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From permissibility to proportionality: Reconstructing the legitimacy and limits of capital punishment in contemporary Islamic jurisprudence

RESEARCH ARTICLE

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ABSTRACT

Capital punishment remains a contested jurisprudential issue at the intersection of state authority, public protection, human rights, and the objectives of Islamic law. This study examines the construction of capital-punishment legitimacy in MUI Fatwa No. 10/MUNAS VII/MUI/14/2005 and reconstructs it within contemporary Islamic jurisprudence. Employing normative legal research with jurisprudential, conceptual, and contextual approaches, the study analyzes the MUI Fatwa 2005, *fiqh* on *qisās*, *hudūd*, *ta'zīr*, and *siyāsah shar'iyyah*, and developments in Indonesian criminal law, particularly Law No. 1 of 2023 and Law No. 1 of 2026. The findings demonstrate that MUI Fatwa 2005 recognizes capital punishment as a form of normative state authority but does not establish an absolute mandate for its application. Through *maqāsid al-sharī'ah*, particularly *hifz al-nafs* and *maslahah*, that permissibility can be reconstructed as subject to cumulative requirements of exceptional criminal seriousness, necessity, proportionality, certainty of guilt, and procedural justice. The restrictive framework established by Law No. 1 of 2023, which positions capital punishment as an alternative and last-resort sanction, further reinforces this reconstruction. The study contributes to contemporary Islamic jurisprudence by shifting the legitimacy of capital punishment from permissibility toward conditional proportionality, whereby normative authorization constitutes only the starting point and concrete legitimacy depends upon stringent substantive and procedural justification.

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Introduction

Capital punishment remains one of the most contested forms of punishment in contemporary law because it brings into tension the state's authority to protect society and the irreversible nature of taking human life.¹ This debate is no longer confined to the binary question of whether capital punishment should be retained or abolished. Instead, it has increasingly shifted toward the limits, conditions, and legitimacy of the state's authority to impose its most severe sanction.² The *International Covenant on Civil and Political Rights* (ICCPR) continues to permit capital punishment in states that have not abolished it, but restricts its application to "the most serious crimes" and requires specific substantive and procedural safeguards.³ The United Nations Human Rights Committee has further emphasized that the imposition of capital punishment is subject to stringent limitations and must not be arbitrary.⁴ Accordingly, the contemporary debate has moved beyond whether capital punishment is permissible toward the more demanding questions of when, under what conditions, and subject to what limitations its application can be justified.⁵

Within Islamic criminal law, the question of capital punishment cannot be reduced to a simple dichotomy between Islamic permission and prohibition. *Fiqh jināyah* recognizes *qisās*, *hudūd*, and *ta'zīr*, each of which rests on distinct sources of legitimacy, objectives, and structures of authority. Tongat demonstrates that capital punishment in Islamic criminal law is closely connected to justice, social order, and the purposes of punishment.⁶ Fatimah et al., meanwhile, examine capital punishment in Indonesia through the framework of *maqāsid al-sharī'ah*, relating it to the protection of life, intellect, property, and public welfare.⁷ These studies are important because they clarify the normative foundations of capital punishment and its compatibility with the objectives of Islamic law. Yet they leave comparatively underdeveloped a critical question: how should this normative permissibility be constrained when the state exercises an authority that results in the permanent deprivation of life? In this context, *hifz al-nafs* within *maqāsid al-sharī'ah* should not be understood solely as a basis for protecting society from crime, it may also serve as a principle for limiting state power over human life.

This question assumes particular significance in Indonesia through the Fatwa of the Indonesian Ulema Council (*Majelis Ulama Indonesia*, MUI) No. 10/MUNAS VII/MUI/14/2005 on Capital Punishment for Certain Criminal Offences (MUI Fatwa 2005). The fatwa was adopted at

¹ Emi Nugraheni Solihah and Ali Masyhar, "The Implementation of Capital Punishment in Indonesia: The Human Rights Discourse," *Journal of Law and Legal Reform* 2, no. 2 (2021): 321–28, <https://doi.org/10.15294/jllr.v2i2.46625>.

² Evelin Nur Agusta et al., "A Juridical Study of the Death Penalty for Premeditated Murder in the Perspective of Indonesian Criminal Law Reform," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (2025): 98–117, <https://doi.org/10.14710/jphi.v7i1.98-117>.

³ In accordance with Article 6, paragraph 2, of the ICCPR. ICCPR, "International Covenant on Civil and Political Rights," 1966.

⁴ Li-Yen Peng, "The Customary Prohibition of the Mandatory Death Penalty in International Law," *Human Rights Law Review* 26, no. 1 (2026): ngaf047, <https://doi.org/10.1093/hrlr/ngaf047>.

⁵ Fauzan Fauzan, "The Death Penalty in Legal Literature: A Study of Indonesian Law and International Human Rights," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 8, no. 1 (2024): 144–53, <https://doi.org/10.29300/mzn.v8i1.2758>; Prija Djatmika, Milda Istiqomah, and Heru Kurniawan, "Discourse on the Death Penalty: A Study of Public Perceptions in Indonesia," *Yustisia Jurnal Hukum* 13, no. 1 (2024): 38–63, <https://doi.org/10.20961/yustisia.v13i1.81938>.

⁶ Tongat Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024): 90–104, <https://doi.org/10.22219/ljih.v32i1.32335>.

⁷ Fines Fatimah et al., "Beyond Criminalization: Rethinking Same-Sex Sexual Offences and Punishment under Aceh's Qanun Jinayat through Contemporary Maqasid Al-Sharia'ah," *Brawijaya Law Journal* 13, no. 1 (2026): 58–78, <https://doi.org/10.21776/ub.blj.2026.013.01.03>.

the Seventh MUI National Conference on 29 July 2005, amid ongoing debates over the application of capital punishment. In its *Menimbang* (considering) section, MUI characterizes capital punishment as the most severe punishment imposed on perpetrators of serious crimes and links its application to the need for legal firmness and the maintenance of social order.⁸ This formulation indicates that the fatwa is not constructed exclusively from Islamic criminal-law doctrine, but also incorporates considerations of social order and the needs of the state. MUI Fatwa 2005 can therefore be read as a jurisprudential construction that brings Islamic legal norms into dialogue with the problem of punishment within the modern state.⁹ Although the fatwa does not possess the same legal status as legislation within the Indonesian legal system,¹⁰ its substantive significance lies in revealing how Indonesian religious authority constructs normative legitimacy for capital punishment.

