

Critical Analysis of the Death Penalty for Narcotics Traffickers: Perspectives of Islamic Law and Human Rights

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A B S T R A C T

The proliferation of narcotics in Indonesia has become increasingly alarming, as it destroys younger generations and threatens social stability. One of the government's legal responses is the imposition of the death penalty on narcotics traffickers. This policy has sparked intense debate, particularly when examined through the lenses of Islamic law and human rights. This article aims to critically analyze the application of the death penalty for narcotics traffickers using a normative juridical approach based on literature studies, while comparing Islamic legal and human rights perspectives. The findings indicate that within Islamic law, narcotics are analogized (*qiyās*) to alcohol (*khamr*), rendering them prohibited, with sanctions categorized as *ta'zīr*, whose severity may be determined by judges or the state in accordance with public interest. Based on the framework of *maqāṣid al-sharī'ah*, capital punishment can be justified as a means of protecting reason (*ḥifẓ al-'aql*) and life (*ḥifẓ al-naḥs*) from the destructive impact of narcotics. Conversely, from a human rights perspective, the right to life is considered a fundamental right that cannot be derogated under any circumstances. Accordingly, the death penalty is viewed as a violation of this principle, inherently inhumane, and inconsistent with the global trend toward abolition. These findings highlight the unresolved dialectic between the legitimacy of capital punishment within Islamic law and its rejection from a human rights standpoint. Therefore, the implementation of the death penalty for narcotics traffickers must be carefully reconsidered with due regard to justice, human dignity, and the effectiveness of law enforcement.

1. Introduction

The circulation of narcotics has become one of the most pressing issues in Indonesia, as it not only undermines public health and morality but also generates long-term social and economic consequences. Statistical evidence indicates that drug use continues to rise, while the capacity of the correctional system and law enforcement institutions is under increasing strain. In response, the government has adopted stringent legal measures, including the imposition of the death penalty for narcotics traffickers as stipulated in the Narcotics Law and other provisions of national criminal law.

At the same time, both public and academic debates have emerged regarding the legitimacy of the death penalty. From the perspective of Islamic law, narcotics are often analogized (*qiyās*) to *khamr* (intoxicating liquor), which is strictly prohibited, and the discourse in *fiqh* places the sanction within the categories of *ḥadd*, *qisās*, or *ta'zīr*. By contrast, in the framework of human rights, the right to life is considered a fundamental and non-derogable right, which should not be curtailed except under very limited circumstances; international and regional instruments increasingly advocate for the restriction or abolition of capital punishment.

The application of the death penalty for narcotics traffickers reflects a tension between the demands of law enforcement, social justice, and human rights protection. Proponents often justify this policy on the grounds of deterrence, public security, and the protection of future generations from the dangers of narcotics. However, critics highlight concerns over procedural fairness, potential human rights violations, and the questionable effectiveness of capital punishment in curbing drug trafficking. Comprehensive comparative and critical studies that integrate both perspectives—Islamic law and human rights—particularly with updated empirical data and normative-theological arguments, remain limited.

Scholarly debates on the death penalty for narcotics traffickers have gained prominence in international law, human rights, and Islamic legal literature. Chan (2025), Hoyle & Harry (2025), and Joe-Laidler & Lowe (2025) emphasize how Southeast Asian states continue to maintain capital punishment as a central instrument of drug control, despite a global trend toward abolition. Sander (2021) further highlights contradictory trends, whereby some states expand the use of capital punishment for narcotics-related crimes while others have begun to restrict it. These findings suggest that the discourse on capital punishment in drug cases is consistently shaped by the competing imperatives of security and human rights.

From the perspective of Islamic law, Husin (2020) grounds the legitimacy of capital punishment in *siyāsah shar'iyyah*, while Saqib (2024) and Laksana et al. (2025) emphasize the framework of *maqāṣid al-sharī'ah* as a normative foundation linking capital punishment to the protection of life and intellect. Harefa (2025) and Tongat (2024) deepen the discourse by examining the practice of Islamic law in Indonesia, noting divergent scholarly views on whether capital punishment falls within the category of *ḥadd* or *ta'zīr*. Saputro et al. (2023) further enrich the discussion by situating the debate at the intersection of Islamic law and human rights tensions.

