



Review of Islamic Criminal Law on Criminal Sanctions for Persecution of Jumping Bastards in Belawan (Study Decision Number: 559/Pid.B/2022/Pn. Mdn.)

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Abstract - This study examines how judges determine criminal sanctions for perpetrators involved in the persecution of jumping squirrels under Islamic Criminal Law, focusing on Case Decision Number 559/Pid.B/2022/PN. Mdn. Using a normative legal research method, this literature-based analysis scrutinizes primary and secondary legal materials through a case and analytical approach. The study reveals that the judge classified the perpetrator's actions as 'persecution that resulted in death,' leading to a 5-year prison sentence, which was reduced due to the perpetrator's polite behavior and remorse. According to Article 351 Paragraph (3) of the Criminal Code, the standard penalty for persecution causing death is 7 years in prison. The judge's decision deviates from this guideline, reflecting a more lenient approach possibly influenced by the perpetrator's conduct and regret. Under Islamic Law, such acts fall under 'murder by mistake,' where the perpetrator, lacking intent to kill, causes death through negligence. In Islamic Criminal Law, this would typically warrant diat (compensation), not ta'zir (discretionary punishment). However, since Indonesian law does not fully adhere to Islamic principles, the ta'zir punishment is deemed appropriate within the Indonesian legal context. This research contributes to legal development in Indonesia and serves as a reference for future studies on similar themes, advocating for better alignment and understanding between Islamic and national legal practices.

Keywords: Court Decisions, Criminal Sanctions, Persecution, Jumping Bastards

I. INTRODUCTION

Criminal acts are behaviors that deviate from legal norms and disrupt public order, morality, and decency. Crimes that are continuously committed will have an impact on violence that negatively affects both the perpetrator and the victim (Kusuma et al., 2021). Pickpocketing, snatching, theft, traffic violations, extortion, embezzlement, robbery, assault, rape, mass brawls, kidnapping, murder, and mutilation are examples of violent crimes that often endanger the community (Alphasa & Juarsa, 2022). One of the incidents that has long been a trend in Indonesia society is the crime of jumping squirrels. Jumping squirrels often occur not only in the forest but in the middle of the city. Just as jumping squirrels happen, jumping squirrel crimes occur in Belawan. In the chronology of the jumping squirrel carried out by Roni Alvarizi and his friend climbed a dump truck containing animal feed (soybean dregs), to steal the animal feed loaded by the defendant Dedi Iskandar. The defendant then saw suspicious movements from under the plastic tarpaulin with a distance of about five meters. The defendant took a piece of wood that was lying on the ground. The defendant then climbed on top of the garbage truck and hit the moving plastic tarpaulin six times. While doing so, the defendant saw someone trying to get out of the garbage

truck. Then the defendant checked the tailgate of the truck by stepping on it and the defendant saw movement and the defendant hit 4 times when there was no more movement, the defendant got off and retied the exposed plastic tarpaulin, then the defendant went to his friends who were fellow drivers. This incident occurred on JL K.L Yos Sudarso km.14.5 Kampung Keluarga Kel. Martubung Kec.

Islamic law was created to connect the world and the hereafter by balancing and regulating material and spiritual affairs. In this way, the reward of one's actions, good or bad, eventually returns to the perpetrator (Syahputra, 2011). Positive law, on the other hand, is the result of how people apply the law and behave in the world (Taufiq, 2021). According to Islamic criminal law, using physical violence against others is illegal and prohibited by sharia because it will cause harm, including losses and endanger the safety of others. Thus, it is classified as a jarimah. In this case, the act of jarimah refers to any illegal act that injures another person and causes damage to his body but does not result in his death. Violations that are criminal acts are included in takzir, or punishment committed at the discretion of the ruler (Assidik et al., 2023).

The crime of assault in Islamic criminal law is known as jarimah, which is an act that violates sharia law and the law of Allah SWT threatens with the punishment of qishash, had, and ta'zir.

