



## Death Penalty: A Response to Arguments by Indonesian Muslim Opposers

Muchammad Ichsan<sup>1</sup>

<sup>1</sup> Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia  
drichsan65@yahoo.com

### Abstract

**Introduction to The Problem:** Life is the greatest gift human beings receive. Man can achieve any task with life, and without it, man can do nothing. Thus, attempts by the State to punish human beings with the death penalty for wrongdoing are reaping the pros and cons. It is clear the stance of Western human rights activists opposed to the death penalty. What is interesting is that, although Islamic law supports it, many educated Muslims have objected to the death penalty.

**Purpose/Objective Study:** The purpose of this research is to analyze and respond to the arguments used by Indonesian Muslim human rights activists, especially those integrated into human rights organizations, which are anti-death penalty. It is hoped that these reviews and responses will contain more definite opinions that can provide enlightenment for all.

**Design/Methodology/Approach:** This research used a descriptive, analytical approach. Therefore, it employed secondary data and normative methods combined to case and statute approach in studying, analyzing, and responding to the arguments of anti-death penalty human rights activists among Indonesian Muslims. Their cases are to be brought forward, investigated, and then returned one by one.

**Findings:** The research found that the human rights ideology propagated by western human rights activists is influencing Indonesian Muslim activists. They have the same point that the death penalty degrades humanity and violates human rights. In the meantime, Islamic law defends the death penalty for providing justice to the victims and the wider community, and for preserving life.

**Paper Type:** Research Article

**Keywords:** Death Penalty; Human Rights; Islamic Law; Right to Life

### Introduction

Life is the most precious grace of God to all humanity because life is the primary object of human activity through nature and wishes. Without it, there can be nothing man can do; thus, a man cannot fulfill his obligations and get his rights.

Accordingly, the right to life is the most fundamental human right (Amitai, 2010). Human beings may enjoy other fundamental rights with the right to life, such as the right to freedom, the right to expression, the right to religion, the right to education, the right to adequate employment, freedom to health, and others. On the other hand,



human beings will not get any of these rights without the right to life. Moreover, men are not worthy of being called human beings without it.

All parties are included individuals, communities, and countries must, therefore, guarantee and protect the right to life. At the same time, all parties must oppose any attempt to reduce or eliminate the right to life, because the right to life is a right that under any circumstances cannot and should not be curtailed, let alone deprived. But the question is, does the duty to guarantee and protect the right to life mean that there is a need to postpone or abolish the death penalty? In other words, should the obligation to condemn any attempt to curtail or eliminate the right to life be rendered with a moratorium or elimination of the death penalty, among other things?

This problem has pros and cons. Among the anti-execution groups, Westerners include human rights activists ([Hnidka, 2016](#)), they oppose the death penalty with various arguments, irrespective of who is convicted, the type of crime, whether guilty or innocent and how to carry out its execution ([The Lancet, 2016](#)). Ironically and unexpectedly, many educated Muslims, especially those who are part of Indonesian human rights activists, are also opposed to the death penalty. They have reasons to support their views. Thus, they oppose the death penalty within Islamic Law.

It is indeed exciting to examine this phenomenon, for how can a Muslim have an opinion that is contradictory to his religious teachings. Do those who oppose the death penalty do not know, or do they have other arguments about such Islamic education? Do they not know that their opposition to the death penalty will impair their belief in the religion they embraced slightly or significantly?

Scholars address Islam's role as a possible impediment to abolition, although the opinion is divided once again. The empirical fact that most Muslim-majority countries are keeping the death penalty is clear. What quantitative scholars' question is whether it is Islam per se that promotes retention or whether most Muslim countries simply tend to exhibit the political characteristics associated with the preservation of the death penalty ([McRae, 2017](#)).

The purpose of this research is to analyze and respond to the arguments used by Indonesian Muslim human rights activists, especially those who become a member of human rights organizations, which are disagreeing toward the death penalty. It is hoped that these reviews and responses will contain more positive opinions that can provide enlightenment for all. Besides, the analysis and its responses should be considered in matters of capital punishment for decision-makers, such as legislators, government, and judges.

### **Methodology**

This research used a descriptive, analytical approach. Therefore, it employed secondary data and normative methods combined to case and statute approach in studying, analyzing, and responding to the arguments of anti-death penalty human



rights activists among Indonesian Muslims. Their cases are to be brought forward, investigated, and then returned one by one.

## Results and Discussion

### Death Penalty by Human Rights Activist

The death penalty is a legal process that leads to the death sentence by the state as a punishment for a particular and usually severe crime. The judicial decree that someone is punished in this manner is a death sentence, while the actual enforcement is an execution. Crimes that can result in a death penalty are known as capital crimes or capital offenses (Dubagari, 2016).

Although many countries have suspended or abolished the death penalty, up to today, there are still around 25 States that have laws that threaten capital punishment and apply it to various serious crimes such as murder, genocide, narcotics, terrorism, and others. The five leading countries that still use the death penalty are China, Iran, Saudi Arabia, Pakistan, and the United States. Execution ways in these countries also vary. Some were decapitated with swords, like in Saudi Arabia (Rao, 2015). Another is using a hanging method like in Afghanistan (Fayaz, Nezhad, Moghaddam, 2016), Bangladesh (Novak, 2015), Egypt (Mohamed, 2017), Iran (Shaheed and Sanei, 2016), Japan (Johnson, 2016), and Malaysia (Dhillon, Mohammad, Miin, 2012). Some countries use the firing squad method like in Indonesia (Rifai, 2017) or injected to death as in the United States (United Nations, 2016; Feldman, 2015; Olugbenga, 2012).

