



## LEGAL POLITICS AND POWER IN THE ISLAMIC WORLD (CASE STUDY: IMPLEMENTATION OF THE DEATH PENALTY IN EGYPT AND IRAQ)

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### Abstract

*Legal politics in the contemporary Islamic world is often caught in the tension between religious norms and the interests of state power. This article aims to analyze the intervention of political power in the implementation of Islamic law, specifically focusing on the practice of the death penalty in Egypt and Iraq. The main issue examined is how states use legal authority to politicize the death penalty for regime stability and national security. Using qualitative research methods with a juridical-normative and comparative approach, this study examines the literature on the dynamics of legal policy in both countries. The findings indicate that in Egypt, the death penalty tends to be used as an instrument to suppress political opposition after the Arab Spring. Meanwhile, in Iraq, the death penalty functions as a security-driven tool in response to the threat of post-conflict terrorism. Comparatively, both countries demonstrate an instrumentalization of Islamic law that diminishes the precautionary principle (al-iḥtiyāt) and strict standards of proof for pragmatic-political purposes. This study concludes that without strong judicial independence, Islamic law risks losing its moral autonomy and becoming merely a tool to legitimize modern state power.*

**Keywords:** Legal Politics, Death Penalty, Islamic Law, Egypt, Iraq, Power

### Abstrak

Politik hukum di dunia Islam kontemporer seringkali terjebak dalam ketegangan antara norma-norma agama dan kepentingan kekuasaan negara. Artikel ini bertujuan untuk menganalisis intervensi kekuasaan politik dalam implementasi hukum Islam, khususnya berfokus pada praktik hukuman mati di Mesir dan Irak. Isu utama yang diteliti adalah bagaimana negara menggunakan otoritas hukum untuk mempolitikasi hukuman mati demi stabilitas rezim dan keamanan nasional. Dengan menggunakan metode penelitian kualitatif dengan pendekatan yuridis-normatif dan komparatif, studi ini meneliti literatur tentang dinamika kebijakan hukum di kedua negara tersebut. Temuan menunjukkan bahwa di Mesir, hukuman mati cenderung digunakan sebagai instrumen untuk menekan oposisi politik setelah Musim Semi Arab. Sementara itu, di Irak, hukuman mati berfungsi sebagai alat yang didorong oleh keamanan sebagai respons terhadap ancaman terorisme pasca-konflik. Secara komparatif, kedua negara tersebut menunjukkan instrumentalisasi hukum Islam yang mengurangi prinsip kehati-hatian (al-iḥtiyāt) dan standar pembuktian yang ketat untuk tujuan pragmatis-politik. Studi ini menyimpulkan bahwa tanpa independensi peradilan yang kuat, hukum Islam berisiko kehilangan otonomi moralnya dan hanya menjadi alat untuk melegitimasi kekuasaan negara modern.

**Kata kunci:** Politik Hukum, Hukuman Mati, Hukum Islam, Mesir, Irak, Kekuasaan

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## **A. INTRODUCTION**

Legal politics in the Islamic world is a field of study that examines the dialectical relationship between legal norms, political power, and the practice of state administration. The main problem examined in this article is the intervention of political power in the implementation of Islamic law, particularly in the practice of the death penalty in Egypt and Iraq. Normatively, Islamic law does recognize the concept of death penalty within the framework of *ḥudūd*, *qīṣāṣ*, and *ta'zīr*. However, in the contemporary context, the state often acts not only as an executor of the law but also as an actor that politicizes the law for the sake of power stability. The urgency of this research lies in the need to uncover how the post-Arab Spring dynamics in Egypt and the threat of terrorism in Iraq have shifted the function of the death penalty from an instrument of justice to an instrument of security and suppression of political opposition. This is crucial to ensure that the application of Islamic law does not lose its essence of justice due to political hegemony.