The structure of this construction becomes particularly significant because MUI Fatwa 2005 situates capital punishment not only within *hudūd* and *qisās*, but also within the domains of *ta'zīr* and *siyāsah*. In its reasoning, MUI cites Wahbah al-Zuhaylī's view that capital punishment may, under *siyāsah*, be imposed on offenders whose harmful conduct cannot be prevented except through such punishment. In the *Memutuskan* (deciding) section, MUI expressly states that "Islam recognizes the existence of capital punishment and applies it in *jarimah* (criminal offences) of *qisās*, *hudūd*, and *ta'zīr*," and further affirms that the state may execute perpetrators of certain criminal offences.¹¹ The use of the term "may" is jurisprudentially significant because it denotes normative authorization rather than a universal obligation upon the state. Once such permissibility is situated within the domains of *ta'zīr* and *siyāsah*, questions concerning the purposes of punishment, public welfare (*maslahah*), the degree of criminal harm, and the limits of *ulī al-amr*'s discretion become unavoidable. The central issue, therefore, is not merely whether capital punishment is recognized, but what this permissibility means and what principles constrain its exercise.

The significance of this question has increased following developments in Indonesian criminal law. Law No. 1 of 2023 on the Criminal Code (*Kitab Undang-Undang Hukum Pidana*) classifies capital punishment as an alternative and last-resort punishment intended to prevent crime and protect society. Article 100 introduces a ten-year probationary period and provides for the possibility of converting a death sentence into life imprisonment.¹² Earlier studies by Fauzan, and Fahmi et al. have argued that, from the perspective of Islamic criminal law, provisions governing capital punishment in positive law embody principles associated with *maqāsid al-sharī'ah*.¹³ In the context of Law No. 1 of 2023, Tongat, as well as Hofifah and Farosy, identify points of convergence between the alternative capital-punishment regime and Islamic

⁸ MUI, "Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu," 2005.

⁹ Aswan and Abdul Hayyaqhdhan Ashufah, "Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia," *Parewa Saraq: Journal of Islamic Law and Fatwa Review* 2, no. 1 (2023): 50–58, <https://doi.org/10.64016/parewasaraq.v2i1.18>.

¹⁰ Ibnu Elmi Achmat Slamet Pelu and Jefry Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 307–16, <https://doi.org/10.24090/mnh.v14i2.3927>.

¹¹ MUI, "Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu."

¹² Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023.

¹³ Fauzan Fauzan, "Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 185–202, <https://doi.org/10.29240/jhi.v7i1.4308>; Zul Fahmi et al., "Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases," *Walisongo Law Review (Walrev)* 7, no. 2 (2025): 195–214, <https://doi.org/10.21580/walrev.2025.7.2.28829>.

law, particularly because the new framework allows for alternative sanctions that do not necessarily culminate in the deprivation of life.¹⁴ Jamilah further examines the *conditional death penalty* under Law No. 1 of 2023 from the perspectives of human rights and *maqāsid al-sharī'ah*.¹⁵ These developments have created a normative context substantially different from that of 2005: the state's permissibility under MUI Fatwa 2005 now operates within a legal system that treats capital punishment as an exceptional, alternative, and conditional measure.

The existing literature can be broadly mapped into four strands. *First*, Ramadhan et al., and Anggraini et al. examine the foundations and objectives of capital punishment in Islamic law, including through the perspective of *maqāsid al-sharī'ah*.¹⁶ *Second*, Wahyudi et al. investigate the alternative and conditional character of capital punishment under Law No. 1 of 2023, including from a human rights perspective.¹⁷ *Third*, Muryani and Rosyida examine the concept of capital punishment from the perspective of Indonesia's officially recognized religions and explicitly discuss MUI Fatwa 2005.¹⁸ This literature demonstrates that the constituent elements necessary for a contemporary analysis have emerged across separate strands of scholarship. However, they have not yet been brought together specifically in an examination of MUI Fatwa 2005 as a jurisprudential text. This study addresses that gap by rereading the permissibility articulated by MUI through the interrelated frameworks of *maqāsid al-sharī'ah*, proportionality, limits on state authority, and developments in Indonesian criminal law. Its novelty, therefore, does not lie in demonstrating that capital punishment is permissible under *fiqh*, but in reconstructing the meaning and limits of that permissibility within contemporary Islamic jurisprudence.

Against this background, this study examines how MUI Fatwa 2005 constructs the jurisprudential legitimacy of capital punishment, how that construction can be evaluated through *maqāsid al-sharī'ah* and the principle of proportionality, and how Islamic law can reconstruct the legitimacy and limits of capital punishment in the contemporary Indonesian context. The study argues that recognition of the existence and permissibility of capital punishment does not, by itself, confer absolute authority upon the state. Its application must instead be assessed in light of the seriousness of the offence, genuine necessity, proportionality, certainty of guilt, public welfare, the protection of life, and procedural justice.

On this basis, the study proposes a conceptual shift from permissibility to proportionality. Capital punishment may remain a recognized jurisprudential possibility within Islamic law, but its application in the contemporary context should be understood as an exceptional, conditional, and strictly constrained measure. The contribution of this study lies in reconstructing the place of capital punishment in Islamic jurisprudence through a rereading of

¹⁴ Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives"; Hofifah Hofifah and Kodrat Hakiki Farosy, "Transitional Perspectives on the New Criminal Law, Human Rights and Islamic Law on the Death Penalty," *Jurnal Konstitusi* 21, no. 3 (2024): 464–81, <https://doi.org/10.31078/jk2137>.

¹⁵ Asiyah Jamilah, "Conditional Death Penalty in National Criminal Code: Study in Frame of Human Rights and Maqāsid Al-Sharī'ah," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 10, no. 1 (2025): 147–64, <https://doi.org/10.31538/adlh.v10i1.6414>.