However, there is often mistaken execution of a death sentence. Such a mistake, for example, is an innocent person who is sentenced to death. In China, as studied by Moulin Xiong and Michelle Mao (2018), the depth analysis result showed 122 death-sentenced innocents. From those figures, 109 have been exonerated, and five were executed wrongly. The wrongful execution also occurred in Pakistan, where most of the death-sentenced cases were forcibly connected to terrorism (Bibi, Hongdao, Ullah, Khaskheli, & Saleem, 2019). Another wrongful or inappropriate death sentence is the execution of youngsters or juveniles (Burlison, 2005; Kallins, 1993).

Those mistakes are among the causes of human rights activists vehemently opposed the law and the practice of capital punishment in various countries. Amnesty International is one of the international organization which opposes the death penalty. This association of human rights activists strongly opposes the death penalty in all times and circumstances, regardless of who is accused of a criminal offense and what the crime is. Similarly, they also opposed the death penalty irrespective of whether the person is guilty or not, and how the execution of it is carried out. It is because, according to them, the death penalty is cruel, inhuman, and degrading human dignity. Besides, the death penalty breaches two essential human rights: the right to life and the right to live free from torture. Both are protected under the



Universal Declaration of Human Rights, adopted by the UN (United Nations) in 1948 ([Amnesty International, 2019](#)).

Besides, they also argued that several international laws explicitly and strictly ban the use of the death penalty, except during times of war. These international laws they have supported with are the Second Optional Protocol to the International Covenant on Civil and Political Rights, Protocol No. 6 to the European Convention on Human Rights, and The Protocol to the American Convention on Human Rights to Abolish the Death Penalty. The European Convention on Human Rights (Protocol No. 13) permanently prohibits the use of the death penalty, even during a war ([Amnesty International, 2019](#)). Amnesty International had fought to abolish the death penalty since 1977, when only 16 countries abolished the death penalty in both law and practice. Until the last year 2017, the State that abolished the death penalty increased to 105 countries, nearly three-quarters of the countries in the world ([Amnesty International, 2019](#)).

In addition to Amnesty International, the World Coalition Against the Death Penalty, an alliance of more than 150 NGOs (Non-Government Organizations), bar associations, local authorities, and unions was established in Rome on 13 May 2002, also exists at international level. The World Coalition seeks to emphasize the international aspect of fighting the death penalty. The ultimate goal is to achieve the universal abolition of the death penalty. The World Coalition advocates a definitive end to death sentences and executions in the countries where the death penalty is in force to attain its goal. In some states, as the first step towards abolition, it seeks to get a reduction in the use of capital punishment ([The World Coalition Against the Death Penalty, 2019](#)).

Among the arguments for why the World Coalition calls for the abolition of the death penalty is as written in the Final Declaration of the 6th World Congress Against the Death Penalty, Oslo, 23 June 2016. The written reports are, first, that the global re-emergence of terrorist violence is being used as a pretext by some governments enforcing the death penalty to suppress opposition movements. Second, Amnesty International has reported that 58 countries apply the death penalty arbitrarily. In 2015, 1,634 people executed worldwide, especially in Iran, Pakistan, Saudi Arabia, Iraq, and the United States, although these numbers do not include the unknown number of people executed in China. Third, the retention of the death penalty for drug trafficking is totally at odds with the UNODC (United Nations Office on Drugs and Crime) recommendations and findings established during UNGASS (United Nations General Assembly Special Session on Drugs) in New York in April 2016. Indeed, UN member states agree on the failure of policies based solely on a repressive vision of war on drugs. Certain countries have resumed executions after prolonged moratoriums, such as Indonesia, Pakistan, or Chad. Fourth, the death penalty still extends to juvenile offenders and persons with intellectual disabilities. Fifth, the sentence has enforced in a discriminatory manner according to race, social, national



or religious origin, skin color, and sexual orientation. Sixth, more often than not, as a direct consequence of their status, prisoners in the death row often suffer deplorable conditions of incarceration that violate human dignity and often represent an inhuman and degrading treatment ([ECPM, 2016](#)).

In Asia, the organizations that reject the death penalty and strive to remove the death penalty are The Anti-Death Penalty Asia Network (ADPAN), the Asia-Pacific Network of Organizations and Individuals for the Abolition of the Death Penalty. ADPAN members up to now consist of 20 countries. Launched on World Day against the Death Penalty in 2006, ADPAN was founded in Hong Kong following an Amnesty International Consultative Meeting. It responded to a call from local abolitionists to take regional arrangements to end the death penalty across Asia and the Pacific. The existence of ADPAN based on the reasons that Asia-Pacific countries are the most countries that have executed people than in the rest of the world. Another reason is that 95% of the world's population lives in states that maintain and use the death penalty. Thirteen countries of that percentage have carried out executions over the past ten years, and most of the executed persons are poor or socially marginalized. The founders of ADPAN also argued that failure of justice could not be reserved in trials that end in the death sentence. This failure, then, reported and documented as unfair trials throughout the region. According to ADPAN, the death penalty is not an effective counter-crime deterrent, and it has violated the right to life and is the ultimate form of cruel sanction ([Anti-Death Penalty Asia Network, 2019](#)).