Contemporary studies show that in many Muslim-majority countries, Islamic law is often instrumentalized to strengthen the regime's legitimacy. Researchers such as Wael Hallaq in *The Impossible State* argue that modern state structures have dominated Sharia, transforming it from a community-centered law into an instrument of state power. In this context, Islamic criminal law is no longer enforced as a form of transcendental justice, but rather as a tool for national stability and regime survival. (Handoko, 2024)

Following the 2011 Arab Spring and the 2013 military coup, the literature has documented a drastic shift in the pattern of death penalty impositions in Egypt. (Basyar, 2021) **Mass Sentencing:** Research shows a sharp increase in the use of mass trials against political opposition, particularly the Muslim Brotherhood. **Legality Without Justice:** A study from Creighton University notes that Egypt's anti-terrorism law broadens the definition of "terror" to include peaceful political activity, allowing the state to impose the death penalty as a form of political purge. **Moral Justification:** The regime often uses official religious authority to legitimize these sentences in order to quell public and international criticism.

In Iraq, the use of the death penalty has been dominated by a national security narrative post-conflict with ISIS. In Anti-Terrorism Law No. 13 of 2005, international legal literature highlights that this law is "mandatory" (mandatory), which eliminates the discretion of judges to grant pardons or alternative sentences.

There is a sense of justice being rushed. Reports from UNAMI and other human rights organizations indicate that many death sentences are handed down in short trials (sometimes only 10 minutes) based on confessions under duress. This indicates a transition from "retributive justice" to "justice as collective punishment" for the sake of post-war stability.(ECPM, 2025)

A literature review of Islamic criminal law (Fiqh al-Jinayah) emphasizes that the death penalty should be highly selective.(Ritonga, 2015) In Islamic tradition, the principle of al-iḥṭiyāṭ demands a nearly infallible standard of proof. However, practices in Egypt and Iraq demonstrate a disregard for reasonable doubt (shubhat) for the sake of pragmatic state interests. Studies show that when the state monopolizes the interpretation of Sharia for punitive purposes, the law loses its "moral autonomy" and becomes merely an extension of the repressive state bureaucracy.(Karimullah et al., 2024)

## **B. METHODS**

To address this issue, the author employed a qualitative research method with a juridical-normative and comparative approach. The analysis was conducted by analyzing literature on legal policy in the two countries and then synthesizing it to determine the extent to which power influences the independence of Islamic law.

## **C. RESULT AND DISCUSSIONS**

The relationship between law and power is a central theme in the study of legal politics, both within the Islamic tradition and in modern legal thought. From a classical Islamic perspective, law and power have a complementary relationship. Al-Mawardi, in *Al-Ahkam al-Sulthaniyyah*, asserts that the existence of power (imamah) is necessary to uphold the law and maintain social order.(Abu al-Mawardi, n.d., p. 5) Without power, law lacks coercive power; conversely, without law, power has the potential to become authoritarian. Within the normative framework of Islam, power is not absolute, but rather limited by the principles of justice (al-'adl) and trustworthiness. Therefore, rulers are obliged to enforce the law fairly and not abuse it for personal or group gain.(Mohammad Hashim Kamali, 2008, p. 121) However, in both historical and contemporary practice, this relationship is often tense. Modern thought offers a more critical perspective on the relationship between law and power. Michel Foucault argued that law is not neutral, but rather a product of the power relations at work in society.(Noah Feldman Brown, 2012, p. 63)

In this view, law is often used as an instrument to maintain the dominance of certain groups. In the context of modern Muslim countries, Noel J. Brown asserts that legal institutions are often not completely independent of executive power.(Noah Feldman Brown, 2012, p. 102) This makes the law enforcement process vulnerable to political

intervention, especially in cases related to state security or political opposition. Wael B. Hallaq also criticized that in the modern state system, Islamic law has lost its moral autonomy because it is under state control.(Wael B. Hallaq, 2013, p. 45)

The modern state has monopolized legal authority and transformed it into an administrative instrument, so that law no longer fully reflects Islamic ethical values. Furthermore, research by John L. Esposito shows that many Muslim countries have adopted a hybrid legal system that combines Western and Islamic law.(John L. Esposito, 1998, p. 134) In this system, state power plays a dominant role in determining the interpretation and application of law. In practice, the relationship between law and power is often seen in the use of law as a tool for political legitimacy. Governments can use the law to strengthen their positions, for example through the criminalization of opposition or the use of harsh punishments such as the death penalty to maintain stability. Thus, the relationship between law and power in the contemporary Islamic world demonstrates a shift from an ideal (normative) relationship to a more pragmatic and political one. This has serious implications for justice and legal legitimacy, particularly in the context of the application of the death penalty.