¹⁶ Rangga Abdi Ramadhan, Athifatul Wafiroh, and Cecep Soleh Kurniawan, "Penerapan Hukuman Mati Di Indonesia Perspektif Maqasid Al-Shari'ah," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 27–49, <https://doi.org/10.15642/mal.v5i1.198>; Rooza Meilia Anggraini, Muh. Maksu, and Arlinta Prasetya Dewi, "Perspektif HAM Dan Maqashid Syari'ah Dalam Meninjau Kebijakan Hukuman Mati Dalam Undang Undang No. 1 Tahun 2023 Tentang KUHP," *El-Dusturie* 3, no. 2 (2025): 164–82, <https://doi.org/10.21154/eldusturie.v3i2.9908>.

¹⁷ Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati Dan Hak Untuk Hidup Di Indonesia: Tinjauan HAM Terhadap Undang-Undang Nomor 1 Tahun 2023," *SOSMANIORA: Jurnal Ilmu Sosial Dan Humaniora* 4, no. 3 (2025): 880–89, <https://doi.org/10.55123/sosmaniora.v4i3.5924>.

¹⁸ Maria Anna Muryani and Noor Rosyida, "The Concept of Death Penalty in a Pancasila State (Perspective of Official Religion in Indonesia)," *Walisongo Law Review (Walrev)* 2, no. 2 (2020): 131, <https://doi.org/10.21580/walrev.2020.2.2.6588>.

MUI Fatwa 2005. In doing so, the debate moves beyond the binary question of whether capital punishment is permissible toward the more fundamental questions of when, under what conditions, and to what extent the state may legitimately exercise authority over human life in a manner that is just, proportionate, and consistent with the objectives of Islamic law.

Methods

This study employs normative legal research (doctrinal legal research) using a jurisprudential approach. The primary legal materials comprise MUI Fatwa No. 10/MUNAS VII/MUI/14/2005 on Capital Punishment for Certain Criminal Offences (MUI Fatwa 2005), the Qur'an and hadith underlying its legal reasoning, classical and contemporary *fiqh* literature on *qisās*, *hudūd*, *ta'zīr*, and *siyāsah shar'īyyah*, as well as Law No. 1 of 2023 on the Criminal Code and Law No. 1 of 2026 on Criminal Adjustment. Secondary legal materials consist of academic books and scholarly journal articles addressing *maqāsid al-sharī'ah*, capital punishment, proportionality, and developments in contemporary criminal law. Sources were selected purposively on the basis of their relevance to the construction, justification, and limitation of capital punishment.¹⁹

The analysis combines conceptual, normative-jurisprudential, and contextual approaches. The conceptual approach is used to examine the legal and jurisprudential meanings of *maqāsid al-sharī'ah*, *maslahah*, *ta'zīr*, and proportionality. The normative-jurisprudential approach is applied to reconstruct the legal reasoning of MUI Fatwa 2005 by examining its *Menimbang* (considering), *Mengingat* (having regard to), and *Memutuskan* (deciding) sections. The contextual approach situates the fatwa's jurisprudential construction within developments in contemporary Indonesian criminal law. The materials are analyzed qualitatively through interpretation, comparison, and critical evaluation to determine whether the permissibility of capital punishment articulated in the fatwa can be reconstructed through the principles of necessity, proportionality, certainty of guilt, public welfare, protection of life, and procedural justice. This methodological framework enables the study to move beyond establishing the permissibility of capital punishment toward examining proportionality as a normative basis for reconstructing its legitimacy and limits in contemporary Islamic jurisprudence.²⁰

Results and Discussion

Jurisprudential construction of capital punishment in MUI Fatwa 2005

MUI Fatwa No. 10/MUNAS VII/MUI/14/2005 on Capital Punishment for Certain Criminal Offences was formulated against the backdrop of public debate over the application of capital punishment in Indonesia. In its *Menimbang* (considering) section, MUI identifies three principal considerations. *First*, extensive media coverage of capital punishment for certain criminal offences had generated public attention and divergent opinions for and against its application. *Second*, capital punishment was characterized as “the most severe punishment imposed on perpetrators of serious crimes” and was presented as implicating both the competent authorities and the values of a just and civilized humanity. *Third*, MUI maintained that prevailing social and state conditions required “legal firmness and public order,” thereby necessitating a fatwa as normative guidance.²¹ These considerations indicate that the fatwa did not emerge solely from a doctrinal inquiry into whether capital punishment exists within

¹⁹ Stefan Theil, “Carefully Tailored: Doctrinal Methods and Empirical Contributions,” *Oxford Journal of Legal Studies* 45, no. 4 (2025): 1047–75, <https://doi.org/10.1093/ojls/gqafo29>.

²⁰ Katerina Linos and Melissa Carlson, “Qualitative Methods for Law Review Writing,” *The University of Chicago Law Review* 84, no. 1 (2017): 213–38, <https://www.jstor.org/stable/44211831>.

²¹ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

Islamic law. From the outset, MUI situated capital punishment at the intersection of three dimensions: serious criminality, state authority, and social order. The fatwa's construction was therefore both jurisprudential and contextual, translating religious norms in relation to the requirements of regulating social life.²²

The *Menimbang* section is also significant methodologically because it reveals how MUI understood the function of a fatwa in matters of criminal law. Rather than treating social controversy as a reason to suspend legal judgment, MUI used that controversy as a basis for articulating normative guidance.²³ The existence of competing public positions over capital punishment was thus not treated as a social issue external to Islamic law, but as a contextual condition requiring jurisprudential articulation.²⁴ This reflects an important characteristic of *fiqh* as a process of legal reasoning that interacts with changing social circumstances.²⁵ The point becomes particularly evident in MUI's explicit association between capital punishment and the need for legal firmness and public order.²⁶ The formulation suggests that the legitimacy of punishment is not constructed solely in terms of retribution against the offender, but also in terms of protecting and regulating society.²⁷ In this respect, the fatwa's initial reasoning opens analytical space for considering the purposes of punishment and the concept of *maslahah*, even though *maqāsid al-shari'ah* is not expressly invoked as a formal concept in the operative part of the fatwa.

