacks a singular legal document that thoroughly defines terrorism. However, pivotal legislation such as the Security Offenses (Special Measures) Act 2012 (SOSMA) and the Prevention of Terrorism Act 2015 (POTA) play crucial roles in regulating the prevention and detention of terrorism-related activities. Malaysia regards terrorism as a transnational crime that endangers security and peace. Acts of terrorism are identified by their use or threat of violence, systematic organization, and intent to instill fear and challenge a state's sovereignty.¹⁷

In the context of Singaporean law, terrorism is characterized by acts or threats of violence intended to intimidate the public, instill fear, or exert pressure on the government to compel specific actions. This definition encompasses the preparation, support, or funding of such activities, as outlined in legal frameworks such as the Internal Security Act (ISA) and the Terrorism (Suppression of Financing) Act (TSOFA).¹⁸

In terms of Islamic law, if terrorism is viewed in the context of criminal acts, then in Islamic law it is classified as *jarimah ḥ irābah* (i.e., acts that cause chaos in society, thereby disturbing public peace, or threats that cause fear and unrest in society, such as bomb threats and bombings, which can cause damage and casualties (death or injury). This definition meets the criteria of *jāmi'*, which covers all acts referred to as *hirābah*, and *māni'* (excluding all types of acts that are not included in *hirābah*). This definition covers criminal acts of causing unrest, inciting others to commit acts of violence, provocateurs, intellectual actors, and, of course, perpetrators of bombings.

Etymologically, acts of terror are referred to as *Irhāb*, the perpetrators are called *Irhāby* (terrorists), and the ideology is called *Irhābiyyah* (terrorism). *al-Irhāb* is a term built on a meaning that has various forms (modes), the essence of which is a movement of intimidation or terror or a movement that spreads fear to individuals or communities that are already in a state of security and tranquility.

Since the attacks on the World Trade Center and the Pentagon in New York, United States, on September 11, 2001, which resulted in the deaths of 5,000 people, terrorism has often been linked to the ideology of a specific religion.¹⁹ Following the incident, there was considerable conjecture regarding the intentions and goals of the terrorist attacks. The U.S. government accused Islamic groups of being the primary culprits of these acts of terrorism. Furthermore, the U.S. government alleged that several Islamic nations were involved in

¹⁶ Siti Mumun Muniroh & Maghfur Ahmad, *Perempuan Di Balik Teroris; Religiusitas, Penyesuaian Diri Dan Pola Relasi* (Stain Pekalongan Press, 2023).²³

¹⁷ Adji Rahmat Andre Setiawan and Rachmat Dwi Putranto, "Perbandingan Regulasi Penanganan Kejahatan Terorisme Di Indonesia Dan Malaysia," *Journal Evidence of Law* 2, no. 2 (2023): 180-189.

¹⁸ U.S. Departement State, "Country Reports on Terrorism 2023: Singapore," <https://www.state.gov/>, 2023, <https://www.state.gov/reports/country-reports-on-terrorism-2023/singapore#:~:text=Overview: Singapore has a comprehensive, new detentions reported in 2023.>

¹⁹ W.Y. Hung, "Review on the World Trade Center Terrorist Attack Fires," *International Journal on Engineering Performance-Based Fire Codes* 5, no. 2 (2003): 45-49.

shielding, aiding, and financing terrorist organizations to execute their operations.²⁰ Since that period, Islam has been associated with acts of terrorism and linked to violent behavior, and Muslims have been perceived as extremists.

The harsh claim that Islam promotes violence has been widely disseminated in various Western media outlets, both print and online. These media sources have even gone so far as to portray the revered Prophet Muhammad (SAW) as a terrorist.²¹ This allegation is biased and harsh in nature. A single group engaging in violent acts is seen as representative of Muslims worldwide. This claim lacks fairness and is not supported by solid evidence. To judge impartially, it is important to note that similar actions have been carried out by Jewish individuals or groups in Palestine, yet no one claims that Judaism is an extremist religion that endorses the killing of innocent people. Throughout history, terrorist activities have not been confined to Islamic nations or perpetrated solely by Muslims; they have also occurred in regions such as the United States, South America, East Asia, and Europe.²²

In the study of history, terrorism did not originate from a specific ideology or connection to any particular religion. All religions promote virtuous behavior, offer guidance for living, and enforce penalties for those who breach their teachings. The influence of religious teachings is not confined to the afterlife; it shapes life before birth, throughout one's existence, and beyond. According to Ball and Dagger, when analyzed ideologically, terrorist movements can be understood through religious lenses that interpret values and teachings, reflecting moral, social, and political interests and commitments.²³ However, this interpretation is misunderstood by its adherents, leading to violent actions that are not supported by the religious doctrines.