### **The death penalty in Islamic law**

The death penalty in Islamic law is a form of criminal sanction with a strong normative basis in the Qur'an and Hadith. Its application is closely related to the three main categories of Islamic criminal law: hudud, qisas, and ta'zir. In this context, the death penalty is understood not only as a form of retribution but also as a mechanism for protecting society and safeguarding the maqasid al-shari'ah (objectives of Islamic law).(Rudolph Peters, 2005, p. 54) In the category of qisas, the death penalty is imposed on the perpetrator of murder based on the principle of "a soul for a soul" as stated in the Qur'an (QS. Al-Baqarah: 178). However, Islamic law also allows for forgiveness through the concept of diyat (compensation), which shows that the primary purpose of law is not merely retributive, but also restorative.(Mohammad Hashim Kamali, 2008, p. 203)

Within the hudud category, the death penalty is applied to certain cases such as zina muhsan (adultery by a married person) and hirabah (robbery with violence). However, classical scholars emphasized that the standard of proof in hudud cases is very strict, so its application in practice is very limited.(Rudolph Peters, 2005, p. 67) Rudolph Peters explains that in the history of classical Islamic law, the death penalty was rarely imposed due to the high standard of proof and the principle of avoiding hudud in conditions of syubhat (doubt).(Rudolph Peters, 2005, p. 70) This demonstrates that the Islamic legal system inherently tends to limit the use of the death penalty. Within the category of ta'zir, the ruler has discretion to determine the type and severity of punishment, including the possibility of imposing the death penalty in certain cases deemed to threaten the public interest. However, this discretion must remain based on the principles of justice and public welfare.(Mohammad Hashim Kamali, 2008, p. 211)

In the modern context, the application of the death penalty in Muslim countries has often been expanded beyond its classical boundaries. Wael B. Hallaq has criticized the modern state for transforming Islamic criminal law into a more repressive tool of social control.(Wael B. Hallaq, 2013, p. 118) This has led to a shift from the precautionary principle

of classical law to a more political practice. Furthermore, Abdullahi Ahmed An-Na'im emphasized that the application of the death penalty in modern states must take into account international human rights standards, which tend to limit or even reject the death penalty. (Abdullahi Ahmed An-Na'im, 2008, p. 156) This creates tension between the application of Islamic law and commitment to global norms. From the perspective of maqasid al-shari'ah, the death penalty should be seen as a last resort (ultimum remedium) in maintaining order and justice.

Mohammad Hashim Kamali emphasized that the main objective of sharia is to realize justice and welfare, so that every application of punishment must take into account the social context and its impact on society. (Mohammad Hashim Kamali, 2008, p. 220) Thus, it can be concluded that the death penalty in Islam has a strong normative basis, but its application is highly dependent on interpretation, social context, and power structures. In modern practice, there is a tendency for politicization that has the potential to deviate from the basic principles of Islamic law.

### **Legal Politics and the Implementation of the Death Penalty in Egyptitik Hukum dan Penerapan Hukuman Mati di Mesir**

Egypt is one of the countries in the Middle East that still maintains the death penalty as part of its criminal justice system. Egypt's legal system is hybrid, combining civil law with Islamic legal principles, particularly in family law and some criminal aspects. In practice, the death penalty in Egypt is applied for a variety of crimes, including murder, terrorism, and crimes against the state. However, political developments following the Arab Spring have shown a significant increase in the use of the death penalty, which is inextricably linked to the dynamics of state power. Since the rise of Abdel Fattah el-Sisi's regime in 2013, the use of the death penalty has increased sharply, particularly in cases related to political stability and national security. Many defendants sentenced to death are from political opposition groups or accused of involvement in terrorist activities.

This phenomenon demonstrates the close link between criminal law and state political interests. A report from Amnesty International shows that Egypt has been among the countries with the highest number of executions in the world in recent years. In 2020, for example, Egypt executed at least 107 people, ranking among the countries with the highest number of executions globally. (Heba Morayef, 2021) Furthermore, the increase in executions also occurred in the context of specific events. Amnesty International reported a spike in executions in 2020, including the execution of 57 people in just two months. (Heba Morayef, 2021) This demonstrates that the application of the death penalty is not only legal but also responsive to the political and security situation. One of the most controversial aspects is the practice of mass trials.

