



Death Penalty and Right to Life: A Comparison between International Bill of Human Rights and Islam

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Abstract

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In human history, the death penalty is not a brand-new form of punishment. In early civilizations, it was known and widely used throughout the world. It was legalized in Codex Hammurabi. Contrary to its long history, the view changed radically after World War II. The abolition of it began to be propagated during the Universal Declaration of Human Rights (UDHR) formulation in 1948 due to respect for the right to life. Islam adheres to the fundamental principle that everyone has the right to life, but that does not mean there is no death penalty in Islam. In this research, the problem to be solved is whether the death penalty regulation, according to the International Bill of Human Rights and Islam, has accommodated the right to life. The purpose of it is to find out and analyze which death penalty regulatory regime is more accommodating to the right to life. This type of research is normative juridical research using secondary data consisting of primary and secondary legal materials. The approaches used are statute and comparative approaches. This research shows that the right to life is thoroughly accommodated in the Islamic death penalty regulation, while the abolition of it under the mandate of the International Bill of Human Rights, especially the Second Protocol to International Covenant on Civil and Political Rights, only accommodates the perpetrator right to life of the perpetrator by ignoring many people right who could potentially be taken away if they are not sentenced to death.

Keywords: right to life, death penalty, Islam.

Abstrak

Pidana mati bukanlah jenis hukuman yang baru dalam sejarah manusia. Pada peradaban awal, pidana mati telah dikenal dan digunakan secara luas di seluruh dunia. Bahkan dalam kodifikasi hukum pertama (Codex Hammurabi), hal tersebut telah dilegalkan. Berlawanan dengan sejarah panjangnya dalam peradaban manusia, setelah Perang Dunia II, pandangan terhadap pidana berubah secara radikal. Penghapusan bentuk hukuman ini mulai disebarkan selama perumusan Deklarasi Universal Hak Asasi Manusia (UDHR) pada tahun 1948 dengan dasar penghormatan terhadap hak untuk hidup. Islam menganut prinsip dasar bahwa setiap orang memiliki hak untuk hidup, namun bukan berarti tidak ada pidana mati dalam Islam. Permasalahan yang dikaji dalam penelitian ini adalah apakah pengaturan pidana mati menurut International Bill of Human Rights dan Islam telah mengakomodir hak untuk hidup. Tujuan dari penelitian ini adalah untuk mengetahui dan menganalisis rezim pengaturan pidana mati manakah yang lebih mengakomodir hak hidup. Jenis penelitian ini adalah penelitian yuridis normatif dengan menggunakan data sekunder yang terdiri atas bahan hukum primer dan sekunder. Pendekatan yang digunakan yaitu pendekatan perundang-undangan (statute approach) dan pendekatan perbandingan (comparative approach). Hasil dari penelitian ini adalah hak untuk hidup diakomodir secara menyeluruh dalam pengaturan pidana mati menurut Islam, sedangkan abolisi pidana mati sesuai dengan amanat International Bill of Human Rights terkhusus Second Protocol to International Covenant of Civil and Political Rights hanya mengakomodir hak untuk hidup dari pelaku tindak pidana dengan mengabaikan hak untuk hidup orang banyak yang berpotensi direnggut apabila pelaku tidak dihukum mati.

Kata kunci: hak untuk hidup, pidana mati, Islam.

I. Introduction

The death penalty is not a type of punishment that is new in history. It has been known and used massively in early civilizations in various parts of the world. Even the first legal codification has legislated the death penalty. In the Hammurabi Codification (*Codex Hammurabi*), a law enacted since King Hammurabi of Babylon, ancient Mesopotamia, there are more than 30 (thirty) criminal offenses punishable by death.¹

After World War II, views on the death penalty radically changed. Based on Amnesty International report, by December 2022, 144 countries had abolished the death penalty in law or practice. This figure consists of 112 countries that abolish the death penalty for all crimes, nine that become abolitionists for ordinary crimes, and 23 that abolish the death penalty in practice. There are only 55 countries that continue to impose the death penalty, also known as retentionist countries.²

That phenomenon cannot be separated from the emergence of international norms that regulate the limitation and abolition of the death penalty. As an ideal of civilized nations, the abolition of the death penalty began to be propagated during the formulation of the Universal Declaration of Human Rights (hereinafter UDHR) in 1948. However, the document did not explicitly mention the opposition to the death penalty practice but rather the recognition of the right to life.³ The non-derogatory nature of the right to life is why the death penalty is abolished.

