



Tarjih Maqāsidī of Terrorism Perpetrators Death Penalty in Indonesia

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Abstrak

Pemberlakuan hukuman mati bagi pelaku terorisme mendapatkan banyak keraguan tentang efektivitasnya. Bagi pemerintah, pemberian hukuman mati kepada pelaku terorisme membuat jaringan terorisme lainnya merasa takut dan jera. Dalam beberapa kasus justru sebaliknya, pelaku terorisme menganggap kematian melalui hukuman mati oleh pemerintah adalah suatu kehormatan dan kepahlawanan. Penelitian empiris ini diolah secara deskriptif. Pengumpulan data dilakukan melalui penelitian lapangan di Lapas Kelas I Surabaya melalui pendekatan fenomenologi, paradigma interpretif, dan analisis dengan teori *Tarjih maqāsidī*. Studi ini menyimpulkan bahwa hukuman mati untuk terorisme memiliki keuntungan yang lebih signifikan (*maslahah arjah*) daripada membiarkan para ideolog terorisme yang masih radikal dan tanpa penyesalan dengan hukuman seumur hidup. Mencegah proses radikalisme dari para ideolog lebih diutamakan daripada mengambil dan menunggu manfaat yang tidak pasti dari hidupnya narapidana teroris yang tidak merasa bersalah.

Kata Kunci : *Tarjih maqāsidī*, Hukuman Mati, Terorisme

Abstract

Upload the death penalty for the perpetrators of terrorism that the government efforts to get a lot of doubt about its effectiveness. For the government, giving the death penalty to the perpetrators of terrorism makes other terrorism networks feel fear and a deterrent to doing the same. In some cases that exist so far, quite the opposite, the perpetrators of terrorism consider death through punishment for committing acts is an honor and heroism by the network community. Empirical research is processed descriptively. Data collection is carried out through field research at the Class I Surabaya Prison through a phenomenological approach, interpretive paradigm, and analysis theory with *Tarjih maqāsidī*. The study concluded that the death penalty for terrorism is a more significant benefit (*maslahah arjah*) than allowing the ideologists of terrorism who are still radicalized and without remorse with life sentences. Preventing the process of radicalism from ideologists takes precedence over taking and waiting for the indiscriminate benefit of the life of convicts who do not feel guilty.

Keyword: *Tarjih maqāsidī*. Death Penalty, Terrorism

Introduction

The problem of the death penalty for terrorism crimes is contained in Law No. 5 of Articles 6 and 14 on the death penalty in terrorism crimes, instead of ending revenge on terrorism networks and becoming propaganda in the recruitment of new fighters. This data is supported by the fact that there is no valid data that the death penalty can suppress the spread of terror acts.

The execution of the death penalty becomes polemic about whether or not this punishment is maintained. The death penalty's implementation is not used to achieve the objectives of criminal law as a whole. This type of criminal can only provide one benefit, namely the eradication of public resentment. The death penalty was seen in the death penalty's execution to the Bali I bombing perpetrators, which the blast victims welcomed. Including family members who died in the incident.

The facts of terrorism convicts at the level of ideologist and militants who have been prosecuted with the death penalty when prosecuted with other punishment, such as life imprisonment or 20 years as terrorism convicts in the Class I Prison Surabaya (Umar Patek, Faturahman, Asep Jaja and Ismail Yamsehu) can finally be cooperative, repentance and helpful as live actors dismantling terrorism networks, justice collaborators¹ and mouthpieces of the BNPT deradicalization program.

Meanwhile, supporters of the death penalty for terrorism said the law should not be skewed towards criminals' human rights. The victim's right to life that the perpetrator has eliminated must also be given legally.² When some countries denounce and ask Indonesia to stop the death penalty, some reject it with the normative view that the death penalty is a positive law in Indonesia. When convicted by a court sentenced to death, it must be implemented to ensure certainty. Even Indonesia does not need to submit to the criticism of other countries because the State must uphold sovereignty in the field of law.³

Based on the model and tactics of terrorism in Islamic Law, it often uses a strategy that is no different from the criminal and crimes in the robbery, looting, and bombing. In some events, sometimes also found to directly kill the terrorists in performing (*amalīyah*) to achieve their goals.⁴

Based on this element of acts of terrorism seen from the principle of Islamic law criteria, it can be equated with *hirābah*. However, although in general terrorism crimes can be correlated with *hirābah*, but in some elements, judging from the motives of actions, objectives of the story, targets of war, terrorism cannot be equated with crimes *hirābah* because extreme acts of terrorism often have different motives, between one crime of terrorism and another terrorism crime.