Meanwhile, human rights-oriented research, such as that by Krismen et al. (2025) and Wulandari & Setiyanegara (2025), underscores that the death penalty violates the non-derogable right to life, even though some states continue to apply it under deterrence

rationales. Brownyard (2025) adds a comparative dimension by analyzing death penalty practices in four Muslim-majority countries, demonstrating how religious law, national law, and international commitments often clash. Accordingly, while numerous studies have examined capital punishment through either the lens of Islamic law or human rights, few have critically integrated the two perspectives within the Indonesian context. This gap is what the present study seeks to address.

Based on this literature, several research gaps become evident. First, studies on capital punishment in drug-related cases have largely emphasized human rights or policy effectiveness, but have rarely engaged with Islamic theological arguments rooted in *maqāṣid al-sharī'ah*. Second, existing Islamic legal scholarship tends to focus on normative *fiqh* legitimacy, without critically engaging with contemporary human rights principles that call for the abolition of capital punishment. Third, although some comparative cross-national studies exist, specific analyses of the dialectic between Islamic law and human rights within the Indonesian context remain limited. As a Muslim-majority state and a signatory to international human rights instruments, Indonesia faces unique challenges in balancing *sharī'ah*, positive law, and universal human rights norms.

Accordingly, this study offers novelty by presenting a critical analysis that integrates two perspectives simultaneously: Islamic law and human rights. Using the framework of *maqāṣid al-sharī'ah*, this article explores how Islamic law may justify capital punishment as a means of protecting society from narcotics. Conversely, by referencing international and national human rights instruments, it examines the challenges associated with implementing the death penalty, which is often perceived as a violation of the right to life. This integrative approach aims to reveal the possibilities for dialogue, conflict, and synthesis between two distinct legal paradigms.

On this basis, the research questions of this study are as follows: (1) How does Islamic law, including *maqāṣid al-sharī'ah*, view the death penalty for narcotics traffickers? (2) How does the international and national human rights framework assess the legitimacy of capital punishment in narcotics cases? (3) To what extent can common ground or divergence be identified between Islamic law and human rights on this issue? and (4) What are the implications of these findings for legal policy in Indonesia?

The objectives of this study are: (1) to provide an in-depth analysis of Islamic legal perspectives on the death penalty for narcotics traffickers; (2) to critically examine human rights perspectives on the right to life and the use of capital punishment; (3) to systematically compare the two perspectives to identify points of integration or contradiction; and (4) to propose policy recommendations that balance justice, humanity, and legal certainty in combating narcotics in Indonesia.

2. Method

This study employs a normative juridical approach, a legal research method that emphasizes the examination of texts and applicable norms, both within Islamic law and within positive law and international human rights instruments. This approach is appropriate because the issue under investigation is normative and conceptual rather than empirical, focusing primarily on a literature-based analysis of legal documents, classical sources, and prior studies (Marzuki, 2017; Soekanto, 2003).

The data for this research consist of secondary sources, encompassing primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, Hadith, *ijmā'*, and *qiyās*, as well as national legal instruments such as the 1945 Constitution of Indonesia, Law No. 39 of 1999 on Human Rights, and Law No. 35 of 2009 on Narcotics, along with international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Secondary legal materials comprise books, journal articles, and relevant research, including recent literature on capital punishment, human rights, and *fiqh jināyah* (Creswell & Creswell, 2017; Krismen et al., 2025). Tertiary legal materials include legal dictionaries and encyclopedias that clarify technical terminology.

The data were analyzed using a comparative qualitative analysis, which involves examining and contrasting the norms and principles of Islamic law with those of international human rights law. The analysis highlights *maqāṣid al-sharī'ah* as an ethical-normative framework in Islam and human rights principles concerning the right to life and the prohibition of cruel, inhuman, and degrading treatment (Bustamam & Hardivizon, 2025). This analytical framework is expected to reveal both points of convergence and divergence, while formulating balanced policy recommendations that integrate considerations of justice, humanity, and legal certainty (Miles et al., 2013; Neuman, 2013).

