



Justice and *Qisās* in Islamic Law: The Views of Muslim Scholars and Intellectuals at Makassar City, South Sulawesi

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Abstract: *Qisās* is a legal provision (for those who commit premeditated murder or unlawful acts) that is ontological-theological in nature, which prioritizes justice in the *maqāṣid al-sharī'ah* paradigm. This form of justice is oriented towards the welfare of humanity while still recognizing the rights and responsibilities of the perpetrator and (family) of the victim. However, *qisās* is often considered barbaric, cruel, and not in accordance with modern human rights standards. Based on this view, it is necessary to study the meaning of justice in *qisās*, according to Muslim scholars and intellectuals in Makassar, South Sulawesi. This study attempts to discuss the construction of the meaning of justice in the law of *qisās* in line with the principles of Islamic law. To answer this, an empirical research method is used with the *maqāṣid al-sharī'ah* approach. Data were collected through in-depth interviews with informants such as Muslim scholars and intellectuals. The research findings show that *qisās* justice actually fulfills the principles of justice as contained in Islamic law and is in line with theological and sociological dimensions. *Qisās* is applied with a balanced axiological orientation, adhering to the principles of justice. However, the application of the law is hierarchical and depends on the reasons (or motives) for the adjustment. This means that *qisās* is the maximum punishment that can be applied if the evidence of premeditated murder or unlawful association is conclusive and beyond doubt (*syubhat*). Conversely, if the evidence has strong reasons (such as preventing harm) or is uncertain (*syubhat*), then the minimum punishment -*diyat* (financial compensation) - can be applied. In the *maqāṣid al-sharī'ah* perspective, *qisās* punishment does not only contain the values of justice and welfare because it can save and protect the lives of other humans from someone's evil intentions to kill, so that the goal of Islamic law for the welfare of humanity can be achieved.

Keywords: Justice, *qisās*, justice, punishment, recontextualization, Islamic law, *maqāṣid al-sharī'ah*

Abstrak: *Qisās* merupakan ketentuan hukum (bagi yang melakukan pembunuhan berencana atau perbuatan melawan hukum) yang bersifat ontologis-teologis, yang mengutamakan keadilan dalam paradigma *maqāsid al-sharī'ah*. Bentuk keadilan ini berorientasi pada kemaslahatan kemanusiaan dengan tetap mengakui hak dan tanggung jawab pelaku dan (keluarga) korban. Meskipun demikian, *qisās* sering dianggap biadab, kejam, dan tidak sesuai dengan standar hak asasi manusia modern. Berdasarkan pandangan ini, perlu dikaji makna keadilan dalam *qisās*, menurut para ulama dan cendekiawan muslim di Makassar, Sulawesi Selatan. Kajian ini berupaya untuk membahas tentang konstruksi makna keadilan dalam hukum *qisās* sejalan dengan prinsip-prinsip hukum Islam. Untuk menjawabnya, digunakan metode penelitian empiris dengan pendekatan *maqāsid al-sharī'ah*. Data dikumpulkan dengan cara wawancara mendalam kepada informan seperti ulama dan cendekiawan muslim. Temuan penelitian menunjukkan bahwa keadilan *qisās* sesungguhnya memenuhi prinsip-prinsip keadilan sebagaimana terkandung dalam hukum Islam dan sejalan dengan dimensi teologis dan sosiologis. *Qisās* diterapkan dengan orientasi aksiologis yang berimbang, berpegang pada prinsip-prinsip keadilan. Akan tetapi, penerapan hukumnya berjenjang dan tergantung pada penyesuaian alasan (atau motif). Artinya, *qisās* adalah hukuman maksimal yang dapat diterapkan jika bukti pembunuhan berencana atau penganiayaan melawan hukum sudah konklusif dan tidak diragukan lagi (*syubhat*). Sebaliknya, jika bukti tersebut memiliki alasan kuat (seperti pencegahan bahaya) atau tidak pasti (*syubhat*), maka hukuman minimal -*diyat* (ganti rugi finansial)- dapat diterapkan. Dalam perspektif *maqāsid al-sharī'ah*, hukuman *qisās* tidak hanya mengandung nilai-nilai keadilan dan kesejahteraan saja karena dapat menyelamatkan dan menjaga kehidupan manusia lain dari niat jahat seseorang untuk membunuh, sehingga tujuan hukum Islam untuk kesejahteraan umat manusia dapat tercapai.

Kata Kunci: Keadilan, *qisās*, hukuman, rekontekstualisasi, hukum Islam, *maqāsid al-sharī'ah*

Introduction

This study discusses the value of justice in *qisās* punishment as contained in Islamic law which upholds the right to life and advances human welfare.¹ This effort aims to reveal the deeper meaning of justice in *qisās*, so as to find welfare, benefit in the concept of forgiveness and protection of human

¹H. Sohail, "Imposition of *Qisās* the Savior for Community: A Response to the Antagonistic Claims of International Human Rights Activists", *Islamic Quarterly* 67, No. 1, (2023), p. 31–44. Muhammad Mawardi Djalaluddin, et. al., "The Implementation of *Ta'zīr* Punishment as an Educational Reinforcement in Islamic Law." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1, (2023), p. 399-417.

life as contained in *maqāṣid al-sharī'ah*.² *Qisās* prioritizes the principles of justice that are oriented towards the humanitarian dimension (namely: forgiveness),³ so as to foster restorative justice.⁴ The objective is to cultivate a just society that empowers victims, perpetrators, and the wider community.⁵ It is reasonable that *qisās* is considered inherently in line with peace and forgiveness compared to positive law, but remains based on an ontological-theological framework.⁶

This construction of justice within *qisās* arises from the integration of law and religion in Islam, where legal principles are inseparable from religious values.⁷ *Qisās* reflects the notion of justice that is both theological and sociological in its orientation. Moreover, the rules governing *qisās* are designed based on the theological values that have humanitarian objectives as an axiological dimension.⁸ Therefore, acts of violation against religion, soul, mind, honor, and property are considered criminal offenses within Islamic law; as they deviate from the core objectives of *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). Within this context, justice within *qisās* serves as an effort to maintain the welfare of humanity based on theological values. Therefore, *qisās* is considered to have a balanced approach between justice and compassion.⁹

Based on the narrative, *qisās* is a legal provision that is ontological-theological in nature, prioritizing justice within a socio-anthropological framework. In its application, there are three options for victims or their heirs: equal retribution (*qisās*); financial compensation (*diyat*); or forgiveness of the perpetrator, either by the victims themselves or by delegating the matter to the

² Muhammad Munir, "Does a Compromise Blot out Both Guilt and Punishment? Analyzing *Qisās* and *Diyat* Provisions of Criminal Law in Pakistan under the Injunctions of Islam." *Islamic Studies* 59, No. 1, (2020), p. 9-28.

³ Ridoan Karim, et.al., "A Comparative analysis of retributive justice and the law of *qisās*." *Journal of Nusantara Studies* 2, No. 2, (2017), p. 169-177. Majdah Zawawi and Nasimah Hussin, "Forgiving the Enemy: A Comparative Analysis of the Concept of Forgiveness in Shari'ah and Malaysian Law," *Pertanika Journal of Social Science and Humanities* 23, (2015), p. 43-54.

