

CRIMINAL LAW AND ISLAMIC PERSPECTIVES ON THE DEATH PENALTY IN PARENTAL MURDER CASES

Zul Fahmi,^{1*} Muhammad Sangidun,² Achmad Faiq Ramadhan,³ Muhammad Roihan Qowima⁴

¹ Department of Islamic Criminal Law, Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Indonesia

^{2,3} Faculty of Sharia, Universitas Islam Negeri Raden Mas Said Surakarta, Indonesia

⁴ Faculty of Sharia, Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, Indonesia

*Correspondence: zulfahmi1901@gmail.com

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Abstract: The death penalty for the murder of a child by a parent is subject to differing standards of justice and proportionality between positive law and Islamic law. This disparity requires in-depth study and analysis of judicial rationality and criminal proportionality. This study assesses the rationality of the judge's considerations and the proportionality of the death penalty in Mandailing Natal District Court Decision No. 40/Pid.B/2025/PN Mdl (parricide murder) from the perspective of Islamic criminal law, with a focus on *qishash* and *maqashid al-shariah*. The method used is normative legal research with a doctrinal and judgment study approach; the analysis materials include a copy of the verdict, the Criminal Code, fiqh literature, and contemporary studies analyzed descriptively-qualitatively and comparatively. The results show that the panel formally assessed the fulfillment of the elements of premeditated murder so that the verdict led to the death penalty according to Article 340 of the Criminal Code. Textually, the elements of *qishash* were fulfilled and the victim's family did not grant forgiveness, but weaknesses in forensic and psychiatric evidence reduced factual certainty, which is an important prerequisite under Islamic criminal law before applying a commensurate punishment.

Hukuman mati dalam kasus pembunuhan yang dilakukan anak terhadap orang tuanya memiliki standar keadilan dan proporsionalitas hukuman yang tidak sama antara hukum positif dan hukum Islam. Kesenjangan ini memerlukan kajian dan analisis mendalam tentang rasionalitas yudisial dan proporsionalitas pidana. Penelitian ini menilai rasionalitas pertimbangan hakim dan proporsionalitas pidana mati dalam Putusan PN Mandailing Natal No. 40/Pid.B/2025/PN Mdl (pembunuhan orang tua oleh anak) dari perspektif hukum pidana Islam, dengan fokus pada qishash dan

maqashid al-shariah. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan doktrinal dan studi putusan; bahan analisis meliputi salinan putusan, KUHP, literatur fikih, dan kajian kontemporer yang dianalisis secara deskriptif-kualitatif dan komparatif. Hasil menunjukkan majelis secara formal menilai terpenuhinya unsur pembunuhan berencana sehingga vonis mengarah pada pidana mati menurut Pasal 340 KUHP. Secara tekstual unsur qishash terpenuhi dan keluarga korban tidak memberi pengampunan, namun kelemahan bukti forensik dan psikiatrik mengurangi kepastian faktual sebagai prasyarat penting menurut hukum pidana Islam sebelum menerapkan hukuman setimpal.

Keywords: Death Penalty; Islamic Criminal Law; Murder of Parents; Proportionality; Rationality.

INTRODUCTION

The death penalty is the most extreme form of criminal sanction and continually provokes wide-ranging debate at both the national and international levels (Amrullah 2024; Shiina et al. 2024; Fardiansyah 2021). Indonesian positive law, through the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP), regulates capital punishment, particularly for cases of premeditated murder as set forth in Article 340 of the Criminal Code (Amrullah 2024; Budiyanto, Pamolango, and Ringgi 2024). Murders of parents (parricide) attract attention because they transgress moral and religious norms (Miles, Condry, and Windsor 2023; Vecina, Chacón, and Piñuela 2021). For example, in Mandailing Natal, Decision No. 40/Pid.B/2025/PN Mdl a child was sentenced to death for the murder of his biological mother, the court finding the defendant's conduct to be particularly sadistic and contrary to religious and humanitarian values. The judges held that the decapitation of a defenseless mother constituted an inhuman act, and that the death penalty was just and commensurate with the defendant's culpability (Mahkamah Agung 2025). This case raises critical questions about the rationality and proportionality of imposing the death penalty in parricide: to what extent is it appropriate for the state to apply capital punishment in such offenses, and does this decision conform to the principles of justice and the objectives of punishment?

