MILRev
Metro Islamic Law Review
Scientific Islamic Law Journal Of Sharia Faculty
MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

Integrating the Concepts of *Diyat* and *'Afwu* into Death Penalty Commutation in the Contemporary Era

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Doi: 10.32332/milrev.v5i2.12183

Dates:
Received 09 December, 2025
Revised 20 Mei, 2026
Accepted 09 July, 2026
Published 07 August, 2026

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Abstract: The commutation of the death penalty to life imprisonment in the new Criminal Code places the state in a central position (state-centred) and does not allow victims or their families to be further involved. This study proposes integrating the concepts of *Diyat* and *'Afwu* into the process of commuting the death penalty in Indonesia, as this can promote restorative justice. This study is normative legal research that uses secondary data as material for prescriptive analysis. The Quran and Hadith are the primary references, followed by research results, scientific articles, papers, and laws and regulations relevant to the issues under study. This study finds that the regulation of commutation of the death penalty in the Criminal Code is not in accordance with the objectives of punishment, which are to protect society and apply a restorative justice paradigm. Therefore, the concepts of *Diyat* and *'Afwu* in qishas law can be adopted to complement the provisions on commutation in the new Criminal Code because they contain values of restorative justice with the involvement of victims or their families. Through this integration, it is hoped that the provisions on commutation of the death penalty in Indonesian criminal law will be updated in the future to achieve restorative justice. The findings of this study can contribute academically to the development of a contemporary legal conceptual framework that integrates Islamic criminal law concepts—namely *Diyat* and *'Afwu*—into the process of commuting the death penalty in Indonesia. The findings of this study enrich the discourse on criminal law reform by linking the principles of Islamic law, restorative justice, and Indonesian positive law, while offering an alternative perspective on how the death penalty can be reconsidered through a victim-oriented and humanistic approach. This study is also expected to make a significant contribution to refining provisions on the death penalty in Indonesian criminal law.

Keywords: Commutation; Death Penalty; Indonesian Criminal Law; Islamic Law.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

INTRODUCTION

Indonesia continues to uphold the death penalty in its criminal law reform through the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP), but with a more moderate approach. These new provisions introduce the death penalty as an alternative, a mechanism for postponing executions,[1] and the possibility of commutation/conversion to life imprisonment.[2] This policy is crucial given the large number of prisoners awaiting execution. Data from the Institute for Criminal Justice Reform (ICJR) as of March 20, 2024, shows that out of 1,326 death penalty cases, there have been a total of 1,486 defendants from 1969 to 2023. Of the total 1,486 defendants, at least 617 defendants have been sentenced to death and are awaiting execution based on the final court verdict.[3]

However, there is a problem: the commutation mechanism in the new Criminal Code makes changes to the death penalty dependent on an assessment of good behaviour and remorse during the probation period, as stipulated in Article 100. This measure remains highly subjective, especially as it centres on assessing the state and provides no formal space for the victims involved. This provision still raises conceptual issues because it relies heavily on the state's assessment of the convicted person's "commendable conduct and behaviour." Such criteria have the potential to introduce subjectivity and institutional bias, as assessments of good behaviour may be influenced by correctional institutions' administrative standards, officials' perceptions, or state considerations that may not reflect victims' interests. Consequently, the provisions of this Article not only raise issues of legal certainty for the convicted person—since the evaluation standards are not yet fully

[1] Gabrielle Aldy Manoppo et al., "Analisis Pidana Mati Berdasarkan Pasal 100 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *LEX ADMINISTRATUM* 12, no. 1 (2023): 1, https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/51527.

[2] Ricky Gunawan, *Mendorong Komutasi Pidana Mati Dan Penjara Seumur Hidup Yang Efektif, Berkeadilan, Dan Bermartabat*, Kertas Kebijakan (LBHM dan PBHI, 2024), 1–30, https://lbhmasyarakat.org/en/kertas-kebijakan-mendorong-komutasi-pidana-mati-dan-penjara-seumur-hidup-yang-efektif-berkeadilan-dan-bermartabat/.

[3] Iftitahsari et al., *Laporan Situasi Kebijakan Pidana Mati Di Indonesia 2023: Pengubahan Pidana Mati Secara Otomatis Mandat KUHP Baru* (Institute for Criminal Justice Reform, 2024), https://icjr.or.id/laporan-situasi-kebijakan-pidana-mati-di-indonesia-2023/.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

measurable and transparent—but also have implications for the rights of victims, who risk remaining marginalised in the commutation process.

This differs from Islam, particularly in *qishās*. Although victims can demand appropriate punishment, [4] Islam also places victims at the centre of justice (*victim-centred*). [5] In Islam, this mechanism is known as the concept of criminal commutation through the concepts of *Diyat* and *'Afwu* (forgiveness). The concepts of *Diyat* and *'Afwu* represent a victim-centred paradigm of justice, as the victim or their heirs are not treated merely as passive objects in the criminal justice process, but rather as subjects who possess moral and legal agency in determining the form of resolution for the case. Unlike the retributive approach, which emphasises commensurate punishment for the perpetrator, and the utilitarian approach, which evaluates criminal law based on social benefits such as deterrence, prevention, or the protection of society, the concepts of *Diyat* and *'Afwu* offer a more restorative orientation toward justice.

The concept of *qishās* in Islam is highly flexible; the victim's heirs have the option of not seeking *qishās* (the death penalty) and instead accepting *Diyat* (financial compensation) from the perpetrator.[6] They can even choose to *'Afwu* (forgive) the perpetrator completely without demanding *qishās* and *Diyat*.[7] This act of forgiveness is highly recommended in the Quran and Hadith.[8] It is this flexibility that underscores the fact that Islamic law is not merely retributive in nature, but rather an alternative paradigm in criminal justice that places a high value on forgiveness, reconciliation, and restoration, while aligning with the principles of restorative justice. The possibility of commutation

[4] Susan C. Hascall, "Shari'ah and Choice: What the United States Should Learn from Islamic Law About the Role of Victims' Families in Death Penalty Cases," SSRN Scholarly Paper no. 2041200 (Social Science Research Network, September 1, 2010), https://papers.ssrn.com/abstract=2041200.

[5] Absar Aftab Absar, "Restorative Justice in Islam with Special Reference to the Concept of Diyya," *Journal of Victimology and Victim Justice* 3, no. 1 (2020): 38–56, https://doi.org/10.1177/2516606920927277.

[6] Siti Zubaidah Ismail, "The Modern Interpretation of the Diyat Formula for the Quantum of Damages: The Case of Homicide and Personal Injuries," *Arab Law Quarterly* 26, no. 3 (2012): 361–379, https://doi.org/10.1163/15730255-12341237.

[7] Susan C. Hascall, "Shari'ah and Choice."

[8] Absar Aftab Absar, "Restorative Justice in Islam with Special Reference to the Concept of Diyya."

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

based on the victim's consent, a characteristic of Islamic law, has not been fully accommodated in the new Criminal Code.