⁴ Absar Aftab Absar, "Restorative justice in Islam with special reference to the concept of *Diyat*." *Journal of Victimology and Victim Justice* 3, No. 1, (2020), p. 38-56.

⁵ Ramizah Wan Muhammad, "Forgiveness and restorative justice in Islam and the west: A comparative analysis." *ICR Journal* 11, No. 2, (2020), p. 277-297.

⁶ Sri Endah Wahyuningsih and Jawade Hafidz. "The Development of the Indonesian Criminal Code Derived from The Yudicial Pardon Value in Islamic Law." *Addin* 11, No. 2, (2017), p. 295-320.

⁷ Abdurrahman Raden Aji Haqqi, "Religiosity in Criminal Law: Islamic Perspective." *Diponegoro Law Review* 4, No. 1, (2019), p. 1-20.

⁸ Ach Fuad Fahmi, et.al., "Aspek Kemanusiaan Dalam Hukuman *Qisās*." *Ijtihad* 15, No. 1, (2021), p. 91-114.

⁹ Badri Khaeruman, "Study of Criminal Hadiths and Qishash: Perspectives on Contemporary Islamic Legal Thought." *Diroyah: Jurnal Studi Ilmu Hadis* 8, No. 2, (2024), p. 351-374.

state.¹⁰ These options form a continuum between *premium remedium* (forgiveness) and *ultimum remedium* (*qisās*) which create justice between the perpetrator and the victim.¹¹ Importantly, *qisās* upholds the principles of equality, as it does not discriminate based on gender (men or women) or social status all individuals are treated equally under *qisās*.¹² It is reasonable that *qisās* is believed to be able to enforce state law in both a preventive and repressive manner and even for resolving larger conflicts (such as warfare).¹³

However, the construction of *qisās* justice -Islamic law- is often viewed as requiring reform, particularly in line with international criminal law. Even Islamic law¹⁴ (namely: *Qanun Jinayat*) are sometimes viewed as limited in their ability to promote the welfare of women¹⁵ particularly concerning their role in providing testimony in *qisās* -though this remains a topic of ongoing debate.¹⁶ On the one hand, there exists a misconception that the Qur'an is a "sadistic" text due to its inclusion of criminal law. This misconception often stems from a superficial reading of criminological verses, without a comprehensive understanding of the meaning of justice within criminal law (*qisās*). A shallow understanding of the Qur'anic text actually results in the criminalization of religion; even misunderstanding of religious texts actually emerges arrogance and radicalism.¹⁷

The emergence of misconceptions regarding *qisās* indicates the need for efforts to introduce a more contextual understanding of *qisās*-based legal justice without sociological boundaries while remaining grounded in theological value. If the contextualization of the meaning of justice within *qisās* is understood

¹⁰ Majdah Zawawi and Nasimah Hussin, "Forgiving the Enemy: A Comparative Analysis of the Concept of Forgiveness in Shari'ah and Malaysian Law," *Pertanika Journal of Social Science and Humanities* 23, (2015), p. 43-54.

¹¹ Zainuddin, "Restorative Justice Concept on Jarimah Qishas in Islamic Criminal Law," *Jurnal Dinamika Hukum* 17, No. 3, (2017), p. 335-341.

¹² Ahmad Muhammad Husni, et.al., "Qisās: The Theory and Its Application on Women a Comparison between Civil and Islamic Views", *Social Sciences* 9, No. 1, p. 53-57.

¹³ Paisol Burlian, *Implementasi Konsep Hukuman Qishas di Indonesia*, (Jakarta: Sinar Grafika, 2015), p. 45. Rahma Abdulkadir and Caroline Ackley, "The Role of Shari'a-Based Restorative Justice in the Transition from Armed Conflict to Peacebuilding: Do Somalis Hold the View That the Restorative Justice Aspects within Qisās Offer a Solution?" *Northeast African Studies* 14, No. 2, (2014), p. 111-132.

¹⁴ Etim E. Okon, "Hudud Punishments in Islamic Criminal law." *European Scientific Journal* 10, No. 14 (2014), p. 227-238

¹⁵ Yogi Febriandi, et.al., "Seeking Justice through Qanun Jinayat: The Narratives of Female Victims of Sexual Violence in Aceh, Indonesia." *QIJIS (Qudus International Journal of Islamic Studies)* 9, No. 1, (2021), p. 103-40.

¹⁶ Abdul Hai Madni, The Status of Women's Testimony: A Critical Analysis Based on The Issue of Hudood and Qisās, *JoKULL Journal* 69, (2019), p. 54-59.

¹⁷ Jilani ben Touhami Meftah, "Roots of Sadistic Terrorism Crimes: Is it Islam or Arab Culture?" *Aggression and Violent Behavior* 42, (2018), p. 52-60.

holistically, then the values of humanity will be clearly readable. As happened in Pakistan, the partialistic construction of *qisās* has only contributed to issues (crimes) such as violence against women.¹⁸ Therefore, the contextualization of justice within *qisās* needs to be studied in more detail as a guardian of humanity; because *qisās* plays a crucial role in safeguarding human dignity and upholding the sanctity of life.¹⁹ This means that the value of justice within *qisās* needs to be understood in an esoteric contextual meaning based on a socio-anthropological framework. This is similar to a study by Nur regarding the recontextualization of the meaning of justice based on an implicative orientation towards the reality of humanity.²⁰

Based on these arguments, this study aims to examine and analyze the values of justice in the law of *qisās* according to the views of Muslim scholars and intellectuals, especially in Makassar, South Sulawesi. This study uses an empirical legal method with a *maqāṣid al-sharī'ah* approach.²¹ Data requires in-depth interviews and literature studies. The informants interviewed were clerics who are members of the Indonesian Ulema Council and intellectuals who understand the problem. While the literature studied was articles, books, sources of Islamic law such as the Qur'an, Hadith, as well as the opinions of scholars. All of these data were then analyzed using the *maqāṣid al-sharī'ah* theory, an approach that prioritizes human welfare as the goal of Islamic law.

***Qisās* and Justice in Islamic Law**

Qisās is one of the *hudud* punishments (divinely ordained limits) in Islamic criminal jurisprudence in society. It is the mainstay of the realization of peace in community life through its orientation towards the realization of welfare in social life.²² Therefore, it offers a restorative justice model which seeks to carry out reconciliation through the realization of interaction between the perpetrator, victim, society, and the state in determining justice after the

¹⁸Johar Wajahat, et.al., "An Analysis of Qisās and Diyat Laws, Inadequately Encompassed the Islamic Gist as Fused in Judicial System of Pakistan." *Journal of Social Sciences Review* 3, No. 2, (2023), p. 532-537.

¹⁹ Hajed A. Alotaibi, "The Challenges of Execution of Islamic Criminal Law In Developing Muslim Countries: An Analysis Based On Islamic Principles and Existing Legal System." *Cogent Social Sciences* 7, No. 1, (2021), p. 1-13.