Islamic criminal law regards murder as a *jarimah qishash*, an offence governed by the principle "life for a life", wherein capital punishment within the *qishash* framework is intended to secure commensurate justice and the public interest (Halimang, Ridhwan, and Sakdiah 2025; Khodadadi 2024; M. T. Nur 2021; Syatar et al. 2024). Consequently, a child who intentionally kills a parent may generally be subjected to *qishash*, provided that no pardon is granted by the victim's heirs or family (Royani 2022; Alam, Aunuh, and Fajrin 2024). Classical *fiqh* literature also records a hadith indicating that a parent who kills a child is not subject to *qishash* (Ad-Damisyqi 2010), which suggests an exception in the reverse case. Nevertheless, Islamic criminal law more broadly allows for pardon and requires the

payment of *diyat* (financial compensation or “blood money”) if the victim’s family forgives the offender. This principle embodies the notion of proportionate justice, balancing retributive measures with consideration for societal welfare (Hapsin and Nurdin 2022; Absar 2020). Accordingly, the Islamic penal framework does not portray the death penalty solely as vindictive retribution but also as a preventive measure aimed at preserving social equilibrium.

Various relevant studies have examined the implementation of the death penalty and *qishash* in Muslim-majority countries, revealing diverse implementation patterns and normative justifications. Several investigations into the *qishash* and *diyat* provisions of the *Qanun Jinayat* of Aceh Province conclude that their application is supported by both a legal framework and prevailing local social norms. Under the *Qanun Jinayat*, the implementation of capital punishment in Aceh has taken varied forms, including decapitation, caning, and stoning (Muzakir 2022; Butt 2020; Halimang, Ridhwan, and Sakdiah 2025; Fuad, Darma, and Muhibbuthabry 2022; Muhibbuthabary et al. 2023).

Damura, Wattimena, and Tuhulele (2025) observe that in Middle Eastern countries such as Saudi Arabia, Iran, and Egypt, *qishash* is employed as an instrument of law enforcement, albeit one frequently contested from human-rights and procedural-justice perspectives. Studies by Singh et al. (2024) and Kananatu (2022) indicate that Malaysia continues to retain the death penalty for serious offenses and narcotics violations, though the practice is subject to intense public and political debate concerning potential abolition or restriction. Comparative studies addressing both theoretical and practical dimensions also offer important perspectives for the Indonesian context. Tongat (2024) examines the death penalty from the standpoint of Islamic law and Indonesia’s positive criminal law, arguing that capital punishment should be commensurate with the offense while respecting humanity. Salam and Karim (2021) emphasize the necessity of evidentiary certainty before imposing the death penalty in court, contending that such a sanction is only appropriate when the standard of proof satisfies strict legal thresholds.

Complementing these findings, Royani and Park (2023) locate the principle of balance as a bridge between the new Criminal Code and doctrines of Islamic criminal law, where the values of divinity, humanity, and public welfare align with *maqasid al-shariah*. *Hudud* and *qishash* represent public values and the rights of Allah (SWT), whereas *ta’zir* provides the state with discretionary flexibility. They further note that the new Criminal Code allows for compensation to victims, a feature analogous to the *diyat* mechanism in *qishash*, which demonstrates a balance among victims’ interests, offense individualization, and judicial discretion. Collectively, these studies help situate the Mandailing Natal parricide decision within a broader discourse on the coherence between Islamic doctrine, positive law, and standards of human-rights protection.

Relevant studies indicate attention to the principles of Islamic justice and crime prevention through punishment, yet most have not examined parricide in depth. As noted by Miles, Condry, and Windsor (2023), parricide, the killing of a parent by an offspring of

any age, remains an understudied form of homicide. Existing literature more commonly addresses *qishash* in cases of grievous homicide or broader reforms of Islamic criminal law, while the rationality and proportionality of capital punishment in the specific context of parricide (or filicide of a parent) have received little analytical attention, insofar as the author's review shows.

Current academic studies still lack focus on whether the death penalty in cases of murder committed by children against their parents meets the standards of justice in Islam and proportionality of punishment. This gap highlights the need for a more incisive analysis of judicial rationality and criminal proportionality in the context of parricide, particularly a comparison between Indonesian positive law and the principles of Islamic criminal law. Although several previous studies, for example in Aceh, support the concept of *qishash* for premeditated murder (Butt 2020; Halimang, Ridhwan, and Sakdiah 2025), these studies have not yet evaluated in detail the parameters of the rationality of punishment and the dimensions of Islamic criminal law and relevant *maqasid al-shariah*.

This study advances the literature by conducting a more detailed comparative-legal analysis of the application of the principles of justice and proportionality in rulings on the killing of parents from the perspective of Islamic criminal law, filling the empirical and normative void by examining the appropriateness of the application of *qishash* and the relevance of *maqasid al-shariah* in Decision Number 40/Pid.B/2025/PN Mdl as a case study. The main questions in this first study are: To what extent is the death penalty imposed in Decision Number 40/Pid.B/2025/PN Mdl rational and proportional according to the principles of Islamic criminal law (*qishash* and *maqasid al-shariah*)? How compatible and/or incompatible are the judges' considerations in the decision with the provisions of Indonesian positive law, as well as the principles of evidence and *maslahah* (public welfare) in Islamic criminal law, and their implications for the legitimacy of the application of the death penalty?

