

ABSTRAK

ANALISIS YURIDIS PENERAPAN PIDANA MATI DI INDONESIA DALAM PERSPEKTIF HUKUM ISLAM DAN HAK ASASI MANUSIA

Tita Rosmawati *

Penerapan hukuman mati terhadap masih menimbulkan perdebatan-perdabatan di kalangan ahli. Rumusan masalah dalam penelitian dalam tesis ini adalah bagaimana pengaturan hukum pelaksanaan pidana mati di Indonesia, bagaimana perspektif hukum Islam terhadap hukuman mati, bagaimana penerapan hukuman mati berdasarkan hukum Islam terkait undang-undang hak asasi manusia.

Penelitian ini bersifat yuridis normatif. Sumber data dalam penelitian ini adalah data sekunder. Pengumpulan data menggunakan metode penelitian kepustakaan. Data yang terkumpul tersebut akan dianalisa dengan seksama dengan menggunakan analisis kualitatif atau dijabarkan dengan kalimat. Pengaturan hukum pelaksanaan pidana mati di Indonesia diatur dalam Pasal 10 KUHP. Selain itu, terdapat pula di luar KUHP, seperti Undang-Undang No. 5 Tahun 2018 tentang Pemberantasan Tindak Pidana Terorisme, UU No. 19 Tahun 2019 tentang Komisi Pemberantasan Tindak Pidana Korupsi. Berdasarkan Mahkamah Konstitusi melalui putusan MK No.3/PUU-V/2007 pada intinya menyatakan hukuman mati terhadap kejahatan yang serius merupakan bentuk pembatasan hak asasi manusia. Perspektif hukum Islam terhadap hukuman mati adalah wajib terutama pada tindak kejahatan pembunuhan yang dalam Islam hal ini dikenal sebagai *qishash*. Dalam Islam, *qishash* dijatuhkan jika pelaku kejahatan tidak memperoleh pemaafan dari keluarga korban. Namun jika pelaku dimaafkan dan bersedia membayar *diyat*, maka hukuman mati tidak dilaksanakan dan diganti dengan hukuman *had* atau *ta'zir* oleh hakim.

Hasil pembahasan menyimpulkan Penerapan hukuman mati di Indonesia relevan dengan pandangan hukum Islam. Seperti hukum Islam dalam prinsip *al-maslahat*, di Indonesia vonis hukuman mati bukan hanya ditujukan pada kejahatan pembunuhan berencana melainkan juga pada kejahatan lain yang dianggap sebagai kejahatan *ektra ordinary* seperti teroris, narkoba dan tindak pidana korupsi. Pelaksanaan hukuman mati di Indonesia seyogyanya dilakukan didepan umum seperti dalam pelaksanaan *qishash* yang disaksikan oleh masyarakat umum. Hukuman mati di Indonesia dianggap tidak melanggar hak asasi manusia sebab selaras dengan prinsip relativisme yang dianut oleh sebagian negara peserta Deklarasi Universal Hak Asasi Manusia

Kata Kunci: Pidana Mati, Hukum Islam, Hak Asasi Manusia.

*Mahasiswa Program Pascasarjana Program Ilmu Hukum Universitas Islam Sumatera Utara.

ABSTRACT

JURIDICAL ANALYSIS OF THE APPLICATION OF THE DEATH PENALTY IN INDONESIA IN THE PERSPECTIVE OF ISLAMIC LAW AND HUMAN RIGHTS

Tita Rosmawati *

The application of the death penalty still raises debates among experts. The formulation of the problem in the research in this thesis is how the legal regulation of the implementation of death penalty in Indonesia, what is the perspective of Islamic law on death penalty, how is the application of death penalty based on Islamic law related to human rights law.

This research is normative juridical. Source of data in this research is secondary data. Collecting data using library research methods. The collected data will be analyzed carefully using qualitative analysis or described in sentences. Legal arrangements for the implementation of capital punishment in Indonesia are regulated in Article 10 of the Criminal Code. In addition, there are also those outside the Criminal Code, such as Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism, Law no. 19 of 2019 concerning the Corruption Eradication Commission. Based on the Constitutional Court through MK decision No.3/PUU-V/2007, in essence, it stated that the death penalty for serious crimes is a form of limitation of human rights. The perspective of Islamic law towards the death penalty is obligatory, especially for the crime of murder which in Islam is known as qishash. In Islam, qishash is imposed if the perpetrator of the crime does not receive forgiveness from the victim's family. However, if the perpetrator is forgiven and is willing to pay the diyat, then the death penalty is not carried out and is replaced by a had or ta'zir punishment by the judge.

The results of the discussion conclude that the application of the death penalty in Indonesia is relevant to the view of Islamic law. Like Islamic law in the principle of al-maslahat, in Indonesia the death penalty is not only aimed at crimes of premeditated murder but also at other crimes that are considered as extra ordinary crimes such as terrorism, narcotics and corruption. The implementation of the death penalty in Indonesia should be carried out in public as in the implementation of qishash which is witnessed by the general public. The death penalty in Indonesia is considered not to violate human rights because it is in line with the principle of relativism adhered to by some of the participating countries in the Universal Declaration of Human Rights.

Keywords: Death Penalty, Islamic Law, Human Rights

** Students of the Postgraduate Program in Legal Sciences, Islamic University of North Sumatra.*