²⁰ Muhammad Tahmid Nur, "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in The Law of Qisās." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, No. 2, (2021), p. 335-365.

²¹Juhaya S. Praja, *Teori Hukum dan Aplikasinya*, Bandung: Pustaka Setia, 2014. Deri Wanto, et.al., "Maqasid Shariah's Change as Theory: From Classical to Cotemporary Maqasid Shariah," *Al-Istinbath: Jurnal Hukum Islam* 6, No. 2 (2021), p. 427.

²²Kurniawan Bagus Samudro, "Juridical Review of The Death Penalty in Indonesia in Islamic Law Perspective," *Law Development Journal* 2, No. 1, (2020), p. 37-50.

crime has occurred.²³ *Qisās* encourages the victim's family to forgive the perpetrator or accept compensation (*diyat*) instead of seeking the death penalty. While the state is responsible for executing the punishment, the decision to forgive rests with the victim's heirs. By fostering compassionate interaction between the perpetrator and the victim's heirs, the Islamic doctrine of the death penalty incorporates elements of restorative justice.

Thus, *qisās* strongly emphasizes social order based on the value of justice. Linguistically, the term *qisās* derives from the Arabic *al-musawa wa al-ta'addul* (equality and balance); and is synonymous with "*adl*" (equality and balance). Therefore, the punishment received is proportionate to the crime committed by the perpetrator; and this concept is the essence of *qisās*. In this context, *qisās* can be a preventive effort (measure), curbing certain crimes by deterring potential perpetrators. This preventive effort, in turn, instill a defensive attitude in perpetrators against crimes that have the potential to be committed.

On the one hand, the form of retaliating in kind is an effort that gives rise to the rule of death penalty for those found guilty of serious crimes (such as murder). The construction of this punishment actually opens up a restorative justice model while still giving the victim's heirs the choice to forgive the perpetrator²⁴ the settlement of which is civil.²⁵ However, it is important to note that the scope of *qisās* is limited to crimes against the soul (murder) and the body (assault), or *al-nafs wa al-jarahah* (life and injury). By adhering to these guidelines, community life is safeguarded, grounded in theological doctrines as outlined in the Qur'anic verses: Surah al-Baqarah (2: 178-179, 194), Surah al-Nisa (4:92), Surah al-Ma'idah (5:32, 45), and Surah al-Isra (17: 33).

These theological directives, doctrinally, is a form of accountability that must be enforced, particularly in cases of intentional murder. However, the punishment must be administered by the appropriate authorities, in line with the principles of justice and welfare. Therefore, the axiological dimension of *qisās* is evident, as it ultimately ensures the preservation of "life" for humans. This objective is explicitly mentioned in Surah al-Baqarah (2: 179) and Surah al-Isra (17: 33), underscoring the ontological and theological basis of *qisās*, including

²³ Susan C. Hascall, "Restorative justice in Islam: Should *Qisās* be considered a form of restorative justice." *Berkeley J. Middle E. & Islamic L.* 4, (2011), p. 35. Clifford K. Dorne and Ron Claassen, *Restorative Justice in the United States: An Introduction*, (United States: Pearson Prentice Hall, 2008).

²⁴ Naija 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 US." *Berkeley J. Middle E. & Islamic L.* 12, (2021), p. 9.

²⁵ Devi Nilam Sari, "Implementasi Hukuman *Qisās* Sebagai Tujuan Hukum Dalam Al-Qur'an." *Muslim Heritage* 5, No. 2, (2020), p. 286-286.

the axiological dimension -read: its legal orientation- because sharia is not just a legal guideline but also a guideline for behavior and ethics.²⁶

The diction of “life” in the axiological dimension of *qisās* can be interpreted as a preventive effort in the form of providing a chance to live for the perpetrator through the payment of *diyat* (financial compensation) if the victim’s heirs choose to forgive. On the other hand, in macro terms, “life” is also oriented toward protecting society from the loss of life, including the welfare of the victim's family who is left behind, there is “life” through the payment of *diyat* (Surah an-Nisa (4: 92) and Surah al-Maidah (5: 45). The objectives of *diyat* includes retribution, deterrence, and reform. Clearly, *qisās* embodies the principle of *al-tahzib* (educational nature). However, when *qisās* was applied in Aceh, Indonesia, it faced criticism for being deemed unconstitutional, discriminatory, and outdated.²⁷ In contrast, *qisās* in Saudi Arabia has contributed to a reduction in crime rates by fostering an understanding of justice aimed at reforming perpetrators (offenders).²⁸

The three key objectives of *qisās* are rooted in the spirit of justice in which there is a guarantee of the welfare of society. As such, all actions are in line with the objectives of Islamic law (*maqāṣid al-sharī'ah*),²⁹ aiming to prevent the recurrence of criminal acts. If the act of "voluntary manslaughter" occurs, there is an element of forgiveness from the victim's family which encourages reconciliation with the perpetrator. On the one hand, the condition of the victim's family is also guaranteed by the *diyat* payment from the perpetrator, so that the perpetrator is free from *qisās* –read: punishment.³⁰ Interestingly, some even view *diyat* as an alternative solution to reduce prison overcrowding.³¹

Moreover, the objective of *qisās* is not driven by revenge, but rather by the desire to teach or educate (*li al-tahzib*) the community. Within this framework, society is encouraged to improve itself, thereby reducing the likelihood of committing (or, repeating) criminal acts. Clearly, *qisās* is not only

²⁶ Richter H. Moore Jr., "Courts, Law, Justice, and Criminal Trials in Saudi Arabia." *International Journal of Comparative and Applied Criminal Justice* 11, No. 1-2 (1987), p. 61-67.

²⁷ Zainul Fuad, et.al., "Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia." *Cogent Social Sciences* 8, No. 1, (2022), p. 1-17.

²⁸ Badr-El-Din Ali, "Islamic law and crime: The Case of Saudi Arabia." *International Journal of Comparative and Applied Criminal Justice* 9, No. 1-2, (1985), p. 45-57.

²⁹ Andi Muhammad Akmal, et.al., "Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia: Integrating Maqāṣid al-sharī'ah," *El-Usrah: Jurnal Hukum Keluarga* 7, No. 2 (2024).

³⁰ Muhammad Munir, "Does a Compromise Blot out Both Guilt and Punishment? Analyzing Qisās and Diyat Provisions of Criminal Law in Pakistan Under the Injunctions of Islam." *Islamic Studies* 59, No. 1, (2020), p. 9-28.

³¹ Kuswandi, et. al., "Sanksi Pidana Diyat Sebagai Alternatif Meminimalisir Permasalahan Overcrowding Penjara Di Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, No. 1, (2020), p. 39-48.

as a firm deterrent against crime but also as a means of preserving "life" through justice. This means that *qishās* is a value of justice that guarantees justice.³² While some may argue that *qishās* represents the maximum punishment and is not necessary for all cases of murder or injury,³³ its "firmness" actually preserves the welfare of society; while the punishment of "equitable retaliation" is central to justice, with the preservation of life being guaranteed by Allah (God) Himself.

