

ETHICAL AND JURIDICAL DILEMMAS IN THE PROSECUTION OF MURDERERS WITH MENTAL DISORDERS: PERSPECTIVES OF ISLAMIC LAW AND INDONESIAN POSITIVE LAW

Gunawan Widjaja

Fakultas Hukum Universitas 17 Agustus 1945 Jakarta
email: widjaja_gunawan@yahoo.com

Abstract

This study aims to analyse the ethical and juridical dilemmas in the prosecution of mentally ill murderers from the perspective of Islamic Law and Indonesian Positive Law. The ethical debate arises from the need to balance the principles of justice for the victim and compassion for the mentally ill offender. In Islamic Law, mentally ill perpetrators are generally not held fully responsible for their actions and may be granted a reduced or commuted sentence. In contrast, in Indonesian Positive Law, mentally disordered offenders can be exempted from criminal responsibility under Article 44 of Law No. 8 of 1981 on Criminal Procedure, although it is still possible to subject them to other measures such as psychiatric treatment. This study underscores the importance of medical and humanitarian assessments in the prosecution process, as well as the need for a balance between justice for victims and protection of the human rights of mentally ill offenders.

Keywords: Ethical Dilemma, Juridical, Prosecution, Murderer, Mental Disorder, Islamic Law, Indonesian Positive Law

Introduction

The crime of murder is one of the most serious and troubling criminal offences in society. The prosecution of murder perpetrators often raises various dilemmas, especially when the perpetrator is known to have a mental disorder. In this context, the problem becomes more complex because it involves ethical, juridical, and humanitarian considerations that must be faced by law enforcement.

Mental disorders, also known as mental disorders, are health conditions that significantly affect a person's thoughts, feelings, moods and behaviour. This condition can result in a decline in an individual's ability to go about their daily activities and interact with others. Mental disorders include various types of mental illnesses, such as depression, anxiety, schizophrenia, bipolar, and post-traumatic stress disorder (PTSD). The causes of mental disorders can be very diverse, including genetic, biological, psychological and environmental factors. Treatment involves a combination of psychological therapies, medications, and social and environmental support. (Ihsan et al., 2024)..

Murder cases committed by mentally ill offenders have always attracted public attention and provoked various reactions. These perpetrators often do not fully realise the consequences of their actions because they are impaired by their mental state. For example, an offender with paranoid schizophrenia may experience delusions or hallucinations that influence his or her actions, so that he or she is unable to consider his or her actions rationally (Kamalludin et al., 20). (Kamalludin et al., 2023).. In a legal context, this poses a challenge for law enforcement to determine whether or not the offender can

be held responsible for his or her actions, given his or her psychologically unstable condition.

The juridical handling of such cases also varies, both in Indonesian positive law and Islamic law. Indonesian positive law, for example through Article 44 of the Criminal Code, provides relief to perpetrators who are proven to have mental disorders by releasing them from criminal liability and transferring their treatment to medical rehabilitation. (Siregar & Rahimy, 2023).. Meanwhile, in Islamic law, mentally ill offenders are not subject to *hadd* or *qisas* punishment, based on the principle that a person cannot be punished for acts committed in a state of unconsciousness or lack of self-control. Both legal systems demonstrate an attempt to strike a balance between justice for victims and humane treatment for mentally unstable offenders. (Fauzan, 2022).

In Indonesian positive law, there is a regulation that specifically regulates criminal offenders with mental disorders, namely Article 44 of the Criminal Code (KUHP). This article states that anyone who commits a criminal offence while mentally ill or mentally disturbed cannot be held criminally responsible. However, the process of determining mental disorder is often not easy and requires medical evaluation and objective assessment. (Helmi et al., 2024)..

On the other hand, Islamic law provides its own view on criminals who are mentally ill. According to a number of *fiqh* experts, a person who commits a criminal offence in a state of unconsciousness or has a severe mental disorder, cannot be subject to *hadd* punishment (fixed punishment) or *qisas* (equal punishment). This is based on the principle of justice and the *ushul fiqh* rule that emphasises the fulfilment of the requirement of responsibility in an act. (Bancin, 2024).