In this case, terrorism sometimes undergoes a casuistic criminalization process, always depending on the elements behind the motive of terrorism crimes itself. Therefore, examples of acts of terrorism that have a reason or purpose of a political nature, such as terrorism in the form of separatism from a legitimate State,

¹ In the Supreme Court Circular No. 04 of 2011, the justice collaborator is referred to as one of the perpetrators of several criminal acts, not the main perpetrators of crimes, who confess to crimes committed and make his statements as witnesses in the judicial process

² Government Regulation (PP) No. 44 of 2008 concerning The Provision of Restitution Compensation and Assistance to Witnesses and Victims.

³ Widodo, *Sistem Pemidanaan Dalam Cyber Crime: Alternatif Ancaman Pidana Kerja Sosial Dan Pidana Pengawasan Bagi Pelaku Cyber Crime* (Yogyakarta: Laksbang Mediatama, 2009), 9-10.

⁴ 'Abdullāh bin Bayyah, *Al-Irḥāb: Al- Tashkhiṣ wa al-Ḥulūl* (Riyad: Obeikan, 2007), 30.

can not be equated with criminal acts. Instead, it is likened to other elements, and motives are the same as separatism, namely *bughāt*.⁵

With fiqh scholars' explanation of terrorism and Indonesia's death penalty, a law imposes sanctions on terrorism. The death penalty for terrorism must be set after going through several existing verdict provisions. But with the problems and doubts that arise due to the death penalty for terrorism, there needs to be another scale to establish and carry out the death penalty for terrorism or not to carry it out with the approach of *Tarjih maqāshidī*.

Tarjih maqāshidī is the superiority of a law using the *maqāshid al-Shar'ī*.⁶ In other terms is *Tarjih maqāshidī* that is to precede him (a mujtahid one of the two pieces of evidence contrary to the power *maṣlahah*.⁷ *Tarjih maqāshidī* then changed not only about the strong opposition between the two propositions but on the conflict of forms, kinds, and categories of *maṣlahah* and *mafsadah* produced by the rule of law.⁸ The researchers themselves defined *Tarjih maqāshidī* in this article with the term superiority of a law/policy that is contrary in *maṣlahah*.

It is undeniable that the effort to determine the choice is a certainty in life, so it is not surprising that Imam Nawawi said that doing *tarjih* to choose one of several opposing propositions is very important. This *tarjih* process can only achieve perfection in mastering various science fields.⁹

To see the problem in detail and the contradiction situation will help understand the problem. Such conditions lead to a solution formulation based on methods that correspond to existing contradictions. Towards the more dominant *maṣlahah* situation. To assess the more dominant position of a problem requires a clear and consistent standard so that the dominant position exists definitively and not based on mere assuming. Like the contradiction between *maṣlahah* and *maṣlahah* the contradiction between *mafsadah* and *mafsadah* in the same category *ḍarūrīyah*, *ḥājīyah* and *taḥsīnīyah*. From this consideration, the author brings up the five scales *maṣlahah* as follows

1. *Qimmah Shumūl al-Maṣlahah (maṣlahah quality)*;
2. *Miqdār Shumūl al-Maṣlahah (maṣlahah quantity)*;
3. *Ta'āqud Natāij al-Maṣlahah (maṣlahah accuracy)*;¹⁰
4. *Quwwah wa 'Umūm Athār al-Maṣlahah (maṣlahah effectiveness)*;¹¹

⁵ Shams al-Dīn Muḥammad bin Muḥammad Al-Khaṭīb Al-Sharbīnī, *Mughnī Al-Muḥtāj Ilā Ma'rifat Ma'ānī Alfāz al-Manhaj*, 2nd ed. (Beirut: Dar al-Kutub al-'Ilmiyah., 1994),123.

⁶ Muḥammad Jabrī Shamsuddīn, *Al-Tarjih al-maqāshidī bayna al-Nuṣūṣ al-Muta'arīdah*, dalam <http://iefpedia.com/arab/?p=8130>. accessed March 16, 2020.