It is clear that some groups misinterpret their religious teachings, leading to a skewed perspective that endorses violence, such as murder, bombings, kidnappings, persecution, and abductions, against those with differing beliefs. Individuals involved in terrorism often identify themselves with terms such as separatists, freedom fighters, crusaders, militants, or mujahideen, depending on their religious or ideological stance. In the Islamic context, the terms "jihad" and "mujahidin" are frequently cited. These elements of Islamic teachings are sometimes used to inspire or rationalize acts of terrorism in the name of Islam. This rationale is then manipulated by individuals or groups to pursue personal interests by justifying their acts of terror.²⁴

In discussions about Islam, the concept of terrorism is often linked to the idea of jihad, which is compared to the Christian Crusades. The way some extremist factions within the Muslim community interpret jihad has led many Western Orientalists to frequently link

²⁰ Uwe Johannsen et al., *September 11 & Political Freedom: Asian Perspectives* (Select Pub & Friedrich Naumann Foundation, 2023).73

²¹ Jeanne Darc Noviyanti Manik, "Tindak Pidana Terorisme," *Equality* 12, no. 2 (2007): 146–150.

²² Ali Abdullah Wibisono et al., "Indonesia's Handling of Terrorists' Cyber Activities: How Repressive Measures Still Fall Short," *Journal of Asian Security and International Affairs* 12, no. 1 (2024): 134–60, <https://doi.org/10.1177/23477970241298764>.

²³ Zulfi Mubarak, "Fenomena Terorisme Di Indonesia: Kajian Aspek Teologi, Ideologi Dan Gerakan," *Salam: Jurnal Studi Masyarakat Islam* 15, no. 2 (2022): 240–254.

²⁴ Mulyana W. Kusumah, "Terorisme Dalam Perspektif Politik Dan Hukum," *Jurnal Kriminologi Indonesia FISIP UI* 2, no. 3 (2002): 22.

jihad with acts of terrorism.²⁵ The latter faction confines itself to a narrow interpretation of jihad, driven by personal biases and interests. Consequently, both radical Muslim factions and Western Orientalists hold similar views of jihad. They interpret it literally, focusing on a single meaning among the various interpretations of jihad. This perspective starkly contrasts with their own scholarly tradition, which embraces a comprehensive and pluralistic approach to understanding concepts.²⁶

In many instances of terrorism in Indonesia, the driving force behind individuals committing such acts is the embrace of extreme and erroneous religious ideologies that compel them to engage in suicide bombings. McAlister points out that terrorism in Indonesia is fueled by a mix of ignorance, poverty, political motives, and a flawed interpretation of religious principles.²⁷ Al Chaidar asserts that terrorism is a form of heroic crime executed under the guidance of intellectuals who employ violence and disseminate religious rhetoric to legitimize the atrocious act of murdering individuals with differing ideologies and political beliefs.²⁸

In the cases of the first and second Bali bombings, the perpetrators came from several terrorist networks, such as Darul Islam (DI), the successor organization to the Indonesian Islamic State (NII), and Jemaah Islamiyah (JI). On October 12, 2002, Kuta in Bali was the site of the first Bali bombing. This tragic event resulted in the deaths of 220 individuals and left 209 others injured, the majority of whom were foreign nationals. It is regarded as the most significant act of terrorism to have taken place in Indonesia. Among those affected by the attack in Bali were tourists from various countries, including Australia, the United Kingdom, the United States, Germany, Sweden, the Netherlands, France, Denmark, New Zealand, Switzerland, Brazil, and Canada, as well as several other nations. Meanwhile, the Bali Bombings II, better known as the 2005 Bali Bombings, shook the Kuta and Jimbaran areas three times, killing 23 people and injuring 196.

Naharong argues that in the Bali Bombing I incident, Imam Samudra and his friends believed that the Bali Bombing I was an implementation of the teachings of jihad, which they believed to be part of fardu ain, meaning that every individual must follow the pillars of Islam, namely, fasting, prayer, and others.²⁹ In other words, they made jihad the sixth pillar of Islam. Jemaah Islamiyah (JI) believes that radicalism is the appropriate way to achieve the goals of its movement. The radicalism referred to is an effort to replace the old

²⁵ M. A. K Hasan et al., "Exploring the Shifting Understanding of Jihad Among Former Terrorists in Their Journey Towards Disengagement: Transforming the Sword," *Journal of Law and Sustainable Development* 11, no. 1 (2024), <https://doi.org/10.55908/sdgs.v12i1.2990>.

²⁶ Hamzah Junaid, "Pergerakan Kelompok Terorisme Dalam Perspektif Barat Dan Islam," *Sulesana* 8, no. 2 (2013): 118–135.

²⁷ Melanie McAlister, "A Cultural History of The War Without End," *Journal of American History* 89, no. 2 (2002): 439–55, <http://dx.doi.org/10.2307/3092165>.

²⁸ Keysha Alea Azzahra et al., "Isu HAM Dalam Penegakan Hukum di Indonesia: Analisis Kasus Penanganan Tindak Pidana Terorisme Berdasarkan Hukum Nasional Dan Internasional," *Referendum: Jurnal Hukum Perdata Dan Pidana* 1, no. 4 (2024): 215–27, <https://doi.org/10.62383/referendum.v1i4.354>.