Despite the differences in approach, both legal systems aim to achieve justice. However, law enforcement against mentally ill murderers often poses ethical and juridical dilemmas. Law enforcers must consider not only the legal aspects, but also the mental health condition of the perpetrator, his rights as an individual, as well as the impact on victims and the wider community. (Nafees, 2020).

Therefore, this study analyses and compares the approaches of Islamic law and Indonesian positive law in the prosecution of mentally ill murderers. It is hoped that this research will provide a deeper understanding of the ethical and juridical dilemmas faced in such cases.

Research Methods

The study in this research uses the literature method. The literature research method is a research approach that collects and analyses information or data from various written sources such as books, journal articles, reports, official documents, and other publications relevant to the topic under study. (JUNAIDI, 2021); (Abdussamad, 2022). The main purpose of this method is to identify, evaluate, and synthesise existing findings in the literature to gain a deep and thorough understanding of a particular field of study or phenomenon. Literature research involves systematic steps ranging from searching the

literature, selecting relevant sources, critically analysing the content of the sources, to presenting the findings in a structured form. This method is often used to build theoretical foundations, identify gaps in previous research, and formulate a framework for further study. (Wekke, 2020).

Results and Discussion

Comparative Analysis of Islamic Law and Indonesian Positive Law

A mental disorder, or mental illness, is a health condition that affects the way a person thinks, feels, behaves, or interacts with others. These conditions can cause significant distress or difficulty in daily activities and reduce quality of life. Mental disorders cover a wide range of conditions, such as depression, anxiety disorders, schizophrenia, bipolar disorder, and eating disorders, each of which has different symptoms, causes, and clinical aspects. (Hosnah et al., 2023).. Causal factors of mental disorders can include a combination of biological elements such as genetics and brain chemistry, psychological factors such as trauma, and environmental factors such as stress and social conflict. Treatment of mental disorders often involves a multidisciplinary approach, including psychological therapies, medication, and support from family and community. (Hayati & Edyar, 2023).

The basic principles in Islamic law relating to crime and punishment, known as Islamic criminal law (fiqh jinayah), are rooted in the Qur'an, sunnah, ijma' (consensus of scholars), and qiyas (analogy). Islamic criminal law categorises crimes into three main types: Hudud, Qisas, and Ta'zir. Hudud is a crime with a fixed punishment prescribed by Allah and includes acts such as adultery, theft, robbery, and rebellion. (Isnawan, 2024). Qisas is the principle of just retribution that is particularly applied in cases of murder and physical offences, where the punishment can be either the death penalty or a blood debt paid by the offender to the victim's family. Ta'zir is a crime for which punishment is not specifically prescribed in the Qur'an or hadith and is left to the discretion of the judge or ruling authority, usually covering acts that jeopardise the integrity and well-being of the community (Hasan & Azman, 2021). (Hasan & Azman, 2021).

In addition to the categorisation of crimes, Islamic law emphasises the aspects of justice, rehabilitation and deterrence in distributing punishment. The principle of justice (al-'adl) is fundamental, whereby each offender must receive a punishment that is appropriate to the level of guilt and evidence available without any arbitrariness. Rehabilitation (islah) aims to correct the offender in order to return to society with better behaviour. Punishment also serves as a means of prevention (zajr), which is to prevent similar criminal acts in the future either by the offender himself or the wider community. This principle underlines the importance of a fair and transparent process in law enforcement, ensuring that punishment serves not only as retribution but also as a tool to rebuild the social and moral fabric of society in accordance with Islamic teachings. (Suartha et al., 2022)..

