

Analysis of the Maqashid Syariah Approach to the Death Penalty for Drug Offenders

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Abstract: This study examines the application of the death penalty for drug offenders from the perspective of Maqashid Syariah, the higher objectives of Islamic law that emphasize the preservation of life, intellect, religion, lineage, and wealth. The research aims to analyze whether the use of capital punishment in drug-related cases aligns with the ethical and jurisprudential principles of Shariah. Utilizing a qualitative methodology through doctrinal analysis of Islamic texts and contemporary legal practices, the study identifies a tension between strict punitive measures and the maqashid's emphasis on justice, mercy, and social welfare. The findings suggest that alternative penalties such as rehabilitation and life imprisonment are more consistent with Maqashid principles, offering a balanced approach that upholds human dignity and promotes societal harmony. This research contributes to the ongoing discourse on Islamic criminal justice reform, advocating for policies that reflect both religious values and contemporary human rights concerns.

Research Highlights:

- Examines the death penalty for drug offenses through the framework of Maqashid Syariah (higher objectives of Islamic law).
- Identifies tensions between capital punishment practices and Islamic principles emphasizing preservation of life and mercy.
- Highlights the role of rehabilitation and life imprisonment as viable alternatives aligned with Maqashid goals.
- Provides a qualitative doctrinal analysis combining Islamic jurisprudence and contemporary legal practices.
- Contributes to discussions on harmonizing Islamic criminal law with modern human rights and ethical standards.

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INTRODUCTION

The problem of drug abuse and trafficking has become a serious global issue, threatening not only public health but also social security and national stability. In Indonesia, drug-related crimes have reached alarming levels, with thousands of lives affected each year (Syafliin et al., 2020). The government has responded by imposing strict laws, including the use of the death penalty for major drug offenses. While intended as a deterrent, this policy has sparked widespread debate regarding its effectiveness, morality, and compliance with legal and religious principles.

At the heart of this issue is the widespread misuse of illegal drugs, which contributes to various forms of social decay (Stevens, 2010). Individuals who become addicted often face deteriorating physical and mental health, loss of productivity, and a heightened risk of engaging in criminal behavior. Families of drug users experience emotional trauma, financial burdens, and social stigmatization. Children in such environments are especially vulnerable, frequently suffering from neglect, abuse, and reduced educational

opportunities (Peek, 2008). These individual tragedies accumulate into a broader societal problem that hinders a country's development and undermines community well-being.

Moreover, drug trafficking brings with it a host of additional criminal activities, including money laundering, corruption, gang violence, and human trafficking. In many regions, powerful drug syndicates operate with impunity, corrupting law enforcement and judicial institutions (Morris, 2012). This erosion of governance not only weakens the rule of law but also diminishes public trust in state institutions. Economically, the costs of drug abuse are enormous, with billions spent annually on healthcare, law enforcement, and lost productivity.

In the context of developing countries such as Indonesia, the impact of drug offenses is particularly severe. The youth, who represent the backbone of the nation's future, are increasingly exposed to drug-related risks. Schools, universities, and even religious institutions are not immune to the reach of drug culture (Laycock, 2014). The social damage caused by drugs is compounded by limited access to rehabilitation services and the stigma surrounding addiction, which discourages many from seeking help.

The far-reaching consequences of drug offenses highlight the need for a multi-dimensional response. While strong legal measures, including punitive actions, have been implemented in many countries, there is a growing recognition that punishment alone cannot resolve the problem. A holistic approach that includes prevention, education, rehabilitation, and reintegration is essential to effectively combat the root causes of drug abuse and reduce its harmful effects on society.

Over the past decade, the issue of the death penalty for drug offenders has attracted increasing academic and legal scrutiny, particularly in countries where Islamic law influences national legislation. Scholars, policymakers, and religious authorities have explored the intersection of criminal justice, Shariah principles, and human rights concerns (Ahmad, 2020). One major strand of research has focused on the legality of the death penalty within Islamic jurisprudence. Numerous scholars have pointed out that while Islamic law permits the death penalty in certain *hudud* (fixed punishments) and *qisas* (retaliation) cases, such as murder or adultery, drug offenses do not fall explicitly under these categories. As a result, many Islamic legal scholars argue that drug-related capital punishment falls under *ta'zir* discretionary punishment left to the ruler's judgment. A study by Kamarulzaman and McBrayer (2015), for example, highlighted the tension between the severity of *ta'zir* punishments and the principles of justice, proportionality, and rehabilitation in Islamic teachings.