1. Jarimah qishash/diyat

According to the words of Allah SWT, the law of qisas is a punishment commensurate with the offense that results in physical pain or death: 45 in Surah al-Maidah and 178 in Surah al-Baqarah. Since there is forgiveness, mercy, and other things, then diat is a fine that must be paid in goods or money by a person who is ruled by law for killing or hurting someone. The murder that occurred may have been the result of a false murder or an accidental murder (khata'). Jarimah qishash / diyat includes: (1) Willful murder. (2) Semi-intentional murder. (3) Murder at fault. (4) Intentional hugs. (5) Semi-deliberate hugs

2. Jarimah hudud

Hudud, plural of the word "had". As far as language is concerned, it has the ability to restrict (punish). One of the definitions of the word "hudud" describes it as "a sanction for a person who violates sharia law by being whipped/beaten (tied up) or stoned to death (stoned)." In addition, depending on the nature of the mistake committed, the punishment can also be the amputation of the hand or leg. The maximum penalty that can be imposed for a particular violation of any law is outlined in this ha-law. The Qur'an provides an explanation of this hudud violation in a number of places, including Surah An-Nur verses 2, 4, and 33 and 38 of Surah Al-Maidah. The following are examples of hudud crimes: (1) adultery; (2) accusing someone of adultery; (3) drinking liquor; (4) theft; (5) robbery; (6) rebellion; and (7) apostasy.

3. Jarimah ta'zir

The law of ta'zir, which is a light punishment, is applied to offenses that are not specifically mentioned in the Qur'an and Hadith. Islamic law states that Muslim judges are the only people who can apply the law of ta'zir. The purpose of the ta'zir law is to provide a light punishment as atonement for one's sins as a result of his actions for those who commit crimes that do not meet the standards for punishment by hadd or are not yet eligible to pay diyat.

Three categories apply to the crime of ta'zir: (1) The crime of hudud or qishash/diyat which is already a sin but contains aspects of doubt or does not meet the standards, such as theft of family members, attempted murder, and theft. (2) offenses listed in the Hadith and the Qur'an but no punishment is prescribed, such as defamation, making false witnesses, and insulting Islam. (3) violations determined by Ulil Amri for the public interest. In this case, the evaluation of Islamic teachings is taken into account when assessing what is in the public interest. The branch of science known as Usul Fiqh discusses in depth certain needs for welfare, such as traffic violations (Muslih, 2006). In positive law, there are several articles regarding persecution as follows. Article 351 (1) The maximum penalty for persecution is two years and eight months imprisonment or a maximum fine of four thousand five hundred rupiah; (2) The maximum penalty for serious injury is five years in prison; (3) The maximum penalty for death is seven years in prison; (4) The longest penalty for persecution is intentionally

damaging health; and (5) Attempts to commit this crime are not criminally threatened (Moeljatno, 2021).

Decision Number 559/Pid.B/2022/PN.Mdn. prosecuted a motorist with a jumping bastard mode to persecute a thief on Jalan K. L. Yos Sudarso Km 14.5 Hamlet Keluarga Dusun Besar, Medan Labuhan District. The defendant, Dedi Iskandar, or who is familiarly called Iskandar, is a dump truck driver who came to the shipping warehouse on Jalan K. L. Yos Sudarso Cingwan on Tuesday, October 19, 2021 at around 15.00 WIB to load animal feed. The defendant only finished filling the animal feed about thirty minutes later. After that, at around 15.45 WIB, the defendant took out the dump truck from the warehouse and parked it on the side of the road K. L. Yos Sudarso km 14,5 with the truck bed covered with a plastic tarpaulin to accommodate animal feed. After that, the defendant went to look for his foreman to ask for a fare, and after returning to the location of his truck, at around 16.00 WIB, he saw suspicious activity from under the truck's plastic tarpaulin, about 5 meters away. Next, the defendant took a piece of wood one meter long that was lying on the ground.

The defendant then got into his vehicle and stepped on animal feed wrapped in a plastic tarpaulin. He then hit the moving tarpaulin six times with the wood he was carrying after seeing a movement underneath that looked like someone was working. Finally, the defendant saw someone trying to get out of the back of his vehicle. Next, the defendant checked the back of the vehicle by stepping on animal feed covered with plastic sheets. This time, the defendant saw movement under the tarpaulin. After that, the defendant used a piece of wood he was carrying in his right hand to hit the moving plastic tarpaulin four times. When the truck stopped moving, the defendant got out of the truck and tied a plastic tarpaulin rope. After telling his friends about the incident, the defendant continued his journey to the other driver's place to find out who he had hit. They saw that the victim Roni Alvarizi had fainted, then they took the victim to the pomegranate hospital to get treatment, after receiving treatment from the hospital, then Rony Alfarizi had died at around 18.45 WIB.