The main objective of this study is to reveal the rationality and proportionality of imposing the death penalty on defendants accused of killing their parents from the perspective of Islamic criminal law, as well as to assess the contribution of these findings to scientific discussion and criminal law practice. This study is expected to provide recommendations and reflections for the application of Islamic criminal law and Indonesian positive law in dealing with such extreme murder cases. The contribution of this research is to present a comprehensive study comparing Islamic criminal law theory with court practices in Indonesia, thereby adding to the literature on the integration of Islamic criminal law and positive law in the context of serious crimes.

RESEARCH METHOD

This study applies normative legal research method with a doctrinal approach, using case studies as primary material to determine the rationality and proportionality of the death penalty within the frameworks of positive legal norms, Islamic criminal law doctrine,

and principles of punishment (Marzuki 2017). Data collection consisted of a literature study encompassing legal and non-legal materials. Primary materials comprised Decision No. 40/Pid.B/2025/PN Mdl, the Criminal Code (KUHP), and fiqh texts addressing *jarimah qishash* and *maqasid al-shariah*. Secondary sources comprised monographs, peer-reviewed scholarship on Islamic criminal law and Indonesian positive law, and psychological and forensic research pertinent to factual and mens-rea analysis. The decision was selected purposively due to its representativeness, the ethical/value tensions it raises regarding the death penalty under the KUHP, and the presence of forensic and psychiatric evidence enabling detailed inquiry.

Data analysis combined descriptive-qualitative and comparative approaches. Verdict manuscripts were systematically reviewed to reconstruct the evidentiary framework employed by judges, the evaluation of criminal elements, aggravating and mitigating factors, indicators of intent and planning, and the legal authorities cited as grounds for the rulings. The verdicts' findings were then compared with Islamic criminal law to evaluate formal coherence, sentencing proportionality, and conformity with the *maqashid al-shariah* (Benuf and Azhar 2020). The review integrated factual records, notably forensic and psychological reports cited in the decisions, and employed normative literature analysis to interpret Islamic legal principles. Deductive reasoning produced the conclusions, and triangulation across decisions, secondary literature, and comparative jurisprudence was applied to increase validity.

RESULT AND DISCUSSIONS

Summary of Facts and Holding

The case adjudicated in Decision No. 40/Pid.B/2025/PN Mdl concerns Wildan bin (Alm.) Sundut (24 years old; resident of Huraba II Village), who was tried for the killing of Rohani (his biological mother) on 18 November 2024. The Mandailing Natal District Court heard the matter at first instance. The Public Prosecutor charged the defendant primarily under Article 340 of the Criminal Code for premeditated murder and sought the death penalty. In the alternative, the indictment included Article 338 Criminal Code, Article 44(3) *jo.* Article 5(a) of Law No. 23 of 2004 on the Elimination of Domestic Violence, and Article 351(3) Criminal Code. Relying on the reasoning set out in the judgment, the panel found that all elements of Article 340 Criminal Code were satisfied and therefore convicted the defendant and imposed the death sentence. The machete submitted as an exhibit was confiscated and destroyed, and the defendant remains in custody (Mahkamah Agung 2025).

According to the judgment, on the morning of 18 November 2024 the defendant asked the victim for IDR 10,000; when she refused, he located a machete (*parang*) customarily stored in the kitchen and took it. He then approached the victim from behind and repeatedly slashed her neck until she collapsed. The defendant reportedly uttered insulting words toward the victim, attempted to flee, but was apprehended by residents in a

nearby paddy field. The victim was pronounced dead upon arrival at the hospital; the *visum et repertum* and the Death Certificate corroborate this finding (Mahkamah Agung 2025).

The panel relied on several evidentiary components: coherent eyewitness testimony from Asmina, Nurainun, Kasmir, and Alihar; the *visum et repertum* and Death Certificate documenting incised neck wounds and injuries consistent with a sharp object; the machete submitted as physical evidence; and a Self-Reporting Questionnaire (SRQ) together with a psychiatric specialist's interview, which found no psychotic disorder or other condition negating criminal responsibility. The defendant's admissions in court acknowledging certain facts were also taken into account by the panel (Mahkamah Agung 2025).