The normative foundation of the fatwa is subsequently developed in its *Mengingat* (having regard to) section. MUI invokes several Qur'anic verses and hadith concerning homicide, *qisās*, *hudūd*, and offences associated with grave social disorder and threats to public security. Among the principal sources are Qur'an Surah (QS.) al-Mā'idah verse 32, which emphasizes the gravity of taking human life and the value of saving life, and QS al-Mā'idah verse 33, which addresses sanctions for those who wage war against Allah SWT and His Messenger (Prophet Muhammad PBUH) and spread *fasad* (corruption) on earth.²⁸ QS. al-Mā'idah verses 32–33 states:

“Therefore, We decreed for the Children of Israel that whoever kills a person—not because that person has killed another or caused corruption on earth—it is as if he has killed all of humanity. Conversely, whoever saves the life of a single person, it is as if he has saved the lives of all of humanity. Indeed, Our messengers have truly come to them with clear proofs. Yet, many of them subsequently transgressed on earth. The punishment for those who wage war against Allah and His Messenger and spread corruption on earth is only that they be killed, crucified, have their hands and feet cut off on opposite sides, or be exiled from their homes. That is a disgrace for them in this world, and in the Hereafter they will have a severe punishment.” (QS. al-Mā'idah [5]: 32–33).

²² Aswan and Ashufah, “Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia.”

²³ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

²⁴ Tongat, “Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives.”

²⁵ Aswan and Ashufah, “Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia.”

²⁶ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

²⁷ M. Sulthon, Imam Syafi'i, and Auliya Ghazna Nizami, “Contemporary Fiqh in Indonesia: The Dynamics of Istinbat Al-Ahkām at Ma'had Aly Salafiyah Shafi'iyah Sukorejo Situbondo,” *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024): 119–34, <https://doi.org/10.15408/ajis.v24i1.32174>.

²⁸ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

MUI Fatwa 2005 also cites a number of hadith reports that it uses to substantiate the possibility of capital punishment for certain categories of offenders. The structure of these sources, however, warrants careful examination. MUI does not rely on a single normative category to justify capital punishment. Instead, it combines several sources associated with the protection of society, homicide, *qisās*, and *fasād*.²⁹ This indicates that the legitimacy of capital punishment within the fatwa is constructed through a plurality of legal foundations rather than derived from a single, self-contained rule.

This pluralistic character becomes more apparent when the fatwa connects its normative sources to the concept of *siyāsah*.³⁰ In the exposition cited by MUI, Wahbah al-Zuhaylī is invoked to support the proposition that an offender whose criminal conduct cannot be restrained except through execution may be subjected to capital punishment. The fatwa consequently concludes that “capital punishment may be imposed as *siyāsah* (legal policy)” on habitual offenders, certain cases involving alcohol consumption, offences threatening state security, and other specified forms of serious criminality.³¹ The use of *siyāsah* is jurisprudentially significant. Capital punishment is no longer understood exclusively as a sanction exhaustively prescribed by revelation through *hadd* or *qisās*, but also as an instrument of legal policy available to political authority in responding to particular forms of criminal harm.³² The literature on *ta’zīr* similarly indicates that this category gives legitimate authority a degree of discretion to determine appropriate sanctions according to the nature of the offence and the interests requiring protection.³³ Consequently, the MUI construction introduces an important distinction between the recognition of capital punishment as a permissible sanction and the exercise of state discretion in determining when such a sanction is warranted.

The foregoing analysis reveals a jurisprudential distinction between two layers of legitimacy embedded in MUI Fatwa 2005. At the first level, capital punishment is situated within established Islamic penal categories, particularly *hudūd* and *qisās*. At the second, it is admitted within the domains of *ta’zīr* and *siyāsah*, where the competent authority enjoys greater latitude to consider context, the degree of social harm, and *maslahah*. This distinction is important because the basis for capital punishment under *qisās* cannot simply be equated with capital punishment imposed as a *ta’zīr* policy. Conceptually, the greater the reliance on *ta’zīr* and *siyāsah*, the stronger the need to specify who is authorized to impose the sanction, for what purposes, according to which criteria, and within what limits. MUI Fatwa 2005 opens space for state authority in this regard, but does not expressly formulate a cumulative set of requirements concerning necessity, proportionality, or procedural safeguards. This normative space therefore constitutes a central point for further jurisprudential inquiry.

The construction becomes most explicit in the fatwa’s *Memutuskan* (deciding) section, where MUI establishes two propositions: “Islam recognizes the existence of capital punishment and applies it to *jarimah* (criminal offences) of *hudūd*, *qisās* and *ta’zīr*” and “the state may implement capital punishment against perpetrators of certain criminal offences”.³⁴

²⁹ MUI.

³⁰ Maimun Maimun and Dani Amran Hakim, “Siyāsah Syar’iyyah and Its Application to Constitutional Issues in Indonesia,” *As-Siyasi: Journal of Constitutional Law* 3, no. 1 (2023): 111–30, <https://doi.org/10.24042/as-siyasi.v3i1.15710>.

³¹ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

³² Maimun and Hakim, “Siyāsah Syar’iyyah and Its Application to Constitutional Issues in Indonesia.”

³³ Muhammad Mawardi Djalaluddin et al., “The Implementation of Ta’zīr Punishment as an Educational Reinforcement in Islamic Law,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 399–417, <https://doi.org/10.22373/sjhk.v7i1.15101>.

³⁴ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

These propositions should be read together. The first establishes substantive legitimacy within Islamic law, while the second connects that legitimacy to the authority of the state. The operative part of the fatwa therefore does not merely affirm the theoretical existence of capital punishment. It recognizes state authority to implement it in specified circumstances. Yet the word “may” is jurisprudentially decisive. It does not mean “must,” “shall,” or “must always be imposed.” Rather, it indicates a sphere of normative authorization that still requires a determination of the conditions under which such authority may properly be exercised. MUI does not, moreover, state that the state is obliged to impose capital punishment for every offence falling within the identified categories.³⁵ The operative ruling can therefore be understood as granting a space of legitimacy rather than conferring an absolute mandate to execute every offender convicted of a specified crime.