²⁹ Nyoman Darma Putra and Michael Hitchcock, "The Bali Bombs and the Tourism Development Cycle," *Progress in Development Studies* 6, no. 2 (2006): 157–66, <https://doi.org/10.1191/1464993406ps134oa>.

administrative system with a completely new one.³⁰ This is understandable because replacing an established system of government cannot be done partially but must be achieved through revolutionary action. If radical methods are used, Jemaah Islamiyah (JI) believes that acts of terror or terrorism are effective enough to achieve the movement's goals.³¹ The involvement of Jemaah Islamiyah (JI) in the first Bali bombing shows the convergence or continuity of fundamentalism as the ideology of the movement, radicalism as the method, and terrorism as the practice or operational step of the Jemaah Islamiyah (JI) movement.

However, after ISIS emerged in Syria and Iraq, the motivations of terrorist groups in Indonesia partially changed.³² Many terrorist groups call for fundamental changes to the nation's philosophical foundations and system of government. Terrorist groups or several organizations with radical ideologies are voicing their desire to establish an Islamic state or replace Indonesia's system of government with a caliphate system. The ISIS pattern of struggle was introduced in Indonesia to undermine the sovereign government through acts of terrorism.

The political approach adopted by terrorist groups in Indonesia is not new. Viotti and Kauppi describe terrorism as violence driven by political motives intended to disrupt society and destabilize the government.³³ Terrorism operates as a rational entity that aims to achieve political influence through intimidation or acts of violence.³⁴ Groups that perceive themselves as politically marginalized often engage in this activity. In essence, terrorism is intentionally orchestrated to instill fear through acts of violence or threats thereof, with the aim of achieving political transformation.

Zulfi Mubarak describes political terrorism as the deployment of violence by individuals or groups, regardless of whether they are aligned with or against the government. This violence is aimed at instilling profound fear in the intended targets, exceeding the fear felt by the immediate victims, to compel the targeted groups to comply with the political demands of the perpetrators.³⁵ Prayitno Ramelan, a retired Air Force Marshal, stated that the terrorist bombings in Indonesia were driven by political motives.³⁶ He stated that the terrorists aimed to exert pressure on and attack the United States, choosing

³⁰ Dheni Anugerah Prasetya, "Bali Bombing and the Erosion of the Legality Principle: A Juridical Analysis of the Application of Retroactive Law in Countering Terrorism in Indonesia," *Indonesian Journal of Counter Terrorism and National Security* 3, no. 2 (2024), <https://doi.org/10.15294/ijctns.v3i2.31141>.

³¹ Dheni Anugerah Prasetya and Rohadhatul Aisy, "Bali Bombing and the Erosion of the Legality Principle: A Juridical Analysis of the Application of Retroactive Law in Countering Terrorism in Indonesia," *Indonesian Journal of Counter Terrorism and National Security* 2024 3, no. 2 (2024): 257–90, <https://doi.org/10.15294/ijctns.v3i2.31141>.

³² Ann E. Robertson, *Terrorism and Global Security* (Fact on File, Inc., 2007).54

³³ Paul R. Viotti, *International Relations and World Politics: Security, Economy, Identity*, Third Edit (Pearson Education Inc, 2007).

³⁴ Bruce Hoffman, *Defining Terrorism Dalam Terrorism and Counterterrorism, Understanding the New Security Environment*, Third Edit (The McGraw-Hill Companies, 2009).

³⁵ Zulfi Mubarak, "Fenomena Terorisme Di Indonesia: Kajian Aspek Teologi, Ideologi Dan Gerakan," *Salam: Jurnal Studi Masyarakat Islam* 15, no. 2 (2012): 1.

³⁶ Prayitno, "Teroris Di Indonesia Punya Motif Politik," *Www.Kompas.Com*, 2009, <https://nasional.kompas.com/read/2009/12/05/16025025/prayitno.teroris.di.indonesia.punya.motif.politik>.

Indonesia as their target because of its perceived ties to the US. Furthermore, the motivations behind terrorist activities are influenced by political agendas, particularly the ongoing Israel-Arab conflict and the US political and military involvement in Muslim nations.³⁷

The interpretation of terrorist criminal acts is further clarified in Article 1, paragraph (2) of Law Number 5 of 2018 in conjunction with Law Number 15 of 2003 on the Eradication of Criminal Acts of Terrorism, which states that terrorism is defined as actions involving violence or threats of violence that instill terror or widespread fear, potentially leading to mass casualties, and/or causing damage or destruction to critical strategic assets, the environment, public facilities, or international facilities, driven by ideological, political, or security-related motives. This regulation clarifies that terrorism is not solely rooted in a specific religious ideology but is also motivated by political interests of the perpetrators.