The panel concluded that *dolus premeditatus* (premeditated intent) was present. The judges reasoned that the defendant knew the location of the machete, retrieved it, returned to attack a vital part of the victim (the neck) repeatedly, and continued the assault after the initial blow; the temporal interval between strikes, the panel held, afforded the defendant an opportunity to desist. On this basis the panel classified the killing as *moord* (wilful, premeditated murder) rather than *doodslag* (ordinary homicide), thereby elevating the culpability and justifying the imposition of the death penalty (Rauzi, Hadi, and Willems 2023; Budiyanto, Pamolango, and Ringgi 2024).

Analytically, however, the judgment raises several important caveats. *First*, the victim's family refused a full forensic autopsy, so certain forensic particulars, such as the sequencing of wounds, wound depth, and the distance or force of the machete swings, were not documented in comprehensive forensic detail. *Second*, although the psychiatric expert found no mental disorder negating responsibility, the record notes the defendant's reported use of a medication (*trex*) in the days preceding the incident, a medical-psychological factor that the panel did not explore further. *Third*, the temporal gap the panel relied on to infer premeditation was relatively short and could plausibly be interpreted instead as an escalation of impulsive conduct in the context of initial provocation (Mahkamah Agung 2025). These divergent readings are material to doctrinal distinctions between intent formed with prior planning and sudden or spontaneous intent, a distinction discussed in comparative doctrinal literature (Urruela, Herrero, and Colom 2025).

The panel identified several aggravating circumstances, including the taking of life, the injuries and consequential harms to the victim's family, and the fact that the perpetrator was the victim's biological child, which together imparted additional moral weight. The court found no mitigating circumstances, thereby justifying the imposition of the maximum penalty (Mahkamah Agung 2025). Under positive law, the death penalty is a lawful sanction for *moord* (premeditated murder) under the Criminal Code (Fardiansyah 2021; Amrullah 2024). From the standpoint of proportionality and Islamic criminal law, however, other dimensions merit attention, most notably whether the possibility of pardon or *diyat* by the victim's family was adequately explored in the judgment, as well as prospects for rehabilitation and relevant human rights considerations. The panel emphasized retributive

and preventive functions, characterising the conduct as inhuman and thus concluding that the death penalty was just and proportionate.

Juridical Coherence in the Application of Offense Elements under Positive Law

An offense (*delik*) is juridically understood as an act prohibited by criminal law that gives rise to criminal liability for its perpetrator, i.e., conduct that satisfies the formulation of a penal norm (*actus reus*) as well as the element of fault (*mens rea*) or another legally recognized form of culpability (Jacobsen 2024; Keiler 2024). Commentaries on the Criminal Code emphasize that this definition comprises subjective dimensions such as intent or negligence, and objective dimensions such as the act and its consequences (Soesilo 2013). Several categories must be distinguished for the analysis of homicide in Indonesian adjudication: (1) material offenses (*delik materiil*), which require the occurrence of a specific consequence, e.g., injury or death; (2) formal offenses (*delik formil*), in which the offense is complete once the prohibited act is carried out regardless of a particular consequence; (3) unplanned offenses (*doodslag*) and premeditated offenses (*moord*), whose primary distinction rests on the nature of culpability, *dolus repentinus* (sudden/impulsive intent) versus *dolus premeditatus/voorbedachte rade* (intent formed with prior planning); and (4) special offenses (*speciale delicta*) and ordinary offenses, which are differentiated by the legal subject and by separate statutory provisions. An example of a special offense is corruption committed by a public official, which is regulated by specific legislation outside the Criminal Code, whereas ordinary offenses include acts such as assault, governed by provisions within the Criminal Code (Sriwidodo 2019).

Article 340 of the Criminal Code defines premeditated murder, providing that anyone who intentionally and with prior planning deprives another person of life may be subject to the death penalty (Soesilo 2013). The elements that must be proven are the legal subject, the element of intent, the element of prior planning (or the existence of a temporal interval or opportunity for the perpetrator to deliberate before acting), and the material element of causing another person's death (Wahyuni 2017). *Voorbedachte rade* in doctrinal studies is measured through indicators such as a reflective pause between intent and action, evidence of surveillance, provision of means, and continuity of *modus operandi*. These indicators determine whether an act is classified as *moord* or *doodslag* (Budiyanto, Pamolango, and Ringgi 2024; Rauzi, Hadi, and Willems 2023). Comparative studies suggest that courts should be cautious in assessing whether the post-action time lag meets the threshold for premeditation (Agusta et al. 2025).

Although the court in Decision No. 40/Pid.B/2025/PN Mdl tended to rely on indicators of preparation (weapon acquisition, repeated attacks, or use of means) as the basis for determining *voorbedachte rade* (Mahkamah Agung 2025), in judicial practice, the interpretation of evidence and the threshold considered sufficient to declare *voorbedachte rade* varies. A combination of direct evidence (such as witnesses, confessions) and forensic evidence (*visum et repertum*, autopsy) is commonly required to establish intent and causality

(Fragkou et al. 2025; Sitompul 2023). Therefore, the focus of analysis must shift from merely cataloging indicators to normative evaluation, namely whether the panel's inference from indicators to conclusions of premeditation is based on consistent, transparent, and proportional reasoning.