### ***Arguments of Human Rights Muslim Activist***

In Indonesia, many individuals and organizations are also voicing a moratorium or abolition of the death penalty. However, a survey shows that the majority of Indonesians (86%) support the death penalty and that the minority in opposition to it do so based on human-rights considerations ([Simandjuntak, 2015](#)). Among the human rights activists who reject the death penalty are KontraS, *Imparsial*, and *Lembaga Bantuan Hukum (LBH) Masyarakat*. The following are those organizations and their arguments for moratorium or abolition of the death penalty in Indonesia.

#### **1. KontraS**

KontraS stands for *Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan* (The Commission for the Disappeared Person and Victims of Violence). Some civil society organizations and public figures founded KontraS on March 20, 1998. KontraS is a task force that was initially named The Central Information Commission of Human Rights (i.e., *Komisi Informasi Pusat-Hak Asasi Manusia* abbreviated as KIP-HAM) which was formed in 1996. As a commission working to monitor human rights issues, KIP-HAM got many complaints and inputs from the community. Furthermore, the idea came out to form a commission that handles cases of missing persons. Now KontraS has evolved into an independent and participating organization in exposing the practice of violence and human rights violations as a result of abuse of power ([KontraS, 2019](#)).



KontraS, on various occasions, has always expressed the rejection of the death penalty as the expression of the cruelest and inhuman punishment. The death penalty is the most significant kind of violation of human rights, the right to life. This fundamental right is a right that cannot be violated, reduced, or restricted under any circumstances, whether in an emergency, a war, including when a person becomes a prisoner. Indonesia itself has signed the Universal Declaration of Human Rights and ratified the International Covenant on Civil and Political Rights. Both are expressly stating that, under any circumstances, the right to life is the right of every human being and is a State obligation to guarantee that right ([Badan Pekerja Kontras, 2007](#)).

Besides, KontraS also argued that the death penalty has other severe violations of human rights violations, namely breaches in the form of acts of torture (psychological), cruel and inhuman. It can happen because generally, the range between the death penalty and the execution lasts long enough. Tragically, Indonesia itself signed and accepted the Convention against Torture in the Anti-Torture Act no. 5, 1998.

Factually, according to KontraS, the implementation of capital punishment in Indonesia is also counter to the growth of the world-wide community of nations today. Amnesty International noted that as of September 2007, 142 countries had abolished the death penalty, with an average of three countries each year, both through the legal mechanism and through actual practice. Even from the above figures, 24 states include the abolition of the death penalty in its constitution. The region whose most active state has abolished the death penalty practice in Africa which has a similar culture, political system, and social structure to that of Indonesia. In Indonesia, the abolition of the death penalty, whether through legal or political means, must have restored Indonesia's integrity in the eyes of the international community ([Badan Pekerja Kontras, 2007](#)).

KontraS argued that the death penalty should be rejected in the context of Indonesian legal policy for numerous reasons ([KontraS, 2005](#)). The first reason is that the positive legal reform character of Indonesia still does not show an independent, impartial, and clean judicial system. Second, sociologically, there is no scientific evidence the death penalty will minimize certain crimes. Third, the death penalty is unequally-applied, where the death penalty rarely reaches the perpetrators of elite groups whose crimes are usually classified as serious/extraordinary crimes. Fourth, the application of the death penalty also shows the opposite political face of Indonesian law. One of the supporting arguments of the death penalty is because it is by positive Indonesian law. Since the era of reform/political transition has been running various changes in State laws and policies. The last reason is that the government's political stance on capital punishment is ambiguous. Some time ago, the government submitted a persistent request to the governments of Saudi Arabia, Malaysia, and Singapore not to run the death penalty to Indonesian citizens, on the grounds of humanity.



## 2. *Imparsial*

*Imparsial* is a Non-Government Organization that engaged in monitoring and investigating human rights abuses in Indonesia. Eighteen Indonesian human rights activists founded the institute in 2002. The *Imparsial* name is derived from the impartial, the view that glorifies the rights of every individual in the diversity of the background to justice, with particular attention to the less fortunate ([Imparsial, 2019b](#)).

Al Araf, the *Imparsial* director, stated that the death penalty should be stopped, Kompas reported. He said, "until now, there is no measurable indication in determining who, why, and when a convicted person is sentenced to death execution." ([Imparsial, 2016](#)). According to him, the law enforcement system in Indonesia is still very vulnerable. If the death penalty is even applied, then the problem will be widespread and offensive to human rights issues. If it is like that, the government does not practice the values of the joy that President Jokowi delivered a political promise at his political campaign.

Currently, according to Al Araf, the death sentence verdict becomes the impression that the government is building a firm government. "The legal process of determining the verdict is less strong. Therefore, in the short term and long term, we demand the government to stop the execution of death for prisoners," Al Araf said. Therefore, the application of capital punishment must be stopped. The government should conduct a moratorium on the law. In reality, he said, the use of the death penalty does not have a significant impact on reducing the crime rate from both narcotics and terrorism crimes ([Imparsial, 2016](#)).