In recent years, a multitude of terrorist groups have emerged worldwide, including those originating in Indonesia, which perpetrate acts of terror to advance their political agendas. These terrorist activities are deeply rooted in identity politics and manipulate individuals or groups based on specific religious affiliations. This manipulation fosters ideologies such as fundamentalism, primordialism, and ethnocentrism, which assert the superiority, sanctity, and righteousness of their own group while condemning other groups and even certain nations. However, what makes terrorism the preferred method for achieving political goals? According to SB Agus, terrorism is chosen because it is uncomplicated, inexpensive, requires a minimal organizational framework, and is effective in altering the power dynamics on the ground.³⁸

The Application of the Death Penalty in Indonesia

In Arabic, punishment is known as 'uqûbah, which means torment or punishment for actions contrary to Sharia. According to 'Abd al-Qadîr 'Audah, punishment is a form of retribution against criminals who violate Sharia law, with the aim of realizing the welfare of humanity.³⁹ Sheikh Wahbah Zuhailî believes that there are two forms of punishment in Islam, namely punishment in the hereafter (*al-'uqûbah al-ukhrawiyah*) and punishment in this world (*al-'uqûbah al-dunyawiyah*). Punishment in the hereafter is the most correct (*haqq*) and just (*'adl*) punishment, and it is the will of Allah SWT, which can take the form of punishment or forgiveness. Meanwhile, Wahbah Zuhailî divides worldly punishment into two types: *hudûd* and *ta`zir*.⁴⁰

Within the framework of Islamic law, the death penalty is regarded as the ultimate form of punishment and is of significant importance. It is applied to specific offenses to safeguard both individual and societal rights from acts that threaten human welfare.⁴¹ Islamic law recognizes the death penalty through three distinct forms of punishment: *qishâsh*, *hudûd* and *ta`zir*. According to 'Abd al-Qadîr 'Audah, *qishâsh* is the death penalty imposed on

³⁷ Mubarak, "Fenomena Terorisme Di Indonesia: Kajian Aspek Teologi, Ideologi Dan Gerakan," 2022.

³⁸ Agus SB, *Darurat Terorisme, Kebijakan Pencegahan, Perlindungan, Dan Deradikalisasi* (Daulat Press, 2024). 21

³⁹ Moh Rifa'i, *Fiqh Islam Lengkap* (PT. Karya Toha Putra, 2022).94

⁴⁰ Muhammad Abû Zahrah, *Ushûl Al-Fiqh* (Maktabah Muhaimeer, 1957). 72

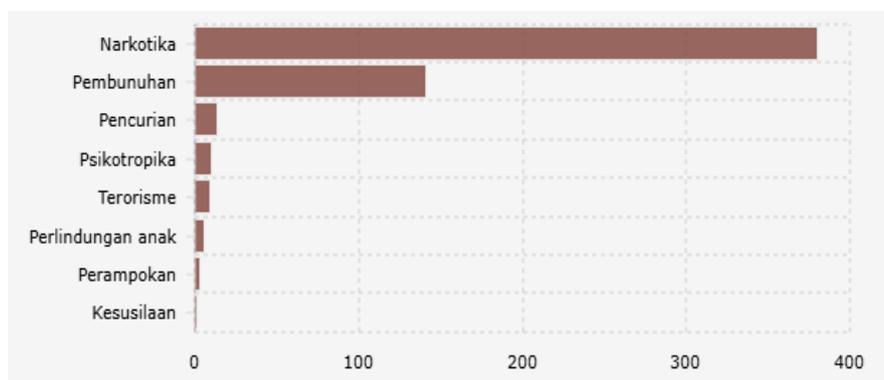
⁴¹ Abd al-Wahab Al-Khalâf, *Ushûl Al-Fiqh* (Dâr al-Qalam, 1992).

perpetrators of murder, whether premeditated or not.⁴² *Hudûd* is a type of death penalty imposed for the crimes of adultery (*muhshan*), robbery (*hirâbah*), rebellion (*al-baghyu*), and apostasy (*riddah*). Meanwhile, *ta'zir* is a type of death penalty imposed for crimes that are not included in *qishash* and *hudud* and are considered to cause great harm to humanity.⁴³

The *ta'zir* category of punishment is applied to contemporary crimes such as drug-related crimes, terrorism, and corruption. *Ta'zir* punishment, also referred to as '*al-qatlu alsiyâsi*', signifies a form of capital punishment not explicitly outlined in the Qur'an and Sunnah. Instead, it is up to the state to establish guidelines and procedures for enforcement.⁴⁴ The death penalty can be imposed by the state if no other measures can be taken to reduce the crime rate. Barda Nawawi Arief explains that, within Islamic law, the death penalty is not fundamentally intended as a primary tool for societal regulation, control, or protection. Instead, it is viewed as a measure of last resort, akin to how amputation is treated in medicine—not as a routine procedure but as an extraordinary action taken only when absolutely necessary.⁴⁵ Instead, it is viewed as a measure of last resort, akin to how amputation is treated in medicine—not as a routine procedure but as an extraordinary action taken only when absolutely necessary. Thus, certain criteria can allow a particular crime to be punished by death, such as punishments that fall under *hudud*, *qishâsh*, and *ta'zir*.⁴⁶