Islam adheres to the fundamental principle that everyone has the right to life. Abul A'la al-Maududi, a renowned Pakistani scholar, emphasized that the right to life is the most essential human right.⁴ QS. Al-Ma'idah verse 32 explains that:

"..whoever takes a life – unless as a punishment for murder or mischief in the land – it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity ..."

Meanwhile, in a hadith narrated by Ibn Majah No. 3932, it is stated that the life of a Muslim is more sacred than the honor of the Kaaba as the house of Allah.

".....By the one in whose hand is the soul of Muhammad, the sanctity of the believer is greater to Allah than your sanctity (Ka'bah)"

However, this does not mean there is no death penalty regulation in Islam. Islam recognizes *qisas*, which can be interpreted as an action against a person proportional to his actions against others. In fact, in Islamic Law, the death penalty can be imposed on those who have taken the lives of others or done damage on earth.⁵

The description above explains a difference in views towards the imposition of the death penalty between the International Bill of Human Rights and Islam. However, both have the same concept and respect for the right to life of each individual. The death penalty remains one of the forms of punishment prescribed by Islam, while the spirit of the International Bill of Human Rights is to annihilate this form of punishment. It creates an endless debate that makes the death penalty one of the most controversial forms of punishment.

Starting from this, the author is interested in conducting a deeper study of the imposition of the death penalty from the perspective of human rights, especially the right to life according

¹ Orzikulova Gulbahor Usmonovna, "In The History Of The Ancient World, The Death Penalty," *Novateur Publications* 6, no. 8 (2000): 101.

² Amnesty International, *Abolitionist and Retentionist Countries As of December 2022* (London, 2023), 1.

³ William A. Schabas, *The Abolition of Death Penalty in International Law*, 3rd editio. (Cambridge: Cambridge University Press, 2002), 1.

⁴ Mujaid Kumkelo, Moh. Anas Khoh Anas and Fiqh Vredian Aulia Ali, *Fiqh HAM: Ortodoksi Dan Liberalisme HAM Dalam Islam* (Malang: Setara Press, 2015), 72.

⁵ Soediro, *Pidana Mati Bagi Pembunuh Sadis* (Purwokerto: Yayasan Suara Nurani Keadilan, 2021), 134.

to the International Bill of Human Rights and Islam. To realize this desire, the author compiles a paper entitled "Death Penalty and Right to Life: A Comparison between International Bill of Human Rights and Islam."

The first reference is a paper entitled "The Islamic Position on Capital Punishment: A Restorative Justice Model Which Aligns with International Law, and Inspires Reasoning for Prison Industrial Complex Abolition in the U.S." by Najma Humayun in 2021⁶. The equation of the author's paper with this research lies in the discussion regarding the comparison of death penalty arrangements between the International Bill of Human Rights and Islamic law. Meanwhile, the difference is that the first paper compares Islamic law with Article 6 of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR). In contrast, the author's paper uses the International Bill of Rights, which consists of UDHR, ICCPR, and the Second Optional Protocol to ICCPR.

The research that the author conducted also has similarities with "The Call for Abolition of Death Penalty: Islamic Law versus International Human Rights Law" by Yusuf Abdul Azeez and Abdullahi Saliu (2017⁷) in the object of research, namely the comparison of death penalty arrangements between Islam and International Human Rights Law. Meanwhile, the difference between the second paper is in the research objectives. The second paper compared the possibility of abolishing the death penalty. In contrast, the author's paper aims to know and analyze whether the right to life has been accommodated in the death penalty arrangements according to the International Bill of Human Rights and Islam.