In addition to the above statement of *Imparsial* Director, *Imparsial* has also formed a Civil Society Coalition to Remove Death Penalty (i.e., Koalisi HATI) consisting of *Imparsial*, Indonesian Legal Aid (i.e., *Yayasan Lembaga Bantuan Hukum Indonesia*, abbreviated as YLBHI), KontraS, The Institution of Research Study and Advocation (i.e., *Lembaga Studi dan Advokasi Masyarakat*, abbreviated as ELSAM), Legal Aid Masyarakat, Legal Aid of Jakarta, Legal Aid of Press, Human Rights Working Groups (HRWG), The Association of Indonesian Legal Aid and Human Rights (i.e., *Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia*, abbreviated as PBHI), The Brotherhood of Narcotic Victims (i.e., *Persaudaraan Korban Napza Indonesia*, abbreviated as PKNI), Indonesian Legal Roundtable (ILR), International NGO Forum on Indonesian Development (INFID), The Supervisor Community of Indonesian Court, Faculty of law Universitas Indonesia (i.e., *Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia*, abbreviated as MaPPI FH-UI), Migrant CARE, Institute for Criminal Justice Reform (ICJR), and Foundation for International Human Rights Reporting Standards (FIHRRST). These communities are urging the Jokowi's government to ([Imparsial, 2019a](#)): (1) Conduct a moratorium on the execution of death row inmates in Indonesia; (2) Establish independent teams to access misbehavior practices especially in cases of death row inmates and carry out the



team's recommendations to change their sentences; (3) Amend the sentences of all death sentences based on the recommendations and findings of independent and non-independent teams; (4) Ensure a fair process for everyone involved with legal matters, especially for those threatened with capital punishment by granting their rights as suspects, such as access to legal aid, interpreters and consular representatives and free from all forms of torture, and consideration of pardons not based on formalities or technical judgments; and (5) Eliminating the death penalty in the Draft Penal Code (RKUHP/Rancangan Kitab Undang-undang Hukum Pidana).

The following arguments accompany the above insistence ([Imparsial, 2019b](#)):

*First*, the execution process tends to be closed and not transparent. The Government's attitude, which tends to be locked in preparing every stage of execution of death, either on the wave I, II, or III, is potentially harmful to the rights of the death row inmates who will be executed later.

*Second*, the rejection of compassion is not meticulous and tends to be emotional. President Jokowi asserted that he would reject all the pardons filed by the convicted death row in the narcotics case. That is, that before the clemency was recorded, President Jokowi has decided without first reading as well as considering the reasons for death row inmates to pardon.

*Third*, dead execution has not been proven to affect harassment. One of the main arguments for the application of capital punishment is providing the impact of harassment on the offender. This argument is always recycled and reproduced as a proposition of the death penalty by hypothesis is that capital punishment has a deterrent effect on criminal cases in society.

*Fourth*, the politicization of the application of capital punishment by the Jokowi government. The practice of capital punishment in Indonesia has a strong political character that shows the purpose of this criminalization is not merely to punish the criminals, but also to serve the agenda beyond the interests of law enforcement. It can be seen from the practical use of this legal instrument to sustain the benefits of power or as an object of politicization.

*Fifth*, the application of the death penalty is discriminatory. The death penalty is applied in an unfair and class-biased manner. This form of punishment tends to be imposed on the offenders of the weak socio-economic strata, which have no access to the power of capital (money) and politics.

*Sixth*, execute against the victim of the unfair trial. Various forms of irregularities in the judicial process passed by death row convicts have never been a consideration for the government to review the execution. The most common type of deviation is the practice of torture against suspects by investigators during the interrogation process or investigation as a useful tool for information, soliciting, and even imposing an



admission. Torture and intimidation are part of the problem inherent in the practice of capital punishment in Indonesia.

### 3. LBH Masyarakat

LBH Masyarakat believes in equality, non-discrimination, and recognition of inherent human dignity. LBH Masyarakat defends the rights of every human being deprived without distinguishing background, ethnicity, religion, race, ethnicity, social status, sexual orientation, gender identity, HIV status, mental health, or another status. LBH Masyarakat based in Jakarta (LBH Masyarakat, 2019b).

LBH Masyarakat has repeatedly voiced the abolition of the death penalty in Indonesia. Here are their demands and arguments:

*First*, LBH Masyarakat strongly opposes the use of capital punishment as a form of punishment and answers to the settlement of legal cases as well as in the case of terrorism. Thus, the death penalty should alternatively be changed by other non-death punishment (LBH Masyarakat, 2019a).

*Second*, there are research findings conducted by many Human Rights Organizations that highlight the systemic weaknesses of the Indonesian justice system and violations of fair trial and additional international safeguards that must be obeyed in all cases of capital punishment. The conducted research found that suspects and defendants in the investigated cases have no access to legal counsel from arrest and other legal proceedings in court and appeals. On top of that, they often become ill-treatment victims to make a false confession for the crime they did not do. Another reported finding is that the death row inmates were brought to trial for the first time in months after the arrest. In some cases, which involved foreign nationality, especially narcotics cases, the authorities fail to identify and verify the death row inmates correctly, which leads to the undelivered notification to their country of origin. The last research result showed that the death penalty consistently applied against narcotics-related crimes. Even though they do not meet the threshold of 'the most serious crimes' as the category of crimes in which the death penalty can be applied when suspending its abolition under the International Covenant on Civil, Rights, and Politics (ICPR) (LBH Masyarakat, 2015).

LBH Masyarakat proposes that any severe crimes should be severely punished. But the most stringent penalty should not take away a person's life. The most massive criminal punishment that can serve as an alternative to criminal punishment is life imprisonment without parole. Lifelong penalties are more appropriate as the harshest punishment that gives more opportunity for many parties to improve the situation. As it like in modern punishment philosophy that is restorative rather than retributive (LBH Masyarakat, 2015).

LBH Masyarakat also reiterated that the application of the death penalty as a deterrent effect is a classic excuse that has been obsolete and has never proven its



guard. Existing data and facts show that the death penalty does not contribute much to reducing crime because of many factors contributing to the high crime rate. It is not how cruel the punishment can have a deterrent effect, but a legal certainty that everyone who commits a crime must be punished after having been through an honest and transparent judicial process.