This integration issue has not been addressed in previous studies. A review of the literature shows that current research remains polarised. For example, Tongat's study on the death penalty in Indonesia: Between the perspectives of criminal law and Islamic law,[9] is still general in its review of the legality of the death penalty. On the other hand, research conducted by Ganang Renaldi Fadila et al., which has examined the Commutation of the Death Penalty in Article 100 of Law Number 1 of 2023, focuses solely on the commutation of the death penalty from the perspective of Indonesian criminal law and does not discuss Islamic law. Finally, Dudung Abdul Azis et al. conducted research examining *Diyat* as a substitute for the death penalty as a reform of criminal law in Indonesia.[10] Although it discusses *Diyat*, this study focuses on analysing the relationship between *Diyat* and the application of the death penalty and *Diyat* as a substitute for the death penalty, which is different from the study to be conducted here, where the concepts of *Diyat* and *'Afwu* in Islamic law will be integrated into the conditions for commuting the death penalty to life imprisonment.

The most recent study and the one most relevant to this research is the study conducted by Siti Zubaidah Ismail (2024), which discusses "Proposing *Diyat* as an alternative to the death penalty for the crime of murder in Malaysia."[11] Its relevance to this research lies in its discussion of the potential impact of integrating the concept of *Diyat* into Malaysian criminal law. In general, this is closely related to the current study; however, Malaysian criminal law—particularly regarding the death penalty—does not yet provide for the commutation of the death penalty, unlike the provisions in Indonesian criminal law.

[9] Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives," *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (2024): 1, https://doi.org/10.22219/ljih.v32i1.32335.

[10] Dudung Abdul Aziz and Darwiti Setiani, "Diyat Sebagai Pengganti Pidana Mati Sebagai Pembaruan Hukum Pidana Di Indonesia," *JURNAL USM LAW REVIEW* 7, no. 3 (2024): 1925–1938, https://doi.org/10.26623/julr.v7i3.10869.

[11] Siti Zubaidah Ismail, "Proposing Diyat as an Alternative to Death Penalty for the Crime of Murder in Malaysia," *Jurnal Syariah* 32, no. 3 (2024): 487–518, https://doi.org/10.22452/syariah.vol32no3.6.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

This distinction sets this study apart and will subsequently offer an update to the provisions on the commutation of the death penalty in Indonesian criminal law.

In response to this academic void, researchers have proposed a new approach by integrating the concepts of *Diyat* and *'Afwu*, not to replace positive law, but as material indicators to strengthen the grounds for commutation in the new Criminal Code. Thus, the commendable attitude and good behaviour of death row inmates are not only assessed by the state but also validated by the forgiveness of the victims. This research is expected to make a significant contribution to improving death penalty regulations so that they not only meet formal legal requirements but also achieve restorative substantive justice.

METHOD

This study employs a normative legal research design, drawing on a statutory, conceptual, and comparative approach. The statutory approach is used to analyse the provisions regarding conditional death sentences in Article 100 of the Criminal Code, which governs the possibility of converting a death sentence to life imprisonment following a probationary period. The conceptual approach is used to examine the key concepts underlying this study, namely restorative justice, victim-centred justice, *Diyat*, *'Afwu*, commutation of the death penalty, legal certainty, victims' rights, and the rights of the convicted. The comparative approach in this study involves comparing three legal frameworks and schools of thought. First, Indonesian criminal law, particularly the provisions on conditional capital punishment in the new Criminal Code. Second, Islamic criminal law, specifically the concepts of qiṣāṣ, *Diyat*, and *'Afwu* in homicide cases. Third, the contemporary restorative justice paradigm that has emerged in modern penal theory, particularly emphasising victim restoration, offender accountability, and community participation. This study is descriptive-analytical, aiming to explain the relationships among various legal norms and concepts, and prescriptive, aiming to formulate an ideal harmonisation model. The research data consists of primary, secondary, and tertiary legal materials collected through literature reviews and documentation. Primary legal materials were obtained from Law No. 1 of 2023 on the Criminal Code, the Quran, and the Hadith.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

The use of the Quran and Hadith as primary legal sources is conducted through the maqāṣid al-syarī'ah approach to interpret the substantive objectives of the concepts of *Diyat* and *'Afwu*, particularly in relation to the protection of life (*ḥifẓ al-nafs*), the protection of human dignity, the rehabilitation of victims, and the attainment of the public interest.

Secondary legal sources are drawn from textbooks, scholarly journals, and research findings relevant to the research focus. Tertiary legal sources come from legal dictionaries and encyclopedias used to understand technical terms. The legal analysis in this study was conducted using a qualitative-prescriptive approach through three stages. First, the identification of legal norms involved examining the regulatory structure of Article 100 of the Criminal Code regarding conditional death sentences, particularly the probationary period, the assessment of the convicted person's behaviour, and the state's authority to modify the sentence. Second, identifying points of conflict and conceptual gaps between the Criminal Code and the principles of Islamic law. Third, normative harmonisation, namely formulating an integration model that does not treat Islamic law as a substitute for national law, but rather as a source of values and legal principles that can enrich the reform of Indonesian criminal law.

RESULTS AND DISCUSSION

Regulations on the Commutation of the Death Penalty in Indonesia's New Criminal Code

Capital punishment remains a dynamic discourse and a serious debate among the global community, including in Indonesia. This debate is actually based on issues of justice, humanity, and the prevention of potential crimes.[12] Theoretically, this debate is divided into two main camps: those who want to abolish capital punishment altogether (abolitionists) and those who want to maintain capital punishment based on applicable

[12] Roni Efendi, "Pidana Mati Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 125–43, https://doi.org/10.31958/juris.v16i1.965.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

positive law (retentionists).[13] Furthermore, the debate over the death penalty between abolitionists and retentionists essentially revolves around the issue of human rights violations,[14] especially the right to life.[15]

Amnesty International notes that 113 countries have completely abolished the death penalty, and a total of 145 cou ntries have abolished the death penalty in law or practice.[16] However, there are still countries that continue to maintain the death penalty. Specifically, 23 countries still regulate the death penalty in their criminal law but have never imposed the death penalty. Meanwhile, 55 countries still maintain and impose the death penalty, including Indonesia.[17]

Conceptually, the death penalty is carried out by the state as a lethal act against criminals who have been found guilty by a court of law with a final and binding decision.[18] In general, the purpose and intent of imposing the death penalty on offenders is to provide a sense of justice, public benefit, and social order, in accordance with the very purpose of the law itself.[19] The death penalty is only a last resort when other measures fail to work effectively.[20] The death penalty is designed to be a special punishment and only applies to certain crimes based on selective and strict rules, which is considered appropriate, given

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[13] Baren Sipayung et al., "Penerapan Hukuman Mati Menurut Hukum Positif Di Indonesia Ditinjau Dari Perspektif Hak Asasi Manusia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 134–142, https://doi.org/10.31316/jk.v7i1.4710.