Justice is clearly the normative foundation of *qishās*, so that it can be conceptualized as both interpersonal and restorative justice.³⁴ Interestingly, the value of restorative justice is superior to retributive justice.³⁵ This means that the justice underpinning *qishās* is able to realize the welfare between the perpetrator and the victim's family. Consequently, *qishās* justice has the meaning of "equal" and "balanced" which is clearly reflected; and is applied by prioritizing respect for individual rights. At the same time, the application of *qishās* also fulfills transcendental rights, contingent upon the condition that "the perpetrator is proven beyond doubt to have committed intentional murder or unlawful injury".

The Rekontextualization of the Meaning of Justice in *Qishās*

Islamic law is a legal system that emphasizes the principles of justice, equality, and tolerance. If these principles are the basis for implementing *qishās*, then a practice full of caution and consideration will be realized. Indeed, in the early history of Islam, *qishās* (in the sense of retaliatory punishment for murder or bodily injury) was very rarely applied because its application required unequivocal evidence; it would even be withheld in cases of doubt (*syubhat*) regarding the proof. This is in line with the legal maxim that states, "Punishment must be avoided when there is doubt"³⁶ and the Prophetic hadith that emphasizes, "Avoid imposing (*hudud*) due to doubt (*syubhat*)."³⁷

Furthermore, *qishās* cannot be enforced if the victim's family chooses to forgive; which can ultimately realize peace (reconciliation) based on justice. Justice, according to Ibn Taimiyah, is the main (core) principle of Islamic law,

³² Sudarti, "Hukum qishash Diyat: Sebuah Alternatif Hukuman Bagi Pelaku Kejahatan Pembunuhan Berencana di Indonesia." *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 12, No. 1, (2021), p. 35-50.

³³ Muhammad Syahrur, *Prinsip dan Dasar Hermeneutika Hukum Islam Kontemporer*, (Yogyakarta: eLSAQ Press, 2007), p. 54.

³⁴ Andrew Fallon, "Restoration as The Spirit of Islamic Justice." *Contemporary justice review* 23, No. 4, (2020), p. 430-443.

³⁵ Absar Aftab Absar, "Restorative Justice in Islam with Special Reference to The Concept of Diyya." *Journal of Victimology and Victim Justice* 3, No. 1, (2020), p. 38-56.

³⁶ Al-Suyuti, *Al-Asybah wa al-Nazair* (Maktabah Nur Asiyah, 1950).

³⁷ Ahmad Yusuf, *Al-Rad 'Ala Syi'ar al-Ahza'i* (Lajnah Ihya' al-Ma'arif al-Nu'maniyah, 1950).

the key to religion and truth and all virtues.³⁸ This means that justice within *qisās* essentially has the aim of preserving human dignity; so that *qisās* is no longer viewed as an inhumane law driven by revenge (vengeance). Instead, the principles of justice, humanity, and welfare are intertwined in the application of *qisās*, which seeks to place both the perpetrator and the victim on an equal footing -although, in this context, debates continue around the application of *qisās* in cases where the victim is a *dhimma* (non-Muslim under Muslim protection).³⁹

Equality will actually decide in the legal case against the perpetrator and the victim carefully, and when *qisās* or *hudud* is applied, it prevents any sense of injustice or jealousy. Because the decision of a legal case only has two certainties, namely: the enforcement of justice legitimately, or the determination of the law based on mistakes. It is precisely these mistakes that causes injustice, thus having implications for the practice of persecution against the perpetrator, the victim's family, and even society in general. A rule in *ushul fiq'h* emphasizes: "It is better for a judge to err in granting forgiveness than to err in imposing punishment (due to doubt -*syubhat*)."⁴⁰ This underscores that carelessness or negligence -caused by a lack of care- only causes a mistake in determining a legal decision that is detrimental to one of the parties.

In this context, the principle of justice, when approached with care, becomes the foundation for seeking *qisās* to uphold human and divine rights. Even caution also promotes public confidence in the enforcement of *qisās* construction. In this context, justice, supported by principles of equality and tolerance, becomes the foundation of effective *qisās* implementation. Hence, the application parameters of *qisās* lie in upholding human rights as well as divine rights through the principles of justice, equality, and tolerance. This principle will diminish the legitimacy of unjust acts carried out in the name of "Islamic law".

It is only natural that Islamic law must be upheld based on aspects that emphasize the welfare of society; deliberation; principles of justice; principle of equality; and responsibility; society must obey the real (de facto) elected government; and there is a need to build trust in society. *Qisās* contains normative values whose provisions are determined by God, but its implementation needs to use principles of justice that are in line with the spirit of humanity. Thus, *qisās* can be applied to societal conditions and also developments in crime science. This flexibility allows for the adaptation of *qisās*

³⁸ Ibn Taimiyah, *Al-Istiqamah*, 1st ed. (Jami'atul Imam Muhammad ibn Sa'ud, 1983).

³⁹ Javad Sarkhosh and H. N. Kharazmi, "Jurisprudential Analysis of Muslim Retaliation Against the Murder of Dhimma Citizens in Islamic Society," *Journal of Criminal Law Research* 11, No. 41, (2023), p. 125–151.

⁴⁰ Fuad Ridwan, *Min Falsafah al-Tasyri' al-Islami* (Dar al-Kitab al-Libnan, 1975).

with the conditions and situation of society while remaining based on justice and benefit-oriented.

On the other hand, law enforcement plays a vital role in addressing criminal acts and seeking justice for both the perpetrator and the victim's family. Specifically, *qisās* has the potential to uphold justice based on human and divine values. It means *qisās* is firm and not stagnant in realizing the ideals of society with prophetic goals through law. It also has preventive measures through crime prevention (criminal acts) to create an orderly, safe, and comfortable society. Through firmness and flexibility, *qisās* is very harsh on serious criminal acts, but it also outlines the rules for dealing with them.⁴¹ Deep complexity of *qisās* indicates that the law is shaped by divine values inherent in human nature.

Thus, *qisās*' elasticity allows for *ijtihad* in law enforcement, leveraging technological developments and advances. One example of the execution process that is imposed does not have to be ratified textually, namely being killed as when the perpetrator kills or abuses the victim. However, *qisās* ratification can use other methods such as hanging, shooting to death, lethal injection, or also beheading. Deep execution medium *qisās* there is a debate among the *ulama'*, especially between the Hanafi and Shafi'i *mazhab*. The Hanafi *mazhab* believes that the media of execution in internal *qisās* must be by sword, while the Syafi'i *mazhab* differs, allowing for other media of execution - read: it doesn't have to be a sword.⁴² However, in several countries in 2023, there will be various methods of ratifying the death penalty, as shown in the figure below:⁴³

Table 1: List of Death Penalty Methods in the World

Beheading	Saudi Arabia						
Hanging	Bangladesh	Egypt	Iran	Iraq	Kuwait	Singapore	Syriah
Lethal Injection	China	USA	Vietnam				
Shooting to Death	Afghanistan	China	North Korea	Palestine (State)	Somalia	Yaman	

However, not all countries (Islamic countries such as Sudan, Brunei Darussalam, Malaysia, or Nigeria) apply Islamic law and implement *qisās*. Islamic State consistently implements *qisās* in the contemporary world in Saudi

⁴¹ Marli Candra, "The Penology of Islamic Criminal Law: Reintroduction of Islamic Penology." *Al-Adalah* 15, No. 2, (2019), p. 345-366.