II. METHOD

This research is a literature review that looks at and evaluates literary sources, such as library books that discuss the crime of assault or the laws and regulations related to the crime. This research uses normative research or also known as literature-based research, which is to analyze primary and secondary legal sources (Armia, 2022). The main source of data for this study is the Decision of the Judge of the Medan District Court Number: 559/Pid.B/2022/PN.Mdn concerning the Review of Islamic Criminal Law on Criminal Sanctions for the Abuse of Jumping Squirrels in Belawan. Documentation, theses, journals, and other materials related to the research topic are examples of secondary data sources. These sources provide information to complete, validate, and explain primary data sources. The author also collects information from other Indonesia laws and regulations, including publications on Islamic criminal law and the Criminal Code. The approach of this research is a case study approach where the case that is the unit of analysis of this study is the judge's decision No.599/Pid.B/2022/PN.Mdn. The data collection technique is a documentation technique from literature study materials from secondary legal materials. When conducting a literature study, secondary legal documents connected to the creation of scientific works are reviewed from books, journals, regulations and provisions, decisions, and research findings.

III. RESULT AND DISCUSSION

Analysis of Court Decisions (Number 559/Pid.B/2022/PN.Mdn).

Analysis of decision No.559/Pid.B/2022/PN.Mdn. is the persecution carried out by a driver to a thief with the modus operandi of jumping squirrels that occurred on Jalan K. L. Yos Sudarso Km 14.5 of the family village of Kelurahan Besar, Medan Labuhan District, which was described earlier. Based on the visum Et repertum Number: 62/VER-RM/RSU-D/XI/2021 dated November 2, 2021, it was found that the results of the examination showed purplish bruises behind the left ear, a laceration on the left chin measuring +3 cm and abrasions on the

left knee measuring +4 cm. Furthermore, based on the Death Certificate Number: 93/SKM/RM/RSU-D/X/2021 dated October 19, 2021 signed by dr. Nindi Dwi Lestari, according to the doctor's statement at Delima Hospital Medan, Rony Alfarizzi the victim died on October 19, 2021 at 18.20 WIB and the head injury he suffered was classified as GCS 3. Meanwhile, based on the Visum Et repertum Number: 10/X/2021/RS. Bhayangkara dated October 19, 2021 prepared by doctors from the Department of Forensic and Mediollegal Medicine, Bhayangkara General Hospital, Kindergarten II, Medan City, which concluded the results of the examination of Roni Alvarizi's body as follows: external examination: bruises on the corpse, stiffness in the facial and jaw muscles, swelling on the left cheek, abrasions on the right forehead and left chin, as well as bluish lips and fingertips, pale toes. Internal examination results: There was blood seepage in the inner scalp, cracks in the right and left skull bones, bleeding under the thick and thin membrane of the brain, bleeding spots on the right cerebrum cutter, and fractures at the base of the left middle skull bone. From the results of the examination, it is estimated that the victim died between two and eight hours before the examination was carried out. The victim suffered an unnatural death due to bleeding in the head cavity and fractured skull bones and skull base bones due to blunt trauma. The defendant has admitted and regretted his actions and promised not to repeat them or other criminal acts. After the court looks at the matters mentioned above, then before the panel of judges makes a decision, incriminating and mitigating factors will be considered.

The judge's incriminating consideration was that the defendant's actions caused the death of Roni Alvarizi and caused unrest in the community, while the mitigating factors included the defendant's polite attitude during the trial, and the remorse shown, his actions and promise not to repeat similar acts or other criminal acts. On the basis of the aforementioned postulates, the panel of judges concluded as follows: First, declaring that the defendant Dedi Iskandar Als Iskandar was legally proven and accountable for committing the crime of "persecution resulting in death" as referred to in Article 351 paragraph (3) of the Criminal Code. Second, imposing a prison sentence of five years on the defendant. Third, the detention period that has been set is reduced from the defendant's criminal period. Fourth, the defendant remains in custody during the trial. One piece of wood measuring 1x4 cm and one meter long, as well as one striped tarpaulin tied with a rope measuring nine meters long and four meters wide, are pieces of evidence that must be destroyed, according to the fifth postulate. And one unit of Mitsubishi brand tronton truck in 2014, both orange and yellow, with police number B 9412 UYZ, frame number MHMFN517CEK004074, and engine number 6D16K34105, belonging to PT. TRANS NUSANTARA, which is located at Jalan Pluit Selatan Raya No.8A and 9, to be returned to PT. Nusantara through the Defendant. Sentence the Defendant to pay the case fee of Rp2,000 (two thousand rupiah) which is the sixth stage.