[14] Wahyu Erni Yulianti, "Komutasi Pidana Mati Kejahatan Narkotika Dalam Perspektif Hak Asasi Manusia," *Masalah-Masalah Hukum* 53, no. 3 (2024): 283–292, https://doi.org/10.14710/mmh.53.3.2024.283-292.

[15] Abdul Syatar et al., "The Consideration of Maslahat in the Imposition of the Death Penalty for Serious Sexual Crimes in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 137–154, https://doi.org/10.29240/jhi.v9i1.8880.

[16] Ady Thea DA, "Hukuman Mati Hanya untuk 'Kejahatan Paling Serius,'" hukumonline.com, accessed August 22, 2025, https://www.hukumonline.com/berita/a/hukuman-mati-hanya-untuk-kejahatan-paling-serius-lt67f5e63356581/.

[17] Bilal Ramadhan, "27 Vonis Hukuman Mati Diketok di Indonesia Sepanjang Tahun Ini," Republika Online, October 10, 2023, https://republika.co.id/share/s2ba1z330.

[18] Marchell Nabil Muhamad, "Transformasi Pidana Mati Dalam Kitab Undang - Undang Hukum Pidana Baru," *Jurnal Mahasiswa Indonesia* 1, no. 01 (2023): 01, https://journal.pusatpenelitian.com/index.php/jmi/article/view/77.

[19] Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional Dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 137–150, https://doi.org/10.24090/mnh.v15i1.4579.

[20] Abdul Manan, "Ancaman Pidana Mati Terhadap Pemberantasan Tindak Pidana Korupsi," *Jurnal Hukum* 36, no. 1 (2020): 12–24, https://doi.org/10.26532/jh.v36i1.11194.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

that the death penalty is the most severe punishment among all other types of punishment.[21] The distinctive nature of the death penalty, which is severe and concerns life itself, makes it logical that there will ultimately be pros and cons.[22] The middle ground policy in the new Criminal Code is an attempt to strike a balance between *abolitionist* and *retentionist* groups, including ambivalence about the death penalty in the international arena.[23] The policy of moderation on the death penalty aims to delay its implementation or, even further, prevent its implementation by replacing it with imprisonment.[24]

There is a new development regarding the framework of the death penalty in Indonesia, where capital punishment remains a form of punishment.[25] In the New Indonesian Criminal Code, the death penalty is still accommodated but as a conditional death penalty because it is no longer a primary punishment but a special punishment that is imposed as analternative[26] and provides room for changing the punishment from death to life imprisonment. This is considered a solution to bridge the gap between those who are for and against the death penalty.[27] The New Criminal Code has opened up space by placing the death penalty as an alternative punishment and regulating the possibility of changing the punishment based on certain evaluations.[28] This change in punishment is known as commutation.

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[21] Tongat, "Death Penalty in Indonesia."

[22] Yb Irpan, "Eksistensi Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Penegakan Hukum Di Indonesia," *Wacana Hukum* 23, no. 1 (2017), https://doi.org/10.33061/wh.v23i1.2023.

[23] "Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana .Pdf," n.d., accessed May 22, 2024, https://bphn.go.id/data/documents/naskah_akademik_tentang_kuhp_dengan_lampiran.pdf.

[24] Calvin Wie, "Jalan Tengah Indonesia Menuju Penghapusan Pidana Mati," *Jurnal Hukum & Pembangunan* 54, no. 4 (2025), https://doi.org/10.21143/jhp.vol54.1701.

[25] Ove Syaifudin Abdullah et al., *Laporan Situasi Kebijakan Pidana Mati Di Indonesia 2024: Transisi Semu Menuju Transformasi* (Institute for Criminal Justice Reform, 2025), https://icjr.or.id/laporan-situasi-kebijakan-pidana-mati-di-indonesia-2024-transisi-semu-menuju-transformasi/.

[26] Pasal 67 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

[27] Basto Daeng Robo, "Identifying the Prophetic Legal Ethos in the Death Penalty Provisions of the Indonesian Criminal Code," *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 3 (2024): 3, https://doi.org/10.25041/fiatjustisia.v18no3.3639.

[28] Endang Sri Melani, *Kajian Atas Rancangan Peraturan Pemerintah Tentang Tata Cara Perubahan Pidana Seumur Hidup dan Pidana Mati* (Komisi Nasional Hak Asasi Manusia RI, 2025).

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

Commutation of punishment is a change in the suffering/misery imposed on a person.[29] This policy upholds justice while accounting for humanitarian considerations. On the one hand, the death penalty remains an available option, so that justice for victims and society can be maintained. On the other hand, it provides perpetrators with an opportunity to show remorse and attempt rehabilitation.[30] Thus, the death penalty commutation policy seeks to meet the demands of justice from both sides, namely by maintaining severe punishment for serious crimes, but also providing opportunities for self-improvement and potential rehabilitation for perpetrators. Those sentenced to death also need to be allowed to have their sentences changed based on certain conditions, such as physical and mental conditions and socio-political contexts that make it impossible.[31] It can therefore be said that the commutation of the death penalty balances the public interest or protection of society with the interests and protection of the individual,[32] as well as protecting society, the death penalty also takes into account the interests of the individual.

There are two forms of commutation in the New Criminal Code, namely commutation of the death penalty with a 10-year probation period and commutation of the death penalty if the death penalty is not carried out within 10 years after the pardon is rejected. Commutation of the death penalty with a probation period is regulated in Article 100 of the Criminal Code. Regarding commutation in this provision, it must be stated in the judge's decision confirming the imposition of the death penalty with a probation period of 10 years starting from 1 (one) day after the decision, taking into account the defendant's remorse and hope for self-improvement or considering the defendant's role in the crime. If, during the probation period, the convict demonstrates a commendable attitude and behaviour, the death penalty will be commuted to life imprisonment through a Presidential

[29] Muhamad Andre Nurdiansah, "Penerapan Kebijakan Komutasi Pidana Mati Pada RKUHP Dalam Perspektif Hukum Dan Hak Asasi Manusia," *Jurnal Hukum dan HAM Wara Sains* 2, no. 01 (2023): 20–28, https://doi.org/10.58812/jhhws.v2i01.150.

[30] Dita Melati Putri, "Hukuman Pidana Mati Dalam KUHP Baru Dan Perspektif Abolisionalis Serta Retensionis," *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara* 2, no. 4 (2024): 01–13, https://doi.org/10.55606/eksekusi.v2i4.1451.

[31] Abdullah et al., *Laporan Situasi Kebijakan Pidana Mati Di Indonesia 2024: Transisi Semu Menuju Transformasi*.

[32] Fadila et al., "Komutasi Hukuman Mati Pasal 100 Undang-Undang Nomor 1 Tahun 2023."