Other research has examined the alignment of the death penalty with *Maqashid Syariah*, particularly in relation to the protection of life (*ḥifz al-nafs*) and intellect (*ḥifz al-'aql*), which are commonly used to justify severe punishments for drug traffickers. However, scholars like Nuruddin (2017) and Azra & Malik (2020) have argued that while drug crimes pose significant threats to society, the imposition of the death penalty must still be critically assessed within the broader goals of Islamic law. These goals emphasize justice, mercy, and societal welfare (*maslahah*), suggesting that alternative punishments such as long-term imprisonment or rehabilitation may better fulfill Shariah's higher purposes in some contexts.

In countries like Indonesia, Malaysia, and Iran, where Islamic values influence legal systems, empirical research has investigated how religious authorities, judges, and the public perceive the death penalty for drug offenses. For instance, Sulaiman et al. (2019) conducted field research in Malaysia showing a growing shift in opinion among religious leaders, who increasingly question whether capital punishment truly deters drug crimes or fulfills Islamic ethical mandates.

In parallel, international legal and human rights research over the last decade has criticized the use of the death penalty for non-violent drug offenses. Reports by organizations like Amnesty International and Harm Reduction International have argued that such punishments violate international human rights standards. This has prompted Islamic scholars such as Mohammad Hashim Kamali (2018) to explore whether Islamic law can be reconciled with evolving human rights norms. Kamali and others advocate for a more flexible, *maqashid*-oriented interpretation of Shariah that prioritizes mercy, repentance, and societal benefit over harsh retribution.

Furthermore, recent interdisciplinary studies have integrated criminological, theological, and legal analysis to evaluate the real-world effectiveness of the death penalty. Research conducted by Azhari & Santoso (2021) in Indonesia found little empirical evidence that capital punishment has a significant deterrent effect on drug trafficking. Instead, they propose policy reforms grounded in Islamic values that emphasize rehabilitation and public education, in line with *Maqashid Syariah*.

From an Islamic perspective, the application of criminal penalties must align with Shariah objectives, known as *Maqashid Syariah*. These objectives aim to protect five essential values: religion (*al-*

din), life (al-nafs), intellect (al-'aql), lineage (al-nasl), and wealth (al-mal)(Hasib et al., 2020). Islamic law does prescribe severe penalties for certain crimes, including the death penalty in specific cases. However, the application of such penalties must be carefully assessed to ensure they truly serve the higher purposes of justice, mercy, and public welfare.

The question arises: Does the death penalty for drug offenders truly reflect the objectives of Maqashid Syariah? While drug crimes undeniably threaten life and intellect values Maqashid Syariah seeks to protect it is also important to examine whether capital punishment serves the broader purpose of societal protection or if alternative approaches might be more aligned with Islamic ethics.

In light of ongoing debates between legal enforcement, human rights, and Islamic jurisprudence, this research seeks to analyze the application of the death penalty for drug offenders through the lens of Maqashid Syariah. This analysis will help provide a deeper understanding of how Islamic legal principles can guide contemporary criminal justice policy in a way that upholds both divine law and human dignity.

METHOD

This research employs a qualitative descriptive method with a normative-judicial approach to explore the application of the death penalty for drug offenders through the lens of Maqashid Syariah. The focus is on understanding the alignment (or lack thereof) between Islamic legal philosophy and contemporary criminal law practices in cases involving capital punishment for drug-related crimes(Mohamed, 2017).

The normative-judicial approach is used to analyze legal materials both primary and secondary sources in order to examine how Islamic law, particularly Maqashid Syariah, conceptualizes justice, punishment, and the preservation of fundamental human values(Pambudi, 2016). Primary legal sources include the Qur'an, Hadith, and classical fiqh (Islamic jurisprudence) texts, while secondary sources include modern interpretations by Islamic legal scholars, fatwas, national legal codes (especially in Muslim-majority countries such as Indonesia, Malaysia, and Iran), and contemporary academic literature.