There is a provision in the Criminal Code that classifies persecution as a crime committed against the human body. The word "abuse" is the beginning of the adjective "abuse," which is used in the United Kingdom. Even more painful, the word "abuse" comes from the noun "abuse," which refers to the perpetrator or person responsible for the act of abuse (Kadek et al., 2019). Violence can take many forms: financial violence, psychological violence, physical violence, sexual violence, and violence against children. The violence that occurred in this study was jumping squirrel violence, which included actions that were harmful, painful, and endangered the physical safety of the victim and the perpetrator. According to Indonesia law, violence is an act of violence against a person that results in damage or injury. This action is regulated in the Criminal Code (KUHP) and is classified as a criminal offense. Persecution is defined as any act that causes another person to suffer physical injury or pain. This persecution can be classified into several categories including mild, moderate and severe persecution. Minor abuse is an act that causes minor injuries to the victim's body, such as bruises, scratches, or other minor cuts. Moderate persecution is an act of violence that results in more serious injuries than minor persecution. Severe persecution is an act of violence that causes serious injury or a threat to the victim's life, such as permanent disability or death. While in Islamic Criminal Law, persecution or in Arabic terms called "al-i'raab" or "al-'unf" is an act of violence that causes harm or injury to a person. Another name for the crime of

persecution is the crime of hurting. The definition of "hurt" in the Al-Munjid lexicon is given as follows: "shaqq ba'd badanih" (meaning to injure a human limb) is derived from the term "Jarah". Thus, it can be said that treating someone to hurt or torture others is a criminal offense of injury. Here, physical abuse can take the following forms: (a) damaging a body part (athraf) or any other visible part of the body by cutting or injuring it; (b) causing injuries to the head and face (syajaj); (c) causing injury to a part that is not considered a part of the face, face, or athraf. The neck, chest, abdomen, and hips are the only components of the body in question. (d) loss of bodily functions, such as hearing, vision, and muscle function; (e) minor beating; i.e. persecution that does not cause damage to the body or cause loss of bodily functions; The effects of this kind of torture are often in the form of pain and bruising. Abu Hanifah claimed that this small blow was part of the violation of ta'zir. The approval of qisash as the main punishment and diat or ta'zir (both as alternative punishments) as a threat to this act of persecution (Azhar, 2019).

Persecution is regulated in the Criminal Code (KUHP). According to Article 351 of the Criminal Code, persecution is defined as an act that causes injury, pain, or health problems to another person. There are several types of persecution that are regulated, such as Article 351 Paragraph 1 regarding minor persecution. For example, violence that does not result in serious injuries. Article 351 Paragraph 2 regarding persecution that results in serious injury or bodily disability. Article 351 Paragraph 3 regarding persecution causing death. The punishment for persecution depends on the severity. For minor persecution, the punishment can be in the form of imprisonment for up to 2 years, while severe persecution can be punished more severely according to the consequences. Islamic criminal law imposes ta'zir punishment as punishment for violent perpetrators. The court gave the punishment of ta'zir as compensation for qishas, perhaps because the victim had forgiven the perpetrator to end the qishas. The judge sentenced ta'zir, which has a focus on education. Thus, the court in this case has the authority to decide the matter in accordance with the relevant rules and regulations. The purpose of punishment is to help the perpetrator learn from his mistakes and get guidance so that he does not repeat them. In the context of Indonesia law, if someone persecutes a person who is committing theft (bajing jumpcat), the act can be subject to legal sanctions. Indonesia law adheres to the principle that law enforcement must be carried out by the authorized officials, not by individuals personally. So, if someone catches a thief and then persecutes him, even though there may be reason to be angry or frustrated, the act can still be considered a violation of the law. The person who commits the persecution can be sanctioned in accordance with the provisions regarding persecution, while the thief can be sanctioned for the crime of theft.