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

Decree after consideration by the Supreme Court, calculated from the date the Presidential Decree is issued. Conversely, if the convicted person does not demonstrate commendable behaviour and there is no hope for improvement during the probation period, the death penalty may be carried out on the orders of the Attorney General.[33] The reformed death penalty is no longer rigid, but is formulated as a suspended death sentence under certain circumstances.[34]

With a 10-year probation period, this is in line with utilitarian theories or principles of punishment. According to this theory, punishment is not merely a form of retribution or retaliation against someone who has committed a crime, but has specific beneficial objectives.[35] The 10-year probation period aims to ensure that during this period, the convicted person demonstrates a change in behaviour in their daily life so as not to repeat their criminal acts. Furthermore, the probation period aims to rehabilitate the convicted person through their own efforts and willpower.[36]

When a convict is sentenced to death and serves a probationary period in a correctional institution, it is only natural that they should behave well, because the purpose of the correctional system is to guide inmates based on Pancasila.[37] In addition, correctional institutions also aim to strengthen the relationship between prisoners and their God.[38] This guidance is a means of improving the quality of inmates so that they realise their mistakes and can improve themselves.

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[33] Pasal 100 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

[34] Michelle Miao, "Two Years between Life and Death: A Critical Analysis of the Suspended Death Penalty in China," *International Journal of Law, Crime and Justice* 45 (June 2016): 26–43, https://doi.org/10.1016/j.ijlcj.2015.10.003.

[35] Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Alumni, 2010).

[36] Roby Anugrah and Raja Desril, "Kebijakan Formulasi Pidana Mati Dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 80–95.

[37] Parhan Muntafa and Ade Mahmud, "Penerapan Hukum Pidana Mati Bersyarat Dalam KUHP Baru Di Hubungkan Dengan Asas Kepastian Hukum," *Jurnal Preferensi Hukum* 4, no. 2 (2023): 2, https://doi.org/10.55637/jph.4.2.6918.130-136.

[38] Royyan Mahmuda Al'Arisyi Daulay, "Analisis Nilai-Nilai Politik Profetik Dalam Undang-Undang Nomor 22 Tentang Pemasyarakatan," *An-Natiq Jurnal Kajian Islam Interdisipliner* 3, no. 1 (2023): 42–53, https://doi.org/an-natiq.v2i2.55744.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

Commutation of the death penalty if the death penalty is not carried out within 10 years after the pardon is rejected is regulated in Article 101 of the Criminal Code. The requirements for commutation of the death penalty can be carried out in this provision if the convict has not escaped during the 10-year waiting period for execution.[39] The postponement of the death penalty is a concrete manifestation of the idea of elasticity in criminal punishment and also provides an opportunity for the convicted person to reform.[40] In addition, the convicted person does not have to bear the psychological burden of uncertainty regarding when the death penalty will be carried out.

The provisions of Article 100 of the Criminal Code apply mutatis mutandis if the probation period has been completed and the convicted person shows a change in attitude. Meanwhile, Article 101 of the Criminal Code stipulates that requests for leniency or pardon by convicted persons must be made in the form of a petition to the president. This petition is the initiative of the convicted person.[41] The provisions on the death penalty with a probation period and the change from the death penalty to life imprisonment after the convicted person's clemency has been rejected reflect the values of Pancasila, as they contain the value of balancing the interests of the individual and society, in this case protecting individuals and society to realise justice and truth based on Belief in One God.[42] This is certainly inseparable from the paradigm of the purpose of punishment in the new Criminal Code, which also stems from the values of balance.

The provisions on commutation of the death penalty in Indonesia's new Criminal Code will come into effect on January 2, 2026. However, Indonesia has not carried out any executions since 2016, but new death sentences continue to be handed down every year. In 2024, Indonesian courts sentenced 85 criminals to death, the majority of whom were involved in narcotics cases. Amnesty International Indonesia noted that in 2024, at least

[39] Pasal 101 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

[40] Anugrah and Desril, "Kebijakan Formulasi Pidana Mati Dalam Pembaharuan Hukum Pidana Indonesia."

[41] Yulianti, "Komutasi Pidana Mati Kejahatan Narkotika Dalam Perspektif Hak Asasi Manusia."

[42] Bambang Poernomo dalam Irvino Rangkuti, "Kajian Norma Pancasila Terhadap Penerapan Sanksi Pidana Mati Dalam Hukum Positif Di Indonesia," *Res Nullius Law Journal* 5, no. 1 (2023): 47–59, https://doi.org/10.34010/rnlj.v5i1.8727.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

85 people were sentenced to death in 75 cases, most of which were drug-related (57 cases with 64 defendants) and the rest were murder cases (18 cases with 21 defendants). Meanwhile, from January to March 2025, the panel of judges sentenced 21 defendants from 21 cases to death.[43]

Although the new death penalty commutation policy will only come into effect in January 2026, the Indonesian government has already implemented such commutations in the past, albeit with a different concept. The Indonesian government has repatriated two death row inmates, Mary Jane Veloso from the Philippines and Serge Atlaoui from France, to their respective countries. This policy is essentially a form of clemency, similar to commutation, except that the new Criminal Code sets out more specific requirements that convicts must meet before they can receive clemency from the president.

The death penalty, with the right to be free from torture and cruel, inhuman, and degrading treatment or punishment, is related to two aspects. First, it is related to the death penalty as a form of torture. Second, it is related to the death row phenomenon.[44] Death row inmates who have been in prison for years awaiting execution have a psychological state of extreme resignation resulting from the process of preparing them for execution.[45] The lack of clear and definite time limits for the execution of death sentences results in a waiting period that is far from certain and only in the implementation of the death penalty.[46]

Although the death penalty policy in Indonesia's criminal law reform still allows for the imposition of the death penalty, there is a commutation policy that can be implemented by setting a definite time limit for convicts to wait for a change in their sentence or certainty of execution of the death penalty. The commutation policy is an important and progressive

[43] "Eksekusi mati global cetak rekor, vonis hukuman mati di Indonesia terus bertambah • Amnesty International Indonesia," *Amnesty International Indonesia*, April 8, 2025, https://www.amnesty.id/kabar-terbaru/siaran-pers/eksekusi-mati-global-cetak-rekor-vonis-hukuman-mati-di-indonesia-terus-bertambah/04/2025/.

[44] Supriyadi Widodo Eddyono, *Politik Kebijakan Hukuman Mati di Indonesia Dari Masa ke Masa.* (Institute for Criminal Justice Reform, 2017), https://icjr.or.id/wp-content/uploads/2018/01/Politik-Kebijakan-Hukuman-Mati-Indonesia-Dari-Masa-ke-Masa.pdf.

[45] Iftitahsari et al., *Laporan Situasi Kebijakan Pidana Mati Di Indonesia 2023: Pengubahan Pidana Mati Secara Otomatis Mandat KUHP Baru.*

[46] Titin Nurfatlah, "Analisis Kritis Masa Tunggu Eksekusi Mati Dalam Rancangan Kitab Undang-Undang Hukum Pidana Nasional," *Unizar Law Review* 5, no. 2 (2022), https://doi.org/10.36679/ulr.v5i2.4.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

step in fulfilling the state's obligation to protect the right to life. This policy provides an opportunity to avoid the execution of the death penalty, which deprives a person of their right to life. Commutation is an instrument to avoid violating the right to life and provides legal hope for prisoners who have served very long sentences. This commutation policy affects not only prisoners but also their families, who live in uncertainty.[47]

The commutation of the death penalty provides a period of evaluation and an opportunity for the convicted person to reform. If the convicted person demonstrates good behavior during the rehabilitation period, the death penalty is commuted to life imprisonment.[48] This is a requirement for obtaining a commutation of the death penalty to imprisonment through an instrument that assesses commendable behavior and actions during rehabilitation in a correctional institution. Instruments for assessing and conducting in-depth observations to evaluate commendable attitudes and behavior are crucial.