3. Results and Discussion

3.1. The Application of the Death Penalty for Narcotics Traffickers from the Perspective of Islamic Law

The narcotics problem has emerged as one of the most pressing issues confronting modern societies. From an Islamic perspective, narcotics are often equated with *khamr* (intoxicating substances), since both share similar intoxicating effects and the potential to impair rational faculties. Islamic law regards reason (*ḥifẓ al-'aql*) as one of the essential elements that must be protected, alongside life (*ḥifẓ al-nafs*), within the framework of *maqāṣid al-sharī'ah*. Thus, discussions concerning the punishment of narcotics traffickers in Islamic law are inseparable from efforts to safeguard human welfare and to protect future generations from moral and physical harm (al-Zuhaili, 1985).

3.1.1 Normative Foundations in the Qur'an and Hadith

Although the Qur'an does not explicitly mention narcotics, since such substances were unknown in the Prophet's era, the prohibition of intoxicants can be found in Surah al-Mā'idah (5:90–91), which declares *khamr* as an abomination to be avoided because it leads to enmity and distracts humans from the remembrance of God. Scholars have employed *qiyās* (analogical reasoning) to extend this ruling to narcotics, given their shared *'illah* (legal rationale), namely the impairment of reason (Assaf, 2015; Chalik et al., 2025).

Hadith further reinforces this prohibition. The Prophet Muhammad (peace be upon him) stated, "*Kullu muskirin ḥarām*" — every intoxicant is forbidden (Sahih Muslim). Another narration condemns not only the consumer of *khamr*, but also its producer, distributor, and seller (reported by al-Tirmidhi, Ahmad, Abu Dawud, and Ibn Majah). Accordingly, narcotics traffickers can be understood to fall under this condemnation, given their role in spreading immorality and corruption within society (Sabiq, 1997).

3.1.2 Scholarly Perspectives on Sanctions

Classical and contemporary scholars diverge on the appropriate category of punishment for narcotics-related crimes. Ibn Taymiyyah, for instance, equated narcotics with *khamr* and argued that offenders may be subject to *ḥadd* punishment, i.e., sanctions explicitly prescribed by the *sharī'ah* (Hardivizon & Bello, 2023; Irfan & Masyrofah, 2022). Conversely, scholars such as Wahbah al-Zuhaili and Ahmad al-Hasari contend that narcotics offenses fall within the category of *ta'zīr*, punishments left to judicial or governmental discretion for the sake of public welfare (al-Zuhaili, 1985).

The *ta'zīr* approach is justified for several reasons: first, narcotics were unknown during the Prophet's time and thus lack explicit scriptural rulings; second, the harms associated with narcotics are often considered greater than those of alcohol, due to their addictive nature and wide-ranging social consequences; and third, the modes of consumption of narcotics differ significantly from *khamr*, as they may be inhaled, injected, or ingested in various forms (Husin, 2020). Consequently, judges retain broad discretion in sentencing narcotics traffickers, including the possibility of imposing the death penalty when deemed necessary for the greater good.

3.1.3 *Maqāṣid al-sharī'ah* as a Philosophical Foundation

Within the *maqāṣid al-sharī'ah*, Islamic law aims to protect five essential objectives (*al-ḍarūriyyāt al-khamsah*): religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), progeny (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Narcotics evidently undermine at least two of these, namely intellect and life. Traffickers endanger not only themselves but also many others, exposing communities to physical, psychological, and moral deterioration. Accordingly, the imposition of severe sanctions, including the death penalty, can be justified within the *maqāṣid* framework, as it seeks to prevent broader societal harm (Laksana et al., 2025).

In *fiqh jināyah*, executions not explicitly prescribed in the Qur'an or Hadith are sometimes referred to as *al-qatl al-siyāsī*, or politically sanctioned executions, imposed by state authority to preserve order and public welfare. This concept legitimizes state authority to impose capital punishment on narcotics traffickers, given their status as a serious national threat. The principle of *fiqh* that "*ta'zīr* is contingent upon public welfare" underscores that the severity of discretionary punishments – including the death penalty – depends on the degree to which societal interests are safeguarded (Djazuli, 2011).