Decision No. 40/Pid.B/2025/PN Mdl the panel upheld the primary charge under Article 340 after assessing that the element of premeditation had been fulfilled, while the subsidiary and alternative charges were included but not selected (Mahkamah Agung 2025). From a doctrinal perspective, the application of Article 340 can be justified if the indicators of *voorbedachte rade* meet the criteria (Agusta et al. 2025; Rauzi, Hadi, and Willems 2023). However, if there is no evidence of communication, surveillance, or other forms of preparation that indicate long-term planning, then strict evidentiary arguments are needed so that the interpretation of premeditation does not expand inconsistently. The main criticism of this ruling is the weak explanation of the relative weight of evidence, as there is no quantification or weighting between confessions, witnesses, and forensic evidence, so that the depth of the logical chain linking the facts to the conclusion of premeditation can be questioned. Academic analysis should assess the rationality and proportionality of the operational elements on which the decision is based.

The strength of the coherence of the application of the elements of the offense is highly dependent on the quality of forensic and psychiatric evidence. Forensic literature emphasizes the importance of comprehensive autopsies to strengthen causality, determine the sequence of injuries, and support inferences about the *modus operandi*, factors that are crucial in cases that distinguish between unplanned and planned acts (Fragkou et al. 2025; Sitompul 2023). Meanwhile, studies on the Self-Reporting Questionnaire (SRQ) indicate that the SRQ is effective as a screening tool but has limitations in assessing pharmacological effects or complex volitional conditions (Zimmerman 2024).

In this case, the *visum et repertum* and SRQ were used, but a full autopsy was rejected by the family and there were indications of drug use that were not further investigated, which weakened the scientific aspect of the evidence despite the presence of witnesses and confessions (Mahkamah Agung 2025). Critically, the panel's reliance on non-forensic evidence without explaining its limitations and impact on legal conclusions weakened the soundness of the decision. Therefore, judicial arguments should ideally outline how each type of evidence contributes to the burden of proof relevant to substantiating *voorbedachte rade*.

Rationality of Judicial Reasoning and Proportionality of Sentencing

The rationality of judicial reasoning refers to a legal-reasoning process that is consistent, transparent, and traceable. Judges must link tested facts logically to the elements of the penal norm, explain the probative weight of each piece of evidence, and cite and apply relevant precedent or authoritative commentary so that readers of the judgment can follow the reasoning that leads to the decision (Hoffmaster 2021). Proportionality of

punishment demands a balance between the gravity of the offense and the severity of the sanction (Manikis 2022).

Common criteria include the seriousness of the crime, the degree of subjective culpability, proven aggravating and mitigating circumstances, and the availability of less liberty-restrictive alternatives. These principles are used to assess whether a sanction serves retributive, preventive, and rehabilitative purposes without exceeding what the law requires. In Indonesian criminal adjudication practice, such standards are often formulated and tested against Criminal Code commentaries, so assessments of rationality and proportionality typically take the form of a coherence test between legal facts and norms (Fatoni et al. 2025).

In Decision No. 40/Pid.B/2025/PN Mdl the panel treated the element of prior planning (remeditation) as the decisive requirement for satisfying Article 340 Criminal Code, where the retrieval of a machete from the kitchen, the repeated assault on the victim's neck, and the defendant's failure to render aid served as the factual premises for concluding premeditation (Mahkamah Agung 2025). Structurally, the panel set out the facts, examined the elements of Article 340, and drew a conclusion, so the form of the reasoning appears coherent.

A critical reading, however, highlights two weaknesses: doctrinal standards require operational evidence of planning, such as a meaningful temporal interval or concrete preparatory acts, and such evidence must be more substantial than a mere brief pause following the act. A judge should therefore compare factual elements with the criteria established in precedent before reaching a determination of premeditation (Riesthuis 2023). On the scientific-evidentiary side, the panel relied on witness testimony, the *visum et repertum*, and the defendant's confession, while a full forensic autopsy was not performed due to the family's refusal (Mahkamah Agung 2025). This places an additional burden on the judge to explain the relative weight of each evidentiary item to preserve rationality.