II. Research Problems

Based on the description that has been presented previously, the problems that the authors formulate in this study are as follows:

1. Does the death penalty regulation, according to the International Bill of Human Rights, accommodate the right to life?
2. According to Islam, Does the death penalty regulation accommodate the right to life?

III. Research Methods

This type of research is normative juridical research, namely legal research conducted by examining library materials or secondary data.⁸ Secondary data used in this research was collected through literature and document studies. The data consists of primary and secondary legal materials. Primary legal materials used in this study are the International Bill of Human Rights, especially the Universal Declaration of Human Rights 1948 (UDHR 1948), the International Covenant on Civil and Political Rights (ICCPR), and the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Secondary legal materials used are books, national and international scientific journals, theses, and annual reports related to the research topic.

The types of approaches used to answer the problem formulation in this paper are the statute approach and the comparative approach. The first approach, the statute approach, analyzes death penalty arrangements in the International Bill of Human Rights. Meanwhile, according to the International Bill of Human Rights and Islam, a comparative approach accommodates the right to life in death penalty regulation. The intended result of using this

⁶ Najma Humayun, "The Islamic Position on Capital Punishment: A Restorative Justice Model Which Aligns with International Law, and Inspires Reasoning for Prison Industrial Complex Abolition in the U.S.," *Berkeley Journal of Middle Eastern and Islamic Law* 12, no. 9 (2021): 9-28.

⁷ Yusuf Abdul Azeez and Abdullahi Saliu "The Call for Abolition of Death Penalty : Islamic Law versus International Human Rights Law," *Advanced Science Letter* no. September (2017).

⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003), 13.

approach is to determine which death penalty regulation is more accommodating to the right to life. Related to the data analysis method, a qualitative analysis method is used by analyzing using words or sentence descriptions by conducting an assessment based on laws and regulations, theories or expert opinions, and logic so that a logical conclusion can be drawn and is the answer to the problem.

IV. Result and Discussion

1. Right to Life in Death Penalty Regulation according to the International Bill of Human Rights

The regulation of the death penalty in the International Bill of Human Rights goes through three stages, namely:

First Stage: Universal Declaration of Human Rights (10th December 1948). The prohibition of the death penalty did not immediately appear when the Universal Declaration of Human Rights was adopted through the UN General Assembly Resolution (A/RES/217 (III)) on 10th December 1948. This Declaration is a document of international recognition of human rights, referred to as an umbrella instrument because all human rights instruments both regionally, nationally, and internationally.⁹ Article (3) contains the right to life: "*Everyone has the right to life, liberty and security of person.*" In UDHR, there is no prohibition on the imposition of the death penalty, and there is only the spirit of abolishing the death penalty as a form of fulfilling the right to life.

Second Stage: International Covenant on Civil and Political Rights (16th December 1966). The regulation to abolish the death penalty began to exist in the International Covenant on Civil and Political Rights (ICCPR). This Covenant was ratified on 16th December 1966 and entered into force on 23rd March 1976. Article 6 of the ICCPR talks about the right to life. The Human Rights Committee describes this right as a supreme right. Article 6 consists of six paragraphs that contain negative and positive components of the right to life that the state must protect. The harmful component relates to the state's obligation to prevent *arbitrary and unlawful deprivation of life*, whether committed by criminals or by the state and its agents.¹⁰ The contents of the Article are:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon, or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

⁹ Eko Riyadi, *Hukum Hak Asasi Manusia* (Depok: Rajawali Press, 2019), 79.

¹⁰ Alfitri, "Konflik Hukum Antara Ketentuan Hukum Pidana Islam Dan Hak-Hak Sipil?" *Jurnal Konstitusi* Volume 7, no. April 2010 (2010), 106.

6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

These paragraphs from Article 6 of the ICCPR show that the prohibition of the death penalty has entered a new stage; namely, there are already restrictions on the imposition of the death penalty. In general, the death penalty is prohibited because of the protection of the right to life. However, the ICCPR still allows non-abolitionist countries to impose the death penalty with strict requirements.