3.1.4 Critical Analysis: Justice and Contemporary Contexts

Although Islamic law permits the imposition of capital punishment on narcotics traffickers, debates persist regarding its implementation in the modern era. Some scholars argue that the death penalty must be applied with utmost caution, given its irreversible nature and the potential for miscarriages of justice. Questions also arise regarding its effectiveness in reducing narcotics circulation, as trafficking networks are often transnational and highly organized (Hoyle & Harry, 2025).

On the other hand, scholars and Islamic jurists supportive of capital punishment emphasize the principle of prevention (*sadd al-dharā'ī*) and the protection of future generations. From this perspective, traffickers warrant the harshest penalties because their actions cause harm far beyond personal misconduct, threatening collective well-being. Thus, the death penalty is deemed legitimate within Islamic law for extraordinary crimes, consistent

with the *shari'ah* objective of promoting welfare (*jalb al-maṣāliḥ*) and preventing harm (*dar' al-mafāsid*) (Saqib, 2024).

In the Indonesian context, the application of the death penalty for narcotics traffickers is frequently linked to the principle of *siyāṣah shar'iyah*, which grants the state authority to enact policies for the benefit of its citizens. This reflects a dual legitimacy: on one hand, Indonesian positive law provides for capital punishment under the Narcotics Law; on the other, Islamic law affords legitimacy through the category of *ta'zīr*. Nonetheless, implementation must adhere to principles of justice, due process, and the protection of defendants' rights to ensure consistency with the broader Islamic principle of upholding justice (*al-'adl*).

In sum, Islamic law normatively permits the application of the death penalty for narcotics traffickers, particularly under the categories of *ta'zīr* and *maqāṣid al-shari'ah*. The normative foundations found in the Qur'an, Hadith, and juristic opinions support the view that narcotics are forbidden substances that endanger both intellect and life. However, implementation must be carried out with caution, ensuring adherence to principles of justice and fairness, while carefully considering its effectiveness in combating narcotics crimes. Thus, the application of the death penalty constitutes not merely a legal-formal issue, but also an ethical and philosophical one, deeply connected to the objectives of *shari'ah* in safeguarding the welfare of society.

3.2 Human Rights Perspectives on the Death Penalty for Narcotics Traffickers

The debate over the death penalty cannot be separated from the broader discourse on human rights, particularly the principle that life is an inherent and inalienable right. While some states continue to justify executions for narcotics-related crimes on grounds of deterrence and public security, international human rights instruments and global trends increasingly emphasize abolition. The human rights perspective, therefore, provides an important counterbalance to retentionist arguments, raising critical questions about the legitimacy, effectiveness, and morality of capital punishment for narcotics trafficking.

3.2.1 The Right to Life as a Fundamental Right

The right to life is the most fundamental human right and serves as the foundation of all human rights instruments. Article 3 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty, and security of person. Similarly, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) affirms that the right to life shall not be arbitrarily deprived. Although the ICCPR initially allowed capital punishment under limited circumstances, subsequent global developments have pushed toward its complete abolition (Nowak, 1993).

In the Indonesian context, the Constitution also guarantees the right to life as a basic right. Article 28A of the 1945 Constitution affirms that every person has the right to live and to defend their life, while Article 28I(1) explicitly declares the right to life as a non-derogable right. This creates a contradiction insofar as the Indonesian legal system continues to retain capital punishment for certain offenses, including narcotics crimes (Wulandari & Setiyanegara, 2025). From a human rights standpoint, therefore, the application of the death penalty for narcotics traffickers remains caught between national legal provisions and international commitments that Indonesia has ratified.

3.2.2 Retentionist Arguments

Supporters of capital punishment (retentionists) typically rely on three main arguments: deterrence, justice for victims, and the protection of society. Narcotics crimes are often described as extraordinary crimes due to their destructive impact on youth, public health, and social order, often linked to secondary crimes such as violence and organized criminal activity. Accordingly, the death penalty is defended as a means to deter offenders and to send a strong warning to society (Harefa, 2025).