In Islamic law, people with mental illness or mental deficiencies are often treated specially, especially in the context of serious crimes. The fundamental principle in Islamic law enforcement is the existence of *akil baligh*, which is the legal responsibility given to someone who has reached the level of maturity and has the full ability to distinguish between right and wrong, this condition is known as "*taklif*". (Mangesti & Suhartono, 2022).. People with mental disorders are considered to lack the mental capacity to understand the consequences of their actions and, therefore, do not qualify as "*mukallaf*" or people who are fully responsible for their actions. In this view, they are not considered eligible for punishment based on such deficiencies, similar to the exemption given to children who have not reached the age of puberty. (Ismail et al., 2024).

Additionally, decisions about a person's mental status in legal cases usually require careful evaluation and may involve medical experts in the process to ensure a proper diagnosis. If it is determined that an individual lacks the necessary mental capacity, the judge may decide to shift the focus from punishment to a more rehabilitative approach, such as care and treatment, to help the individual. The principles of justice and compassion in Islam emphasise the importance of treating people with mental illness in a way that considers their health and wellbeing, and as much as possible ensures they receive appropriate support rather than punishment that may be unjust. (Sirait et al., 2024)..

In Indonesian criminal law, the provisions regarding the responsibility of offenders with mental disorders are regulated in Article 44 of the Criminal Code (KUHP). This article states that a person who commits a criminal act in a state of incapacity for responsibility due to mental disorder or impaired mental development, cannot be subject to punishment. However, even if not punished, the person may be subject to rehabilitative measures such as treatment in a mental hospital or other appropriate institution. The purpose of this provision is to ensure that individuals who do not have sufficient mental capacity to understand or control their actions get the treatment they need rather than being subjected to inappropriate punishment. (Maulana et al., 2023).

In both Islamic law and Indonesian criminal law, there is special attention to the mental state of mentally ill murderers. Both legal systems recognise that a person who is mentally unstable or has a significant mental disorder may not be fully capable of understanding the meaning or consequences of their actions. (Badaru & Baharuddin, 2023).. This principle is based on the concept of justice which places importance on intention and the ability to distinguish between right and wrong. In both legal systems, a careful evaluation of the offender's mental state often requires the assistance of a medical expert or psychiatrist to ensure that the decision taken is appropriate and fair (Hehanussa et al., 2015). (Hehanussa et al., 2024)..

In Islamic law, the concept of legal responsibility or *taklif* requires that a person must have sufficient mental capacity to be subject to punishment. If mental illness renders a person incapable of understanding their actions, they are considered legally irresponsible. Islamic courts may decide to provide treatment or rehabilitation rather than the traditional punishment usually applied in murder cases. The Islamic view emphasises

the concepts of compassion and rehabilitation, ensuring that mentally ill people get the appropriate support to overcome their condition. (Fadli, 2021).

Meanwhile, in Indonesian criminal law, Article 44 of the Criminal Code specifically states that a person who commits a criminal offence in a state of mental disorder or impaired mental development cannot be held criminally responsible. To ensure that there is no abuse or error in the determination of mental status, the Indonesian judicial process often involves an in-depth medical examination by a competent psychiatrist. If it is proven that the offender does have a significant mental disorder, the measures taken are usually rehabilitative, such as treatment in a mental hospital, rather than imprisonment or the death penalty. (Apriyani et al., 2024)..

One key similarity between the two systems is the orientation towards a rehabilitative approach when the offender is proven to be mentally ill. In both Islamic law and Indonesian criminal law, primary attention is paid to the recovery and treatment of the individual. Appropriate treatment, whether in an Islamic mental health facility or a mental hospital in Indonesia, aims to help the offender achieve the mental stability needed to live a normal life again. In Islamic law, in addition to medical treatment, strong spiritual support through religious guidance can also be part of the rehabilitation process (Sjarief, 2020).

In the social and moral context, both legal systems place a high value on justice and forgiveness by taking into account mental health conditions. Islamic law strongly emphasises compassion, while Indonesian criminal law incorporates modern principles of human rights and mental health in its judicial processes. These similarities indicate a universal understanding of the importance of treating individuals with mental illness humanely and fairly, while maintaining the safety of the community. (Senjaya, 2021).