Normatively, this provision is viewed as a step forward because it allows for the possibility of commuting the death penalty and mitigates the irreversible nature of capital punishment. However, from an analytical perspective, the provision still raises serious concerns because the criteria for "commendable conduct and behavior" have not been defined in an objective, measurable, and transparent manner. The lack of clarity regarding these parameters can lead to discrepancies in assessment among correctional institutions, as each institution may have different administrative standards, bureaucratic cultures, and perceptions of discipline. Consequently, two convicts with relatively similar circumstances may receive different evaluations depending on the institution where they are serving their sentences. This problem has direct implications for legal certainty, as convicts lack clear standards regarding the criteria they must meet to qualify for a commutation of their sentence.

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[47] Melani, *Kajian Atas Rancangan Peraturan Pemerintah Tentang Tata Cara Perubahan Pidana Seumur Hidup dan Pidana Mati*.

[48] Nur Annisa et al., "Analisis Kebijakan Hukuman Mati Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Inovasi Hukum dan Kebijakan* 6, no. 2 (2025), https://ejurnals.com/ojs/index.php/jihk/article/view/1958.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

In addition to administrative subjectivity, the mechanism for commuting death sentences also carries the risk of politicisation, particularly because the final decision on commutation involves the president. In a presidential system, the president's authority has a constitutional basis as part of the executive branch, but in cases involving the death penalty, that authority must be checked by the principles of due process, transparency, and accountability. Without a clear evaluation mechanism, commutation decisions may be perceived as political decisions, not merely legal ones. The decision to commute or uphold a death sentence may be influenced by political pressure, public sentiment, or considerations of power, as the death penalty is associated with cases of serious crimes that face intense public pressure.

The rule of law requires that any decision affecting the right to life, the right to legal certainty, and the right to equal treatment before the law must be based on objective and verifiable criteria. The Constitution of the Republic of Indonesia affirms the principles of equality before the law and the protection of human rights, including the right to fair legal certainty and equal treatment before the law. Therefore, the commutation of the death penalty cannot simply be left to state authority, but must be established as a transparent, participatory, and accountable legal process.

The Concepts of *Diyat* and *'Afwu* in Islamic Law

One of the distinctive features of Islamic law is the establishment of different types of punishment for different cases.[49] In Islamic law, the death penalty can be found in three forms of punishment, namely *hudud*, *qishās*, and *ta'zir*.[50] Of these three forms of punishment, the death penalty in *qishās* allows for commutation of the sentence. This is because, even though qishās has been imposed, its implementation will largely depend on the victim or their family.[51] *Qishās* refers to the principle of equal retribution (a similar or

[49] Khusnul Khotimah, "Hukuman dan Tujuannya Dalam Perspektif Hukum Islam," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 1, no. 2 (2014), https://doi.org/10.29300/mzn.v1i2.57.

[50] Muhammad Hatta, "Perdebatan Hukuman Mati Di Indonesia: Suatu Kajian Perbandingan Hukum Islam Dengan Hukum Pidana Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012), https://jurnalmiqotojs.uinsu.ac.id/index.php/jurnalmiqot/article/view/121.

[51] Tongat, "Death Penalty in Indonesia."

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

equivalent punishment) imposed on the perpetrator of a criminal act,[52] to ensure equal justice between the strong and the weak, and between the many and the few.[53] As the primary punishment, *qishās* has a substitute punishment: if the victim's family waives this primary punishment, qishās cannot be imposed, and *Diyat* can be imposed instead. Even *Diyat* can be waived if it is ultimately forgiven.[54]

The concepts of *Diyat* and *'Afwu* are two alternatives that can replace the punishment of *qishās*. The punishment of *qishās* can be waived if there is reconciliation between the perpetrator and the victim's family, or if the victim's family grants forgiveness.[55] Reconciliation between the perpetrator and the victim's family can result in an agreement in the form of *Diyat* as a substitute for the punishment of *qishās*. Forgiveness by the victim's family in the form of *'Afwu* can lead to the complete cancellation of the *qishās* punishment. *Diyat* is property that must be paid and given by the perpetrator to the victim or their guardian as compensation for the criminal act committed by the perpetrator. *Diyat* is required to replace the forgiven *qishās* punishment, and the fine must be paid in cash by the perpetrator.[56] In other words, *Diyat* is a form of financial compensation paid by the perpetrator of the crime to the victim's family as an alternative to the death penalty (*qishās*).[57] This concept is regulated in Surah Al-Baqarah [2]: 178, which states that whoever receives forgiveness from his brother, let him follow it up in a good manner.[58]

Al-Baqarah [2]: 178 emphasises the importance of justice and forgiveness in conflict resolution. *Diyat* is applied in cases of accidental murder or in situations where the victim's

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[52] A. Khumedi Ja'far, "Hukuman Mati Atas Delik Pembunuhan Menurut Hukum Pidana Islam Dan Hukum Pidana Positif," *Al-'Adalah* 11, no. 2 (2014): 397–408, https://doi.org/10.24042/adalah.v12i2.194.

[53] Muhamad Rizal, "Penerapan Hukum Pidana Mati Perspektif Hukum Islam di Indonesia," *Nurani: jurnal kajian syari'ah dan masyarakat* 15, no. 1 (2015): 101–116, https://doi.org/10.19109/nurani.v15i1.277.

[54] M. Rahmat Hakim, *Hukum Pidana Islam (Fiqih Jinayah)* (Pustaka Setia, 2000), 126.

[55] Syariful Alam et al., "The Concept of Restorative Justice in Islamic Criminal Law: Alternative Dispute Settlement Based on Justice," *KnE Social Sciences* 9, no. 1 (2024): 642–651, https://doi.org/10.18502/kss.v8i21.14779.

[56] Sudarti, "Hukum Qishash Diyat: Sebuah Alternatif Hukuman Bagi Pelaku Kejahatan Pembunuhan Berencana di Indonesia," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 12, no. 1 (2021): 35–50, https://doi.org/10.21043/yudisia.v12i1.8991.

[57] Dudung Abdul Aziz and Darwiti Setiani, "Diyat Sebagai Pengganti Pidana Mati Sebagai Pembaruan Hukum Pidana Di Indonesia."