Third Stage: Second Optional Protocol to International Covenant on Civil and Political Rights (15th December 1989, 44/128). On 15th December 1989, the United Nations General Assembly passed General Assembly Resolution No.44/128, which began the third phase of the death penalty regulation. In considering the protocol, which was effective on 11th July 1991, it was stated that Article 6 of the ICCPR has a solid message to abolish the death penalty, and that step is an essential progress in enjoying the right to life.¹¹ To follow up on the message of these provisions, the protocol begins to obligate state parties to halt executions (Article 1(1)) and take all feasible measures to abolish the death penalty (Article 1(2)).¹²

After going through a long dynamical history, in the end, the International Bill of Human Rights prohibits the imposition of the death penalty and calls on bound states to become abolitionist states. This prohibition, which is ultimately absolute without exception, has the legal consequence that the state may not impose the death penalty on anyone, including serious crime perpetrators. In this case, the International Human Rights Instrument ignores the fact that the death penalty has a significant role related to the fulfillment of the right to life as a whole, namely:

- a. Prevent many people from killing or committing other serious crimes because of the fear of severe punishment.
- b. Murderers who have been executed can be sure not to kill again so as not to take other victims.
- c. The death penalty can compensate for crimes that cannot be tolerated by anything.¹³

The implementation of the death penalty is proven to be able to prevent the occurrence of similar criminal offenses. A study conducted by Dezhbakhsh, Rubin, and Shepherd concluded that the death penalty has a strong deterrent effect. Each execution results, on average, in eighteen fewer murders with a margin of error of plus or minus ten. Tests show that stricter sentencing laws do not drive results and are robust to many alternative specifications. Move in tandem with Dezhbakhsh, Rubin, and Shepherd, Mocan and Gittings's research showed that the death penalty deters homicide. The results show that each additional execution decreases homicides by about five, and each additional commutation increases homicides by the same amount. In contrast, an additional removal from death row generates one additional murder.¹⁴

In the research conducted by Marah S. McLeod ¹⁵, the possibility of future violence is frequently a deciding factor in whether to execute someone. More than a dozen additional states and the federal government allow the death penalty based on future dangerousness. Only two states, however, require a finding of future dangerousness before a death sentence may be issued. Texas, the state that has used the death penalty the most frequently, has killed more than 550 criminals because juries believed that if they were permitted to live, they would continue to commit violent crimes. A soft approach such as imprisonment is unnecessary for serious criminals such as serial killers because they do not feel guilty about their crimes or even

¹¹ Riyadi, *Op. Cit.*, 92.

¹² Rhona K.M. Smith et al., "Hukum Hak Asasi Manusia (HAM)," *Evolusi Pemikiran Dan Sejarah Perkembangan Hak Asasi Manusia* (2008), 99.

¹³ Samuel Agustinus, Eko Soponyono, and Rahayu, "Pelaksanaan Pidana Mati Di Indonesia Pasca Reformasi Dari Perspektif Hak Asasi Manusia," *Diponegoro Law Journal* 5, no. 4 (2016): 7.

¹⁴ Daniel S. Nagin and John V. Pepper., *Deterrence and the Death Penalty: The Journal of Criminal Law, Criminology, and Police Science*, vol. 61 (Washington D.C: The National Academies Press, 2012), 10.

¹⁵ Marah Stith McLeod, "The Death Penalty as Incapacitation," *Virginia Law Review* 104, no. 6 (2018): 1125-1126.

enjoy their evil deeds. There is a great potential for them to repeat their crimes if the opportunity arises, and they often seek such opportunities. These cold-blooded criminals are very dangerous to the general public and fellow prisoners. Therefore, the most appropriate way is to eliminate this destructive potential by imposing the death penalty.