Thus, both Islamic law and Indonesian criminal law recognise that mentally ill murderers require special treatment that differs from mentally normal offenders. Both emphasise in-depth medical evaluation and rehabilitative approaches to ensure justice is done for all parties. Despite differences in terminology and specific practices, the essence of both approaches is grounded in the principles of justice, compassion, and the protection of individual rights and society.

Ethical Dilemmas in the Prosecution of Mentally Ill Offenders

Ethical dilemmas in the perspective of Islamic law often arise when there is a clash between deeply held moral principles and the contextual demands faced by individuals or society. Islamic law, known as sharia, covers various aspects of life, including ethics and morals. A key principle in Islam is justice (*`adl*), which underpins decision-making in various situations. For example, in the case of finance, interest or *riba* is prohibited in Islam as it is considered exploitation. However, in a world that is highly connected to the global financial system, Muslims are often in the difficult position of avoiding such utility without compromising the practical aspects of modern life. (Putrirezhy, 2024)..

In addition, ethical dilemmas also arise in matters such as human rights, individual freedom and state policy. For example, hudud law in Islam includes very strict punishments, such as cutting off the hands of thieves. On the one hand, this may be seen as an attempt to uphold justice and provide a deterrent effect. However, on the other hand, the application of these very strict punishments can be controversial when applied in the context of modern laws that prioritise rehabilitation and the protection of human rights. (Tursilarini et al., 2024).. Dilemmas such as these demonstrate the complexity of applying Islamic law in a changing world, which often requires in-depth ijtihad (interpretation) by scholars to balance traditional wisdom with contextual needs (Ladiku & Zaman, 2024). (Ladiku & Zaman, 2023)..

Ethical dilemmas in the perspective of Indonesian positive law often arise when there is a clash between written legal norms and the moral values of society. Positive law is a law that is enacted by an official government institution and has clear sanctions. For example, in terms of environmental management, Indonesian positive law regulates various provisions that aim to preserve the environment. (Sudirman et al., 2023). Law No. 32/2009 on Environmental Protection and Management, for example, has strict provisions regarding industrial waste disposal. However, in practice, there is a dilemma when industry players prioritise economic benefits over complying with these provisions, leading to environmental pollution and harm to the surrounding community. (Isman et al., 2024).

In addition, ethical dilemmas also arise in the application of criminal law relating to human rights. Take the case of the death penalty which is still applicable in Indonesia, especially for serious crimes such as narcotics and terrorism. Although in positive law the death penalty is regulated in the Law, there is considerable controversy regarding its ethical aspects. (Sulistiani et al., 2022).. Some people and human rights activists view the death penalty as contrary to the right to life which should not be reduced under any circumstances, as stipulated in the International Convention on Civil and Political Rights, which Indonesia has ratified. The tension between adhering to the existing positive law and considering human rights values demonstrates the complexity in the application of the law in Indonesia, and calls for deep moral reflection and legal reform. (Saraswati, 2020).

Thus, the ethical dilemma of prosecuting mentally ill offenders is a complex and controversial topic given the need to balance the interests of justice for victims and the protection of human rights and health care for offenders. On the one hand, the legal system has an obligation to uphold justice and provide appropriate sanctions for those who violate the law, in accordance with applicable positive legal principles. However, when dealing with mentally ill offenders, questions arise about their ability to understand and take responsibility for their actions. This poses an ethical dilemma, as punishing individuals who may not be fully aware or in control of their actions may be seen as violating the principles of justice and humanity.

On the other hand, the protection and treatment of offenders with mental illness requires legal policies that consider mental health as an important factor in the judicial

process. Indonesia's Mental Health Law, for example, emphasises the need for appropriate treatment and rehabilitation for individuals with mental illness. In this context, the legal system needs to create mechanisms that allow for a thorough evaluation of the offender's mental state and appropriate rehabilitative measures, without neglecting the victim's right to justice. A balance between retributive justice and restorative justice is key in resolving this ethical dilemma, with the ultimate goal being to provide fair and humane protection for all parties involved.