The judgment imposed the death penalty, emphasizing the sadistic nature of the act and the additional moral weight of murdering one's biological mother, and expressly found no mitigating circumstances (Mahkamah Agung 2025). Although the Criminal Code formally authorizes capital punishment for *moord*, a proportionality analysis requires the judge to perform an explicit balancing test: the judge should demonstrate why the most severe punishment is necessary for deterrence and clarify how mitigating factors, such as remorse or indications of pre-offense substance or medication use, were evaluated and weighted. Empirical literature in Indonesia stresses that death sentences demand a strong and transparent rational justification to maintain judicial consistency and to be defensible in public-policy terms.

Case studies of premeditated murder and Supreme Court rulings by Motian and Pura (2024) underscore the importance of comprehensive forensic evidence and a rigorous examination of motive to safeguard the accuracy of sentencing assessments. Forensic and medico-psychiatric reviews observe that the absence of a full autopsy and the limitation of

psychological inquiry to screening tools such as the SRQ, without accompanying toxicological analysis, undermine the scientific basis for evaluating elements of intent and volitional capacity, which are material to determining the proportionality of severe sanctions (Zimmerman 2024; Tasdemir et al. 2024). From the perspective of judicial rationality and positive-law reasoning, the judgment would be more robust if the panel had set out in detail the balancing process between the objectives of punishment and the available scientific evidence, thereby providing clearer jurisprudential support for its sentencing decision.

Conformity of the Judgment with the Doctrine of Islamic Criminal Law

Islamic criminal law is structured around three principal categories of sanctions found in classical fiqh literature and contemporary scholarship: *hudud*, *qishash/diyat*, and *ta'zir*. *Hudud* denotes fixed punishments prescribed by the explicit texts (*nash*) of the Qur'an, such as for *zina*, theft, and intoxication, and is subject to stringent evidentiary requirements (Fahim 2022). *Ta'zir* refers to discretionary penalties imposed by the state or ruler for offences not covered by *hudud* or *qishash*; its scope and severity are context-dependent and calibrated according to the harm caused and considerations of *maslahah* (Djalaluddin et al. 2023).

Qishash occupies a distinct position between these categories because it concerns homicide and bodily injury. Fundamentally a principle of commensurate retributive justice "life for life", *qishash* nonetheless permits *diyat* or pardon if the victim's family so chooses. Classical jurists and contemporary comparative studies emphasize that invoking *qishash* for a killing requires clear proof of causation and intent, and recognizes the family's right either to demand *qishash* or to accept *diyat* as an alternative (Hapsin and Nurdin 2022; Absar 2020; Ad-Damisyqi 2010; Halimang, Ridhwan, and Sakdiah 2025; Khodadadi 2024; M. T. Nur 2021; Syatar et al. 2024).

Elements commonly required to actualize *qishash* for homicide include: (1) identification of the perpetrator as the legally responsible subject and proof that the act constitutes *qatl 'amd* (intentional killing); (2) proof of causation linking the defendant's act to the victim's death (Khodadadi 2024; Halimang, Ridhwan, and Sakdiah 2025); (3) the absence of sharia-based exculpatory reasons that would negate criminal responsibility, such as lawful self-defence or a significant psychiatric disorder established by forensic examination; and (4) the position of the victim's family as the holders of the *qishash* right, who may demand commensurate retribution or opt for *diyat* or pardon (Hapsin and Nurdin 2022; Absar 2020). *Qishash* is not an automatic mechanism of retaliation: its operation is linked to the protection of life (*hifz an-nafs*) and to strict evidentiary procedures, while the accommodation of *diyat* reflects a restorative orientation that affords the victim's family a normative choice (M. T. Nur 2021; Halimang, Ridhwan, and Sakdiah 2025; Absar 2020).

Regarding Decision No. 40/Pid.B/2025/PN Mdl, when compared with the elements of *qishash*, there appears to be a formal match between the facts of the case and the provisions of *qishash*. The verdict notes the repeated killing of the victim by slitting his

throat, the defendant's confession, the *visum et repertum* and death certificate as medical evidence, and the absence of extenuating circumstances that would negate criminal responsibility, so the panel chose the charge of premeditated murder under Article 340 of the Criminal Code and imposed the death penalty (Mahkamah Agung 2025). Doctrinally, these facts satisfy the formal prerequisites for *qishash* (Halimang, Ridhwan, and Sakdiah 2025; Khodadadi 2024), although substantive appropriateness remains contingent on the quality of forensic proof and a rigorous assessment of the defendant's mental state to secure factual certainty prior to any retributive sanction.

In *qishash* terminology, the defendant's conduct falls within the category of homicides potentially subject to *qishash*, while the absence of a family-initiated pardon or acceptance of *diyat* indicates that restorative remedies were not pursued in the case record (Absar 2020; Ad-Damisyqi 2010; Halimang, Ridhwan, and Sakdiah 2025; Khodadadi 2024; M. T. Nur 2021; Syatar et al. 2024). Nonetheless, to secure not only formal coherence but also robust legitimacy under *maqashid al-shariah*, the court ought to set out expressly how the imposed sanctions comport with objectives such as protection of life (*hifz an-nafs*) and public welfare (*maslahah*), for instance, by explaining why rehabilitative or restorative alternatives would be inadequate in the factual context and how capital punishment furthers prevention and long-term justice.