The death penalty is an appropriate form of retribution for serious crimes. However, retribution and rebalancing are often cited as beneficial to society and the victim. In the majority opinion in *Furman v. Georgia* (1972), Justice Stewart affirmed the need for retribution in a civilized society. He noted that citizens need proof that their justice system is applying appropriate punishment to offenders to maintain law and order. He worried that a lack of visible retribution toward offenders could lead to vigilantism and anarchy.¹⁶ Abolition of the death penalty under the pretext of protecting non-derogatory rights, namely the right to life, has the potential to take away the right to life of a more significant number of people in the event of street trials from parties who are thirsty for justice.

The International Bill of Human Rights does not fully accommodate the right to life, especially the Second Protocol to the ICCPR, through the call to abolish the death penalty. The paradigm of thinking used in formulating these human rights instruments is narrow regarding the fulfillment of the obligation to respect the right to life. Respect for the right to life is interpreted only to the extent of not depriving the life of anyone, including serious criminals. In contrast, such actions can lead to not accommodating and even endangering the right to life of many people. The abolition of the death penalty can have fatal consequences in the form of street courts that cause many casualties, the continuation of a series of crimes, the omission of potential crimes, and the threat to the right to life because there is still a possibility that the perpetrator can commit the same crime.

2. Right to Life in Death Penalty Setting according to Islam.

The sources of Islamic law are as follows: *Quran, Hadith, Ijtihad, Ijma', and Qiyas*. The highest source is the Quran, which is the revelation of Allah SWT. If a legal issue is not found in the Quran, the *hadith* of the prophet, which is all words, actions, and agreements, can be used as a second source of reference. If a legal text is not found in the Quran or sunnah, then *ijtihad* is used in the form of *ijma'* and *qiyas*, which is a method of legal discovery carried out by scholars by comparing previously existing laws.¹⁷

The evidence for the death penalty in Islam has a firm juridical basis, with several suras explaining the death penalty, including in Al-Baqarah (2): verse 178, Al-Maidah (5): verse 45, An-Nisa (4): verses 92 and 93.¹⁸ The death penalty contained in these verses is included in the *jarimah qisas*. *Qisas* linguistically means tracing the trail. This definition is used for the meaning of punishment because the person entitled to *qisas* follows and traces the traces of the criminal act of the perpetrator. *Qisas* can also be interpreted as balance and equality. So, *qisas* can be defined as giving retribution to the perpetrator of a crime under his actions.¹⁹

According to Abu Bakar al Masyhur bi al-Sayyid al-Bakri, the actions classified as *jarimah qisas*, namely; first, intentional murder (*al-qaṭlu al-'amdi*); second, semi-intentional murder (*al-qaṭlu syibh al-'amdi*); third, murder by mistake (*al-qaṭlu al-khata'*); fourth, intentional persecution

¹⁶ Charlene Kaye Chudacoff, "Capital Child Rape: Does Public Opinion Support the Use of the Death Penalty on Child Rapists?" (Master Theses: the University of Louisville, 2015), 20.

¹⁷ Ayusriadi, Abdul Razak, and Muh. Arfin Hamid, "Perspektif Hukum Islam Terhadap Hukuman Mati Berdasarkan Undang-Undang Terkait Hak Asasi Manusia Di Indonesia," *Jurnal Ilmu Hukum* 7, no. 2 (2018): 232.

¹⁸ Putri Silvah Al Hikmah, *et.al*, "Hukuman Mati Di Indonesia Dalam Perspektif HAM Dan Pidana Islam," *Ma'mal* 03, no. 06 (2022): 584-585.

¹⁹ Roni Efendi, "Pidana Mati Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 126.

(*al-jarh al-'amdi*); fifth, unintentional persecution (*al-jarhu ghair al-'amdi aw al-khata'*).²⁰ In *fuqaha'* thinking, *qisas* is imposed on *'amdun* murder (intentional killing), which is a crime of murder committed intentionally by using weapons such as stones, knives, fire, sharp objects, and other tools that are commonly used to kill.²¹ For other *jarimah qisas*, the punishment is *diyat* or corporal punishment.