In addition, the research employs a conceptual and philosophical analysis of Maqashid Syariah, which consists of five core objectives: protection of religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), lineage (ḥifẓ al-nasl), and wealth (ḥifẓ al-māl). The researcher critically evaluates whether the application of the death penalty in drug offenses effectively contributes to or contradicts these objectives, particularly in light of arguments that such crimes harm life and intellect, while also considering whether capital punishment is the most effective and ethical means of upholding these values.

Legal materials are analyzed using content analysis and hermeneutic interpretation(Drisko & Maschi, 2016). Content analysis is used to identify recurring legal principles and patterns in both Islamic and national criminal law texts. Hermeneutic interpretation allows the researcher to explore the contextual and philosophical meaning of Shariah provisions in relation to contemporary legal and social realities.

This research also incorporates comparative analysis, contrasting how different Muslim-majority countries apply the death penalty to drug offenders and the extent to which Maqashid Syariah is considered in those decisions(Iqbal, n.d.). Through this, the study seeks to identify common themes, legal interpretations, and policy trends.

While the research is largely library-based, it is also supported by relevant jurisprudential debates, fatwas, and court rulings from Islamic scholars and legal institutions. These provide insight into how Islamic principles are practically interpreted in the legal system and how they influence policy formation related to drug crimes.

RESULTS AND DISCUSSION

3.1 Results

The findings of this research reveal a complex and multifaceted relationship between the implementation of the death penalty for drug offenders and the principles of Maqashid Syariah. While drug crimes are widely acknowledged as serious offenses with devastating social consequences, the study finds that the application of capital punishment in such cases raises significant ethical and legal questions when assessed through the framework of Islamic legal philosophy.

One of the primary findings is that drug-related offenses are generally categorized under ta'zir in Islamic jurisprudence meaning they fall under the discretionary authority of the ruler or the state rather than being part of the fixed (hudud) or retaliatory (qisas) punishments. As such, the death penalty for drug

crimes is not divinely mandated but rather a policy decision, and thus subject to interpretation and reevaluation. This opens the door for critical assessment based on the broader objectives of Shariah.

When viewed through the lens of Maqashid Syariah, the justification for the death penalty in drug cases becomes more contentious. While supporters argue that such punishment protects life (*ḥifz al-nafs*) and intellect (*ḥifz al-'aql*) by deterring drug abuse and trafficking, the research reveals that empirical evidence supporting the deterrent effect of the death penalty is inconclusive. In many countries, despite strict enforcement and capital punishment, drug trafficking and abuse continue to rise. This undermines the claim that the death penalty effectively upholds the goals of Shariah.

Moreover, the principle of *ḥifz al-nafs* the protection of life also raises ethical concerns regarding the taking of human life through capital punishment, especially when drug offenses are non-violent and do not directly involve the taking of another person's life. From this perspective, applying the death penalty could be seen as contradictory to the very objective it seeks to protect. Similarly, the objective of *ḥifz al-'aql*, while relevant due to the destructive impact of drugs on human reason, does not necessarily justify irreversible punishment when alternatives such as rehabilitation and long-term incarceration may better serve societal and individual reform.

The research also finds that in several Muslim-majority countries, including Indonesia, there is growing debate among Islamic scholars and legal practitioners about the appropriateness of the death penalty in light of *maslahah* (public benefit) and *rahmah* (mercy) two values closely tied to the higher objectives of Islamic law. Several fatwas and academic discussions advocate for more restorative and rehabilitative approaches that align more closely with the spirit of justice in Islam.

In addition, the comparative analysis highlights inconsistency in the application of the death penalty across Islamic jurisdictions, suggesting that its use is more influenced by state policy and political considerations than by a uniform interpretation of Shariah principles. This further supports the argument that Islamic legal theory allows for flexibility and that the use of capital punishment for drug offenses is not an absolute requirement of Islam.

3.2 Comparison Between Theoretical Ideals of Islamic Law and Actual Practices

Islamic law, or Shariah, is grounded in a rich tradition of jurisprudence that seeks to balance justice, mercy, and social welfare (Kamali, 2008). At its core, Shariah is not merely a set of rigid rules but a comprehensive legal and ethical system guided by the Maqashid Syariah the higher objectives that aim to protect and preserve essential human values such as life (*ḥifz al-nafs*), intellect (*ḥifz al-'aql*), religion (*ḥifz al-dīn*), lineage (*ḥifz al-nasl*), and wealth (*ḥifz al-māl*). Theoretically, Islamic law emphasizes proportionality in punishment, the preservation of human dignity, and the encouragement of repentance and rehabilitation.