In some cases, hundreds of defendants were sentenced to death in a single trial. This practice has drawn widespread criticism as it violates the principles of a fair trial and the right to adequate legal representation. (Krisnawati & Putrawan, 2015) From an international legal perspective, this practice is considered contrary to human rights principles, particularly those stipulated in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, the Egyptian government argues that the death penalty is necessary to maintain national

stability and combat terrorism. Academic studies also indicate that the implementation of the death penalty in Egypt cannot be separated from external and internal factors. Research in Islamic law journals states that the implementation of the death penalty, particularly in terrorism cases, is often influenced by political pressure, security conditions, and global dynamics.(Adelina, 2024)

From a legal political perspective, this situation reflects the instrumentalization of law, namely the use of law as a tool to achieve specific political goals. The state plays not only a law enforcer but also an actor that shapes and directs the law according to its interests. Therefore, it can be concluded that the implementation of the death penalty in Egypt demonstrates the close relationship between law and power. The law no longer functions solely as an instrument of justice, but also as a tool of social and political control. This raises critical questions about the extent to which the implementation of the law is still in line with Islamic principles of justice and international human rights standards.

#### **4. DISCUSSION**

##### **Security Politics and the Implementation of the Death Penalty in Iraq**

Iraq is one of the countries that consistently maintains the death penalty as part of its criminal justice system, particularly in the context of terrorism and threats to national security. Unlike Egypt, which was influenced by post-revolutionary domestic political dynamics, Iraq faces a more complex context of armed conflict, political instability, and the threat of extremist groups. Following the fall of Saddam Hussein's regime in 2003, Iraq underwent a political transition accompanied by increased sectarian violence and terrorist activity. In this situation, the state uses the death penalty as a primary instrument to maintain national stability and security. The death penalty is primarily imposed in cases related to terrorism under the Iraqi Anti-Terrorism Law.

According to an Amnesty International report, Iraq has one of the highest execution rates in the world. In 2024, Iraq recorded at least 63 executions, a nearly fourfold increase compared to the previous year.(Human Rights Watch, 2024) This indicates a significant escalation in the use of the death penalty as a response to security threats. Furthermore, Iraq, along with Iran and Saudi Arabia, accounts for the majority of global executions, indicating that the Middle East remains a hub for the use of the death penalty.(Amnesty International Indonesia, 2025) This situation strengthens the argument that geopolitical and security factors play a significant role in criminal justice policy in the region. In practice, the vast majority of executions in Iraq are related to terrorism charges. Amnesty International noted that almost all executions in Iraq in 2024 were carried out against individuals accused of involvement in terrorist activities.(Heba Morayef, 2021) This shows that the death penalty has become part of the state's strategy in combating extremism.

However, this practice has not been without sharp criticism, particularly regarding judicial procedures. Human Rights Watch reports that the justice system in Iraq often falls short of fair trial standards, including the use of confessions obtained through duress or

torture, and limited access to legal aid. (Razaw Salihy, 2024) Furthermore, there are reports of mass executions carried out suddenly without adequate notification to the families or legal counsel of the accused. This practice raises serious concerns regarding the transparency and accountability of the legal system in Iraq. From a legal-political perspective, this situation reflects the use of law as a tool to maintain state stability in crisis situations. The state tends to prioritize a security approach over a justice approach. As a result, criminal law, including the death penalty, functions as a repressive instrument to control threats to the state.

Furthermore, in the context of post-conflict states, such as Iraq, the legitimacy of power often depends on the state's ability to guarantee security. Therefore, the death penalty is used as a symbol of state assertiveness against serious crimes, particularly terrorism. However, from an Islamic legal perspective, this practice raises critical questions. As explained previously, Islamic law requires strict standards of proof and upholds the principles of justice and prudence in imposing the death penalty. When judicial procedures fail to meet these standards, the legitimacy of the death penalty is questioned. Therefore, it can be concluded that the implementation of the death penalty in Iraq is heavily influenced by security and political factors. The law serves not only as an instrument of justice but also as a tool to maintain state stability. This indicates a shift from the normative principles of Islamic law to more pragmatic and political legal practices

### **Dynamics of the Implementation of the Death Penalty in Egypt and Iraq**

The application of the death penalty in Egypt has experienced a significant escalation following the political dynamics after the Arab Spring and the regime change in 2013. The author finds that judicial authorities in Egypt often use the *ta'zīr* framework to impose mass death sentences on members of the political opposition, particularly the Muslim Brotherhood. Normatively, although Islamic law is very cautious about shedding blood, the practice in Egypt shows a shift in the function of law into a tool of legitimizing power. The state positions political crimes as threats to the welfare (*maṣlaḥah*) of national stability to justify severe punishment. This is in line with Wael B. Hallaq's criticism that modern states often reduce the ethical dimension of Islamic law for administrative purposes and political control. Executive intervention in the judicial process in Egypt has caused the precautionary principle (*al-iḥtiyāt*) in Islamic criminal law to be neglected for the sake of regime security.