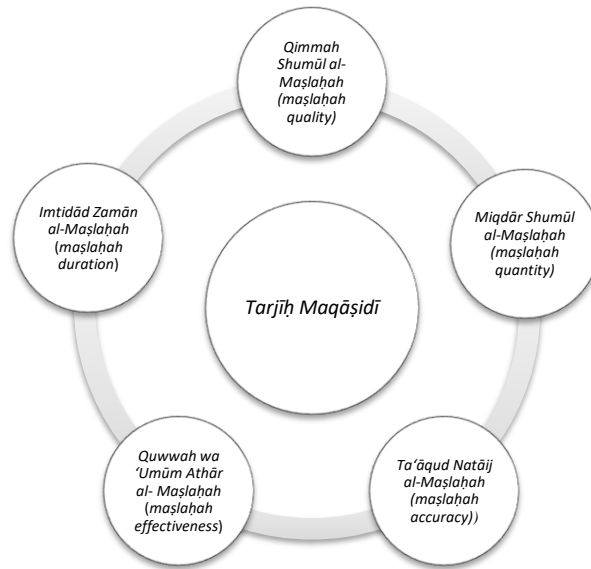
⁷ Muḥammad al-Asūrī, *Al-Tarjih bi al-Maqāshid wa Ḍawābiṭuhū wa Atsāruhū Fiqhī* (Universitas al-Haj Li Hadar Jazair, 2008), 38.

⁸ Ahmad Imam Mawardi, *Fiqh Minoritas* (Yogyakarta: LKIS, 2010), 230.

⁹ Jalal al-dīn 'Abd al-Raḥmān Ibn Abī Bakar al-Suyūṭī, *Tadrīb Al-Rāwī Fi Sharḥ Taqrīb al-Nawawī*, 2nd ed. (Beirut: Dār Iḥyā al-Sunnah al-Nabawīyah, 1979),196.

¹⁰ Muḥammad Sa'īd Ramaḍān al-Būṭī, *Ḍawābiṭ al-maṣlahah Fi al-Sharī'ah al-Islāmīyah* (Beirut: Mu'assasah al-Risālah, 2000), 249-254.

¹¹ Abd Majīd Najjār, *Maqāshid al-Sharī'ah Biab'ād Jadīdah* (Beirut: Dār Garīb al-Islāmī, 2008), 252-265.

5. *Imtidād Zamān al-Maṣlahah* (maṣlahah duration).¹²Picture : *Tarjih maqāṣidī* Concept**Terrorism Death Penalty Controversy**

In the present conditions, discussing the death penalty in the Terrorism Act has always been debated. On the one hand, it still approves the death penalty for acts of terrorism, and the different sides say the death penalty is no longer relevant for use in modern times. On the other hand, the House of Representatives of the Republic of Indonesia (DPR RI) stated that the eradication of terrorism will still maintain the provisions of the death penalty stipulated in Article 6 and Article 14 because the contents of the article on the death penalty are considered to still relevant applied in Indonesia as a deterrent effect for perpetrators and network groups.¹³

Umar Patek is a Surabaya 1st Class Prison Terrorist convict accused of being the perpetrator of a series of acts of terrorism in Indonesia. As a result of his actions, the public prosecutor charged Umar Patek with several criminal articles with the death penalty. But in reading the verdict, the judge sentenced him to 20 years in prison. The judge's ruling was lighter than the prosecutor's claim of a life sentence or the death penalty. The panel of judges saw some things to lighten the sentence. Among others, Umar Patek admitted and regretted his actions.¹⁴

About the death penalty Bambang Sugianto *pamong* Umar Patek in Surabaya Class I Prison gave his argument

¹² Ahmad al-Raysūnī, *Nazarīyat al-Taqrīb wa al-Taghlīb fī al-'Ulūm al-Islamīyah* (Kairo: Dar al-Kalimah, 1997), 350-368.

¹³ Nyu/P-3, "Revisi UU Terorisme Pertahankan Hukuman Mati," last modified 2020, accessed March 16, 2020, <https://mediaindonesia.com/politik-dan-hukum/44097/revisi-uu-terorisme-pertahankan-hukuman-mati>.

¹⁴ Mummmad Arkhan, "Vonis Penjara Untuk Umar Patek," last modified 2020, accessed March 16, 2020, <https://www.bbc.com/>

Giving the death penalty for terrorist convicts who have taken many lives either from any Muslim non-Muslim male-female is very appropriate considering that terrorists (ideologists) will shut down the tissue cells that with the death penalty are underneath. Unlike the inmates who are here (Prison Porong), even though they are a person who gets a life sentence but with some approach, gradually 4 out of 6 inmates have joined the deradicalization program to reduce the criminal period meet families.¹⁵

In the case of terrorism convict Aman Abdurahman's death sentence, many disagreed with the verdict due to several matters

1. The allegations against Aman are doubtful. Unlike Amrozi, Hambali, and Imam Samudra, who were directly involved in the bombing operation, as executors or who gave orders, Aman did not suffer such consequences. However, his teachings are believed to have inspired many attacks. Aman has been imprisoned for two periods, namely in 2004-2008 and 2010-present. Some analyst considers that Aman's death punishment has gone too far, although his views are directly opposite of Indonesian state ideology.