Efforts to Resolve Dilemmas with the Approach of Islamic Law and Indonesian Positive Law

In Islamic law, the resolution of dilemmas related to the prosecution of mentally ill offenders is based on the principles of justice and humanity set out in the Qur'an and Hadith. One of the important concepts in Islamic law is that individuals should not be punished for actions that they are not aware of or are unable to control. (Yulia et al., 2023).. This is based on the hadith that says "The pen is lifted (no sin will be recorded) from three groups: from the sleeper until he wakes up, from the child until he matures (baligh), and from the insane until he regains consciousness (waras)". Therefore, in Islamic law, individuals with mental illness may not be punished in the same way as people who knowingly commit crimes. (Pausacker, 2020).

Islamic law also emphasises the importance of rahmah (compassion) and ihsan (kindness) in the treatment of mentally ill offenders. In this context, the community and family have a responsibility to care for and ensure the mental wellbeing of the individual. In addition, damages can be awarded to the victim or their family as a form of compensation, while the mentally ill offender receives appropriate treatment and rehabilitation. This approach reflects a balance between retributive justice and empathy and rehabilitation, in accordance with Islamic teachings. (Analisa et al., 2022).

In Indonesia, positive law provides a more formalised and structured framework for dealing with mentally ill offenders. One important component of Indonesian criminal law is the concept of mental incompetence, as set out in Article 44 of the Criminal Code. This article states that a person who, at the time of committing a criminal offence, is mentally disturbed or insane cannot be held criminally responsible. Instead, the individual may be placed in a care facility or receive appropriate mental health treatment. (Riyadi & Huda, 2023)..

To ensure justice for victims, Indonesia's positive legal system also implements evaluation mechanisms by medical experts and psychiatrists to objectively determine the offender's mental state. In addition, the role of the judge is crucial in assessing whether the offender deserves special treatment based on the available medical evidence. Thus, Indonesia's positive legal approach seeks to harmonise the protection of human rights, mental health interests, and justice for victims of crime. (Arifin et al., 2024).

Thus, efforts to resolve ethical dilemmas in the prosecution of mentally ill offenders can be made through the approaches of Islamic law and Indonesian positive law. Islamic

law emphasises the principles of justice, compassion and social responsibility, emphasising treatment and rehabilitation for mentally ill offenders, while ensuring compensation for victims. On the other hand, Indonesian positive law provides a formal framework involving medical and psychiatric evaluations, and offers a more institutionalised and structured approach to the treatment of mentally ill offenders. Both approaches, although different in implementation, seek to maintain a balance between justice for victims and protection and restoration for mentally ill offenders.

Conclusion

In the study, it was found that there are significant ethical and juridical dilemmas in the prosecution of mentally ill murderers. From the perspective of Islamic Law, mentally ill offenders are considered to lack the mental capacity and perfect reasoning to take responsibility for their actions. Therefore, Islamic Law tends to grant exemptions or reduced sentences for mentally ill offenders, emphasising humanitarian mercy and justice.

Meanwhile, according to Indonesian Positive Law, the handling of offenders with mental disorders also considers the mental condition of the offender. Under Law No. 8 of 1981 on Criminal Procedure, specifically in Article 44, offenders who are proven to be mentally ill can be released from criminal responsibility. However, the offender may still be subject to other measures such as treatment in a mental hospital to protect the public and treat their mental condition.

Overall, both Islamic Law and Indonesian Positive Law show similar concerns regarding justice and protection for mentally ill offenders. Although these two legal systems have different approaches, each makes room for the assessment of mental state as an important factor in the legal process, demonstrating that humanitarian principles remain a key foundation in the pursuit of justice.

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