Assessment of formal conformity should be supplemented by *maqashid al-shariah*, focusing on *hifz an-nafs*, justice, and *maslahah*. Contemporary analyses on *maqashid al-shariah* and the application of *qishash* by Zuhdi and Nasir (2024) and Rusli et al. (2024) argue that the application of proportionate sanctions is considered valid if it truly fulfills the objectives of protection and prevention, while still allowing room for forgiveness for the sake of social benefit. Recent studies examining *qishash*, *diyat*, and *maqashid al-shariah* reveal two points relevant to this case: Khodadadi (2024) and Halimang, Ridhwan, and Sakdiah (2025) maintain that *qishash* can be functions as deterrence and restorative justice when evidentiary and procedural safeguards are robust. Ibrahim et al. (2025) and Alam, Aunuh, and Fajrin (2024) underline that *maqashid al-shariah* require forward-looking punishments that factor in offender circumstances and the possibility of restorative justice at the family's request.

Comparative practice highlights that jurisdictions applying *qishash* emphasize *maqashid al-shariah* elements to varying degrees. Iran's jurisprudence includes instances of family-led forgiveness occurring before or during execution, which underscores the decisive influence of familial will and the restorative capacity of *qishash* (Rehman et al. 2023). Pakistan's experience under the *Qisas and Diyat Ordinance* reveals a spectrum between *diyat* acceptance and *qishash* demands, evidencing how socio-cultural contexts, standards of proof, and mediation processes by families inform whether execution proceeds or restorative alternatives prevail (Ghobishavi 2025). These comparative cases signal the importance of contextual analysis when evaluating *qishash* implementation.

While Decision No. 40/Pid.B/2025/PN Mdl is retributively coherent with *qishash*, *maqashid al-shariah* scrutiny requires more than formal conformity. The panel should articulate normative rationales that link the sentence to *hifz an-nafs* and *maslahah*, for instance by demonstrable prevention of public danger and a reasoned rejection of alternative measures. Absent this *maqashid al-shariah* justification, the decision's legal or theological validity may not translate into ethical or social legitimacy within Islamic criminal law.

Implications for Integrating Islamic Criminal Law and Positive Law

The integration of the death penalty in Decision No. 40/Pid.B/2025/PN Mdl reflects the normative and procedural impact on efforts to harmonize positive law and Islamic criminal law doctrine. Conceptually, there is a fundamental common ground, as both Article 340 of the Criminal Code and the doctrine of *qishash* recognize that premeditated murder that fulfills the elements of intent and planning can result in the most severe punishment as a response to threats to *hifz al-nafs* and demands for justice for the victim (Halimang, Ridhwan, and Sakdiah 2025; Khodadadi 2024). However, from a procedural perspective, these ruling underscores the need for stronger forensic standards of proof to establish causality and intent.

In practical terms, procedural harmonization can be achieved through several concrete instruments. *First*, positive courts need to adopt minimum forensic evidence standards (e.g., comprehensive forensic autopsies and toxicology analyses), given the importance of forensic evidence in establishing causality and *modus operandi* (Tasdemir et al. 2024). *Second*, it is important to integrate the position of the victim's family into the formal process through an official mechanism for recording the *qishash/diyat* will so that restorative options are not only ad hoc but can be legally verified. *Third*, the court is required to compile a written balancing test explaining why the most severe punishment is necessary to weigh prevention, rehabilitative aspects, and social impact, so that the judicial rationality of the Criminal Code can be linked to the objectives of *maqashid al-shariah*. *Fourth*, judicial guidelines are needed that detail the operational indicators of *voorbedachte rade* (preparation of tools, surveillance evidence, prior communication, repeated attacks) so that Article 340 of the Criminal Code is not interpreted expansively based solely on a brief pause. The following is a summary of comparisons that highlight similarities and differences and suggest steps for procedural harmonization:

Table 1. Summary of Comparisons between Islamic Criminal Law and Positive Law

Elements	Islamic Criminal Law	Positive Law	Recommendations
Normative objectives	Retributive and restorative between the protection of life and the rights of the victim's family	Retributive and law enforcement by the state (Article 340 of the Criminal Code)	Mechanisms for recording the wishes of the family and verified mediation procedures
Subject of the	Victim's family (<i>qishash/diyat</i> option)	State through criminal court	Official protocol for recording the family's