Retentionists also emphasize retributive justice. Thousands of individuals suffer death, addiction, or severe harm as a direct result of narcotics abuse, for which traffickers are held accountable. In this context, capital punishment is framed as a proportionate response that restores social justice (Chan, 2025). Another common argument relates to social protection: by executing traffickers, the state can permanently eliminate an ongoing threat. Some even argue that execution is more cost-effective than life imprisonment, which entails high maintenance expenses for inmates (Krismen et al., 2025). From this perspective, the death penalty is considered both legitimate and effective for safeguarding public security.

3.2.3 Abolitionist Arguments

Conversely, abolitionists reject the death penalty on the basis that the right to life is absolute and cannot be curtailed under any circumstances. Amnesty International (2023) has stressed that executions constitute cruel, inhuman, and degrading punishment, while Human Rights Watch has repeatedly condemned executions in Southeast Asia as serious violations of the right to life.

Abolitionist arguments also stress the lack of evidence that capital punishment has a meaningful deterrent effect. Empirical research shows no clear correlation between the existence of the death penalty and reductions in narcotics-related crime. For instance, Hoyle & Harry (2025) found that despite Indonesia's continued enforcement of capital punishment, narcotics trafficking remains widespread and is even growing due to the involvement of transnational criminal organizations. This suggests that executions fail to address the structural roots of the problem.

A further concern lies in the risk of wrongful convictions. Capital punishment is irreversible, and in several jurisdictions, individuals have been executed only to be later proven innocent. Such cases underscore the potential violation of the principles of fair trial and due process (Sander, 2021). Global trends further support abolition: Amnesty International (2023) reports that more than two-thirds of countries worldwide have abolished the death penalty either *de jure* or *de facto*. Even in Southeast Asia, there is a gradual weakening of support, although countries such as Indonesia, Malaysia, and Singapore continue to retain it (Joe-Laidler & Lowe, 2025).

3.2.4 Critical Analysis

The central human rights question is not only whether the death penalty is compatible with human rights instruments, but also whether it is effective in combating narcotics trafficking. Evidence from multiple studies suggests that its effectiveness is highly questionable. Chan (2025) notes that despite the application of capital punishment in several Southeast Asian states, drug networks remain resilient and continue to expand through transnational criminal syndicates.

In regional comparison, Singapore and Indonesia maintain some of the strictest capital punishment regimes for narcotics crimes. Yet the prevalence of drug abuse is not significantly lower than in abolitionist states such as the Philippines or Cambodia (Luong, 2024). This indicates that socio-economic and political factors play a more decisive role than the threat of execution itself.

In Muslim-majority countries, the practice of capital punishment is often influenced by religious and political considerations. Brownyard (2025) demonstrates that in some Muslim states, executions are legitimized on the basis of *shari'ah* principles, but in practice they are frequently criticized as being applied selectively and politically. This raises serious concerns about the moral and legal legitimacy of such executions.

In sum, from a human rights perspective, the death penalty for narcotics traffickers faces fundamental challenges. While retentionists emphasize deterrence and public protection, abolitionists argue that the right to life is absolute, executions are inhumane, and the deterrent effect is unsubstantiated. A critical assessment suggests that capital punishment fails to significantly reduce narcotics trafficking and risks severe human rights violations. Consequently, there is a growing need to reconsider the use of the death penalty in narcotics cases and to explore more humane, effective, and socially just alternatives.

3.3 Points of Convergence and Divergence between Islamic Law and Human Rights

The relationship between Islamic law and international human rights instruments in addressing the death penalty is often portrayed as one of contradiction. However, this perspective risks oversimplifying a much more nuanced interaction. Both frameworks are grounded in the fundamental concern of protecting human dignity and preserving societal order, yet they articulate these priorities through different normative lenses. A careful comparative analysis reveals not only divergences but also important points of convergence that provide opportunities for dialogue, especially in contexts such as Indonesia where Islamic law and human rights norms are both legally and morally significant.