⁴² Muhammad Rivki, et.al., "Execution of *Qisās* Penalty between Theory and Implementation (Comparative Study of the Hanafi Mazhab and the Shafi'i Mazhab)," *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan dan Pranata Sosial* 11, No. 1, (2021), p. 93-103

⁴³ Aditya Irawan, *Laporan Amnesty International tentang Hukuman Mati 2023/2024* (Amnesty International, 2024).

Arabia, Yaman, Qatar, and Iraq. However, even in Indonesia -a country with a majority Muslim population- tends to choose to apply the Dutch (read: Western) version of criminal law which is based on positive rationality. Aceh Province is the only part of Indonesia that applies *qisās* as Islamic law in its entirety. This indicates that Indonesia as a whole tends not to implement *qisās* as a national legal law. Burlian's study states that there are similar principles between Islamic law and Indonesian national law, including the same principle of legality; the principle that law does not apply retroactively; the principle of presumption of innocence; invalidity of punishment due to doubt; and the principle of equality before the law.⁴⁴

The current reality shows that *qisās* is not yet considered as an alternative to implementing a law that addresses criminal acts. While some countries still enforce *qisās* in the form of the death penalty, such as in Saudi Arabia for serious or sadistic murders (such as brutal or multiple murders). In Indonesia, the implementation of *qisās* is still only a topic of theoretical debate among academics, rather than among legal practitioners. Hence, the implementation of *qisās* is still limited to "theory" which is still academic advice in journal articles or dissertations. Meanwhile in Malaysia, the death penalty was abolished in October 2018,⁴⁵ so it will be increasingly difficult to actualize *qisās* in practice.

Moreover, Western academics, especially revisionist groups like Patricia Crone, Kenneth Cragg, or Wilfred C. Smith, hold a negative view of Islamic law in general.⁴⁶ Whereas *qisās* is God's law intended for humans; In it there is protection of the human soul.⁴⁷ This is explicitly stated in the Qur'an, specifically in surah al-Baqarah verse 179; Therefore, *qisās* needs to be implemented theologically to ensure survival. Furthermore, the implementation of *qisās* creates a deterrent effect that is tied to the principle of justice. As a result, *qisās* can be seen as a barometer of the effectiveness of the application of Islamic criminal law in society. Negative statements or research questions such as "Should *qisās* be considered a form of restorative justice?" proposed by Hascall⁴⁸ will be answered scientifically based on theological facts or empirical data.

⁴⁴ Paisol Burlian, *Implementasi Konsep Hukuman Qishash di Indonesia*, Cet. 1 (Jakarta: Sinar Grafika, 2015).

⁴⁵ Thaatchayini Kananatu, "Framing death penalty politics in Malaysia." *International Journal for Crime, Justice and Social Democracy* 11, No. 3 (2022), p. 57-66.

⁴⁶ Muhammad Hizbullah and Haidir Haidir, "Hukum Islam Dalam Pandangan Pemikir Muslim Kontemporer Dan Orientalis." *TAQNIN: Jurnal Syariah Dan Hukum* 4, No. 1 (2022).

⁴⁷ Abu Ishaq Al-Syathibi, *Al-Muwafaqat fi Ushul al-Syari'ah* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003).

⁴⁸ Susan C. Hascall, "Restorative Justice in Islam: Should Qisās be Considered a form of Restorative Justice." *Berkeley J. Middle E. & Islamic L.* 4, (2011), p. 35.

In this context, *qisās* can be said as a mechanism for enforcing law within socio-community when seeking justice. *Qisās* was ordained by God to humans so that there is a system to regulate acts that violate criminal law. Certainly, *qisās* will be an effective tool that creates a deterrent effect on the perpetrators or other communities. Moreover, in the construction of *qisās* there is a holistic dimension of welfare, encompassing both worldly benefits (*al-mashaih al-dunyawiyah*) and benefits for the afterlife (*al-mashalih al-ukhrawiyah*). Through this construction, society can understand the difference between the law of *qisās* and the death penalty. The punishment of *qisās* is specifically intended for the crimes of intentional murder and bodily injury, including cases of wrongful killing (murder without just cause); and unlawful injury to another person. The death penalty -read: *hudud*- is actually intended for other serious crimes, such as *had zina muhsan* (adultery committed by a married person, punishable by stoning), *had al-riddah* (apostasy), *al-bagy* (rebellion), and *al-hirabah* (highway robbery or acts that disturb public security).

Thus, *qisās* highly upholds humanitarian values based on the principles of justice. The justice within it is not only theological but also sociological, so that the application of *qisās* has a proportional balance of axiological orientation. This understanding needs to be conveyed to the community holistically in which there are values of justice and humanity. Therefore, the meaning of *qisās* justice as a public knowledge needs to be transformed into a public criminal law paradigm. Critical studies, such as that of Sohail, which address misconceptions about *qisās* -often wrongly perceived as barbaric- are essential to correcting public understanding.⁴⁹

Due to its emphasis on justice, *qisās* can emerge as the main alternative to resolving the problem of premeditated murder or unlawful acts. Therefore, contextualization of justice needs to be carried out so that *qisās* can be reactualized in accordance with the development of society while still adhering to theological normative values. The efforts offered in this context refer to the principles of criminal law enforcement as practiced in the history of Islamic law: where criminal law adjusts to several aspects, including: the degree of guilt and harm caused, the strength or weakness of the perpetrator's *aqidah* at the time of the offense, whether the action was premeditated and carried out with full knowledge, and whether the perpetrator acted as an instigator or accomplice.⁵⁰

Based on these aspects, the application of *qisās* can adopt the "limit" theory as proposed by Muhammad Syahrur. This theory is particularly relevant to the current socio-community development, so this theory is also adopted in

⁴⁹ Bukhori Abdul Shomad, et.al., "The Implications of Hamka's Thoughts in Tafsir al-Azhar on the Standpoint of Islamic Social Organizations in Preventing Authoritarianism in Indonesia." *Indonesian Journal of Islam and Muslim Societies* 14, No. 1, (2024), p. 91-116.

⁵⁰ Muhammad Biltaji, *Manhaj Umar bin al-Khattab fi al-Tasyri'i Dirasatun Mustaw'ibatun: Li Fiqh 'Umar wa Tanzimatihi* (Darussalam, 1950).

the reactualization of inheritance law (*mawaris*) within Islamic family law.⁵¹ When applied to *qisās* -read: death penalty- is determined as the maximum punishment, recognizing that not all cases of murder and assault automatically warrant *qisās* which must end (be sentenced) with the death penalty. This is because, during the process of adjudication, there may be doubts (*syubhat*);⁵² or forgiveness granted by the victim's family. Thus, the enforcement of criminal law does not always take the *qisās* alternative as a decision-making; there are other alternatives that can be used as law enforcement.