Death penalty in *jarimah qisas* for premeditated murder is not automatically applied for every incident. The victim's family can choose three options regarding the punishment that will be imposed on the perpetrator of the murder. Abdurrazzaq, Ibn Abu Shaibah, Ahmad, Ibn Hatim, and al Baihaqi narrated from Abu Shuraikh al-Khuza'i: That the prophet SAW said:

"Whoever is a relative of a murdered person or a victim of a crime of bodily harm has the right to choose from three options: retaliation, forgiveness, or ransom. If he desires the fourth, then prevent his hand. Furthermore, whoever transgresses the limits after that, then for him is Hellfire; he will remain therein forever."²²

Qisas has the status of the original law, i.e., it applies from the beginning. At the same time, *diyat* or blood money payment is the secondary law, which applies if the family forgives the murderer. At the same time, the Qur'an recommends making peace in resolving murder cases.²³ It causes that in Islamic conception, pure death penalty abolition cannot be done because the authority to determine the imposition of the death penalty is the absolute right of the family or heirs of the murdered.²⁴

Qisas is not solely revenge, but it is legislated to maintain people's lives and build healthy social relationships²⁵. Islamic law applies punishment to create personal and community tranquility and prevent acts that can cause harm to community members concerning life, property, and honor. The purpose of giving the death penalty in Islam is under the law's general purpose: to realize the benefit of the ummah and, simultaneously, justice will be upheld.²⁶

In the *qisas*, justice between the offender and the victim is achieved as the murderer deprives the victim of enjoying his life, so the murderer shall be deprived of life as of the other deprived.²⁷ The aspect of retribution is seen when *qisas* are imposed to avenge those who have committed an act of transgression, who at will have lost their lives or injured others, even though it has been expressly prohibited. Murder is an evil thing from the Islamic perspective because the right to life is one of the things upheld in Islam.²⁸ Fulfilling the right to life is one of the five basic human needs called *ad-dharuriyah al-khamsah*. Respect for the right to life escapes the reach of the International Bill of Human Rights because the spirit of total abolition of the death penalty is the same as not respecting or considering the victim's right to life is not too important. Hence, there is no need to impose severe punishment on the party who revoked it.

Qisas is healing for the guardians of the victim and releasing the rage, hatred, and willingness that accumulate in their hearts to take revenge on the offender and *qisas* that prevents them from this revenge that may exceed the offender. This also turns off the flames of

²⁰ Zikri Darussamin, "Qisās Dalam Islam Dan Relevansinya Dengan Masa Kini," *Jurnal Ilmu Syari' ah dan Hukum* 48, no. 1 (2014): 112.

²¹ Armaya Azmi, "Penerapan Kaidah Fikih Tentang Niat 'Al-Umūru Bi Maqāṣidihā' Dalam Kasus Hukum Tindak Pidana Pembunuhan," *TAQNIN: Jurnal Syariah dan Hukum* 1, no. 2 (2019): 66.

²² Asy-Syaukani, *Tafsir Fathul Qadir*, 1st ed. (Jakarta: Pustaka Azzam, 2008), 681.

²³ Devi Nilam Sari, "Implementasi Hukuman Qisas Sebagai Tujuan Hukum Dalam Al-Qur'an," *Muslim Heritage* 5, no. 2 (2020): 276.

²⁴ Aries Munandar Erha Saufan Hadana, Harnides, "Execution of Qisas Penalty Between Theory and Implementation (Comparative Study of the Hanafi Mazhab and the Shaff'i Mazhab)," *Ar-Raniry* 11, no. 1 (2021): 94.

²⁵ Ahmad Bin Muhammad Husni, et.al "Relationship of Maqasid Al-Shariah with Qisas and Diya: Analytical View," *The Social Sciences: Medwell Journals* 7, no. 5 (2012): 729.

²⁶ Muhammad Rifa'i, "Penetapan Pidana Mati Dalam Perpektif Hukum Islam dan International Covenant on Civil and Political Rights (Iccpr)," *Al-Mazaahib: Jurnal Perbandingan Hukum* 2, no. 2 (2014): 380

²⁷ Ahmad Bin Muhammad Husni, *Op.Cit.*, 729.