3.3.1 Points of Convergence

Despite fundamental differences, significant areas of overlap exist between Islamic law and human rights principles in addressing capital punishment. Both frameworks emphasize the protection of human beings as a core legal norm. Within the framework of *maqāṣid al-shari'ah*, Islamic law prioritizes the preservation of life (*hifẓ al-nafs*) and intellect (*hifẓ al-'aql*) as essential objectives. The abuse and trafficking of narcotics are regarded as serious threats to both, as they destroy health, erode morality, and endanger future generations (al-Zuhaili, 1985; Saqib, 2024). Hence, Islamic law recognizes the state's duty to protect society from such harm, including through the imposition of severe sanctions on offenders.

Similarly, international human rights law, as articulated in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), recognizes the right to life as the most fundamental and non-derogable right. This principle elevates human dignity as the highest value to be respected and safeguarded (Nowak, 1993). Within the context of narcotics, human rights instruments acknowledge the state's responsibility to protect its population from the dangers of drugs, but insist that such protection must not come at the cost of violating the right to life. Thus, both Islamic law and

human rights share a common orientation toward safeguarding humanity, though they differ in their emphasis and implementation strategies.

3.3.2 Points of Divergence

The most fundamental divergence lies in their respective attitudes toward the death penalty. Under Islamic law, particularly within the category of *ta'zīr*, capital punishment remains permissible when deemed necessary for public welfare. Contemporary scholars such as Wahbah al-Zuhaili argue that the state retains discretion to impose the death penalty for extraordinary crimes, including narcotics trafficking, if such offenses are perceived as severe threats to society (al-Zuhaili, 1985). This perspective aligns with the principle of *siyāsah shar'īyyah*, which grants the state authority to formulate legal policies in the public interest (Husin, 2020). In this sense, Islamic law does not categorically exclude the death penalty, provided its ultimate purpose is to protect society and prevent greater harm.

By contrast, international human rights law increasingly rejects the death penalty in absolute terms. Amnesty International (2023) argues that capital punishment constitutes cruel, inhuman, and degrading treatment, violating the inherent dignity of human beings. More than two-thirds of states worldwide have abolished the death penalty in law or practice, and the UN Human Rights Committee has consistently urged states to move toward full abolition. Thus, while both frameworks uphold the principle of human protection, Islamic law retains space for capital punishment under specific circumstances, whereas international human rights standards categorically reject it.

3.3.3 Integrative Analysis

These divergent positions raise a critical question: is it possible to find a middle ground between Islamic law and human rights regarding capital punishment? An integrative approach would require balancing the protection of human life with respect for the non-derogable right to life. One possible solution involves the adoption of alternative sanctions to the death penalty, such as life imprisonment without parole, compulsory social service, or closely supervised rehabilitation. Such measures can ensure public protection from narcotics while preserving the offender's right to life (Chan, 2025; Hoyle & Harry, 2025).

This integrative approach is also consistent with the principles of *maqāṣid al-sharī'ah*. If the ultimate aim of Islamic law is to safeguard life and intellect, then the state may select punishments most effective in achieving these ends, which need not always entail capital punishment. This is particularly relevant where empirical evidence suggests that the death penalty fails to significantly deter narcotics trafficking (Sander, 2021). In this context, alternative punishments may be better aligned with the principles of justice and public welfare.

The relevance of such an approach is especially significant in Indonesia. As a Muslim-majority nation that retains capital punishment in its Narcotics Law while simultaneously being a signatory to the ICCPR, Indonesia faces a legal and moral dilemma. An integrative policy that accommodates both Islamic and human rights principles may offer a viable solution. For instance, the government could suspend executions while imposing stricter alternative sanctions, or convert death sentences into life imprisonment in order to uphold the right to life while protecting society (Wulandari & Setiyanegara, 2025).