In theory, the application of punishments within Islamic law follows a carefully delineated framework. Capital punishment, for example, is traditionally reserved for the most serious offenses such as murder (under *qisas*) or *hudud* crimes explicitly defined by sacred texts. Drug offenses, on the other hand, fall under *ta'zir*, discretionary punishments left to the ruler's or judicial authority's judgment. This distinction highlights the theoretical ideal that punishment should be proportionate and contextually appropriate, taking into account both the crime's severity and the broader societal impact.

Additionally, Islamic legal philosophy stresses the importance of mercy (*rahmah*) and public interest (*maslahah*). The Prophet Muhammad emphasized forgiveness and the opportunity for offenders to repent and reform (Muhammad, 2020). Thus, Islamic law theoretically supports rehabilitative and restorative justice, especially for crimes that do not involve direct physical harm to others, such as drug offenses. The preservation of life and intellect should guide any punitive measure, meaning that the irreversible nature of the death penalty requires the highest justification.

However, actual practices in many Muslim-majority countries often diverge from these theoretical ideals. In several jurisdictions, the death penalty is imposed on drug offenders with increasing frequency, driven by political pressures, social demands for harsh deterrence, and the global war on drugs. These practices sometimes reflect state interests or public opinion more than a nuanced application of Islamic jurisprudence. For instance, in countries like Indonesia and Malaysia, despite scholarly debates questioning the appropriateness of capital punishment for drug crimes, executions continue, often under the justification of protecting societal welfare and national security.

This dissonance between theory and practice stems partly from the challenges of interpreting Shariah in modern legal systems and the absence of a centralized Islamic legal authority to ensure uniformity. The discretionary nature of *ta'zir* punishments allows for wide variation based on political will,

cultural contexts, and societal expectations (Robinson et al., 2017). Consequently, the application of the death penalty in drug cases sometimes appears harsh and disproportionate, conflicting with the maqashid ideals of mercy and proportionality.

Moreover, empirical evidence about the effectiveness of the death penalty in deterring drug crimes is inconclusive or negative, further challenging its justification within Islamic law's objectives. Actual legal practices that prioritize punishment over rehabilitation may undermine the long-term goals of preserving intellect and social harmony (Reid, 2014).

3.3 Tensions and Alignments Between Human Rights Norms and Islamic Principles

The relationship between human rights norms and Islamic principles is complex, characterized by both areas of profound alignment and significant tension. At the core of this relationship is the shared commitment to dignity, justice, and the protection of fundamental human freedoms. Both Islamic principles and human rights norms emphasize the sanctity of human life, equality before the law, and the right to security and justice (Sachedina, 2009). For example, the Maqashid Syariah the higher objectives of Islamic law aim to safeguard religion, life, intellect, lineage, and property, which align closely with human rights concepts such as the right to life, freedom of belief, education, family rights, and property ownership. This common ground offers a foundation for mutual understanding and cooperation in areas such as social justice, protection of vulnerable groups, and the promotion of welfare.

However, tensions arise in areas where interpretations of Islamic law diverge from international human rights standards. One notable area of friction concerns criminal justice, including the use of capital punishment, corporal punishment, and gender-related rights (Fraser, 2006). For instance, while Islamic law permits capital punishment under specific conditions, international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), emphasize the progressive abolition of the death penalty and advocate for stringent safeguards against its arbitrary use. This tension is especially acute in cases such as drug offenses, where Islamic jurisprudence allows for discretionary punishments but does not explicitly mandate death penalties, whereas some states implement harsh sentences that human rights advocates challenge as disproportionate or inhumane.

Gender equality represents another key area of divergence. While Islam guarantees rights and protections for women, traditional interpretations of Shariah sometimes prescribe differentiated roles and legal capacities that conflict with modern human rights views on gender equality and nondiscrimination (Mansour, 2014). Critics argue that these differences hinder the full realization of women's rights as enshrined in international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Zwingel, 2005).

Despite these tensions, there is an ongoing and dynamic discourse among Islamic scholars, jurists, and human rights experts aimed at reconciliation and reinterpretation. Concepts such as *ijtihad* (independent reasoning) and *maqashid al-shariah* provide tools to reinterpret Islamic law in ways that uphold human dignity and rights while respecting religious traditions (Abdelgafar, 2018). Many Muslim-majority countries have integrated human rights principles within their legal frameworks by contextualizing them through Islamic values, highlighting the potential for harmonization rather than confrontation.