To date, Indonesian positive law still accommodates the death penalty, which is included in various laws both within and outside the Criminal Code (KUHP). However, Indonesia cautiously and selectively applies the death penalty to uphold human rights values. Article 10 of the KUHP stipulates that the death penalty is the main punishment that will be imposed for certain crimes, such as treason, inciting other countries to wage war, aiding the enemy during wartime, treason against friendly countries, premeditated murder, robbery with violence, extortion with violence, and piracy. In addition, several provisions outside the Criminal Code impose the death penalty for certain crimes. For example, narcotics, psychotropic, terrorism, gross human rights violations, firearms possession, and corruption crimes.

Table 1. Number of Death Row Inmates in Indonesia 2024



⁴² Abd al-Qadir Audah, *Al-Tasyri' al-Islâmi Jina'iy: Muqâranah Bi al-Qanûn al-Wadh'i*, Juz 1 (al-Risâlah Mu'assasah, 1992).

⁴³ Abdul Salam, *Fiqh Jinayat (Hukum Pidana Islam)* (Ideal, 2023).

⁴⁴ Al-Syathiby, *Al-Muwafaqat Fi Ushul al-Ahkam*, II (Dar al-Fikr, 1314).

⁴⁵ D Ismanto et al., "Kebijakan Hukum Pidana/Penal Policy," *Innovative: Journal of Social Science Research* 4, no. 4 (2024): 16351–61, <https://doi.org/10.31004/innovative.v4i4.15096>.

⁴⁶ Zafrullah Khan Muhammad, *Islam and Human Rights* (Islam International Publications Ltd., 2022).

Abdul Rahman Saleh stated that the death penalty is still necessary in Indonesia, but the method of execution by firing squad needs to be reviewed because it is considered inhumane. Abdul Raman Saleh suggested that the death penalty should no longer be carried out by firing squad but by lethal injection or hanging.⁴⁷ The Attorney General once formed a team to find a new formula for carrying out the death penalty, consisting of the Supreme Court (Mahkamah Agung, MA), the Indonesian Medical Association (IDI), the Ministry of Law and Human Rights, the Ministry of Health, and the Indonesian National Police. However, to date, the death penalty in Indonesia is still carried out by shooting the condemned prisoners.

The implementation of the death penalty in Indonesia remains controversial. Those who disagree with the death penalty base their arguments on the fact that the death penalty violates human rights. Advocates for human rights and various international humanitarian organizations are urging an end to the death penalty. They argue that it violates a person's fundamental right to life and removes the possibility for individuals to rectify their wrongdoings and reintegrate into society.

The death penalty is considered a barbaric and classic punishment that is outdated and out of touch with the times. According to Schabas, the death penalty is an ancient form of punishment that is no longer relevant to modern human civilization and should be abolished.⁴⁸ Hardiman states that no matter how severe the punishment, it cannot reduce the crime rate. For example, the high number of drug-related crimes, terrorism, corruption, and other crimes is not caused by the absence of the death penalty but rather by other structural problems such as poverty, ignorance, or the behavior of officials.⁴⁹ In cases of terrorism, the death penalty can serve as ideological fuel, intensifying the radicalism and militancy of offenders who then indoctrinate others.

However, those who support the death penalty base their arguments on ideology and the development of crime, which is becoming increasingly systematic, organized, and massive. Some believe that the concept of capital punishment, especially as regulated in Islamic law, is cruel, inhumane, and sadistic. The horrific impression of the death penalty was initially launched by Western countries, not solely because of their dislike of the death penalty, but more because of their low moral awareness and lack of fully developed social sensitivity.

The punishment of criminals is solely for the purpose of implementing the provisions of Islam, as outlined in the *maqashid al-syariah*. Before imposing the death penalty, law enforcement officials conduct a professional and careful investigation. The purpose of law enforcement, which includes the sentencing of offenders, is to uphold and safeguard the five fundamental values of humanity: religion (*al-din*), life (*al-nafs*), property (*al-mal*), intellect (*al-aql*), and lineage (*hifz al-nasl*).⁵⁰ These rights are gifts from Allah SWT that must be upheld

⁴⁷ Yanti Kristina Sianturi, "Amnesty International Dan Penghapusan Hukuman Mati di Malaysia," *Jurnal Transformasi Global* 7, no. 2 (2020): 236–242.

⁴⁸ William Schabas, "Islam and the Death Penalty," *William and Mary Bill of Rights Journal* 1, no. 4 (2000): 223.

⁴⁹ H Firmansyah, "Upaya Penanggulangan Tindak Pidana Terorisme Di Indonesia," *Mimbar Hukum-Fakultas Hukum* 23, no. 2 (2011): 237–429, <https://doi.org/10.22146/jmh.16193>.