This reading is further reinforced by the relationship between the fatwa and positive law reflected in its *Mengingat* section. Alongside Qur’anic and hadith sources, MUI cites a range of Indonesian legal provisions that, at the time, prescribed capital punishment for offences including crimes against the state, premeditated murder, certain property offences, piracy, firearms offences, aviation-related offences, narcotics crimes, and terrorism.³⁶ The inclusion of these statutory provisions demonstrates that the fatwa was deliberately situated in dialogue with the national legal system then in force.³⁷ MUI therefore did not construct the legitimacy of capital punishment within a normative sphere wholly detached from state law. Instead, the fatwa sought to demonstrate that capital punishment already recognized by Indonesian positive law could also be given normative justification within Islamic law.³⁸ This position is significant because it reveals a form of normative convergence, whereby religious norms and state law are brought into alignment to legitimate the same penal sanction.³⁹

Taken as a whole, the architecture of MUI Fatwa 2005 constructs the legitimacy of capital punishment through four interconnected layers. *First* is the social layer, reflected in the perceived need for legal firmness and public order. *Second* is the normative layer, consisting of the Qur’an, hadith, and Islamic concepts of punishment. *Third* is the jurisprudential layer, in which *hudūd*, *qisās*, *ta’zīr*, and *siyāsah* function as distinct categories of legal legitimacy. *Fourth* is the institutional layer, through which the state is recognized as having authority to implement capital punishment for certain criminal offences. These layers demonstrate that the fatwa does not construct capital punishment as an autonomous principle, but as an instrument whose legitimacy is linked to the nature of the offence, societal interests, and the exercise of state authority.⁴⁰

At the same time, this construction reveals a significant normative limitation. Although the fatwa expressly recognizes the state’s authority to implement capital punishment, it does not systematically specify the criteria that must be satisfied before that authority may be exercised.

³⁵ Muryani and Rosyida, “The Concept of Death Penalty in a Pancasila State (Perspective of Official Religion in Indonesia).”

³⁶ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

³⁷ Aswan and Ashufah, “Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia.”

³⁸ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

³⁹ Anis Mashdurohatun et al., “Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy,” *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 80–100, <https://doi.org/10.32332/milrev.v5i1.11887>.

⁴⁰ Aswan and Ashufah, “Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia”; Muryani and Rosyida, “The Concept of Death Penalty in a Pancasila State (Perspective of Official Religion in Indonesia).”

It contains no explicit formulation concerning a minimum threshold of criminal seriousness, necessity as a condition of last resort, the requisite standard of certainty as to guilt, the proportional relationship between the offence and the sanction, or procedural safeguards designed to prevent irreversible error. This omission becomes particularly significant when capital punishment is situated within *ta'zīr* and *siyāsah*, where the scope of state discretion is comparatively broad.⁴¹ From a jurisprudential perspective, the greater the discretionary authority vested in the ruler or state, the greater the need for normative constraints governing its exercise.⁴² Accordingly, MUI Fatwa 2005 may be understood as providing relatively strong normative legitimacy at the level of permissibility, while leaving substantial indeterminacy at the level of the conditions governing its exercise.

Reconstructing capital punishment through *maqāsid al-sharī'ah*

The construction developed in MUI Fatwa 2005 establishes the legitimacy of capital punishment at the level of permissibility, particularly by situating it within *hudūd*, *qisās*, *ta'zīr*, and *siyāsah*. Yet permissibility alone does not resolve the question of how such authority should be limited in practice. Within Islamic law, a legal rule is assessed not only according to whether it is permissible, but also according to the purposes it is intended to serve and the *maslahah* it seeks to realize. Al-Ghazālī identifies the protection of religion, life, intellect, lineage, and property as fundamental necessities at the core of *maslahah*, while requiring the prevention of anything that undermines them.⁴³ This framework was further developed by Ibn 'Āshūr, who broadened the discussion of *maqāsid al-sharī'ah* to encompass social order, freedom, rights, and human welfare.⁴⁴ Jasser Auda likewise conceptualizes *maqāsid al-sharī'ah* as a framework for approaching Islamic law in a holistic, multidimensional, and purpose-oriented manner.⁴⁵ Accordingly, MUI Fatwa 2005 need not be challenged by rejecting the permissibility it establishes. Rather, its permissibility can be subjected to a further jurisprudential inquiry into whether and under what conditions it serves the purposes of Islamic law when the state exercises authority over human life.

Within this framework, *hifz al-nafs* constitutes both the starting point and the most challenging dimension in evaluating capital punishment. If one of the fundamental objectives of Islamic law is the protection of life, capital punishment presents a jurisprudential paradox: the state takes an individual's life in the name of protecting life and safeguarding society. Existing scholarship has shown that capital punishment may be situated within the framework of *maqāsid al-sharī'ah* where the offence poses a serious threat to the life, intellect, or property of others.⁴⁶ The relationship, however, is not automatic. *Hifz al-nafs* should not be understood solely as a justification for punishing offenders who endanger others. It should also operate as a principle requiring heightened caution toward state decisions involving an irreversible deprivation of life. Protection of life therefore has a dual dimension: protecting society from

⁴¹ Maimun and Hakim, "Siyāsah Syar'iyah and Its Application to Constitutional Issues in Indonesia."

⁴² Mashdurohatun et al., "Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy."

⁴³ Imam Al-Ghazālī, *Al-Mustashfa Min 'Ilm Al-Usūl* (Beirut: Dar al-Kutub al-Ilmiyyah, 1997).

⁴⁴ As cited by: Mohammad Shihan, Abdulhamid Mohamed Ali Zaroum, and Muhammad Amanullah, "Universal Maqāsid Al-Sharī'ah and Their Modern Application: Towards Ensuring a Peaceful and Secured Environment," *Al Hikmah International Journal of Islamic Studies and Human Sciences* 4, no. 4 (2021): 466–95, <https://doi.org/10.46722/hkmh.4.4.21d>.

⁴⁵ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008).