[58] https://quran.nu.or.id/al-baqarah#178

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

family chooses to forgive the perpetrator. This reflects a combination of Allah's rights (the right to uphold justice) and human rights (the right to forgive).[59] The wisdom behind the *Diyat* punishment is for the benefit of both parties. By peacefully paying a fine to the victim's family, the perpetrator will experience a new life of safety, repent to the right path, and realise how precious life is. The victim's family who accepts the fine peacefully can use the money for their livelihood and to ease their burden of grief a little.[60] Meanwhile, the law of *'Afwu* is found in the Word of Allah SWT in Surah Al-Maidah [5]: 45, which essentially states that whoever is willing to relinquish their right to *qishās*, will have it as an expiation for their sins.[61] The purpose of granting *'Afwu* is to eliminate resentment and the desire for revenge, strengthen ties between the perpetrator's family and the victim's family, and maintain social harmony within the community.[62]

Waiving the right to *qishās* as atonement for sin, in this context, means granting forgiveness by the victim's family to the perpetrator, without the need to compensate with *Diyat*. This verse encourages the victim's family to show mercy by avoiding the punishment of *qishās*. Mercy and forgiveness are strongly emphasised and encouraged, and even praised in the Quran and Hadith.[63] It is not merely a recommendation or emphasis; if we refer to this verse, it is considered that waiving the right to qishās is atonement for the victim's sins. This means that this verse not only allows the death penalty as a solution to the problem, but also considers the concepts of tolerance between humans and forgiveness.[64]

The concepts of *Diyat* and *'Afwu* are closely related to the fulfillment of justice in several aspects, such as the perpetrator, the victim, and the community. From the perpetrator's point of view, a person who should be subject to *qishās* but is forgiven by the victim's family and pays *Diyat* or is forgiven completely will certainly benefit greatly. From

[59] Paizah Ismail, "Asas Perbezaan Kadar Diyat Antara Lelaki Dan Wanita Menurut Undang-Undang Islam," *Jurnal Syariah* 5, no. 2 (1997): 229–237.
[60] Sudarti, "Hukum Qishash Diyat."
[61] https://quran.nu.or.id/al-maidah#45
[62] Khamim Khamim et al., "Convergence of Restorative Justice and Al-'Afwu: Reforming Criminal Procedure Law in Indonesia," *Justicia Islamica* 22, no. 2 (2025): 277–302, https://doi.org/10.21154/justicia.v22i2.9807.
[63] Absar Aftab Absar, "Restorative Justice in Islam with Special Reference to the Concept of Diyya."
[64] Tongat, "Death Penalty in Indonesia."

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

the point of view of the victim or their family, they can choose between *qishāṣ*, requesting *Diyat*, or forgiveness. In this case, the victim's interest in being treated fairly is taken into consideration. From the community's perspective, they certainly want a situation that is free from various crimes.[65]

Integration of the Concepts of *Diyat* and *'Afwu* in the Establishment of Restorative Justice in the Commutation of the Death Penalty in Indonesia

According to Barda Nawawi Arief, the existence of the death penalty in the New Criminal Code is based on various principles that are broadly referred to as the idea of balance.[66] The idea of balance gives rise to a more prudent attitude because it considers everything from different perspectives/angles, looking not only at the perpetrator but also at the victim, and not only at the interests of the individual but also at the interests of society.[67] Therefore, the purpose of punishment in the New Criminal Code is to protect society and protect/guide individuals. This subsequently became one of the bases for the birth of the concept of commutation of the death penalty.

In addition to the concept of balance, which forms the basis of the objectives of punishment, the New Criminal Code has also undergone a paradigm shift from one that originally emphasised retributive justice to one oriented toward corrective justice, restorative justice, and rehabilitative justice.[68] However, neither the idea of balance nor the paradigm shift in punishment has been fully realised in the New Criminal Code's provisions on the commutation of the death penalty. This is because the provisions on the commutation of the death penalty are limited to the paradigm of corrective justice aimed at the perpetrator, and do not yet include the paradigms of restorative and rehabilitative justice aimed at the victim and society. Similarly, the idea of balance only considers the

[65] Mahendra Kusuma and Rosida Diani, "Qishash Diyat Dalam Hukum Pidana Islam Lebih Mencerminkan Keadilan Dari Sisi Korban," *Jurnal Dinamika* 2, no. 2 (2022): 45–54.

[66] Barda Nawawi Arief, *Pidana Mati Persfektif Global, Pembaharuan Hukum Pidana Dan Alternatif Pidana Untuk Koruptor* (Pustaka Magister, 2015), 25–26.

[67] Muhyidin Muhyidin et al., "Contribution of Islamic Law Concerning The Death Penalty to the Renewal of Indonesian Criminal Law," *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022): 73–90, https://doi.org/10.15294/ijals.v4i1.23277.

[68] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana Edisi Penyesuaian KUHP Nasional* (Rajawali Pers, 2024), 55.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

perpetrator's perspective, while ignoring the victim. As a result, the objective of punishment to protect society has not been fully realised.

In order to achieve the objectives of punishment in line with the paradigm of punishment in the provisions on commutation of the death penalty in the New Criminal Code, it is necessary to integrate the values contained in the concepts of *Diyat* and *'Afwu* in the implementation of qishas in Islamic criminal law. The concept of commutation of the death penalty in the Criminal Code is similar to the concept of *qishāṣ* punishment in Islamic law in that both allow for changes in punishment. However, in *qishāṣ* punishment, there are provisions in the form of *Diyat* and *'Afwu* from the victim's family, which are alternative[69] and involve the victim or the victim's family. Meanwhile, the commutation of the death penalty is purely a decision by the government, which in Islamic law is equated with the concept of *ta'zir* punishment, without involving the victim or their family at all.

Involving victims or their families in the process of fulfilling the requirements for obtaining a commutation of the death penalty is a way to integrate the concepts of *Diyat* and *'Afwu* into the regulation of death penalty commutation. As stipulated in Article 100 paragraph (4) of the New Criminal Code, the requirement for a death row inmate to obtain a change of sentence from death to life imprisonment is "to demonstrate commendable attitude and behavior during the 10-year probation period," while Article 101 stipulates that "the death penalty shall not be carried out for 10 years since the pardon was rejected, not because the convict escaped." Looking at these two conditions, there is considerable scope for involving the victim or their family during the convict's probation period or waiting period for execution of the death penalty. The victim or their family will likely be involved in the commutation of the death penalty through the integration of Islamic legal concepts. This is in line with the values of restorative justice, namely victim participation, redress for the harm suffered by the victim, reconciliation or reparation, and guarantees against the recurrence of the crime. Redress for the harm suffered by the victim may include

[69] Zainuddin Zainuddin, "Restorative Justice Concept On Jarimah Qishas In Islamic Criminal Law," *Jurnal Dinamika Hukum* 17, no. 3 (2017): 335–341, https://doi.org/10.20884/1.jdh.2017.17.3.826.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

compensation, an apology, and restitution to the victim.[70] To assess the extent to which victim involvement is important through the integration of the concepts of *Diyat* and *'Afwu* into the regulations governing the death penalty, the following table provides a comparison:

Table 1: Comparison of victim involvement in the current regulations on commutation of the death penalty and after the integration of the concepts of *Diyat* and *'Afwu*