2. Safe Execution will not answer the big question about terrorism in Indonesia. It is feared that there are errors in the Indonesian prison system. If there is still a dangerous ideology that exists, then the Indonesian prison system is as guilty as the ideologues accused of these crimes. However, even his figure has turned into a corpse, Aman has responded to the determination of punishment for terrorism. Kompas published the findings of his survey in Kompas Daily. From the survey results, 89.3 percent of respondents agreed with the death penalty for terrorists. Only 9.7 percent disagreed, and 1 percent did not know or did not give an answer.¹⁶ The survey method was conducted by telephone by Kompas from May 31 to June 2, 2017. With 514 respondents randomly selected in 14 Indonesian cities. This survey has a confidence level of 95 percent, with a margin of error of approximately 4.3 percent.¹⁷

After the execution of Amrozi Cs., there was a new worrying phenomenon. Some communities use the death penalty cases of terrorism as a symbol of Muslim fighters' heroism, in Islamic terminology called *Syuhada*. This symbolism of heroism shows that the ideology of resistance and acts of terror remain entrenched in society.¹⁸

Similar to the statement delivered by Ustaz Khozin, the eldest brother of Amrozi and Ali Gufon/Mukhlash

¹⁵ Bambang Sugiyanto, *Interview*, Sidoarjo, July 16, 2019.

¹⁶ R24, "Hukuman Mati Bagi Teroris?," last modified 2017, accessed March 16, 2020, <https://www.pinterpolitik.com/hukuman-mati-bagi-teroris>.

¹⁷ Robertus Belarminus, "Survei Kompas: Mayoritas Setuju Vonis Mati Untuk Teroris," last modified 2017, accessed March 16, 2020, <https://pemilu.kompas.com/>. Although the survey may appear without research based on analysis of the effects there after, this opinion may be the effect of public hatred on recent acts of terrorism. Opinions that can put pressure on the judiciary in decision-making.

¹⁸ Petrus Reinhard Golose, *Deradikalisasi Terorisme: Humanis, Soul Approach Dan Menyentuh Akar Rumput* (Jakarta: Yayasan Pengembangan Kajian Ilmu Kepolisian, 2009). 57.

In the *amaliyah* practice of my brothers who have been punished, I never blame them. They have their perception of *amaliyah* based on the knowledge that has been obtained. At the same time, my *da'wah* mission is different from my two younger brothers, and my daily life is for education to the surrounding community. I have never stated my brother is radicalized because I disagree with the word. I always continue to teach jihad lessons without blaming my brother.¹⁹

With the symbolization of heroism, there is an impression that the government must be blamed for the deaths of terrorist convicts. Yet, for terrorist organizations, the end of convicted terrorists would be a proud success story for their movement. And it gives rise to the potential to cause a cycle of terrorism, and terrorism will never end, into an ongoing vendetta.²⁰

Efforts to eradicate terrorism through punishment alone are not enough to eliminate terrorism to its roots. Because in reality, the range of criminal punishment is only on people proven to have committed criminal acts. Convicted terrorism is only part of the surface, far below which many parties can become terrorists or support terrorism. Umar Patek's statement strengthens this explanation

I have repeatedly told some police about the dangers of terrorist ideology such as Aman Abdurahman when punished to death, the martyrs will consider him in the fight for Islam then can be seen when he read the death sentence he feels happy, *Takbir* and prostration of gratitude then I think not punishable by death. Still, enough he is exiled by other means. So it will be more excruciating for him than on death row. This fact will be well known that in the next 10-20 years.²¹

Table 1. List of terrorism convicts awaiting execution of the death penalty²²

No	Name	Case/ Prison	legal verdict	Note
1	Iwan Darmawan Mutho or Rois or Fajar alias Abdul Fatah or Darma or Yadi or Muhammad Taufik alias Ridho or Hendi	Bombing in front of the Australian Ambassador 2004 / Batu Class I Prison, Nusakambangan	Death Penalty	Radical
2	Achmad Hasan or Agung Cahyono	Bombing in front of the Australian	Death Penalty	Radical

¹⁹ Khozin, the eldest brother of Amrozi and Mukhlash, Interview, Solokuro, October 12, 2019.

²⁰ Golose describes a cycle known as the Vendetta Cycle, in which terrorists who carry out criminalization and get the death penalty, will be seen as martyrdom or a proud success story for their movements that inspire other would-be terrorists, so that the cycle of terrorism will not cease to be an ongoing vengeance. Petrus Reinhard Golose, *Deradikalisasi Terorisme: Humanis*, 57.