⁴⁶ Ramadhan, Wafiroh, and Kurniawan, "Penerapan Hukuman Mati Di Indonesia Perspektif Maqasid Al-Shari'ah"; Jamilah, "Conditional Death Penalty in National Criminal Code: Study in Frame of Human Rights and Maqāsid Al-Sharī'ah."

serious criminal harm and protecting individuals from arbitrary or unjustified exercises of state power. Such a balanced reading is consistent with contemporary *maqāsid al-sharī'ah* scholarship, which places justice, rights, human dignity, and human welfare among the purposes toward which Islamic law is directed, rather than treating them merely as incidental consequences of punishment.⁴⁷

A second dimension is *maslahah*. MUI Fatwa 2005 itself identifies the need for “legal firmness and public order” as an important consideration. *Maslahah*, however, cannot be equated with the state’s interest in imposing the harshest available punishment. Within *maqāsid al-sharī'ah*, *maslahah* must be evaluated in terms of the benefits and harms that a legal rule produces in relation to the fundamental objectives of the *sharī'ah*. Ibn ‘Āshūr understands the general purposes of the *sharī'ah* to include the preservation of social order and the realization of human welfare. Accordingly, a legal policy should be assessed according to its contribution to those purposes rather than merely by reference to the form or severity of the sanction.⁴⁸ From this perspective, invoking capital punishment as necessary for maintaining public order is insufficient in itself. The state must demonstrate that the sanction generates a sufficiently significant *maslahah* and that the same legitimate objective cannot reasonably be achieved through a less severe alternative. This inquiry becomes particularly important when capital punishment is situated within *ta’zīr* and *siyāsah*, because the legitimacy of the sanction in these domains depends more heavily on assessments of necessity, harm, and public welfare than on a penalty rigidly predetermined by *nass*.

It is at this point that proportionality can be introduced as an analytical device, although not on the assumption that it is a technical concept that originated in classical *fiqh* in an identical form. Proportionality is better understood here as an evaluative principle that can be derived from the objectives of justice, the prevention of *darar* (harm), the correspondence between the severity of a sanction and the gravity of the offence, and the need to constrain the discretionary authority of rulers.⁴⁹ This logic can be observed, for example, in the Qur’anic framework of *qisās*. The Qur’an not only recognizes retaliation as a legal response to homicide, but also provides mechanisms of pardon and the payment of *diyah*. QS. al-Baqarah verse 178 states:

“O you who believe, *qisās* is prescribed for you in cases of murder. A free person for a free person, a slave for a slave, and a woman for a woman. Whoever is granted forgiveness by his brother should accept it in a proper manner and should settle the matter with him in a good way. That is a relief and a mercy from your Lord. Whoever transgresses after that will receive a most painful punishment.” (QS. al-Baqarah [2]: 178).

This structure indicates that the legal response to homicide is not directed exclusively toward absolute retribution. It accommodates consideration of the interests of the victim, the victim’s family, the offender, and the continuity of social relations. A similar structure appears in QS. al-Mā'idah verse 45, which links the principle of retaliation with the possibility of *'afw* (waiver or pardon) and expiation (*kaffārah*):⁵⁰

⁴⁷ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

⁴⁸ Shihan, Zaroum, and Amanullah, “Universal Maqāsid Al-Sharī'ah and Their Modern Application: Towards Ensuring a Peaceful and Secured Environment.”

⁴⁹ Syamsul Fatoni et al., “Asas Proporsionalitas: Perspektif Hukum Positif Dan Maqosid Syariah Dalam Sistem Peradilan Pidana,” *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 1 (2025): 46–71, <https://doi.org/10.20885/iustum.vol32.iss1.art3>; Mashdurohatun et al., “Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy.”

⁵⁰ Muhammad Rijaldy Alwy, “The 'afw Principle and The Indonesian Restorative Justice System,” *Jurnal Hukum Islam* 19, no. 2 (2021): 313–28, <https://doi.org/10.28918/jhi.v19i2.4726>.

“We have prescribed for them (the Children of Israel) therein (the Torah) that a life is to be repaid with a life, an eye with an eye, a nose with a nose, an ear with an ear, a tooth with a tooth, and for wounds there is also *qisās* (equal punishment). Whoever forgives (the right to *qisās*), it (becomes) an atonement for his sins.” (QS. al-Mā'idah [5]: 45).

The relevance of proportionality becomes even more pronounced when capital punishment is situated within the domain of *ta'zīr*. Unlike *hudūd* and *qisās*, which have more specifically defined normative foundations and structures, *ta'zīr* allows the competent authority greater latitude in determining the form and severity of punishment in light of the nature of the offence and the interests requiring protection. Greater discretion, however, calls for correspondingly clearer reasons and constraints governing its exercise.⁵¹ Fahmi et al., for example, demonstrate that reconstructing capital punishment through the framework of *maqāsid al-shari'ah* requires constraints grounded in the protection of life, proportionality, safeguards against wrongful conviction, and procedural guarantees.⁵² These findings reinforce the proposition that when capital punishment is not an automatic consequence of a specific *hudūd* or *qisās*, rule, but rather the product of *ta'zīr* or *siyāsah*, the state's decision should be subject to more demanding standards of justification.⁵³ This point is particularly significant in the context of MUI Fatwa 2005 because one of the principal foundations of its authorization lies precisely within the domains of *siyāsah* and *ta'zīr*.

On this basis, the permissibility of capital punishment articulated in MUI Fatwa 2005 should first be subjected to a necessity test. The initial question is not whether capital punishment may theoretically produce a deterrent effect, but whether its actual use is genuinely necessary in responding to a particular criminal offence. Within the logic of *maqāsid al-shari'ah*, where the legitimate objective of protecting society can be achieved through another effective sanction that causes less harm to fundamental human interests, the justification for employing the most severe punishment becomes correspondingly weaker. This principle is especially relevant to *ta'zīr*, which by its nature grants the competent authority flexibility in determining the appropriate type and severity of sanction. State authority to impose capital punishment should therefore not be understood as a first-line option, but as an exceptional measure whose necessity must be demonstrated. This orientation finds a parallel in the development of Indonesian criminal law: Article 98 of Law No. 1 of 2023 expressly characterizes capital punishment as a last resort, reflecting a movement from formal permissibility toward restrictions grounded in necessity and the purposes of punishment.⁵⁴

A further dimension is the certainty of guilt, which cannot be separated from *hifz al-nafs*. Capital punishment differs fundamentally from other sanctions because a judicial error discovered after execution cannot be remedied.⁵⁵ The greater the severity and irreversibility of a punishment, therefore, the stronger the demands for factual certainty, evidentiary reliability, and procedural justice. This principle is particularly relevant within *fiqh*, where the imposition of criminal sanctions is inseparable from caution in matters of proof and protection against wrongful punishment.⁵⁶ Fahmi et al., for example, demonstrate that, in assessing capital punishment from the perspective of Islamic criminal law, weaknesses in forensic evidence and

⁵¹ Djalaluddin et al., “The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law.”