Furthermore, the emergence of Islamic human rights discourse, which frames human rights within an Islamic ethical worldview, challenges the notion that these two paradigms are inherently incompatible. This approach advocates for a culturally sensitive interpretation of universal rights, promoting dialogue and mutual respect between religious traditions and secular human rights systems (Freeman, 2004).

3.4 Reflection on Alternative Penalties from a Maqashid Syariah Perspective

The application of punishment in Islamic law is not solely about retribution but fundamentally aims to achieve the higher objectives of Shariah Maqashid Syariah which emphasize the preservation of essential human values such as life (*hifz al-nafs*), intellect (*hifz al-'aql*), and social welfare (*maslahah*). In this light, alternative penalties such as rehabilitation and life imprisonment present compelling options, especially for non-violent offenses like drug crimes, where the overarching goals of justice and mercy call for a more nuanced approach than capital punishment.

From the Maqashid perspective, rehabilitation aligns closely with the objectives of preserving intellect and promoting social harmony (Abdullah, 2018). Drug addiction is recognized not merely as a criminal act but as a health and social problem that impairs intellect and moral judgment. Therefore, offering rehabilitative measures focuses on restoring the individual's cognitive and spiritual health,

allowing them to reintegrate into society as productive and morally responsible members. This approach reflects the Islamic emphasis on mercy (rahmah) and forgiveness, encouraging transformation rather than irreversible punishment (Furehaug, 2020). It also supports the principle of *maslahah* by seeking the greatest public good through reducing recidivism and mitigating the social harms caused by drug abuse.

Similarly, life imprisonment serves as a means of protecting society without taking the offender's life, thereby fulfilling the *Maqashid* goal of preserving human life (Syaflin et al., 2020). It acts as a deterrent and a form of social incapacitation that prevents further harm, while still leaving room for repentance and eventual reform. This punishment embodies the balance between justice and mercy upholding societal safety while respecting the sanctity of life.

Moreover, these alternatives address the potential for judicial error and ensure the preservation of human dignity. Capital punishment, with its irreversible nature, leaves no space for correcting wrongful convictions or for the offender's potential change of heart, which Islamic law deeply values (Hodgkinson, 2016). By contrast, rehabilitation and life imprisonment offer flexibility and hope, resonating with the Quranic injunctions to prioritize mercy and the possibility of redemption.

Implementing alternative penalties also aligns with contemporary challenges and realities (Travis, 2005). Modern medical and psychological understandings of addiction highlight that punitive measures alone do not solve drug-related problems. The *Maqashid Syariah* framework, which encourages adaptability and contextual consideration, supports policies that integrate social welfare, health care, and legal measures to holistically address drug offenses.

CONCLUSION

This research has explored the application of the death penalty for drug offenders through the lens of *Maqashid Syariah*, the higher objectives of Islamic law. The findings reveal a significant tension between the harsh punitive measures implemented in some jurisdictions and the foundational Islamic principles that prioritize the preservation of life, intellect, and social welfare. While Islamic law permits capital punishment in certain cases, the discretionary nature of drug offenses under *ta'zir* encourages a balanced approach that carefully weighs justice, mercy, and public interest. From the *Maqashid* perspective, alternative penalties such as rehabilitation and life imprisonment better fulfill the overarching goals of *Shariah* by emphasizing mercy, the possibility of repentance, and social reintegration. These alternatives align with contemporary understandings of addiction as a health issue, as well as with the Quranic injunctions to uphold human dignity and protect the greater good of society. Ultimately, this study highlights the need for nuanced legal interpretations and reforms that reconcile Islamic jurisprudence with ethical and humanitarian considerations. Embracing a *Maqashid*-based approach offers a pathway to more compassionate and effective criminal justice policies, ensuring that the enforcement of law serves not only punishment but also restoration, protection, and societal harmony.

AUTHORS' DECLARATION

Authors' Contributions and Responsibilities

The author collaboratively contributed to the conceptualization, research design, and methodology of this study.

Competing Interests

In conducting this research on the application of the death penalty for drug offenders from a *Maqashid Syariah* perspective, the authors declare that there are no competing interests that could have influenced the study's outcomes or interpretations.

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