Aspect	**Current regulations on the commutation of the death penalty**	**Regulations on the Commutation of the Death Penalty Following Integration**
The victim's status	Victims or their families are merely the parties who bear the consequences of criminal acts and play no role in the process of commuting the death penalty	Victims or their families are among those involved in the process of implementing and considering commutations of the death penalty
System Orientation	Focused on the interests of the state and stakeholders through public law mechanisms	Focused on striking a balance between the interests of the state, perpetrators, and victims
Considerations for Granting a Commutation	Determined based on legal and administrative considerations and an assessment of the convicted person	In addition to the legal and administrative aspects, consideration should be given to reconciliation, forgiveness, and the rehabilitation of victims
The victim's right to express an opinion	It is not specifically provided for as part of the death penalty commutation mechanism.	Victims are allowed to express their views and assessments of the convicted person before a request for commutation of the death penalty is filed
Reconciliation between the perpetrator and the victim	Not part of the death penalty commutation process	One of the key factors considered in the commutation process through the restorative program

[70] Emma Charlene Lubaale, "Restorative Justice and Cases of Serious Offending: A South African and Canadian Perspective," *Obiter* 38, no. 2 (2017): 2, https://doi.org/10.17159/obiter.v38i2.11441.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

Granting forgiveness and compensation	Has no legal consequences and is not recognised in the mechanism for commuting the death penalty	It is a primary consideration and serves as a form of redress or restitution for victims without undermining the state's authority to enforce the ruling
The Role of the State	The state is the dominant actor that determines the entire commutation process	The state retains ultimate authority, but facilitates restorative programs and takes the victims' interests into account
Purpose of commutation	Focusing on changes in the type of criminal offense and the evaluation of convicted offenders	In addition to changes to criminal law, the goal is to achieve reconciliation and the recovery of victims
The Paradigm of Justice	Retributive and rehabilitative, with the interests of the state taking precedence	Restorative justice, which integrates the values of justice, humanity, forgiveness, and victim recovery

Source: Authors' analysis

Based on what has been outlined in the table above, it is in this context that the integration of the concepts of *Diyat* and *'Afwu* can make both a conceptual and practical contribution. This integration goes beyond the normative understanding that Islam recognises compensation and forgiveness; it must be translated into an applicable model within the national legal system. One proposed model is establishing a restorative justice mechanism within the criminal sentence commutation process. This mechanism can be established as a formal forum involving various stakeholders, namely the victim, the victim's family, the convicted person, the Correctional Institution, community leaders, psychologists or social workers, certified mediators, and an independent body appointed by the state. Its implementation may take the form of criminal mediation or a restorative conference. This model aligns with the principles of restorative justice in international standards, which view restorative processes as allowing victims, offenders, and other

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

affected parties to participate together in resolving the consequences of criminal acts.[71] The outcome of this mechanism is not intended to replace a court ruling but to provide recommendations to the authorities responsible for the process of commuting death sentences.

This is also reinforced by Susan C Hascall's opinion that qishās contains restorative justice values, because the victim or their family plays a central role in punishing the perpetrator. The victim is given the choice of carrying out the punishment, asking the perpetrator to pay *diyat* as compensation for their crime, or forgiving the perpetrator. Therefore, *qishās* punishment supports the restorative justice movement and enables the victim or their family to participate in granting forgiveness and reconciliation.[72] Restorative justice within the conceptual framework of integrating *Diyat* and *'Afwu* is not merely understood as the payment of financial compensation in the form of a monetary sum to the victim. Rather, restorative justice emphasises participatory processes, the restoration of relationships, acknowledgment of harm, and the perpetrator's accountability. This approach is crucial to prevent the commodification of forgiveness—a situation where forgiveness appears to be something that can be purchased by perpetrators with financial means, thereby potentially creating inequality between wealthy and impoverished offenders. On the one hand, by prioritising solutions based on dialogue, forgiveness, and social responsibility, people will become increasingly accustomed to resolving issues peacefully and with mutual respect.[73]

To avoid such disparities, the model for integrating *Diyat* and *'Afwu* into Indonesian criminal law must include limiting principles. First, compensation must not be the sole criterion for pardon or commutation. Second, the perpetrator's financial capacity

[71] United Nation Office on Drugs and Crime, *Handbook on Restorative Justice Programmes Second Edition* (United Nations, 2020).

[72] Susan C. Hascall, "Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?," *Berkeley Journal of Middle Eastern & Islamic Law*, ahead of print, 2011, https://doi.org/10.15779/Z385P40.

[73] Joko Budi Darmawan et al., "Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 269–94, https://doi.org/10.32332/milrev.v4i1.10435.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

must be taken into account proportionally to prevent discrimination. Third, the state may provide a victim restitution fund in certain cases, so that victim restitution does not depend entirely on the perpetrator's financial capacity. Fourth, forgiveness must be freely given, in full awareness, and without social, political, economic, familial, or religious pressure. Fifth, restorative forums must be overseen by an independent mediator and documented in an official record to ensure legal admissibility. With these principles, *Diyat* is not understood as an economic transaction to buy forgiveness, but as part of the perpetrator's responsibility and the victim's recovery. Similarly, *'Afwu* is not understood as a moral obligation imposed on the victim or their family, but as a valid ethical and legal choice when granted voluntarily. This principle of limitation is consistent with the principle of resolution based on restorative justice, which aims to benefit the perpetrator, the victim, and the community through restoration and the fulfillment of accountability.[74]

The integration of *Diyat* and *'Afwu* must not conflict with the principle of equality before the law, the pluralistic nature of the national legal system, and the protection of human rights. Indonesia is not a theocratic state, but neither is it a state that completely separates law from religious values. Therefore, Islamic legal concepts can serve as a source of values, ethical inspiration, and material for legal reform, provided they are not applied in a discriminatory manner and remain within the framework of national law. Thus, the integration of *Diyat* and *'Afwu* must not apply exclusively to Muslim perpetrators or victims, as this could raise issues of equality. A more constitutional model is to adopt the principles underlying *Diyat* and *'Afwu* (namely, victim restitution, perpetrator accountability, voluntary forgiveness, and reconciliation) as general principles within the mechanism for commuting the death penalty. In this way, Islamic legal values are not imposed as sectarian law, but are articulated as restorative norms compatible with the principles of the rule of law, pluralism, and the protection of human rights. This is consistent with the fundamental

[74] Sriwiyanti Sriwiyanti et al., "Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law," *Journal of Islamic Law* 2, no. 2 (2021): 168–196, https://doi.org/10.24260/jil.v2i2.335.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

principles of restorative justice, which reflect the core principles of respecting, protecting, and realising human rights for both perpetrators and victims.[75]