Judges may consider the provisions of Article 5 paragraph (1) which states that constitutional judges and judges have the obligation to investigate, obey, and understand the principles of law and the sense of justice that apply in society. Judges are expected to uphold law and justice impartially. The judge must determine whether the events given to him are true before assessing them and relating them to the applicable legal framework (Simbolon et al., 2023). The higher court has the authority to overturn a judge's decision if the judge's reasons are not thoroughly and appropriately examined. In handling this case, the judge referred to several articles of the criminal code. Based on article 351 of the criminal code on persecution, namely: (1) The perpetrator of persecution is sentenced to a maximum fine of four thousand five hundred rupiah or imprisonment for a maximum of two years and eight months. (2) If the act results in great losses, shall be punished with imprisonment for a maximum of five years. (3) If the act results in death, it shall be punished with imprisonment for a maximum of seven years. (4) An act committed with the intention of harming another person is the same as persecution. (5) No criminal offense shall be imposed for attempting to commit the act. Meanwhile, in article 49, it has been explained about self-defense. Article 49 of the Criminal Code: Regulates self-defense, namely: Paragraph (1): "Whoever commits an act of self-defense to defend himself, honor, or property against an attack or threat of a very close attack that is unlawful, shall not be punished." Paragraph (2): "Self-defense beyond the necessary limits, if caused by confusion, fear, or anxiety, is not punished."

Review of Islamic Criminal Law: Judge's Decision on Criminal Sanctions for Persecution of Jumping Squirrels

The judge's decision must consider a number of considerations, including the way the perpetrator committed the crime. Looking at the results of the examination of Dedi Iskandar's legal case, where the perpetrator hit Roni Alvarizi with a stick that wanted to steal the load from the dump truck. For his actions, the perpetrator Dedi Iskandar must receive a prison sentence for 5 years. Resulting in the death of people, as in article 351 paragraph (3) of the Criminal Code in a single indictment. Based on a number of factors, including Article 351 paragraph (2) of the Criminal Code which states that "if the act results in serious injury, the perpetrator is threatened with imprisonment for a maximum of five years" the court imposed a penalty through decision Number 559/Pid.B/2022/PN.Mdn. According to the author's analysis of the way the judge assessed the case described above, the judge decided the punishment based on various factors, including how the perpetrator committed his crime and the consequences of Dedi Iskandar's action of hitting Roni Alvarizi with wood while trying to steal from a dump truck. The blow caused the death of Roni Alvarizi, so Dedi Iskandar was subject to severe punishment according to article 351 paragraph 3 of the Criminal Code, which regulates persecution that causes death.

Although the original intention may not have been to kill, the consequences of the act of dying after being taken to the hospital led to a harsher punishment. The judge before deciding on the sentence, will consider the articles demanded by the JPU. The judge handed down a decision using article 351 paragraph 2 of the Criminal Code if the persecution resulted in serious injury, as an additional consideration in determining the punishment. The punishment becomes more severe when the perpetrator's actions cause serious consequences, such as the death of the victim, although the initial action may seem light. However, according to the author, the judge's decision is inappropriate because it does not pay attention to article 49 paragraph (1) of the Criminal Code as stated "Whoever is forced to carry out a beating in self-defense, because there is an attack or threat of an unlawful attack, against himself or others, against the honor of one's own or the property of oneself or others, then it is not punished." This is a very serious situation that must be handled carefully from a legal point of view as well as from an Islamic point of view.