²¹ Umar Patek (Terrorism Prisoner), *Interview*, Sidoarjo, October 11, 2019.

²² Report of Specific Work Visit of Commission III DPR RI with the Attorney General of DKI Province, Head of BNN DKI Province and Head of Law and Human Rights Of DKI Province. 1-5.

		Ambassador 2004 Class IIA Permisian prison, Nusakambangan		
3	Oman Rochman or Aman Abdurrahman or Abu Sulaiman bin Ade Sudarma	Bombing on Thamrin Street 2016 / Prison NusakambangaN	Death Penalty	Radical

***Tarjih Maqāṣidī* Application for Death Penalty Terrorism**

The death penalty controversy becomes a dilemma because the death penalty for theorists has another effect different from the death penalty on other crimes such as drugs. Therefore, the difference is whether to continue to give the death penalty in return for the crime or not to carry out the death penalty because of the effect of sympathizers increasingly militant and dare to commit terrorism crimes in the name of jihad. So with *Tarjih maqāṣidī* analysis can conclude the most substantial policy in terms of *maṣlahah* as follows:

1. Quality *Maṣlahah*

In International Human Rights law, there is a point that others' rights limit human rights. That is, a person's rights are protected for as long as that person does not violate others' rights. "People who say that the death penalty violates human rights only see in terms of the weight of the punishment alone. Discipline is a reaction to an action. There is a death sentence because someone has resulted in the death of another person. The death penalty also applies to intellectual actors who are the brains in criminal cases and have been proven in court as intelligent actors who plan crimes but are not direct perpetrators, such as the indictment in the Aman Abdurahman case.²³ Some of the facts to consider are:

- a. The death penalty for terrorism convicts who have taken human lives is included in the category of *ḍarūriyyāt* because of the importance of justice for victims for society. In this case, the death penalty is a legal mechanism of justice for people who are harmed in violation of the law of loss of life.
- b. Implementing the death penalty will be a valuable lesson and deterrent effect for others, raising fears of committing similar crimes. The death penalty in the Act, if retained, will be a helpful tool to foster a deterrent effect in society.²⁴
- c. The danger is always there if terrorism convicts are convicted of murder and have influenced/given the doctrine of extremism to some people so that they want to commit crimes and without remorse, such as the Bali bombing trio and Aman Abdurahman.

²⁴ Abū Ḥāmid al-Ghazālī, *Al-Mustaṣfā Min 'Ilmi al-Uṣūlī* (Libanon: Dār al-Kutub al-'Ilmiyah, 2008). 275.

- d. While not giving the death penalty to terrorism convicts at the idiopathic level by expecting awareness to uncover terrorist networks that he knows is at the level of *ḥifẓ al-naḥs*, which is *ḥājīyāt* means there are still other ways for law enforcement to stop acts of terrorism.²⁵

2. Quantity *Maṣlahah*

In Islamic law, the rights protected from evil are not only individual human beings but also the righteousness of God in public rights. In line with this explanation, in the perspective of *Maṣlahah* especially viewed in terms of its scope, the context of the death penalty for terrorism is related to the goodness of personal rights (*Maṣlahah Khaṣṣah*) and public good (*Maṣlahah 'Āmmah*) some things that should be considered are:

During the waiting for the death penalty execution, Amrozi et al., as a convict, still seeks and maximizes the doctrinal process time. With three Bali bombing death row inmates, Amrozi, Imam Samudra, and Ali Ghufron circulated in Indonesia. Imam Samudra's book is titled 'Sekuntum Rosela Pelipur Lara', Amrozi's book is titled 'The Senyum Terakhir Seorang Mujahid, and Mukhlas's book is titled 'Mimpi Suci Dibalik Jeruji'. Doctrinal books and justifications are hazardous when read by the general public. Moreover, this kind of book is straightforward to get. The existence of these books proves the existence of the ideology trio of Bali bombings. The presence of ideolog convicts of terrorism in campaigning their ideolog is a form of *mafsadah* 'āmmah.

Transformative learning begins when a person is involved in a "disoriented direction" (disorientation dilemma). There is a change between events that states that it is causing a kind of personal crisis so far. This condition will trigger changes in a person's frame of reference.²⁶

When individuals begin to experience confusion over their identities or personalities, it eventually comes to a point where the prisoners come to realize that they are no longer an old identity but a new one. Therefore, when the radicalization process of individuals goes through forms of socialization and is validated by other "similar" people, their transformation is strengthened, and their new identity is maintained. Finally, these prisoners who become violent personalities, prisoners, not only justify their actions are also supported among radical groups.²⁷

The death penalty for terror perpetrators is reviewed from the right to life of the perpetrators of crimes in violation of human rights. However, the right to life of victims and people (people) is also a human right that must be guaranteed

²⁵ The penalty for promoters/indoctrination of suicide is *ta'zīr*, even up to the death penalty, if the impact of *mafsadah* evenly distributed among the public and other *ta'zīr* punishment is no longer useful. *Ibn Taimīyah, Al-Fatāwā al-Kubrā*, Vol. 5 (Dār al-Arqām, 1999).