⁵⁰ Muhammad Iqbal Siddiqi, *The Penal Law of Islam* (Kazi Publication, 2021). 81

and protected, including the death penalty as one of the most severe punishments among many others.

The Indonesian Ulema Council (MUI) supports the death penalty for certain crimes that can cause great harm to humanity.⁵¹ In terms of Indonesian criminal law, the 1945 Constitution protects and fully guarantees human rights, including the right to live freely and with dignity. However, the evil behavior of a person who kills and endangers the lives of others can result in the death penalty being imposed on the perpetrator. Article 28 letter A and Article 28 letter I Paragraph (1) of the 1945 Constitution outline the guarantees for the right to life, yet these assurances come with certain constraints. These limitations are specified in Article 28 J letter (b) of the same Constitution, which indicates that individuals must adhere to restrictions set by law while exercising their rights and freedoms. These restrictions aim to ensure the acknowledgment and respect of others' rights and freedoms within a democratic society, considering moral, religious, security, and public order considerations. Therefore, the death penalty may be applied to protect greater national interests.

The Death Penalty for Terrorism in Indonesia: Between Law Enforcement and Islamic Justice

Under Indonesian criminal law, the fight against terrorism is governed by Law Number 5 of 2018, which amends Law Number 15 of 2003. This earlier law was about the enactment of Government Regulation in Lieu of Law Number 1 of 2002 on the Eradication of Terrorism. The death penalty, as mentioned in the Law on the Eradication of Criminal Acts of Terrorism, is not obligatory but is one of the possible sentences that a judge may impose if an individual is found guilty of committing a terrorist act.

Law No. 5 of 2018, which addresses the Eradication of Terrorism, outlines the death penalty in several sections. Specifically, for current acts of terrorism, the death penalty may be applied to offenses that meet the criteria outlined in Articles 6, 8, 9, 10, 10A (paragraph 1), 14, 15, and 16. As an illustration, Article 10A paragraph (1) outlines that “any individual who unlawfully imports into, produces within, acquires, receives, transfers, manages, carries, possesses, stores, transports, conceals, or exports from the Republic of Indonesia any chemical, biological, or radiological weapons, microorganisms, nuclear or radioactive materials, or their components, with the intent to perpetrate a terrorist act, shall be subject to a prison term ranging from a minimum of 3 (three) years to a maximum of 20 (twenty) years, life imprisonment, or the death penalty.”

The effectiveness of the death penalty as a deterrent to terrorism is a topic of debate. Despite the harsh penalties, including capital punishment, imposed on those who commit terrorist acts, the incidence of such crimes is on the rise, with terrorist networks continuing to grow.⁵² Supriyadi argues that imposing the death penalty in terrorism cases is misguided. He suggests that executing terrorists only reinforces their image as ideological martyrs,

⁵¹ Farah Rhesyfa Abril and Muthoifin, “Analisis Pidana Mati Di Indonesia Perspektif Hukum Islam,” *Risalah Jurnal Pendidikan Dan Studi Islam* 10, no. 1 (2024): 140–148, https://doi.org/10.31943/jurnal_risalah.v10i1.771.

⁵² Mahdi Abdullah Syihab, “Metode Penanggulangan Tindak Pidana Terorisme Di Indonesia,” *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 1, no. 1 (2023): 13–27, <https://doi.org/10.5281/ZENODO.8116169>.

making it a prestigious act to die for a cause that their group deems ideological. This perception could motivate new offenders and further terrorist activities while obstructing the progress of deradicalization efforts.⁵³

Deradicalization is a proactive approach designed to prevent prisoners, those who have been incarcerated, and other potentially involved individuals from participating in or repeating violent or terrorist activities.⁵⁴ Evidence indicates that arresting, detaining, and sentencing individuals through legal proceedings do not effectively prevent terrorists from committing further acts of violence or terrorism. Conversely, law enforcement efforts combined with deradicalization programs aimed at prisoners, former inmates, and others who might become involved have yielded positive or significant outcomes in curbing the recurrence of violence or terrorism, as these individuals recognize the importance of returning to normal life.

Deradicalization is often interpreted as a method for countering terrorist ideology. Criminals often interpret their actions as commands from their religion. This flawed and misleading grasp of ideology stems not only from ignorance but also from deliberate, systematic, and structural indoctrination by terrorist groups, which aim to disseminate and instill an ideology that diverges from the true reality. In addition to addressing ideological concerns, the government must prioritize substantial improvements in welfare and ensure fair access to education throughout Indonesia. To effectively counter the ideologies of terrorist groups in Indonesia, it is essential to strengthen the involvement of intellectual circles, religious figures, ethnic communities, and society at all levels.