⁵² Fahmi et al., “Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases.”

⁵³ Maimun and Hakim, “Siyāsah Syar'iyyah and Its Application to Constitutional Issues in Indonesia”; Djalaluddin et al., “The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law.”

⁵⁴ Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.”

⁵⁵ Tongat, “Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives.”

⁵⁶ Gunaldi Ahmad et al., “Principles of Reversal Burden of Proof in the Perspective of Indonesian Criminal Law and Islamic Law,” *Jurnal Hukum Islam* 20, no. 2 (2022): 355–78, <https://doi.org/10.28918/jhi.v20i2.6749>.

factual certainty may undermine the legitimacy of its imposition even when the formal elements of the offence appear to have been established.⁵⁷ *Maqāsid al-shari'ah* should therefore not be invoked merely to demonstrate that capital punishment protects society. It must also function as a constraint ensuring that the state does not sacrifice an individual's life on the basis of an inadequate degree of certainty.

Taken together, these considerations move the *maqāsid al-shari'ah* analysis of MUI Fatwa 2005 from permissibility to conditional legitimacy. The permissibility articulated in the fatwa may be retained insofar as Islamic law recognizes the possibility of capital punishment and permits a certain degree of state authority within *ta'zīr* and *siyāsah*. That permissibility, however, should not be interpreted as automatic authorization for every application of the death penalty. At minimum, its exercise should satisfy a set of cumulative constraints: (1) the offence must reach an exceptionally serious level of gravity; (2) capital punishment must be demonstrably necessary; (3) the severity of the sanction must be proportionate to the culpability and harm involved; (4) guilt must be established to an exceptionally high degree of certainty; (5) the imposition of the sanction must serve a demonstrable and substantial public *maslahah*; and (6) the entire process must satisfy procedural justice and preserve meaningful opportunities for review and correction before execution.

This framework does not displace the normative position of MUI Fatwa 2005. Rather, it clarifies the jurisprudential consequences of the authority it grants to the state. The question of permissibility is addressed at the threshold level. The question of proportionality determines whether that permissibility can be translated into concrete legitimacy in a particular case. The distinction is crucial because a sanction may be recognized as legally permissible in the abstract without being justified in every factual circumstance.

On this reading, *maqāsid al-shari'ah* provides an internal basis for reconstructing MUI Fatwa 2005 without reducing the relationship between Islamic law and the right to life to a simple opposition between religious law and human rights. This approach is consistent with Auda's conception of *maqāsid al-shari'ah* as a multidimensional framework for interpreting Islamic law through the interaction of norms, purposes, rights, justice, and context.⁵⁸ The contribution of *maqāsid al-shari'ah* in this study is therefore not to transform capital punishment into an institution that is categorically prohibited, but to narrow the scope within which its exercise can be considered legitimate.⁵⁹ The more irreversible the sanction, the stronger the demands for necessity, proportionality, certainty, and justice. Within this framework, capital punishment may remain a jurisprudential possibility, but its status shifts from a general permission to an exceptional, conditional, and strictly constrained exercise of state authority that must be capable of justification in light of the objectives of Islamic law.⁶⁰

Reconstructing the jurisprudence of capital punishment in contemporary Indonesia

The analysis of MUI Fatwa 2005 demonstrates that capital punishment is constructed as an authority that is normatively permissible, yet the fatwa does not systematically specify the parameters that must be satisfied before such authority may be exercised. This issue has become increasingly significant following the enactment of Law No. 1 of 2023 on the Criminal Code, which places capital punishment within a more restrictive legal framework. Article 98 classifies it as an alternative punishment and as a "last resort to prevent the commission of

⁵⁷ Fahmi et al., "Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases."

⁵⁸ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

⁵⁹ Mashdurohatun et al., "Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy."

⁶⁰ Fahmi et al., "Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases."

criminal offences and protect society,” while Article 100 introduces a ten-year probationary period and allows a death sentence to be commuted to life imprisonment under specified conditions.⁶¹ This framework does not abolish capital punishment, but changes the manner in which the state may employ it, shifting it from an immediately available sanction toward an exceptional and conditional form of punishment.

These developments have been examined in several recent studies. Jamilah, in her analysis of alternatives to capital punishment under Law No. 1 of 2023, demonstrates that the availability of such alternatives can be understood through *maqāsid al-sharī’ah*, particularly in relation to legal protection and public welfare.⁶² Anggraini et al. likewise assess the capital-punishment policy under Law No. 1 of 2023 from human rights and *maqāsid al-sharī’ah* perspectives, drawing particular attention to the provision allowing a death sentence to be converted into life imprisonment following the probationary period.⁶³ Other research has examined the probationary mechanism and the conversion of the sentence as part of Indonesia’s broader shift in penal objectives toward a more rehabilitative orientation.⁶⁴ These studies are important to the present analysis because they demonstrate that Indonesian positive law has moved toward greater restriction and conditionality in the use of capital punishment. Their primary focus, however, remains the new positive-law framework and its relationship with *maqāsid al-sharī’ah*, rather than the question of how these developments should inform a rereading of the jurisprudential legitimacy previously articulated in MUI Fatwa 2005.

This distinction is important because MUI Fatwa 2005 and Law No. 1 of 2023 operate at different levels of normative authority. MUI Fatwa 2005 states that “the state may implement capital punishment against perpetrators of certain criminal offences,” whereas statutory law determines when and how the state may legally exercise that authority within the positive legal system.⁶⁵ Their relationship is therefore better understood as one between normative authorization and operational constraint rather than as a conflict between religious law and state law. The fatwa establishes a sphere of permissibility, while positive law subsequently structures the legal conditions and procedures governing its exercise. This interpretation is also consistent with the 2026 statement by the Secretary-General of MUI that the 2005 fatwa remains a reference concerning the permissibility of capital punishment in certain cases, while its implementation continues to depend on state authority within the framework of positive law.⁶⁶ The implication is that changes in the legal environment need not invalidate MUI Fatwa 2005. Rather, they provide grounds for rereading the scope and meaning of the permissibility it establishes.