In Islamic criminal law, criminal acts are often referred to as *jinayah* or *jarimah*. According to Al-Mawardi, *jarimah* is an act of violating sharia (i.e. doing what is prohibited and/or staying away from what is obliged) for fear of punishment of *hadith* or *takzir* (Harefa, 2019). Then, most academics only classify *jarimah* into three categories: *ta'zir jarimah*, *qisash/diyat jarimah*, and *hudud jarimah*. *Hudud jarimah* is a term for a class of offenses or crimes that are considered great sins. *Hudud jarimah* is also part of the Qur'an and *hadith* that regulates certain punishment guidelines. Adultery, theft, use of *khamar*, or alcoholic beverages, and accusing someone of adultery without providing evidence are some examples. In cases of murder or other serious injuries, the victim's family can seek compensation based on the *qishash jarimah* punishment, which also allows the perpetrator to be forgiven and given fair compensation. *Ta'zir jarimah* includes offenses or crimes that must take into account the public interest and circumstances to decide on the appropriate punishment, which must be determined by wisdom and justice. The *ta'zir* category, for example, can include situations such as drug abuse, gambling, or behavior that is considered detrimental to society (Azhar, 2019).

Violence that causes the death of a victim is classified as murder according to Islamic criminal law. Murders are basically divided into two categories: forbidden murders and all murders that involve violence or hostility. And any murder committed without hostility qualifies as justified murder (Hamdi & Efendi, 2022). In particular, most academics believe that there are three (three) categories that can lead to murder: The actual act of murder (*amd mahdh*) involves the beating of a person deliberately using a weapon that is often intended to kill. The phrase "with something that is usually used as a tool for killing" refers to heavy instruments, such as large stones, knives, and similar items. Murder that appears to be unintentional or simply guilty (*khatha'mahdh*) is a mistake that occurs in murder cases. For example, *qishas*

are not mandatory for a hunter or shooter if the bullet misses and hits someone, and the victim dies as a result. *Qatl al-khata*, or intentional murder wrongfully committed, is defined as murder committed without intent to kill and by using non-lethal weapons. For example, if a person is hit with a light stick and dies as a result, the person who hit him or her is not obliged to give *qishas* (Khairunnisa & Pancasilawati, 2023). According to the author's analysis, the criminal act committed by Dedi Iskandar is minor persecution and is related to murder due to mistake or accident, therefore according to Islamic criminal law, the punishment can be in the form of the following. The main punishment is *diat* and *kifarat*, additional punishment in the form of the abolition of inheritance rights and wills.

1. Diat Punishment

As mentioned earlier, the lighter *diat mukhaffafah* is the punishment for involuntary murder. There are three ways this lightning is seen:

- 1) The payment of obligations is charged to the 'aqilah (family).
- 2) Payments are paid in installments over three years.
- 3) The composition of the *diat* is divided into five groups.
 - a. 20 *bintu makhadh* camels (1-2 year old female camels).
 - b. 20 camels *lbn Makhadh* (male camels aged 1-2 years) according to Hanafiyah and Hanabilah; or 20 camels *bintu labun* (male camels aged 2-3 years), according to Malikiyah and Shafi'iyah.
 - c. 20 *bintu labun* camels (female camels aged 2-3 years).
 - d. 20 *hiqqah* camels (camels aged 3-4 years).
 - e. 20 *jadza'ah* camels (4-5 years old) (Muslih, 2006).

As mentioned earlier, the payment of *diat* is associated with 'aqilah and reflects deliberate intent in the case of murder. "Aqilah" means "the party who bears the payment." They are a group of *ashabas*, consisting of all the male relatives who are capable, mature, and clever on the father's side. Therefore, the category of 'aqilah does not include women, small children, crazy people, or the poor and indigent. The general guidelines governing Islamic criminal law do not apply to the burden of *diat* on 'aqilah in cases of murder, such as those involving intentional and responsible murder. A person must be responsible for his or her actions in accordance with the applicable law (Teduh et al., 2023). Therefore, people who do not commit crimes or help commit crimes are not punished as a result of the actions of others. Verse 18 of Surah Faathir (35) regulates the punishment. Means: "Everyone who cleanses himself, then it is for his own good. The goal is simply to return to God. Everyone will be held accountable for their actions on the Day of Resurrection. Furthermore, the wicked will not be able to endure the evil of others (Muallip & et. al., 2016).

The involvement of *aqilah* in this situation is actually necessary in order to help the perpetrator of the crime in bearing the burden of *diat* due to criminal acts that occur unintentionally, both in his actions and the consequences it causes, even though the burden of *diat* *aqilah* in the two types of coaching is different from the general rules that apply. This responsibility is intended to support and help family members who are experiencing problems, not as a form of punishment. Furthermore, the nature of this burden serves as a lesson for every family member (*aqilah*) (Bayuaji & Kuswardani, 2024). Family members can make efforts and actions to prevent the crime of murder committed by one of their family members, and can also guide them to the right and straight path in accordance with the teachings of Islam. If all family members realize that they will be burdened with death, then they will be able to do one of those things (Yusuf et al., 2021).