The practice of capital punishment in Iraq is deeply rooted in the state's efforts to address the threat of terrorism and post-conflict instability. Unlike Egypt, which emphasizes repression of the opposition, Iraqi legal policy is dominated by a security logic designed to restore state authority. Implementation of the death penalty in Iraq is often based on the Anti-Terrorism Law, which, in some perspectives, is linked to the concept of

hirābah (robbery with violence/terror) in Islamic law. However, findings indicate that public demands for revenge and political pressure to demonstrate government assertiveness often expedite the execution process without complying with the stringent standards of proof established by classical hudūd rules. The relationship between law and power in Iraq demonstrates that when the state is in a state of emergency, the principles of protection of life (ḥifẓ al-nafs) within the maqāṣid al-sharī'ah are often interpreted narrowly as merely collective protection, thus sacrificing individual procedural rights.

### **Comparative Analysis of Legal Politics in the Two Countries**

A comparison of Egypt and Iraq reveals that while both countries use Islamic legal terminology as a source of legitimacy, the political motives behind it differ but achieve a similar result: strengthening state authority. In Egypt, the death penalty serves as an instrument for eliminating opposition, while in Iraq, it serves as an instrument for post-war stabilization. Both confirm Abdullahi Ahmed An-Na'im's concern that modern states tend to monopolize the authority of Islamic law to strengthen their political legitimacy. Systematically, both countries demonstrate that the independence of judicial institutions is often subjugated to executive control, resulting in the application of the death penalty shifting from a restorative justice goal to a politically retributive one. This underscores that without a clear separation of powers, Islamic law risks losing its moral autonomy in the hands of modern rulers.

### **CONCLUSION**

This study provides conclusive empirical evidence that the implementation of food export and import deregulation policies in Indonesia has triggered contradictory dualistic impacts on national food security and farmer welfare. Structural analysis results indicate that import deregulation contributes positively and significantly to securing macro-food affordability and availability by reducing price volatility among urban consumers (Dawe, 2020). However, on the other hand, the easing of import restrictions has been shown to exert significant negative pressure on farmer welfare indices due to distortions in upstream selling prices (*farm-gate prices*), which plummet during the peak harvest season (Suryana, 2022). Meanwhile, export deregulation consistently has a positive impact on both sectors, although the distribution of economic benefits remains dominated by large-capital agribusiness corporations (Reardon et al., 2019).

Theoretically, these findings provide a profound critique of *the Market Optimism* assumption in free trade liberalization in emerging markets. The study results confirm that without the existence of balancing regulatory instruments from the state, free markets tend to exploit economic actors with limited structural resource capacity, such as smallholders (Barney, 1991; Wright et al., 2001). The apparent *trade-off* between consumer

price stability and protecting the incomes of rural producers indicates that the concept of food security should not be measured solely by the fulfillment of physical supplies, but must be integrated with the principle of food sovereignty that places the welfare of domestic producers as its main foundation (Clapp, 2020; Falcon & Naylor, 2018).

Practically, the government, through relevant ministries, is advised to immediately end sectoral egos and implement a *smart-protectionism* system that aligns import volumes and timings in *real time* with the Indonesian harvest calendar (Simatupang, 2022). Improvements to maritime and land logistics infrastructure corridors are also urgently needed to reduce high domestic distribution costs, allowing local commodities to compete fairly with imported commodities (Arifin, 2021). Finally, the economic surplus gained from international trade efficiency must be reallocated to strengthen farmer institutional capacity, finance modern agricultural technology, and strengthen the floor price safety net to ensure the sustainability of the upstream agricultural sector as the vanguard of the nation's food sovereignty (Armstrong & Taylor, 2020; Cascio, 2019).

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