Based on these two aspects, the provisions for enforcing criminal law - read: intentional murder or unlawful injury- are tiered and dependent on the adjustment of the reasons (or motives) for the crime. Therefore, *qisās* is the maximum punishment reserved for instances of murder and assault (injury) where the crime is committed without just cause. On the other hand, if the crime has strong reasons (such as harm prevention), then law enforcement can be at the minimum limit. When this concept is used as a parameter for classifying criminal acts, then everything that regulates murder and assault can be categorized as *qisās* (maximum punishment) and *diyat* (minimum punishment), or as falling somewhere between these two categories.

Efforts to determine the category of punishment must still refer to the principles of justice, equality, and tolerance, grounded in both human and divine values. This will create public trust because the perpetrator and the victim (or their families) are treated with equity, without disregarding the normative values in law and religion. Thus, sociological law enforcement efforts remains intrinsically connected to the divine dimension; or it can be said that efforts to enforce criminal law in society -read: the reality of humanity- refer to the provisions (laws) of God. This concept can be described as follows:

⁵¹ Musda Asmara, et.al., "Teori Batas Kewarisan Muhammad Syahrur dan Relevansinya dengan Keadilan Sosial." *Journal de Jure* 12, No. 1, (2020), p. 17-34.

⁵² Muhammad Syahrur, *Prinsip dan Dasar Hermeneutika Hukum Islam Kontemporer* (Bogor: eLSAQ Press, 2007).

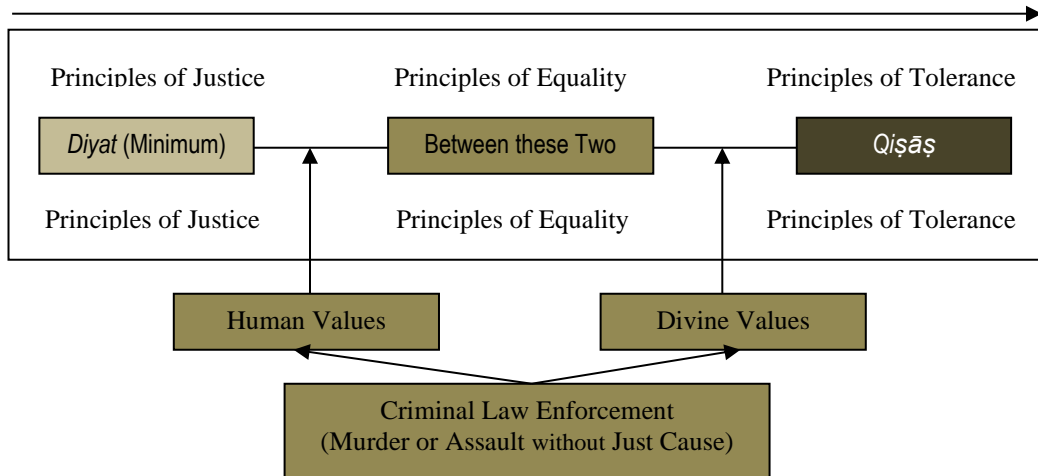


Figure 1: Determination of Criminal Punishment Categories

According to the figure, it is explained if "between the two categories" - read: alternative punishment- is imposed when there is a *syubhat* reason. However, if the act of murder and persecution are proven beyond doubt, the act can be sentenced to *qisās* punishment –which means that the maximum sentence will still be implemented;⁵³ or if in Pakistan, from life imprisonment to the death penalty.⁵⁴ This indicates whether the *qisās* provisions are clear (*qat'i*), and applicable in real-life situations. Additionally, It also emphasizes the theological principle that life is preserved within criminal law, particularly in cases of murder or persecution. On the other hand, it also guarantees "justice to the perpetrators and victims" through its firmness; so there is "kindness towards the perpetrator" based on the goal of justice.⁵⁵ Therefore, legal ethics combined with morality under the control of revelation becomes the legitimacy of law enforcement for the benefit of human life.

The justice within *qisās* actually builds significant hope in society about the certainty of a peaceful life. *Qisās* can also be an instrument for regulating social life, preventing lawlessness, and curbing "barbaric" attitudes that resemble a "survival of the fittest" mentality (jungle law). This ideality is evident in the narrative of criminology verses -read: *qisās* verses- which guarantee the welfare of society based on the principles of justice and equality

⁵³ Muhammad Syahrur, *Prinsip dan Dasar Hermeneutika Hukum Islam Kontemporer* (Bogor: eLSAQ Press, 2007).

⁵⁴ Rai Muhammad Khan and Khurshid Iqbal, "The Rule of Death as the Normal Penalty for Murder." *Islamic Studies* 58, No. 2, (2019), p. 219-253.

⁵⁵ Sahibzada Aqil Munir, et.al., "Qisās and Diyat: A Critical and Analytical Study of Murder in Criminal and Islamic Law," *Global Legal Studies Review* 8, No. 1 (2023), p. 99–105.

of humanity. In reality, the justice within *qisās* tends not to be understood holistically, and the majority of society still views and thinks about the concept of *qisās* as something that is *juz'i* (from one point of view) or partialistic. The implication is that society cannot view the "wisdom of *qisās*" as a whole; and assumes negatively about *qisās*. One of them is *qisās* which is stated to be contrary to human rights;⁵⁶ so that criminal law -read: *hudud* and *qisās*- needs to be adjusted to international criminal law.⁵⁷ Even in practice, it also gets various responses that in Islamic countries like Pakistan, *qisās* has been criticized for being susceptible to misuse or misapplication.⁵⁸

In fact, the guarantee of "life" in *qisās* extends to both the perpetrator and the victim of murder or assault. On the one hand, the enforcement of justice is also designed to be able to build an ideal society in line with the divine values of God's revelation. The legal determination of *qisās* is conducted with strict precision, which narrows the space for doubt (*syubhat*); so that the construction of law enforcement prioritizes justice based on human and divine values. Therefore, acts of murder and assault are in clear violation of the ontological value of *qisās* (namely God's revelation). Through *qisās*, there is a guarantee of "life" in line with the nature of humanity whose application has a dimension of worship -namely on the basis of carrying out God's commands.

Justice in *Qisās* Punishment According to Muslim Scholars and Intellectuals

The integrated dimensions of humanity and divinity prove that *qisās*, compared to other criminal laws, appear to be more perfect and have provisions. One example is the provision of punishment in the form of *jarimah ta'zir* -a discretionary punishment- serves as an alternative when a crime does not meet the stringent requirements as a crime. This punishment is different from *jarimah hudud* and *qisās-diyat* punishment which are dogmatic (which must be accepted as is) and certain (*qat'i*) based on the evidence that there is no element of doubt (*syubhat*). Because in this punishment there are human and divine rights (*syari'*) that must not be violated; and it is static in any condition or situation. This means that *qisās* has a very strict pattern and provisions including the meaning of justice within it.