2. The Pilgrimage of the Farat

Those who commit murder for their mischief are subject to a basic punishment known as *kifarat*, which is to free a believing servant. A substitute punishment in the form of fasting for two consecutive months is imposed if the servant is not found (Hamdi & Efendi, 2022). Apart from being a form of punishment, *kifarat* is also considered a form of service. Therefore, all of these penalties are imposed on the person who committed the offense, and no other party was involved in the process. Regarding the obligation of the *kifarat* to kill for this error, the jurists agreed, provided that the victim was not a disinfidel and a slave. According to the

majority of scholars, kifarāt must be done if the victim is a dhimmi who is not a follower of Islam. Meanwhile, madhhab Malikiyah is of the opinion that this kifarāt punishment is not mandatory. This is because disbelief is the reason why it is generally permissible to kill every unbeliever (Hamdi & Efendi, 2022).

3. Substitute Punishment

If the slave is not released, then the punishment in lieu of wrongful murder is fasting for two consecutive months. It can also be a substitute for the emancipation of the slaves. Meanwhile, the jurists have come to the conclusion that the punishment of ta'zir, which can be an alternative to the death penalty if the murderer is pardoned for his crimes by mistake, does not exist (Rahmat, 2020).

4. Additional Laws

If a person commits the crime of murder due to negligence, he will be subject to additional punishments, namely revocation of inheritance rights and wills. Meanwhile, the jurists disagree on this, as mentioned in the discussion of the punishment for intentional murder. Although the majority of scholars are of the opinion that manslaughter by negligence is still punishable by additional punishment, they also argue that this kind of murder falls under the category of unlawful murder. Therefore, the revocation of inheritance rights and wills is still imposed as an additional punishment for the person who committed the murder, even if the perpetrator of the murder committed the murder by accident. In fact, Imam Malik argued that the revocation of inheritance rights and wills was not the result of accidental murder. This is because the person who committed the murder did not intend to commit a prohibited act, namely murder (Sembali & Mohede, 2021).

From the explanation above, the crime of persecution that causes death in Islamic law does not include persecution but is included in the category of murder. Mistakes lead to the punishment of diat and kafarah. If the punishment is not carried out, then the punishment of kafarah is replaced by fasting for two consecutive months in exchange for the release of the slave if the slave is not found. Meanwhile, legal experts decided that if the murder was pardoned, then the punishment of ta'zir would replace the diat because this offence did not exist. If the killer receives additional punishment, then his rights as heirs will also be lost (Mentari, 2020). If all conditions are met, it can be concluded that the defendant Dedi Iskandar has committed a criminal act. Therefore, the defendant can be sentenced to death, but it can also be replaced with takzir, which can be in the form of a fine or imprisonment. Regarding how severe the takzir sanction is imposed on the perpetrator, the Judge or Ulil Amri is authorized to impose sanctions commensurate with the criminal acts committed by the perpetrators. This includes imposing sanctions for the crime of persecution whose main purpose is to uphold the public interest and prosper all citizens of the community (Mentari, 2020).

According to the author, the judge is not appropriate and less relevant in giving a verdict because the verdict is still general and not special. This understanding comes from several factors that are considered by the judge in deciding this case when viewed from a positive law, as can be seen from the description above. The court did not decide that the attempt to commit the crime was not punishable, which would lead to the prosecution of Article 351 paragraph 5. In fact, the author sees from several other articles, namely Article 49 paragraph 1 which regulates defense with violence. The author is of the opinion that Article 49 of the Criminal Code is the right article for the defendant. Therefore, the defendant should no longer appeal or file a memorandum of appeal to many parties, because from the article it can be seen that there are parties who oppose the victim in an effort to seize his property. Therefore, Article 49 of the Criminal Code is a applicable legal provision.