LBH *Masyarakat* sees that the execution of the death penalty will only perpetuate the cycle of vengeance. They often ask a question, “when we strongly condemn the crime committed by the perpetrator, why then do we also do the same thing by killing the offender? Promoting the death penalty as a reason for justice implies that we all always use vengeful reasons to obtain justice.

### **The Respond of The Arguments of Muslim Human Rights Activists**

Those the opinions of Indonesian Muslim human rights activists who are members of several human rights organizations such as KontraS, *Imparsial*, and LBH *Masyarakat* in the issue of capital punishment. They agreed that the death penalty should be abolished both from the legal and practical domains, permanently in Indonesia. But realizing it is not easy, some of them are realistic, that is, they only urge a moratorium on the execution of capital punishment, as a step to abolish the death penalty entirely from Indonesia. An alternative sentence should replace the death penalty with life imprisonment (Sina, 2016).

Now let us analyze and respond to their argument in demanding the abolition of the death penalty in Indonesia. Those Indonesian human rights activists who are Muslim and who are members of KontraS, *Imparsial*, and LBH *Masyarakat* are deeply affected by international human rights organizations in demanding a moratorium and the abolition of the death penalty. It is not strange because they are members or partners of Amnesty International, The World Coalition Against the Death Penalty, The Anti-Death Penalty Asia Network (ADPAN), and others.

In general, the arguments of Indonesian Muslim human rights activists in expressing the abolition of the death penalty are like the cases of their respective international human rights organizations. The fellow examples by Indonesian Muslim human rights activists in demanding the removal of the death penalty are almost the same, so there is often a repetition of arguments even with different words.

The following arguments are presented frequently by Indonesian Muslim human rights activists who are members of KontraS, *Imparsial*, and LBH *Masyarakat* in calling for a moratorium and the abolition of the death penalty, followed by a response to the argument:

#### ***First, the death penalty is cruel, inhuman, and degrading to humanity***

The notion of cruelty reason into the death sentence only viewed from the perpetrator standpoint. But if seen from the point of the victim, his family, his clan, and the wider community, then it is justice. If a cruel and deliberate killing happens, for example,



how do the victim, his family, and his clan get justice? As long as the perpetrator is not punished with proportionate punishment for his actions, the victim, his family, and his group will feel that they have not received justice. Islam always views two sides, which are criminal and the victims. From both two points of view, along with fair judgment and its wise reasoning, will come appropriate punishment and justice (Ramzan, Akhter, and Rubab, 2015).

***Second, capital punishment is nothing more than a legalized murder committed by the State in the name of justice***

It is certainly appropriate that the death penalty and other punishment must necessarily be carried out by the State so that the people do not do it themselves because if it is left to the people, there will be great chaos. Each side will take revenge without any end. Islam does not acknowledge any form of vigilantism; that is why the execution process should be handled by the state only (Arifin, 2015). Therefore, if the State sentences a person to death for his crime, then it cannot be said to be a legal murder to uphold justice. It is the enforcement of judgment and security for the public at large by the State.

***Third, a death penalty is a form of denial of life as essential rights***

if we view this statement from one side, it likely seems the death penalty is life denial. However, some crimes are also inhuman; they generate the loss of humanity, so the perpetrators deserve the death sentence. Genocide, for example, the culprit, has lost his tolerance for killing innocent people in a planned way. Even in the case of genocide, the death penalty is still mild because the number of murdered victims is more than the perpetrators. Thus, logically, it is right to say that violating life could also cause a person to lose his life too.

***Fourth, sociologically, no scientific proof that capital punishment will reduce certain offenses.***

Please note that, in addition to deterring perpetrators and frightening others from committing similar crimes, the death penalty also aims to provide justice to the victims, their families, and their clan, and provide security to the public at large. So, even though it is said that the death penalty does not deter him, it has other benefits.

***Fifth, the positive legal reform character of Indonesia still has not shown its independent, impartial, and clean judicial system***

It is found from the above arguments that in striving abolition of the death penalty, Indonesian Muslim Human Rights activists rely upon their reasoning through the trend of the world and the conditions of law and its implementation in Indonesia. It is indeed recognized that the arrangement and execution of capital punishment in Indonesia are still transactional, not transparent, and far from justice, especially for the convicted person. But they should not encourage Indonesian Muslim human rights activists to deny the death penalty as other human rights activists. Reforms to Indonesia's positive law should continue, the judicial system must be improved, and



apparatus should always be trained and educated to be skilled and clean, without having to call for the total abolition of the death penalty for the exclusion of the world trends.

In expressing the abolition of the death penalty, unfortunately, Indonesian Muslim human rights activists are in no way to make Islam their consideration. Islam is a religion that values human life. One of the *Maqāṣid Syarīah* (Islamic purposes) is the maintenance of the soul (Al-Razi, 1400). To nourish the soul, Islam, among others, forbade persecution and let alone murder. Many Quranic verses and Prophet Muhammad's traditions confirm this (see surah Al-Maidah: 32 and 45, and surah Al-Israk: 33, and see (Al-Hajjaj, n.d.). Even so honored human life so that the Koran declares that anyone who kills a human being, not because that person kills another person, or not for making damage on earth, it is as if he has destroyed all humanity. And whoever preserves the life of a man, it is as if he has kept all human life (see surah Al-Maidah: 32).