Addressing terrorism in Indonesia involves more than just legal and law enforcement efforts; it also encompasses social, cultural, and economic dimensions that are intricately linked with national security. Consequently, strategies and actions to prevent and combat terrorism focus on striking a balance between safeguarding the nation's sovereignty, upholding the human rights of victims and witnesses, and respecting the rights of suspects and defendants. The pursuit of preventing terrorist activities with the aforementioned three goals demonstrates that the Indonesian populace values human civilization and is deeply committed to preserving the unity of the sovereign Republic of Indonesia amid the changing tides of global peace and security. The government's anti-terrorism strategies involve both preventive and repressive measures to ensure comprehensive law enforcement.

Furthermore, in Islamic criminal law, the death penalty for terrorism is very severe. According to Islamic law, terrorism is classified as a crime of *hirabah*, which is punishable by death (*Qishâsh*) for destroying the safety and peace of society. This provision is in accordance with religious principles that prohibit acts that cause destruction and violence, with the aim of protecting life, property, and society. The effects of terrorism are so profound that implementing the death penalty aligns with *maqâsid asy-syari'ah*, as one of the objectives of this punishment is to safeguard life (*hifz al-nafs*).⁵⁵

⁵³ Sumiadi et al., "Concept of Deradicalization against Criminal Acts of Terrorism in the Perspective of Islamic Criminal Law," *International Journal of Law, Social Science, and Humanities* 2, no. 2 (2025): 275–85, <https://doi.org/10.70193/ijlsh.v2i2.252>.

⁵⁴ Muhammad Hatta et al., "Terrorism Crimes in Indonesia: A Counterterrorism Perspective," *Malaysian Journal of Syariah and Law* 13, no. 1 (2025), <https://doi.org/10.33102/mjsl.vol13no1.867>.

⁵⁵ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (The International Institute of Islamic Thought, 2024).103

Surah Al-Maidah verse 33 in the Qur'an serves as the foundation for enforcing capital punishment for actions that threaten security. Terrorism is classified as *jarimah hirabah* because of its harmful impact on humanity, comparable to offenses against life and property. However, historically, the *hirabah* sanction has not always been applied literally, as stated in the verse. An exception was applied in this case. Diana, in Surah Al-Maidah verse 34, explained in the interpretation of Ibn Kathir that the death penalty (Al-Maidah verse 33) can be set aside if the perpetrator repents before the case reaches court. An example of this is the exemption from the death penalty for Ali al-Asadi during the Umayyad Dynasty. He killed, terrorized, and stole property, but he repented after hearing the verse "*illa al-la žina tābu min qablu antagħdirū 'alaihim.*"⁵⁶ He entered the mosque for dawn prayer and approached Abu Hurairah, when Marwan bin al-Hakam (the governor of Medina) came to the mosque and said, "This man has come to me and repented, so no one has the right to arrest and punish him (with the death penalty)."

Islamic criminal law stipulates that criminal penalties can be applied to individuals involved in terrorism if they fulfill the criteria and conditions necessary to be held legally accountable, similar to conventional criminal law. In Islamic law, these conditions are (1) *Mukallaf*, namely being of sound mind and mature; the insane and minors are not subject to *had* punishment; (2) Male; the perpetrator of *jarimah* must be male, and a woman will not be subject to *ad* if she conspires with others to commit *jarimah*; and (3) There must be no element of coercion in committing a *jarimah*. According to Abdul Qodir Audah, there are three elements of a criminal act:⁵⁷

- a. There must be a *naş h* that threatens criminal acts that can punish them, which we call the Formal Element in our legislation.
- b. Committing an act that is punishable by law, either by doing something or by not doing something, is a crime. This is what we refer to in our legislation as the Material Element.
- c. The perpetrator of the crime must be *mukallaf* or responsible for the criminal act. This is what we refer to in our legislation as the Moral Element.

The material element of *jarimah hirabah* is that the crime of *hirabah* is committed by a group of people, and sometimes by an individual. This crime is usually committed in public or without the victim's knowledge, carried out openly with violence or the threat of violence.⁵⁸ The crime of *hirabah* is more dangerous than intentional murder because the latter may only be an act of revenge.⁵⁹ *Hirabah* represents a significant threat to the stability and safety of society, nations, and states. When perpetrated by an individual, it has the potential to disrupt an entire country. If executed by a group, it can destabilize security, damage public interest, and result in extensive destruction across the land.⁶⁰ The moral element of a *jarimah* act contains several requirements for a person to be held accountable

⁵⁶ Makhrus Munajat, *Dekonstruksi Hukum Pidana Islam* (Logung Pustaka, 2023).41

⁵⁷ Audah, *Al-Tasyri' al-Islāmi Jina'iy: Muqāranah Bi al-Qanūn al-Wadh'i*.14

⁵⁸ Sayyid Sabiq, *Fiqh as Sunnah*, 3rd ed. (Dara al Fikr, 1977). 205

⁵⁹ Muhammad Hatta, "Perdebatan Hukuman Mati Di Indonesia: Suatu Kajian Perbandingan Hukum Islam Dengan Hukum Pidana Indonesia," *Jurnal MIQOT* 34 (2012): 320–341.