²⁶ F. Sayilan, "F. Sayilan, Jack Mezirow, 'Transformative Learning Theory,' Journal of Faculty of Educational Sciences, Vol. 41, (2008), 299-316.," *Journal of Faculty of Educational Sciences* 41 (2008): 299-316.

²⁷ Claire Jehanne Dubouloz Alex Wilner, "Transformative Radicalization: Applying Learning Theory to Islamic Radicalization," *Journal Studies in Conflict & Terrorism*, 34, no. April, 2011 (2011): 418-438.

and protected.²⁸ Therefore, when there is a conflict between these two rights, the rights of victims and people take precedence over the right to life of the perpetrators of crimes.²⁹

The death penalty is applied to the maximum, giving justice to victims and families and communities persecuted by acts of terrorism. The death penalty contained in Islamic law does not intend to destroy an individual's freedom but controls it for the benefit of the society consisting of the individuals themselves and therefore also protects his legitimate interests.

3. Accuracy *Maṣlahah*

The actions of terrorist perpetrators cannot be separated from the power of doctrine they have. That what is done is a must-do. They are no longer afraid of the death penalty by the government. But the matters of consideration of the death penalty are as follows:

a. Protecting society from crime. The death penalty for terrorism crimes is intended to prevent one person from shedding another's blood so that the terrorists will think twice about committing the crime of murder and the bombing that took many lives.

b. Currently, many articles contain legislation to criminal terrorism and the many laws but do not make the perpetrators of terrorism deterrent. Therefore, applying the death penalty will provide the appropriate punishment for the perpetrators.³⁰

Another view holds that the execution of the dead for the perpetrators of terrorists is judged not to have a deterrent effect. On the contrary, the terrorists think that if they are executed because they have fought for their beliefs, the alleged death penalty to the terror perpetrators will not make the terrorism network in Indonesia or the world weakened, or the explanation of the more robust network after the death penalty of the Bali bombing trio is the allegations (*Zani*) that exist is cutting the web with the emergence of lone-wolf terrorism that is not organized.³¹

²⁸According to the absolute theory of people who commit crimes, it has caused feelings of revenge from the victim and the public. Therefore, in the event of a criminal act, the public should be given satisfaction by imposing a criminal penalty on the perpetrator as much as the crime he has committed. Yesmil Anwar dan Adang, *Pengantar Sosiologi Hukum* (PT Grasindo, 2008). 132.

²⁹ Ḥusain Ḥāmid Ḥasan, *Naẓariyah al-Maṣlahah al-Fiqh Al-Islām* (Beirut: Dār al-Nahḍah al-'Arabīyah, 1971), 444- 445.

³⁰Including from the purpose of criminalization in Islam is Retaliation (al-Jaza') this concept generally provides an explanation that the perpetrators of the crime should be subjected to a recompense according to what he has done without seeing the punishment benefit him or society, 'Umar Muḥyiddīn, *Al-Jarimah Asbabuhā Wa Mukāfahatuha: Dirāsah Muqāranah Fi al-Sharī'ah Wa al-Qanūn Wa 'Ulūm al-Ijtimā'iyah* (: (Damaskus: Dār al-Fikr, 2003). 141-142

³¹ The shift in orientation to the movement of terrorism is the beginning of the abandonment of *tanzhim* or organizations as a forum for the movement with the beginning of the emergence of individual terrorism or Lone Wolf Terrorism. Ramon Spaaij formulated the characteristics of Lone Wolf Terrorism among others: (1) carried out individually; (2) is not part of any terrorist group or network; (3) the modus operandi is understood and regulated by the individual in the absence of command. Ramón Spaaij, *Understanding Lone Wolf Terrorism* Springer (New York: Heidelberg, 2012). 16.

4. Effectiveness *Maṣlahah*

The execution of ideologists such as terrorist Aman Abdurahman and Rois will impact the moral collapse and spirit of the fighters Jamaah Ansharut Daulah (JAD) in Indonesia. In his research, one of the terrorism researchers, Patrick B. Johnston, put the terror group leader's death potentially 25-30% led to the terror group's dissolution.