The firmness and certainty of *qisās* -as Islamic law- in the form of justice becomes the integration's entrance with criminal law in national law -read: state law. Based on this construction, society can understand the ins and outs and

⁵⁶ Raas Nabeel, "Conceptions of Legitimacy Under International Human Rights Law and Islamic Rights Law." *Indonesian Journal of International Law* 21, No. 2, (2023), p. 1.

⁵⁷ Etim E. Okon, "Hudud Punishments in Islamic Criminal Law." *European Scientific Journal* 10, No. 14 (2014), p. 227–238.

⁵⁸ Qadeer Alam, "The *Qisās* and *Diyat* Law in Pakistan." *Islamic Studies* 58, No. 4, (2019), p. 551-562.

wisdom of Islamic criminal law (*qisās*) comprehensively. In fact, society is not yet familiar with Islamic criminal law, causing them to be uninterested in applying it⁵⁹; or even rejecting it due to the perception that it is harsh or cruel.⁶⁰ In contrast, in communities that possess a deeper understanding of Islamic law, the ideal of applying the material and substance of Islamic criminal law -read: *qisās*- can be realized. Moreover, if the state is based on Islam, the opportunity to apply Islamic criminal law is relatively easier, such as in Malaysia, which follows *mazhab* of Shafi'i;⁶¹ or Nigeria, which has pursued Islamization initiatives in some regions.⁶² On the one hand, there is one effort that makes it easier to apply Islamic law, namely incorporating the substance or spirit of Islamic law into national law. It could also revive Islamic norms in society as customary religious law as a form of assimilation, as seen in the evolution of Islamic family law in Malaysia.⁶³

Unlike Indonesia -a country with a Muslim-majority population- whose state administration is based on *rechtstaat* (the 1945 Constitution) and not on *machtstaat* (general explanation of the 1945 Constitution). As a result, Indonesia does not explicitly follow the normative principles of Islamic law. However, it has integrated elements of Islamic law through the Compilation of Islamic Law, which serves as a positive legal supplement for Muslim communities.⁶⁴ This suggests that Islamic law -read: *qisās*- can be assimilated into any society; especially with a society that requires legal protection according to the principles of humanity and divinity. In this context, legal justice based on religion -such as *qisās* and *diyat*- is the main alternative to maintaining community and state life. Through *qisās*, it is possible to enforce positive criminal law containing the value of justice while remaining grounded in the values of humanity and divinity.

⁵⁹ Hendra Gunawan, "Peluang dan Tantangan Penerapan Hukum Pidana Islam di Kota Padangsidimpuan." *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan* 5, No. 2, (2019), p. 200-215.

⁶⁰ Massadi, Massadi, "Peluang Dan Tantangan Pelaksanaan Pidana Islam Di Indonesia." *Al-Bayyinah* 3.2 (2019): 252-268.

⁶¹ Muhammad Safwan Harun, et.al., "The Influence of the Shafie School on Fatwa Methodologies in Malaysia: Toward the Unity of Ummah's Objective." *Mazahib* 23, No. 1, (2024), p. 351-390.

⁶² Helen Mu Hung Ting and Tobi Angel Kolawole. "Comparative Study of the Islamisation Process in Malaysia and Nigeria: A Social Movement Theory Approach." *Journal of International Studies* 20, No. 1, (2024), p. 149-176.

⁶³ Ahmad Sharifuddin Mustapha, et.al., "Al-Fatani's Perspectives on Islamic Family Law: Insights from Hidayah Al-Muta'allim Wa'Umdah Al-Muta'alim." *Journal of Islamic Thought and Civilization* 14, No. 1, (2024), p. 247-265.

⁶⁴ Edi Gunawan, "Eksistensi Kompilasi Hukum Islam di Indonesia." *Jurnal Ilmiah Al-Syir'ah* 8, No. 1, (2016), p. 1-15. Sulfanwandi, Sulfanwandi. "Kompilasi Hukum Islam Di Indonesia: Penyusunan Dan Kaitannya Dengan Ushul Fiqh." *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 9, (2021), p. 219.

Thus, *qisās* can indeed be applied -or positioned as positive law- in countries with a pluralistic society, both formally and substantively. This condition has actually been exemplified in Islamic countries or non-Islamic countries, such as Indonesia. Aceh -one of the provinces in Indonesia- can be a proof that *qisās* -read: Islamic law- has the potential to be applied formally and substantively in non-Islamic countries. The law is formulated in the form of a law termed *Qanun*; which hierarchically has conformity with the laws of the state of Indonesia.⁶⁵ It is reasonable that *qisās* can be an alternative solution to build public welfare. Given Indonesia's widespread issues such as murder and corruption, so the construction of justice within *qisās* is important to be realized.

Regarding the value of justice in *qisas* punishment according to the views of Muslim scholars and intellectuals, this can be studied further, for example; Lomba Sultan, Professor of the Faculty of Law, UIN Alauddin emphasized that *qisās* is not a sadistic punishment, but rather an alternative for the sake of creating a life and living according to Allah's provisions. Legal practices that are considered unfair are reconstructed by the Qur'an, so that the goals of fair law and peace in society can be realized. In Islamic law, *qisās* is to provide equal treatment to the perpetrators. While the *ta'zir* punishment and fines for perpetrators of *qisās* crimes have been explained in the Qur'an verses 178-179, so whoever's family is killed can forgive the perpetrator of the murder, then that is better, and the replacement of the *ta'zir* law and fines, that is also called justice in the sight of Allah. The punishment of *qisās*, *ta'zir* and fines can be applied in Indonesia, as long as it goes through the legislative process by amending the Criminal Code. This is like the application of Islamic law in Aceh which has its own legal rules within the framework of special autonomy given authority by the state.⁶⁶

Indonesia as a country with the largest Muslim majority, according to Baso Midong, Professor of the Faculty of Sharia UIN Alauddin, considers that the law of *qisās* can be applied in Indonesia. but there must be a basis and mechanism in accordance with state regulations, the application of law without a basis is also a violation. Therefore, there must be rules to do so so that everyone is saved from the risk of implementing the law. In addition, Islamic law has actually been applied in several matters such as inheritance law, zakat and hajj, this is in accordance with the rules of fiqh: "If everything is not yet accessible, then do not throw away everything."⁶⁷

⁶⁵Kamarusdiana, "Qânûn Jinâyat Aceh dalam Perspektif Negara Hukum Indonesia." *Ahkam: Jurnal Ilmu Syariah* 16, No. 2, (2016), p. 151-162.

⁶⁶Interview with Lomba Sultan, Professor of Islamic Law, Faculty of Law and Sharia, UIN Alauddin Makassar, February 22, 2025.

⁶⁷Interview with Baso Midong, Professor of Islamic Law, Faculty of Law and Sharia, UIN Alauddin Makassar, February 22, 2025.