Decision		proceedings	position and integration of legal mediation
Threshold of proof	Emphasis on factual certainty before imposing a proportionate punishment	Standard of proof for the element of <i>voorbedachte rade</i> in general courts	Minimum forensic standards (autopsy, toxicology, psychiatric evaluation)
Procedural focus	Strict <i>fiqh</i> procedures: attention to intent, annulment, and family wishes	Proof of <i>voorbedachte rade</i> and general judicial process	Judicial guidelines detailing indicators of premeditation and weight of evidence
Dimensions of <i>maqashid al-shariah</i>	Emphasizes <i>hifz al-nafs</i> and <i>maslahah</i> .	Emphasizes legal certainty and enforcement of sanctions	The council must outline a balancing test that connects prevention and social welfare with sentencing decisions

Source: Author's compilation based on previous studies (Halimang, Ridhwan, and Sakdiah 2025; Abdillah et al. 2024; Royani and Park 2023; Syatar et al. 2024).

The public policy implications of this integration extend to state legitimacy, legal certainty, and public perceptions of justice. Decisions containing elements of qishash in positive law can increase the perception of state responsiveness to serious crimes but risk triggering human rights controversies if the process of evidence and proportionality considerations is not transparent (Ariyanti and Supani 2024). Therefore, practical recommendations include: (1) mandatory forensic standards (forensic autopsy and toxicology tests if there are indications of substance consumption); (2) judicial guidelines detailing the operational indicators of *voorbedachte rade*; (3) protocols for recording the family's position on forgiveness/*diyat*; (4) interdisciplinary training for judges, prosecutors, and legal advisors on the interaction of forensic evidence, psychiatric evaluation, and relevant *fiqh* rules; and (5) a written mechanism for a balancing test that explains why the most severe punishment was chosen and why alternatives were not adequate. Implementation of these measures will minimize the risk of weak evidence or ethically and legally controversial verdicts.

Effective harmonization requires judicial policies and practices that go beyond mere textual parallelism to achieve procedural integration. Clear forensic and judicial guidelines, legally valid recording of family wishes, and interdisciplinary training are necessary to ensure that decisions combining Article 340 of the Criminal Code and qishash are not only formally coherent but also procedurally sound and socially meaningful. This policy renewal is necessary so that the integration of norms maintains legal certainty while fulfilling the *maqashid al-shariah* demands for justice and public benefit.

This study is limited by its focus on a single decision and doctrinal methods without field surveys, so the findings tend to be normative and do not directly represent national practice. To overcome these limitations, further comparative and field research is needed, as

well as interdisciplinary collaboration (forensics, toxicology, forensic psychiatry) to assess the role of scientific evidence in imposing severe penalties. In addition, empirical studies on how such rulings affect public trust and the application of criminal law in Muslim communities would be very useful.

CONCLUSION

Decision No. 40/Pid.B/2025/PN Mdl formally fulfills the elements of premeditated murder under Article 340 of the Criminal Code and is textually consistent with the doctrine of *qishash*, intent and causality are recorded, and there was no family pardon. However, weaknesses in forensic evidence and psychiatric/toxicological evaluations weaken the scientific basis for declaring premeditation and volitional capacity. From the perspective of *maqashid al-shariah*, the legitimacy of the verdict depends on the existence of a judicial explanation that balances *hifz al-nafs*, justice, and *maslahah*. Without an explanation of why the maximum sentence is necessary and why alternatives such as rehabilitation, *diyat*, or pardon are inadequate, the substantive legitimacy remains questionable. This study contributes by mapping the gaps between the Criminal Code and Islamic criminal law doctrine in judicial practice, particularly regarding forensic protocols and mental evaluations, and by offering operational steps to strengthen the coherence of evidence and judicial arguments.

Normatively and policy-wise, a formal mechanism for proportionality testing based on *maqashid al-shariah* is needed. Courts are required to develop a written balancing test that explains how the decision fulfils *hifz al-nafs* and *maslahah* and outlines the reasons for the inadequacy of a lighter punishment. Procedural prerequisites must include minimum forensic standards (comprehensive forensic autopsy, toxicology analysis, psychiatric evaluation) before *qishash* or the death penalty is considered. Judicial guidelines detailing operational indicators of premeditation and methods of weighting evidence are also needed, as are official protocols for recording the position of families regarding *qishash/diyat*, and strengthened inter-agency coordination and cross-disciplinary training for judges, prosecutors, and forensic and religious experts. Further empirical research is needed, including comparative jurisprudence, field studies on autopsy practices and family recording, and interdisciplinary forensic-psychiatric studies, so that the integration of positive law and Islamic criminal law is coherent with the evidence and normatively valid. [W]

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