In societies with strong communal bonds, the victim's family may face pressure from religious leaders, community figures, law enforcement officials, the perpetrator's family, or public opinion to grant forgiveness. If this occurs, *'Afwu* loses its ethical significance because forgiveness no longer stems from the victim's moral autonomy but rather from social pressure. Therefore, the forgiveness process must be accompanied by procedural safeguards, such as the victim's right to legal representation, psychological support, sufficient time to make a decision, the right to refuse mediation, and the right to withdraw from the restorative process. This principle aligns with modern restorative justice standards that emphasise voluntariness, the safety of all parties, and respect for the dignity of both the victim and the perpetrator. Therefore, the integration of *'Afwu* into the process of commuting the death penalty must be designed as a mechanism for protecting victims, not as a new instrument to burden victims with the obligation to forgive. This is where the restorative justice approach—as a result of the integration of "*'Afwu*"—comes into play, serving as one of the most appropriate concepts for addressing various legal crises.[76]

Several Muslim-majority countries that apply Islamic law demonstrate that the concepts of *Diyat* and *'Afwu* do indeed have practical relevance, but at the same time carry risks that must be anticipated. In Pakistan, the application of *qishas* and *Diyat* laws in murder cases reveals serious flaws, as the mechanisms of forgiveness and compromise can be exploited by perpetrators who hold greater social and economic power. The right of heirs to forgive and settle murder cases can serve as an escape route for the powerful and may even lead to discrimination against vulnerable groups.[77] The practice of carrying out

[75] Deni Setiyawan et al., "Law Enforcement of Sexual Violence on Social Media: An Islamic Restorative Justice Perspective," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (2025): 90–111, https://doi.org/10.18860/j-fsh.v17i1.28185.

[76] Desy Maryani et al., "A Model of Implementing Restorative Justice Perspective of Trong Yowari Traditional Jurisdiction, Jayapura Regency," *Nusantara: Journal of Law Studies* 2, no. 1 (2023): 40–51, https://doi.org/10.5281/zenodo.17390001.

[77] Qadeer Alam, "The Qisas and Diyat Law in Pakistan: Prosecution of Offence of Murder," *Islamic Studies* 58, no. 4 (2019): 551–562.

MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

qishas, accepting *Diyat*, or granting forgiveness in Iran also demonstrates that the victim's family's forgiveness can have a direct impact on the fate of a death row inmate, but at the same time raises questions about consistency, social pressure, and equal access to clemency.[78] Meanwhile, in some countries, such as Saudi Arabia and the United Arab Emirates, the *Diyat* mechanism is practiced in different ways, both in terms of determining the amount of compensation and the involvement of the state or judges,[79] and even serves as a mechanism for expunging criminal records.

Based on a comparison of these countries, an important lesson emerges regarding the integration of *Diyat* and *'Afwu* into Indonesia's national criminal law—not by literally adopting the systems of other countries, but through a transformation of principles. Indonesia can adopt their core values, namely recognition of the victim's position, the scope for forgiveness, restitution for losses, and the perpetrator's responsibility. Therefore, in this integration, *Diyat* and *'Afwu* are utilised as sources of value in the process of commuting the death penalty, not as an automatic mechanism for expunging criminal liability.

Thus, the primary contribution of integrating *Diyat* and *'Afwu* into Indonesia's contemporary criminal law reform lies in its ability to challenge an overly state-centric commutation model. Article 100 of the new Criminal Code has opened the door to the commutation of the death penalty, but it has not fully addressed questions regarding who is entitled to be heard, how the convicted person's conduct is assessed, how victims are compensated, and how the state prevents bias in the commutation process. The concepts of *Diyat* and *'Afwu* can enrich these mechanisms by introducing a more participatory, restorative, and victim-centered paradigm of justice. However, to ensure this integration does not conflict with constitutional principles and human rights, its implementation must be accompanied by clear limitations, such as: forgiveness must be voluntary, compensation must not be used as a bargaining tool for pardon, victims must be protected from pressure, and the final decision must remain subject to the principles of legal certainty, equality

[78] "Death Penalty for Murder Charges: Qisas and Forgiveness in Iran," accessed May 23, 2026, http://iranhr.net/en/articles/3659/.

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MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1455-1488

before the law, and state accountability. Within this framework, the integration of *Diyat* and *'Afwu* is not only theoretically relevant but also holds practical potential as a model for strengthening the commutation of the death penalty within a more humanistic and just Indonesian criminal justice system.

CONCLUSION

Based on the above discussion, it can be concluded that the provisions on commutation of the death penalty in the new Criminal Code are more oriented towards protecting/rehabilitating the perpetrator as an individual, and ignore the interests of the victim or their family as part of the community who should receive protection as stipulated in the objectives of punishment in the new Criminal Code. In addition, the regulation of commutation of the death penalty is limited to the paradigm of corrective justice, which only aims to reform the perpetrator, and ignores the paradigm of restorative justice, which aims to help the victim. Even the paradigm of rehabilitative justice is difficult to achieve, as envisioned in the new Criminal Code. On the other hand, the concepts of *Diyat* and *'Afwu* in qisas punishment in Islamic law contain values of restorative justice, where victims and their families play an important role in determining changes to the punishment for perpetrators. The values of restorative justice in the concepts of *Diyat* and *'Afwu*, in the form of financial compensation for victims and forgiveness from victims, can be integrated into the future revision of the death penalty commutation regulations through the concept of involving victims or their families as part of the alternative requirements for death row inmates to obtain commutation. To that end, it is necessary to integrate criminal law regulations and values in Islamic law, through the harmonisation of the regulation of commutation of the death penalty in the new Criminal Code and the concepts of *Diyat* and *'Afwu* in *qishas* punishment in order to achieve restorative justice for victims, offenders, and society.

ACKNOWLEDGEMENTS

The author would like to thank those who have helped and supported the completion of this Article, especially the Doctoral Program in Law at the Faculty of Law,

Islamic University of Indonesia. In addition, the author would also like to thank the Indonesian Education Scholarship (BPI), the Center for Higher Education Funding and Assessment (PPAPT Kemdiktisaintek), and the Indonesian Endowment Fund for Education (LPDP) as the funders/sponsors for the publication of this Article.

AUTHOR CONTRIBUTIONS STATEMENT

In this study, all authors were actively involved and made significant contributions. Basto Daeng Robo formulated the research concept, developed the framework, and collected and analysed the data. Tongat contributed to the literature review, supported data analysis, and provided critical revisions. Muhammad Arif Setiawan supported data analysis and reviewed and refined the manuscript to ensure consistency. Arisa Murni Rada contributed to drafting specific sections of the manuscript and ensuring compliance with publication guidelines. All authors were involved in reviewing and approving the final version of the research manuscript.

CONFLICT OF INTEREST

We, the authors, declare that there are no conflicts of interest related to the publication of this Article. There are no relationships with anyone who has influenced the preparation of this research manuscript.

AI USAGE STATEMENT

The author acknowledges the use of artificial intelligence-assisted language tools during the preparation of this manuscript, specifically DeepL Translator for translation and Grammarly for grammar checking and clarity improvement. These tools were used solely to enhance linguistic quality, readability, and clarity of expression. All conceptual development, legal analysis, interpretation of findings, and final intellectual content remain the sole responsibility of the author.

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