According to the teachings of Islam, the State also should not arbitrarily execute someone. A person will be sentenced to death if he or she has a criminal liability and has been legally proven and, without any doubt, violates the prescribed terms. If there is any doubt, then all penalties, let alone the death penalty, should be avoided. It is confirmed in the words of the Prophet Muhammad's sayings, "Avoid *ḥudūd* with doubts" (Al-Baihaqi, 1344). *Ḥudūd* is a predetermined punishment and is God's right. Among the *ḥudūd* is the death penalty (Audah, 2011).

Still, according to Islam, the judiciary must be carried out somewhat, and judges must decide the case carefully, based on knowledge, and not discriminatory, especially in cases threatened with the death penalty. It is because the judiciary is made to obtain worldly justice. If the judicial process is not careful and thorough, then the parties will get injustice.

Islam is a religion of justice. Islam highly values truth and orders Muslims to be fair even to enemies and criminals. In retaliating or punishing a person's crime, there is also a civil injunction. Allah says, "And if you repay, then repay with the same as the torment imposed upon you. But if you are patient, it is better for those who are patient" (see surah Al-Nahl: 126). This verse implies that the death penalty is fair to the deliberate murderer and that the victim or his family has the right to forgive if they so desire.

The death penalty must also be conducted transparently and witnessed by the public, not secretly or at the time of sleep or rest. It is so that all the people will take valuable lessons, and this is following the word of God: "And let the execution of their punishment be witnessed by a group of believers" (see surah Al-Nuur: 2).

Why is there a death sentence in Islam? As Muslims, Indonesian Muslim rights activists should know and realize that life is a gift from God, and therefore, only He is



entitled and can take it back. As a giver of life to man, God has the right to make it away from him in the way he pleases, which is, among other things, by justifying the death sentence for a crime committed by that person.

In Islam, the death penalty is clearly revealed, and *qaṭ'i* (definitely, not having more than one interpretation) doctrine in the Koran and Hadith, and the scholars also have the *ijmā'* (consensus) about it. The person who doubts or does not believe it means not accepting in the Koran and hadith. It is deeply feared that it would make a defect of his faith, if not said out-consciously or unconsciously-from Islam itself.

The death penalty according to the Koran and Hadith include intentional killing (see surah Al-Nisak: 93); robbery accompanied by murder (see surah Al-Maidah: 33); adultery committed by a *muḥṣan* (married person with legal marriage) (Al-Hajjaj, n.d.); and apostasy (Al-Bukhari, 1987). Also, there are some crimes that God has authorized to punish him to the judge. Judges can choose punishment ranging from the lightest to the most severe punishment of the death penalty. It is in Islamic criminal law called *ta'zīr* (Audah, 2011). These crimes include spying, terrorism, drugs, corruption, and others. God gave authority to punish criminals so that when the judge commissioned the death penalty, it was on the command of the life-giver, i.e., Allah Almighty. However, Baker argued that sentencing the apostate to death is a political affair, not a religious one, which means it is Muslim rulers who should decide whether an apostate should be killed (Baker, 2018).

Among the wisdom why God justifies the death penalty are His words: "And in that *qiṣāṣ*, there is a (guarantee of survival) of life for you, O you who are wise, that ye may be cautious" (see surah Al-Baqarah: 179). *Qiṣāṣ* is an Islamic expression signifying 'retaliation in kind' or retribution (Karim, Newaz, & Kabir, 2017). *Qiṣāṣ* is to punish with the same, in both murder and persecution. In other words, *qiṣāṣ* is to treat a person according to what he has done; if he cut off a man's hand, then his hands must also be cut off. Also, if he kills intentionally, he must be put to death (Audah, 2011). According to the above verse, in *qiṣāṣ* there is a guarantee of survival, for if a man who will kill knows that he will be killed anyway, then he will be afraid then abandon his plan, so that means he has kept his own life and the life of others who will die. If the perpetrators are only sentenced to life imprisonment, of course, the punishment will not scare him, not worth the crime, unfair to the victim and his family, and do not provide security for the wider community (Sulaiman, 2018).

From the verses and traditions relating to the death penalty, it can be said that when justifying the death penalty, Islam not only concerns the perpetrators of crime, but Islam also concerns the victims, their families, their clan, and the wider community. Besides, the death penalty has several benefits, among others, to prevent and frighten others from committing similar crimes, to provide justice to the victim, his family, and his clan, and provide security for the welfare of the public. Also, the implementation of capital punishment creates a peaceful and harmonious life (Arifin, 2019). And there



is one more benefit that may be forgotten by many, the death penalty and the other punishment, according to the teachings of Islam, can erase the mistake of the offender and abort the sentence in the afterlife if preceded by regret and repentance.

We are not neglecting the fact that efforts to expand the application of Islamic criminal law in Muslim majority states lie in between difficult choices between modern human rights norms and conservative local understandings of Islamic tradition (Lindsey & Steiner, 2016). However, the Muslims must be firm and take the attitude of carrying out the teachings of the religion they embrace for the welfare of the people.

### Conclusion

Indonesian Muslim human rights activists are profoundly affected by world trends and the real conditions of law and the execution of capital punishment in Indonesia when they express a moratorium or the abolition of the death penalty. They did not make Islam considerable. Islam, the religion that they embrace, is a religion that values human life much, but at the same time justifies the death penalty under strict conditions for certain criminals because of its many benefits. Rejecting the death penalty in total, consciously or unconsciously, means discarding some of Islam's teachings.