Specifically, Aceh, which has implemented Islamic law, especially the criminal law of *ta'zir* and fines, has been implemented since 2001, namely for perpetrators of drinking alcohol, gambling and *khalwat* (acts leading to adultery) based on the qanun. Then the qanun was updated more completely with the stipulation of the qanun jinayat in 2014. The *qanun jinayat* includes more punishments, namely, drinking alcohol, gambling and *khalwat*, *ikhtilat* (intimate intercourse), adultery, *liwath* (sexual deviation between men), *musahaqah* (sexual deviation between women), rape, accusing others of committing adultery.⁶⁸ Meanwhile, the law of *qisās* such as cutting off hands, let alone the death penalty for perpetrators of these crimes, has not been regulated in the qanun jinayat in Aceh.

According to member of the Indonesian Ulema Council of South Sulawesi, Ambo Asse, *qisās* is a punishment that clearly contains the values of justice, because the punishment is based on the sources of Islamic law, the al-Qur'an and Sunnah. It is even stated in the Qur'an surah al-Baqarah verse 178 that in the law of *qisās* there is life. The person who commits murder is actually usurping Allah's right, namely eliminating the soul of a person who is forbidden by Allah. Likewise, cutting off one's hand is actually a punishment prescribed so that people do not carry out this prohibition. Likewise, the law of *ta'zir* is a punishment determined by a judge based on the judge's considerations, but the provisions are not found in detail in the Qur'an and the Hadith of the Prophet PBUH, but the *ta'zir* still refers to the principles of Islamic law.⁶⁹

In line with that, according to a member of the Indonesian Ulema Council of South Sulawesi, Muh. Daming K, the *qisās* law can be applied in Indonesia. *Qisās* clearly does not violate human rights, but on the contrary, it can elevate human dignity because it maintains public welfare. Avoid partial interests. The perpetrator of the crime is like a dangerous disease in a person's body, so the meat must be thrown away if it will not damage and eat away at other parts of the body. Likewise, criminals who damage and endanger the safety of other humans.⁷⁰ Related to the view that *qisās* takes someone's life and robs the right to life of others. Asni, a female figure and academic at UIN Alauddin emphasized that *qisās* does indeed rob human life but it is still better and more important because it can be a way to save more human lives. Because

⁶⁸Muhammad Amin Suma, et.al., "The Implementation of Shari'a in Aceh: Between the Ideal and Factual Achievements," *Ahkam: Jurnal Ilmu Syariah* 20, No. 1 (2020). Mursyid Djawas, et.al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, No. 1 (2024).

⁶⁹Interview with Ambo Asse, Professor and Member of the Indonesian Ulema Council of South Sulawesi Province, February 23, 2025.

⁷⁰Interview with Dr. Moh. Daming K, Member of the Indonesian Ulema Council, South Sulawesi Province, February 23, 2025.

if it is allowed to live, it will become more rampant and threaten the safety of more people.⁷¹

Then, Hadi Daeng Mapuna, a member of the Indonesian Ulema Council emphasized that the law revealed by Allah to mankind, must have a value of justice in it including *qisās*. Only in the eyes of humans who consider it cruel, whereas in it there is wisdom and benefit for humans themselves. A murderer who is *qisās*, does kill one person, but there are thousands or even millions of lives that are saved. In addition, in the punishment there is a deterrent effect and fear of others to do the same thing. Then even though the *qisās* punishment seems cruel, there is wisdom and flexibility in it, namely if the heirs forgive then it can be replaced with a fine (*diyat*), so there is still a way out and it is not rigid.⁷²

The justice within *qisās* is in line with the universal reality of humanity, because it is formed from the epistemology of divinity. In fact, a society that is far from the values of humanity and divinity forms immoral and arrogant actions that encourage criminal acts such as murder and assault. Therefore, *qisās* becomes a medium to create welfare and harmony through the formulation of theological justice that arises from the textual-scriptural rules of criminological texts of the Qur'an. This justice is a meaning that goes through the process of understanding *takwil* (interpretative analysis) according to the meaning of criminological texts with reference to the reality of humanity.

So, in this way Islamic laws such as *qisās*, *ta'zir*, *diyat* and various kinds of punishment aim for the benefit of humanity. These various types of punishment are considered sanctions that contain educational values because they aim to have a deterrent effect on the perpetrator and serve as a lesson for others not to commit similar violations.⁷³ Because of that, in this context, all punishments determined by Allah in Islamic law are in accordance with the principles of *maqāṣid al-sharī'ah* for the benefit and bringing harmony in the order of human life, as respect and protection for human life given by Allah.

Conclusion

Justice is the main objective of Islamic law which is in the concept of *maqāṣid al-sharī'ah*. The construction of justice in *qisās* punishment, as well as other punishments such as *ta'zir* and *diyat*, has a human and divine dimension

⁷¹Interview with Dr. Asni, Female Figures and Academics at UIN Alauddin, February 24, 2025.

⁷²Interview with Dr. Hadi Daeng Mapuna, Member of the Indonesian Ulema Council, South Sulawesi Province, February 24, 2025.

⁷³Muhammad Mawardi Djalaluddin, et. al., "The Implementation of Ta'zīr Punishment p. 399-417. Atika Fitri, et.al., "Divorce Lawsuit Due to Impotence Perspective Maslahat Theory: Case study of the Andoolo Religious Court Decision, Southeast Sulawesi, *El-Usrah: Jurnal Hukum Keluarga* 7, No. 1 (2024).

that is united in one orientation, namely welfare. Justice is formed based on the principle of "respect for individual rights, namely the perpetrator and (family) victim" whose implementation (enforcement) needs to use the principle of enforcement in Islamic law, namely justice. *Qisās* is a form of justice that is attributed to God's nature, so that the realization of community welfare becomes a substantive part of law enforcement. Therefore, the aspects of firmness and flexibility of *qisās* remain oriented towards the perpetrator and (family) victim, so that the contextualization of the meaning of justice can be positioned based on the maximum (*qisās*) and minimum (*diyat*) categories; or between the two. Regarding the possibility of implementing *qisās* punishment in Indonesia, it still takes a long time, besides having to go through the process of drafting a bill which is not easy and then the legislative process. In the *maqāsid al-sharī'ah* perspective, *qisās* punishment not only contains the values of justice and welfare because it can save and protect the lives of other humans from someone's evil intentions to kill, so that the goal of Islamic law for the welfare of humanity can be achieved.

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Interviews

- Interview with Ambo Asse, Professor and Member of the Indonesian Ulema Council of South Sulawesi Province, February 23, 2025.
- Interview with Baso Midong, Professor of Islamic Law, Faculty of Law and Sharia, UIN Alauddin Makassar, February 22, 2025.

Interview with Dr. Asni, Female Figures and Academics at UIN Alauddin, February 24, 2025.

Interview with Dr. Hadi Daeng Mapuna, Member of the Indonesian Ulema Council, South Sulawesi Province, February 24, 2025.

Interview with Dr. Moh. Daming K, Member of the Indonesian Ulema Council, South Sulawesi Province, February 23, 2025.

Interview with Lomba Sultan, Professor of Islamic Law, Faculty of Law and Sharia, UIN Alauddin Makassar, February 22, 2025.