⁶⁰ Zulfan, "Legal Position of Caning Punishment in Aceh," *Int" Journal of Law, Environment, and Natural Resources (INJURLENS)* 1, no. 2 (2021): 61–73.

for their actions. These requirements are as follows: first, the person must be able to understand *dalil taklif*; second, the person must be held accountable for their actions and be subject to punishment.⁶¹

The Holy Qur'an explains that the punishment for the crime of *hirabah* or terrorism, as specified in Q.S. al-Maidah verse 33, varies. The *fuqaha* divide the punishment for perpetrators of *hirabah*, or terrorism, into four types according to the severity of the crime committed: death and crucifixion, death alone, amputation of the right foot and left *hand*, and imprisonment.⁶² Similarly, those who instigate chaos on earth, disrupt peace, or inflict damage are subject to severe punishment, such as having their hands and feet severed in a diagonal pattern or being forced to leave their community.⁶³ The purpose of enforcing these punishments in Islam is to preserve and protect religion, life, reason, lineage, and property.⁶⁴ Consequently, according to Islamic Sharia law and the principle of *qishash*, terrorism is akin to the crime of *hirabah*. Therefore, the punishment for terrorism is comparable to that for *hirabah*, which is the death penalty. This aligns with the Qur'anic verse found in Surah Al-Maidah, verse 3, as previously mentioned.

Following the analysis presented, this study endorses the use of capital punishment for those convicted of terrorist offenses. However, it is imperative that this severe measure is employed with prudence and only as a final option after other forms of punishment, such as a determinate prison sentence or life imprisonment, have been considered. The rationale for imposing the death penalty on terrorists lies in recognizing terrorism as an exceptional crime that endangers a nation's security and stability because of its far-reaching detrimental effects.

Moreover, addressing terrorism through stringent punitive measures should be complemented by robust preventive strategies. While the government must enforce laws against those involved in terrorism professionally, it is equally important to implement counter-ideology or de-radicalization initiatives for both the community and former terrorism convicts. These programs are crucial because acts of terrorism often stem from a misinterpretation of religious ideologies or an extreme ideological perspective, which can be realigned with the authentic teachings of religion.

Conclusion

Under Indonesian criminal law, the death penalty is a possible punishment for terrorism-related offenses, as outlined in Law No. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. Although not obligatory, judges have the discretion to impose this penalty. The law specifies the death penalty in various sections, particularly for acts of terrorism that meet the criteria of Articles 6, 8, 9, 10, 10A (paragraph 1), 14, 15, and 16. In the framework of Indonesian criminal law, terrorist offenses are characterized by elements such as instilling widespread fear (terror), causing mass casualties, and inflicting damage on

⁶¹ Achmad Fikri Oslami, "Penjatuhan Uqubat Pada Jarimah Maisir Menurut Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *MAQASIDI: Jurnal Syariah Dan Hukum* 2, no. 1 (2022): 31-39, <https://doi.org/10.47498/maqasidi.vi.881>.

⁶² Hamilton Hart, "Anti Corruption Strategies in Indonesia," *Buletin of Indonesia Economic Studies* 37, no. 1 (2001): 65-88.

⁶³ Ahmad Fathi Bahnasi, *Al Ma'uliyah al Jina'iyah Fi al Fiqh al Islami* (Al Halabi, 1969).152

⁶⁴ Ahmad Fathi Bahsani, *Al-'Uqubah Fi Al-Fiqh Al-Islami* (Dar Al-Syuruq, 1983).103

strategic locations or public facilities, driven by motives related to ideology, politics, or security.

In the context of Islamic law, terrorism is not explicitly addressed in traditional Fiqh texts. However, acts of terrorism can be compared to *jarimah hirabah* because of the shared *'illat* between them. Within Islamic criminal law, the elements of terrorism can be identified in several forms, including the use of weapons to commit violence, instilling fear in victims, causing numerous fatalities, and inflicting destruction. Those who commit terrorist acts, according to Islamic criminal law, may face various punishments, such as execution and crucifixion, execution alone, amputation of hands and feet on opposite sides, or imprisonment, as determined by the judge. The similarity between the two legal systems is that both Islamic criminal law and positive law categorize terrorism as a danger or serious crime, for which the perpetrators deserve the death penalty. The difference lies in the elements; Islamic criminal law does not require the consequences of the act to be widespread and does not mention the perpetrator's motive, while in positive law, terrorism must fulfill elements such as widespread consequences and specific motives. This study recommends that to effectively address terrorism in Indonesia, the government should strike a balance between preventive strategies and equitable law enforcement (repressive) actions. The death penalty should be considered a final option (*ultimum remedium*) in the fight against terrorism, and the government is encouraged to focus on preventive strategies by consistently implementing counter-ideology or de-radicalization initiatives for both the general public and individuals imprisoned for terrorism-related offenses.

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