

ABSTRAK

Pluralitas sistem hukum di Indonesia menempatkan hukum pidana Islam dan hukum pidana positif nasional dalam posisi yang saling berinteraksi, khususnya dalam penanganan tindak pidana pembunuhan. Hukum pidana Islam melalui konsep *qisas* dan *diyat* menawarkan model pemidanaan yang menekankan keadilan retributif sekaligus membuka ruang pemaafan dan pemulihan sosial, sedangkan hukum pidana Indonesia sebagaimana diatur dalam KUHP dan KUHP Baru (Undang-Undang Nomor 1 Tahun 2023) bertumpu pada asas legalitas, *ius puniendi* negara, dan tujuan pemidanaan yang bersifat preventif, represif, serta rehabilitatif. Perbedaan orientasi tersebut memunculkan kebutuhan akan upaya harmonisasi agar nilai keadilan substantif, kemanusiaan, dan perlindungan hak hidup dapat diwujudkan secara seimbang dalam sistem hukum nasional. Atas dasar tersebut, penelitian ini mengkaji: (1) bagaimana perbandingan hukum pidana Islam dan hukum pidana positif Indonesia dalam penjatuhan hukuman terhadap tindak pidana pembunuhan; dan (2) bagaimana upaya harmonisasi prinsip *qisas* dan *diyat* dalam hukum Islam dengan hukum pidana Indonesia.

Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, dan perbandingan. Hasil penelitian menunjukkan bahwa meskipun kedua sistem hukum memiliki landasan filosofis dan mekanisme pemidanaan yang berbeda, keduanya memiliki titik temu dalam perlindungan hak hidup dan semangat keadilan restoratif. Prinsip *diyat* khususnya relevan untuk diharmonisasikan melalui pendekatan *restorative justice* yang telah diakomodasi dalam KUHP Baru serta berbagai regulasi penegakan hukum. Harmonisasi tersebut dapat dilakukan melalui internalisasi nilai-nilai hukum Islam secara substantif, bukan melalui formalisasi, dengan dukungan teori objektifikasi dan pluralisme hukum. Dengan demikian, integrasi nilai *qisas–diyat* berpotensi memperkaya sistem hukum pidana Indonesia agar lebih berkeadilan, humanis, dan sesuai dengan karakter masyarakat Indonesia yang plural.

Kata Kunci: Qisas, Diyat, Tindak Pidana Pembunuhan, Hukum Pidana Islam, Hukum Pidana Indonesia, Restorative Justice

ABSTRACT

*The plurality of legal systems in Indonesia places Islamic criminal law and national positive criminal law in a dynamic relationship, particularly in addressing the crime of homicide. Islamic criminal law, through the concepts of qisas and diyat, offers a model of punishment that emphasizes retributive justice while simultaneously providing space for forgiveness and social reconciliation. In contrast, Indonesian criminal law, as regulated in the Criminal Code (KUHP) and the New Criminal Code (Law Number 1 of 2023), is based on the principle of legality, the state's *ius puniendi*, and penal objectives that are preventive, repressive, and rehabilitative in nature. These differing orientations give rise to the need for harmonization so that substantive justice, humanity, and the protection of the right to life can be realized in a balanced manner within the national legal system. Accordingly, this research examines: (1) the comparison between Islamic criminal law and Indonesian positive criminal law in imposing sanctions for homicide; and (2) efforts to harmonize the principles of qisas and diyat in Islamic law with the Indonesian criminal law system.*

This study employs normative legal research using statutory, conceptual, and comparative approaches. The findings indicate that although both legal systems differ in philosophical foundations and penal mechanisms, they share common ground in the protection of the right to life and the spirit of restorative justice. In particular, the principle of diyat is relevant to be harmonized through a restorative justice approach that has been accommodated in the New Criminal Code and various law enforcement regulations. Such harmonization can be achieved through the substantive internalization of Islamic legal values rather than their formalization, supported by the theories of objectification and legal pluralism. Thus, the integration of qisas–diyat values has the potential to enrich the Indonesian criminal law system so that it becomes more just, humane, and consistent with the pluralistic character of Indonesian society.

Keywords: *Qisas, Diyat, Homicide, Islamic Criminal Law, Indonesian Criminal Law, Restorative Justice*