The euphoria death of al Qaidah leader Osama bin Laden's brought significant changes to the al-Qaida group's network. Osama bin Laden's successor Ayman al-Zawahiri was deemed not charismatic enough to lead al Qaidah.³²

Despite the weakening of the JAD network after the loss of command from Aman Abdurahman, the threat of radicalization remains real in Indonesia. A straightforward example is the attack of ex Coordinating Minister for Political, Legal, and Security Affairs (Menkopolhukam) Wiranto. The attack was spontaneous and certainly not at the behest of the network. There is no strategy with roughing tools, but the result of radicalization of thought has been rooted.³³

The death penalty is helpful for radical terrorism archaeologists based on the following facts: First, Amrozi et al. have never regretted bombing Bali's island. The punishment does not dampen the spirit of this group to spread ideas and spread the network. Bomber trio Amrozi, Muchlas, and Imam Samudra once recruited narcotics prisoners. Prisons are used as a soft ground for the radicalization process of prisoners. Second, Aman Abdurrahman, a hardline terrorist, has successfully recruited three inmates who previously did not incline to wage jihad in Sukamiskin Prison, Bandung. So the decision to give them the death penalty is the right thing regardless of the extraordinary crime is because it is hazardous in living conditions.³⁴ Third, Della Porta found that radicalism is formed and strengthened by personal ties in togetherness and terrorist convicts are very vulnerable to encourage the activities of non-terrorist prisoners to become radicalized.³⁵

The repentance of important terrorist figures Umar Patek, Ali Imron, and Ali Fauzi is very likely due to the factor of losing their leader (push factor) Umar Patek, who lost his close friends Dulmatin, Ali Imron, and Ali Fauzi lost the figure of brother and teacher Amrozi and Mukhlas, with the participation of Umar Patek in The National Counter-Terrorism Agency (BNPT) seminars and Indonesia Police (POLRI) to fight terrorism ideology.

The judge's decision not to give the death sentence to Umar Patek and Ali Imron was the right decision to develop the situation and conditions and pay

³² Patrick B. Johnston, "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," *International Security* 36, no. 4 (2012): 47-79.

³³ Ilham Safutra, "Karena Wiranto Dianggap Sebagai Common Enemy," last modified 2019, accessed February 12, 2020, <https://www.jawapos.com/nasional/hukum-kriminal>;

³⁴ Yandi M.R., "Merekrut Terorisme Bermain Facebook Atas Izin Allah," last modified 2010, accessed January 7, 2020, <https://majalah.tempo.co>

³⁵ Peter Bell Elizabeth Mulcahy, Shannon Merrington, "The Radicalisation of Prison Inmates: Exploring Recruitment, Religion and Prisoner Vulnerability," *Journal of Human Security* 9, no. Maret 2013 (2013): 8.

attention to the benefits.³⁶ On the other hand, while giving the verdict of the death penalty to Amrozi, Mukhlash, and Imam Samudra former or Aman Abdurahman and Iwan Darmawan alias Rois today is effective and following the situation and conditions.

Former terror perpetrators who are still prisoners or have been freed, such as Umar Patek, Ali Imron, and Ali Fauzi, plays an essential role in assisting the government in deradicalization, counter-radicalization, or anti-radicalism, as well as in negotiations with the network of terrorist groups at home or abroad.

In terrorist organizations, a person's classification is to be a friend in a group and an outgroup opponent. All those outside their network are considered opponents of the outgroup, and people like them are groups. Therefore, terror perpetrators are considered more lenient when communicating/negotiating with people who have been their compatriots in training and fighting or in groups rather than dealing with government officials such as the police BNPT as an outgroup.³⁷

But Referring to John Horgan that terrorists who have disengaged themselves with their group do not always become deradicalized or regret their actions. Often they are physically attacked but do not change or reduce their ideology.³⁸

5. Duration of *Maṣlahah*

Differences in the meaning of *takfiri* between terrorist networks in Indonesia and the presence of ISIS in 2014 resulted in the split of radical Islamic movement groups in Indonesia, which became the driving factor (pull factor), weakening the terrorism network in Indonesia. Disputes and debates between adherents of *takfiri* al-Qaeda/JI stronghold and its supporters and the *takfiri* of Aman Abdurrahman and ISIS sympathizers in Indonesia.³⁹

The discussion between the two camps also impacts tensions between terrorist convicts in prisons; both al-Qaeda and ISIS are groups that campaign for the teachings of jihad. Still, the two must disagree because it disputes the issue of *takfiri*. Thus, the presumption that terrorism convicts are robust and reliable in the organization is not proven by the existence of such disputes.