²⁸ Nafi Mubarak, "Pidana Qisas Dalam Prespektif Penologi," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 20, no. 2 (2017): 483.

revenge that could become a destructive war for the energies and capacities of the society as it was happening between the tribes during the Jahiliyyah or Pre-Islamic Era²⁹. *Qisas* answers the retributive dimension in addressing a murder case, so the potential for anarchism caused by disappointment in the fulfillment of justice does not occur. In this case, the death penalty regulation in Islam is superior to the death penalty regulation in the n, which does not reach this dimension.

The application of *qisas* has excellent potential to reduce the incidence of murder and other crimes. While at the same time, the stability of societies and the dissemination of safety among the people with the discipline and the reform of the offender in the case of pardon or conciliation. The application of *qisas* also served the lives of millions of people.³⁰ The idea of lowering crime rates based on awareness of other human beings' right to life is a utopian idea. There must be an element of fear of punishment so that there is a barrier for people who have the potential to become criminals to commit their evil acts. The death penalty is helpful to annul the potential of serious crimes such as murder.

Death penalty regulation in Islam also contains aspects of restoration and reformation. The fact that the law of *qisas* allows for retribution in kind as an option of punishment does not foreclose its ability to aid the restorative justice movement.³¹ As mentioned in the previous paragraph, Islam offers and even encourages forgiveness from the victim's family. *Qisas* focuses on being imposed based on the choice of the victim's family. Islam provides an alternative for the victim's family to forgive the perpetrator's actions and accept diyat or blood money as gratitude from the perpetrator and a great reward from Allah for the generosity of the victim's family.

Death Penalty Arrangement in Islam accommodates the right to life more comprehensively than the death penalty arrangement according to the International Bill of Human Rights, especially the Second Optional Protocol to ICCPR. Islam accommodates the victim's right to life by giving the death penalty to the party who revokes the right. Furthermore, through *qisas*, Islam accommodates the right to life of many potential victims of further crimes from perpetrators or victims of similar crimes committed by others due to the absence of a deterrent effect due to the death penalty abolition. In addition, *qisas* also prevent anarchism or street court due to the unfulfillment of a sense of justice. In contrast, the street court can potentially take many people's lives and cause new conflicts. The death penalty in Islam also gives the victim full power without state intervention to exercise their rights in imposing punishment against the perpetrator. The death penalty against the perpetrator can be annulled when the victim provides forgiveness. So that in this particular condition, the perpetrator gets the opportunity to stay alive.

V. Conclusion

According to the International Bill of Human Rights, death penalty regulation does not comprehensively accommodate the right to life. The call for the abolition of the death penalty for all types of crimes in the International Bill of Human Rights, especially Article 1 of the Second Optional Protocol to the International Covenant of Civil and Political Rights (ICCPR), will potentially take away the right to life in the broader spectrum. This is because the death penalty has a deterrent effect that can prevent other people from committing crimes, and incapacitation that can prevent criminals from having the opportunity to commit the same crime. In addition, the death penalty can prevent street court or anarchism caused by the non-fulfillment of justice.

²⁹ Ahmad Bin Muhammad Husni, *Loc.Cit*, 729.

³⁰ *Ibid*.

³¹ Susan C Hascall, "Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?," *Berkeley Journal of Middle Eastern & Islamic Law* 4, no. 1 (2012): 78.

In contrast to the death penalty regulation according to the International Bill of Human Rights, Islam has comprehensively accommodated the right to life in its death penalty regulation. *Qisas* guarantees the right to life of many people who could be taken away due to the non-imposition of the death penalty. *Qisas* has a deterrent dimension to provide fear to others to take away the right to life; it also provides a sense of justice to the community, especially the heirs of the victims, so that uncontrolled revenge that can end up in bloody conflicts does not occur. On the other hand, the death penalty regulation in Islam also has the spirit to allow the perpetrator to live and repent through *diyat* and forgiveness options whose authority is in the hands of the victim's heirs.

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