In conclusion, Islamic law and human rights share a common concern for human protection, yet differ fundamentally in their stance on the death penalty. While Islamic law allows its application as a form of *ta'zīr* to preserve public welfare, international human rights law rejects it entirely on the grounds of the non-derogable right to life. An integrative analysis suggests that a middle ground may be found in alternative punishments that fulfill both the objectives of *sharī'ah* and the principles of human rights. In Indonesia, such an approach is particularly relevant, as the state must reconcile its dual identity as a Muslim-majority nation and as a participant in the international human rights regime. This study therefore underscores the importance of constructive dialogue between Islamic law and human rights in formulating legal policies that are just, humane, and effective in addressing narcotics-related crimes.

3.4 Implications for Legal Policy in Indonesia

The debate over the death penalty for narcotics trafficking in Indonesia cannot be separated from its broader legal, constitutional, and international dimensions. As a Muslim-majority nation that retains capital punishment in its Narcotics Law while simultaneously being bound by international human rights commitments, Indonesia finds itself navigating a complex and often contradictory policy landscape. Understanding the implications of this dual framework is crucial for evaluating the legitimacy, effectiveness, and future direction of Indonesia's legal policies on narcotics.

3.4.1 Evaluating the Effectiveness of the Death Penalty under the Narcotics Law

Law No. 35 of 2009 on Narcotics stipulates the death penalty as one of the possible sanctions for narcotics traffickers, particularly in cases involving large quantities or organized criminal networks. This policy is grounded in the logic of deterrence, premised on the belief that the threat of execution can dissuade both offenders and potential offenders. The Indonesian government has repeatedly emphasized that narcotics constitute a grave threat to national security, public health, and the future of younger generations, thereby justifying the strictest possible enforcement (Harefa, 2025).

Nevertheless, the effectiveness of the death penalty in curbing narcotics trafficking remains highly questionable. Data from the National Narcotics Board (BNN) reveal that despite several executions of drug kingpins, narcotics circulation continues at high levels and, in some instances, has increased. Hoyle and Harry (2025) similarly observe that narcotics trafficking is transnational in scope, characterized by complex organizational structures and the ability to quickly replace executed members. This suggests that capital punishment functions more symbolically than practically as an anti-narcotics strategy.

Furthermore, the administration of the death penalty in Indonesia is often criticized due to weaknesses in the judicial process, including issues of integrity, transparency, and accountability. Cases of wrongful arrest, limited access to legal aid, and corruption among law enforcement officials amplify the risk of miscarriages of justice. Given that capital punishment is irreversible, such deficiencies raise profound concerns about procedural fairness (Wulandari & Setiyanegara, 2025). Hence, the effectiveness of the death penalty must be questioned not only in terms of deterrence but also in terms of procedural justice.

3.4.2 Constitutional and International Challenges

Constitutionally, the death penalty poses serious dilemmas in Indonesia. Article 28A of the 1945 Constitution guarantees every person the right to life, while Article 28I(1) declares this right non-derogable under any circumstances. This appears to create a contradiction between constitutional norms and statutory provisions that permit capital punishment. The Constitutional Court, however, has upheld the constitutionality of the death penalty in several rulings, such as Decision No. 2-3/PUU-V/2007, arguing that the right to life may be restricted by law to protect broader societal interests, such as public security (Saputro et al., 2023).

At the international level, Indonesia faces growing pressure. As a state party to the International Covenant on Civil and Political Rights (ICCPR), Indonesia is bound to respect the right to life. Although Article 6 of the ICCPR still allows capital punishment under restricted conditions, the UN Human Rights Committee consistently urges member states to move toward full abolition. Organizations such as Amnesty International (2023) and Human Rights Watch have frequently criticized Indonesia for continuing executions in narcotics cases, some of which reportedly violated fair trial standards.

Regionally, several Southeast Asian states are revising their death penalty regimes. Malaysia, for instance, has introduced reforms providing judges with the discretion to replace capital punishment with life imprisonment, while the Philippines abolished the death penalty in 2006, despite intermittent calls for reinstatement. These regional developments highlight Indonesia's increasingly isolated position in retaining capital punishment amidst global and regional momentum toward abolition (Chan, 2025; Joe-Laidler & Lowe, 2025).