### References

- Al-Baihaqi, A. B. A. bin al-H. bin A. (1344). *Al-Sunan al-kubrā* (First). Haedarabad: Majlis Dāirāt al-Ma'ārif al-Niṭāmiyah.
- Al-Bukhari, M. bin I. (1987). *Al-Jāmi' al-ṣaḥīḥ* (1st ed.). Cairo: Dār Al-Sya'b.
- Al-Hajjaj, A. al-H. M. bin. (n.d.). *Ṣaḥīḥ muslim*. Beirut: Dār al-Jail.
- Al-Razi, M. ibn U. ibn al-H. (1400). *Al-Maḥṣūl fī 'ilm al-uṣūl* (First). Riyadh: Jāmi'āt al-Imām Muḥammad ibn Sa'ūd al-Islāmiyah.
- Amitai, E. (2010). Life: The most basic right. *Journal of Human Rights*, 9(1), 100-110. <https://dx.doi.org/10.1080/14754830903530359>
- Amnesty International. (2019). Death penalty. Retrieved December 25, 2019, from <https://www.amnesty.org/en/what-we-do/death-penalty/>
- Anti-Death Penalty Asia Network. (2019). About Us. Retrieved December 27, 2019, from <https://adpan.org/aboutus/>
- Arifin, T. (2019). The guarantee of the application of capital punishment on a peaceful and harmonious life: Proof from around the world. *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah*, 4(1), 56–66. <https://doi.org/10.22373/petita.v4i1.14>
- Arifin, T. (2015). Misunderstanding of the Indonesian human rights activists on the application of the death penalty. *Asy-Syari'ah*, 17(2), 185-198. <https://doi.org/10.15575/as.v18i1.7607>
- Audah, A. Q. (2011). *Al-Tasyrī' Al-Jinā'ī Al-Islāmī Muqāranan bi Al-Qānūn Al-Waḍ'ī*. Beirut: Dār Al-Kutub Al-'Ilmiyah.
- Badan Pekerja Kontras. (2007). *Praktek hukuman mati di Indonesia*. Jakarta.
- Baker, M. (2018). Capital punishment for apostasy in Islam. *Arab Law Quarterly*, 32(4), 439–461. <https://doi.org/10.1163/15730255-12324033>
- Bibi, S., Hongdao, Q., Ullah, N., Khaskheli, M. B., Saleem, H. A. R. (2019). Excessive use of death penalty as stoppage tool for terrorism: Wrongful death executions in Pakistan. *Journal of Law, Policy, and Globalization*, 81, 42-52.



- <https://doi.org/10.7176/jlpg/81-05>
- Burleson, E. (2005). Juvenile execution, terrorist extradition, and supreme court discretion to consider death penalty jurisprudence. *Albany Law Review*, 68, 909-950. Retrieved from <https://core.ac.uk/download/pdf/46714471.pdf>
- Dhillon, G., Mohammad, N., Miin, N. Y. (2012). Capital punishment in Malaysia and globally: A tool for justice or a weapon against humanity. *Legal Network Series*, 1-24. Retrieved from <https://bit.ly/2QUN53R>
- Dubagari, U. A. (2016). Same sex marriage, human rights and death penalty: Common and Islamic law perspectives. *Journal of Philosophy, Culture and Religion*, 23, 49-57. Retrieved from <https://iiste.org/Journals/index.php/JPCR/article/view/33164/34062>
- ECPM. (2016). Report 6th world congress against the death penalty. Retrieved from <http://www.ecpm.org/wp-content/uploads/actes-Oslo-GB-220217b.pdf>
- Fayaz, A. A., Nezhad, A. K. A., Moghaddam, H. N. (2016). A critique of documentations of discretionary death penalty in jurisprudence and Afghanistan Penal Code. *The Social Sciences*, 11(4), 463-469. Retrieved from <http://profdoc.um.ac.ir/articles/a/1058098.pdf>
- Feldman, J. C. (2015). Nothing less than the dignity of man: The eighth amendment and state efforts to reinstitute traditional methods of execution. *Washington Law Review*, 90(3), 1313-1348. Retrieved from <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=4877&context=wlr>
- Hnidka, R. (2016). European perspective and legal framework of death penalty. *Izzivi Prihodnosti/Challenges of the Future*, 1(4), 159-171. Retrieved from [https://www.fos-unm.si/media/pdf/ip/death\\_penalty\\_hnidka\\_10.pdf](https://www.fos-unm.si/media/pdf/ip/death_penalty_hnidka_10.pdf)
- Imparsial. (2016). Imparsial minta hukuman mati dihentikan. Retrieved December 26, 2019, from <http://www.imparsial.org/publikasi/berita/imparsial-minta-hukuman-mati-dihentikan/>
- Imparsial. (2019a). Evaluasi praktik hukuman mati pada era pemerintahan Jokowi 2014-2019. Retrieved December 27, 2019, from <http://www.imparsial.org/publikasi/siaran-pers/evaluasi-praktik-hukuman-mati-pada-era-pemerintahan-jokowi-2014-2019/>
- Imparsial. (2019b). Profil. Retrieved December 26, 2019, from <http://www.imparsial.org/profil/tentang-imparsial/>
- Johnson, D. T. (2016). Retention and reform in Japanese capital punishment. *University of Michigan Journal of Law Reform*, 49(4), 853-889. Retrieved from <https://repository.law.umich.edu/mjlr/vol49/iss4/4/>
- Kallins, L. B. (1993). The juvenile death penalty: Is the United States in controvertion of international law? *Maryland Journal of International Law & Trade*, 17(1), 77-108. Retrieved from <https://core.ac.uk/download/pdf/56359333.pdf>
- Karim, R., Newaz, S., & Kabir, A. I. (2017). A Comparative analysis of retributive justice and the law of qisas. *Journal of Nusantara Studies (JONUS)*, 2(2), 169. <https://doi.org/10.24200/jonus.vol2iss2pp169-177>
- KontraS. (2005). Hukuman Mati adalah Pelanggaran Prinsip Kemanusiaan dan Konstitusi RI! Retrieved December 27, 2019, from <http://kontras.org/backup/home/index.php?module=pers&id=41>
- KontraS. (2019). Profil KontraS. Retrieved December 27, 2019, <https://kontras.org/en/company-profile/>
- LBH Masyarakat. (2015). Negara harus segera melakukan moratorium hukuman