he court must consider the circumstances of the defendant's surviving family when sentencing Dedi Iskandar, the defendant, to five years in order to provide compensation. Thus, the Judge's decision in this case is in accordance with the relevant law. The author claims that the court lacked consideration of Article 49, paragraph 1, which is the applicable law. Given that the description of this article on criminal harm shows "If a person is obliged to defend themselves or others against unlawful attacks, their moral integrity, their property, or the

property of others, they cannot be punished even if their actions endanger the lives of others". The author claims that since the victim has passed away, this is a general article and is not entirely accurate. The maximum penalty allowed by law is five years because the violation is a criminal act of persecution resulting in serious injury. Article 351 of the Criminal Code explains in more detail that every criminal act committed can be classified as a criminal act, even a criminal act involving serious injury. regulated in Article 351 of the Criminal Code which states:

"(2) If the act causes serious injuries, the guilty person shall be sentenced to imprisonment for a maximum of 5 years. (3) If it results in death, it shall be subject to imprisonment for a maximum of 7 years. (4) Persecution is equated with deliberately damaging health. (5) Attempting to commit a crime is not punishable".

To address this, the act constitutes a component of crime, the threat of crime, which is illegal, and the rationalization of the action intended to highlight the prohibition of certain crimes. The judge can make decisions in the case based on his ideas and the facts of the trial. But when imposing a penalty, it is important to evaluate the relevant legislation, in particular the concept of legality, which is considered very important (Alphasa & Juarsa, 2022). The principle of legality itself has been regulated in the Criminal Code in article 1 (Lago et al., 2023).

A number of experts also expressed their thoughts on the idea of legality. According to Wirjono Prodjodikoro, criminal law does not apply retroactively and the concept of legality is a criminal sanction that can only be determined through laws and regulations. In addition, Sudarto said that the provisions of the law governing criminal acts must exist before the occurrence of criminal acts (Lago et al., 2023). This can be seen from the provisions of the Criminal Code and the view of some experts that it is impossible to impose a criminal sentence before the existence of laws and regulations. The law has set limits for imposing criminal penalties and assessing the severity of the offense. The most crucial factor in the application of criminal law is the principle of legality. The whole purpose of the concept of legality is to protect the public from the government's attempts to criminalize their activities and impose penalties on them without following all the rules. Furthermore, the concept of legality serves as a restriction set by law, thus limiting the authority of the government (Sudibyo & Rahman, 2021).

One can argue that the government is in charge of implementing the provisions of the law. According to Montesquieu, he said that Judges function as "mouthpieces of Law" or people who implement the Law. For offenses against the soul that do not result in athraf, sajā, or jirah, ijtiḥad and the judge's discretion are used to determine the terms of compensation, which are similar to takzir. Crimes classified as takzir are crimes that carry the possibility of receiving punishment other than hudud, kisas, or diat (Darmawan & Wahyudi, 2022). In conclusion, ulil amri is in charge of determining and implementing the punishment of takzir, which has not been decided by syarak. (Syarbaini, 2019). Thus, the judge's consideration in imposing punishment for the perpetrator of the crime of persecution is a form of punishment of Diat or takzir.

IV. CONCLUSION

Based on the discussion above regarding the crime of jumping squirrels both according to positive criminal law and Islamic Criminal Law, the author concludes that the judge must carefully consider the case. Dedi Iskandar, who is also a victim of theft from Roni Alvarizi, must be considered as a factor in the judge's decision. Judges as law enforcers, must understand the legal values that live in society. In reviewing the case (Decision Number: 559/Pid.B/2022/PN.Mdn.) concerning the alleged criminal acts, it is imperative for judges to consider all facets of the case, including the roles and impacts on involved parties. In this particular case, Dedi Iskandar, as a victim of theft by Roni Alvarizi, should be factored into the judicial decision-making process. Judges must fully grasp the legal values prevailing in society to make informed rulings.

From the perspective of Islamic criminal law, acts of persecution might be punishable by severe penalties, including death for significant wrongdoing. However, in this case, which involves assault and damage to property, the judicial panel has considered several mitigating factors despite the fatal outcome. In contrast, positive law requires a more precise application of relevant statutes. The current decision appears overly general and may not fully align with Article 49, Paragraph 1 of the Criminal Code, which addresses defenses related to stolen property. A more nuanced application of this article would better suit the case's specific context, ensuring that the legal response is both appropriate and relevant.

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