³⁶ J. Rummelink, *Pengantar Hukum Pidana Material 3: Hukum Penitensier* (Jakarta: Maharsa Publishing, 2017). 167.

³⁷ When the process of radicalization arises from the recruitment process (brainwashing) then the deradicalization process will be effective with the same recruitment model, if people are infected through the internet, then the internet is the way out of the path of radicalism as well as the figure or teacher of one school that recruits him then the same person who will be able to realize it, the way you in is the way you will out, Syaifuddin Umar aka Abu Fida (Ex Terrorist), interview, Surabaya, October 9, 2019.

³⁸ John G. Horgan, "Deradicalization or Disengagement? A Process in Need of Clarity and a Counter Terrorism Initiative in Need of Evaluation," *Revista de Psicología Social* 24, no. Mei, 2009 (2009): 291-298.

³⁹ Syaifuddin Umar aka Abu Fida (Ex Terrorist), interview, Surabaya, October 9, 2019.

The start of a split between terrorism networks after the death penalty in the Bali Bombing trio supported by Jamaah Islamiyah and al-Qaeda caused the terrorism movement to weaken as it is today. The differences between *takfiri* al-Qaeda and ISIS that divide Islamist groups in Indonesia do not strengthen the terror movement but rather undermine the terror movement itself.

After the death sentences of Amrozi and Mukhlas Tenggulun Area, where the Peace Circle Foundation (YLP) was previously synonymous with terrorist villages, with bombs, but the views of the general public have changed, now Tenggulun becomes a deradicalization village and can be said to be a barometer for deradicalization programs.

Taking into account the long-term effects of the death penalty on Amrozi et al., it can be concluded that in the death penalty policy on Aman Abdurahman and Iwan Drmawan it is very appropriate with positive long-term effects for the weakening of radicalism in the network and security that is increasingly conducive although not entirely the same.

Tabel 2. *Tarjih maqāsidī* death penalty for terrorism convicts

	Application of <i>Tarjih maqāsidī</i>	
	<i>Maṣlahah</i> of Death penalty terrorists	<i>Mafsadah</i> of Death penalty terrorists
Quality	Quality Penalty of terrorism crimes extraordinary crime this punishment is enforced as an inevitability deterrent effect for terrorism crimes the enforcement of this punishment is <i>ḍarūrī</i> in the framework of <i>hiḍ nafs</i> .	They make terrorism motivated by treating the idiopathic's death as a hero of martyrdom and revenge acts. Hence, the anticipation of such conditions, including <i>ḥājīyah</i> or <i>taḥsīnīyah</i> because the security forces can easily detect symptoms like this.
Quantity	the death penalty is given to actors of terrorism as a lesson for others not to engage in terrorism and fulfill justice for victims <i>maṣlahah 'āmmah</i> .	The execution of a terrorism convict is reviewed from the individual's right to life, which violates the human rights <i>maṣlahah</i> of the convicted.
Accurate	Death Penalty To avoid the spread of radicalism ideology After the three Bali bombing death row inmates' execution, I had no negative impact afterward. Hence, the death penalty policy became an accurate solution (<i>qaṭ'ī</i>) in breaking up the terror network.	Claims after the death penalty will make terrorism networks stronger are alleged (<i>ẓannī</i>). It is also <i>wahmīyah</i> because there is no evidence that others' death penalty inspired the perpetrators of terrorism.

		And there was no case related to Amrozi et al.
Effectiveness	The decision to give Bali Bombings and Aman the death penalty are effective and targeted because of the dangerous fact in living conditions. Prisons are used as a soft ground for the doctrinal process of terrorism convicts.	The death penalty does little to reduce crime rates, dispersing inmates who do not want to be rehabilitated and endangering far more ineffective deradicalization programs.
Duration	the death penalty caused a deterrent effect of breaking the network chain due to the fear effect with an extended period proved the absence of events with the same level of mode as the Bali bombings.	The death penalty has the effect of assuming jihadists are motivated to commit and continue the same crimes as the Bali bombing trio is a short-lived and unproven euphoria of anger

Conclusion

After paying attention to the aspects of each *maṣlahah* and *mafsadah* in the death penalty for terrorism perpetrators after being sentenced to death and the high consideration of the law *maqāsid al-sharī'ah* in five aspects *tarjih maqāsidī* then with this instruments can be concluded that the death penalty for terrorism is more significant benefit than allowing the ideology of terrorism which is still radicalized and without regret to live with life sentences, Preventing the process of radicalism from ideologists takes precedence over taking and waiting for the indiscriminate benefit of the life of ideologist-level terrorism.

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