3.4.3 Policy Recommendations: Toward a Balanced Legal Reform

To address the tension between Islamic law, international human rights, and Indonesia's pressing social needs, balanced legal reforms are essential. First, policymakers should reassess the effectiveness of the death penalty under the Narcotics Law. If empirical data continue to demonstrate its failure to reduce narcotics trafficking, the policy must be critically re-evaluated. Alternative sanctions such as life imprisonment without parole, compulsory social service, or supervised rehabilitation could serve as more humane and effective substitutes (Krismen et al., 2025).

Second, within the framework of Islamic law, *maqāṣid al-sharī'ah* can provide a foundation for reform. Since the primary objectives of the *sharī'ah* are the protection of life (*hifẓ al-naḥs*) and intellect (*hifẓ al-ʿaql*), if capital punishment proves ineffective, alternative sanctions that better preserve public welfare may be considered more consistent with these objectives. This approach not only aligns with Islamic values but also opens space for dialogue with international human rights principles (Laksana et al., 2025; Saqib, 2024).

Third, reforms must reflect Indonesia's specific social realities. While narcotics pose a genuine and urgent threat, the response must go beyond punitive measures. Strengthening alternative penal systems, enhancing prison supervision, improving rehabilitation programs, and intensifying international cooperation against transnational networks could ensure societal protection without undermining human rights.

Fourth, reforming Indonesia's criminal justice system is crucial to ensure transparency, accountability, and freedom from abuse of power. Any sanction, particularly the death penalty, loses legitimacy if imposed through flawed or unjust processes. Strengthening procedural safeguards must therefore be integral to any legal reform.

The implications of capital punishment for narcotics trafficking in Indonesia highlight a complex dilemma. From an effectiveness standpoint, the death penalty under the Narcotics Law has failed to significantly reduce narcotics circulation. From a constitutional perspective, it conflicts with the guarantee of the right to life under the 1945 Constitution. From an international perspective, Indonesia faces increasing pressure to abolish executions in line with global and regional human rights trends. As such, comprehensive legal reform is necessary to balance three dimensions: the Islamic imperative of protecting life and intellect, the human rights principle of safeguarding the right to life, and Indonesia's social imperative of protecting its youth from narcotics. A middle-ground approach—replacing capital punishment with more humane and effective sanctions—offers a viable pathway out of this dilemma.

4. Conclusion

This study finds that from the perspective of Islamic law, the death penalty for narcotics traffickers can be justified under the mechanisms of *ta'zīr* and the principle of *siyāsah shar'īyyah*, insofar as it serves to protect public welfare. The normative foundations derived from the Qur'an, Hadith, and scholarly opinions support the classification of narcotics as prohibited substances that endanger both life and intellect. Within the framework of *maqāṣid al-sharī'ah*, severe punishments—including capital punishment—are deemed permissible when their primary aim is to safeguard society from the moral, physical, and social harms caused by narcotics. Nevertheless, such implementation must be accompanied by prudence, adherence to justice, and a guarantee of fair and transparent judicial processes.

From a human rights perspective, however, capital punishment raises profound concerns as it contradicts the principle of the right to life, which is universally recognized as a fundamental and non-derogable right. International human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), emphasize the prohibition of arbitrary deprivation of life, while the Indonesian Constitution equally enshrines the right to life as non-derogable. Although pro-retention arguments often highlight deterrence and social protection, empirical evidence suggests that the death penalty does not significantly reduce narcotics trafficking. Moreover, global trends toward abolition further reinforce the difficulty of defending capital punishment from a human rights standpoint.

Taking both perspectives into account, this research concludes that Indonesia must reconsider its policy on the death penalty for narcotics-related offenses. Legal reform is needed to strike a balance between the principles of Islamic law, respect for human rights, and the social imperative to protect communities from the dangers of narcotics. Alternative sanctions, such as life imprisonment without parole or tightly monitored rehabilitation, may provide a more integrative solution. In this way, national legal policy can continue to uphold the *maqāṣid al-sharī'ah* by protecting life and intellect, while also aligning with constitutional obligations and international commitments to safeguard the right to life and human dignity.

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