- mati. Retrieved December 28, 2019, from <https://lbhmasyarakat.org/negara-harus-segera-melakukan-moratorium-hukuman-mati/>
- LBH Masyarakat. (2019a). Hukuman mati bukan solusi: Pernyataan sikap LBH Masyarakat atas eksekusi Amrozi, dkk. Retrieved December 28, 2019, from <https://lbhmasyarakat.org/hukuman-mati-bukan-solusi-pernyataan-sikap-lbh-masyarakat-atas-eksekusi-amrozi-dkk/>
- LBH Masyarakat. (2019b). Tentang kami. Retrieved December 28, 2019, from <https://lbhmasyarakat.org/tim-kami/>
- Lindsey, T., & Steiner, K. (2016). Islam, the monarchy and criminal law in Brunei: The syariah penal code order, 2013. *Griffith Law Review*, 25(4), 552-580. <https://doi.org/10.1080/10383441.2016.1273294>
- McRae, D. (2017). Indonesian capital punishment in comparative perspective. *Journal of the Humanities and Social Sciences of Southeast Asia*, 173(1), 1-22. <https://doi.org/10.1163/22134379-17301002>
- Mohamed, G. (2017). Reforming the death penalty in Egypt: An Islamic law perspective. Unpublished Master's Thesis. Indiana University Maurer School of Law, Indiana.
- Novak, A. (2015). The abolition of the mandatory death penalty in India and Bangladesh: A comparative commonwealth perspective. *Global Business & Development Law Journal*, 28, 227-254. Retrieved from <https://bit.ly/2JomSGz>
- Olugbenga, A. E. (2012). Modern methods of executing condemned prisoners: Elixir to painful killings? *International Journal of Business and Social Science*, 3(8), 141-148. Retrieved from <https://pdfs.semanticscholar.org/aa4d/439c2f0a6bebdd752aabab3bb481e03898db.pdf>
- Ramzan, S., Akhter, N., & Rubab, A. (2015). Punishment from Islamic perspective. *Journal of Social Sciences*, 9(1), 53-56. Retrieved from <http://www.sbbwu.edu.pk/journal/Journal%20June%202015/8.%20Punishment%20from%20Islamic%20Perspectives.pdf>
- Rao, D. (2015). An autopsy evaluation of complete decapitation injuries. *International Journal of Forensic Science & Pathology*, 3(4), 99-104. <https://dx.doi.org/10.19070/2332-287X-1500024>
- Rifai, E. (2017). An analysis of the death penalty in Indonesia criminal law. *Sriwijaya Law Review*, 1(2), 190-199. <https://doi.org/10.28946/slrev.vol1.iss2.44.pp191-200>
- Shaheed, A., & Sanei, F. (2016). Outlier: Iran and its use of death penalty. *Cardozo Legal Studies Research Paper*, 564. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3237140](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3237140)
- Simandjuntak, D. (2015). Spectacle of the scaffold? The politics of death penalty in Indonesia. *ISEAS Yusof Ishak Institute*, (46), 1-8. Retrieved from [https://www.iseas.edu.sg/wp-content/uploads/pdfs/ISEAS\\_Perspective\\_2015\\_46.pdf](https://www.iseas.edu.sg/wp-content/uploads/pdfs/ISEAS_Perspective_2015_46.pdf)
- Sina, L. (2016). Implementation of the death penalty in the perspective of human rights in Indonesia. *Hasanuddin Law Review*, 2(3), 385. <https://doi.org/10.20956/halrev.v2i3.695>
- Sulaiman, A. (2018). Reinterpretasi ayat al- qisās QS. Al-Baqarah: 178-179 (Pendekatan maqāṣid al-syarī'ah dan sosio-historis). *Maghza: Jurnal Ilmu Al-Qur'an dan Tafsir*, 3(2), 242-252. <https://doi.org/10.24090/maghza.v3i2.2137>
- The Lancet. (2016). Ending the death penalty for juveniles. *The Lancet*, 387(10018), 506. [https://doi.org/10.1016/S0140-6736\(16\)00266-X](https://doi.org/10.1016/S0140-6736(16)00266-X)



- The World Coalition Against the Death Penalty. (2019). Presentation. Retrieved December 26, 2019, from <http://www.worldcoalition.org/Presentation.html>
- United Nations. (2016). *Death penalty and Punishment* (1st ed.; I. Šimonović, Ed.). New York: Office of High Commissioner.
- Xiong, M., Miao, M. (2018). Miscarriage of Justice in Chinese Capital Cases. *Hastings International & Comparative Law Review*, 41(3), 273-342. Retrieved from [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol41/iss3/3](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol41/iss3/3)