From the perspective of *maqāsid al-sharī’ah*, this rereading can be directed toward a shift from permissibility to conditional legitimacy. If *hifz al-nafs* constitutes one of the fundamental objectives of the *sharī’ah*, state authority to deprive a person of life cannot be separated from the corresponding obligation to protect life itself.⁶⁷ Fahmi et al., for example, demonstrate that

⁶¹ Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.”

⁶² Jamilah, “Conditional Death Penalty in National Criminal Code: Study in Frame of Human Rights and Maqāsid Al-Sharī’ah.”

⁶³ Anggraini, Maksum, and Dewi, “Perspektif HAM Dan Maqashid Syari’ah Dalam Meninjau Kebijakan Hukuman Mati Dalam Undang Undang No. 1 Tahun 2023 Tentang KUHP.”

⁶⁴ Tongat, “Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives.”

⁶⁵ MUI, “Fatwa Majelis Ulama Indonesia Nomor: 10/MUNAS VII/MUI/14/2005 Tentang Hukuman Mati Dalam Tindak Pidana Tertentu.”

⁶⁶ Latifahtul Jannah and Azharun N, “Sekjen MUI Tegaskan Fatwa Hukuman Mati Koruptor Ada Sejak 2005,” MUI Digital, July 13, 2026, <https://mui.or.id/baca/berita/sekjen-mui-tegaskan-fatwa-hukuman-mati-koruptor-ada-sejak-2005>. Accessed on 19 August 2026.

⁶⁷ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

capital punishment can be situated within the framework of *maqāsid al-sharī'ah* when it is directed toward protecting the fundamental interests of society. Their analysis, however, primarily evaluates the compatibility of capital punishment with *maqāsid al-sharī'ah*, rather than developing criteria for determining when that permissibility may legitimately be translated into an actual execution.⁶⁸ This gap allows the present study to develop *maqāsid al-sharī'ah* as an instrument of constraint, rather than merely an instrument of justification. Under this approach, *hifz al-nafs* has a dual dimension: protecting society from serious criminal harm while also protecting individuals against disproportionate or unjustified exercises of state authority.⁶⁹

This dimension is further supported by recent scholarship explicitly addressing proportionality in Islamic criminal law. In their analysis of capital punishment in a case involving the murder of parents, Fahmi et al. emphasize the importance of rationality and proportionality in sentencing and argue that weaknesses in forensic evidence may undermine the factual certainty required before imposing the most severe punishment.⁷⁰ This finding is significant because it demonstrates that proportionality in Islamic criminal-law analysis concerns not only the relationship between the offence and the sanction, but also the quality of evidence and the rationality of the sentencing decision. The present study extends this insight from the level of individual adjudication to that of jurisprudential policy: where MUI Fatwa 2005 grants the state authority to impose capital punishment, that authority should not be exercised without assessing the gravity of the offence, necessity, proportionality, and certainty of guilt.

Jamilah's study provides an even closer point of comparison. By examining capital punishment through Islamic law, *maqāsid al-sharī'ah*, and human rights norms, the study identifies tensions between the objectives of Islamic criminal law, particularly the protection of life and proportionality, and practices of capital punishment that are excessively broad or procedurally deficient.⁷¹ This scholarship demonstrates that the reconstruction of capital punishment through *maqāsid al-sharī'ah* and proportionality has already emerged as an important strand of contemporary research. The contribution of the present study therefore does not lie in being the first to establish a relationship between *maqāsid al-sharī'ah* and proportionality. Rather, it lies in applying that framework to reread MUI Fatwa 2005 within the context of the changing architecture of Indonesian criminal law. In this sense, the study moves the debate from the general question of "capital punishment in Islam" to the more specific jurisprudential question of the limits governing state authority that a national religious institution has expressly recognized as permissible.

On the basis of this synthesis, the proposed jurisprudential reconstruction should operate through the following cumulative constraints:

- 1) exceptional seriousness of the offence: capital punishment may be considered only for offences involving an exceptionally grave threat to life or other fundamental societal interests.
- 2) necessity: the state must demonstrate that the legitimate objective of protecting society cannot be adequately achieved through a less severe sanction.
- 3) Proportionality: the severity of the sanction must correspond to the degree of culpability and the harm caused.
- 4) certainty of guilt: given the irreversible nature of capital punishment, guilt must be established to an exceptionally high degree of certainty.

⁶⁸ Fahmi et al., "Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases."

⁶⁹ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

⁷⁰ Fahmi et al., "Criminal Law and Islamic Perspectives on The Death Penalty in Parental Murder Cases."

⁷¹ Jamilah, "Conditional Death Penalty in National Criminal Code: Study in Frame of Human Rights and Maqāsid Al-Sharī'ah."

- 5) public *maslahah*: the sanction must produce a demonstrable and defensible social benefit rather than rest solely on generalized claims of deterrence or public order.
- 6) procedural justice: the process must guarantee a fair trial and meaningful opportunities for review and correction before execution.

These parameters should not be understood as external additions imposed upon MUI Fatwa 2005. Rather, they can be derived from the internal logic of *maqāsid al-sharī'ah*, *maslahah*, the discretionary character of *ta'zīr*, and the jurisprudential principle of caution in the imposition of criminal sanctions. They consequently function not to negate the fatwa's recognition of capital punishment, but to specify the conditions under which its normative authorization may legitimately be translated into state action.

Taken together, the preceding analysis shows that the reconstruction of capital punishment from normative permissibility to conditional legitimacy rests on several interrelated dimensions. The relationship among these dimensions is summarized in Table 1 below.

Table 1. Jurisprudential reconstruction of capital punishment

Dimension	MUI Fatwa 2005	Reconstruction through <i>maqāsid al-sharī'ah</i>	Law No. 1 of 2023
Status of capital punishment	Recognized under <i>hudūd</i> , <i>qisās</i> , and <i>ta'zīr</i>	Remains jurisprudentially permissible	Retained as a special form of punishment
State authority	The state may implement capital punishment	Authority is exceptional and non-absolute	Exercise is constrained by statutory provisions
Basis of legitimacy	<i>Nass</i> , <i>fiqh</i> , <i>ta'zīr</i> , and <i>siyāsah</i>	<i>maqāsid al-sharī'ah</i> , <i>maslahah</i> , justice, and protection of life	Penal objectives and protection of society
Necessity	Not formulated as an independent requirement	Must be demonstrated that a less severe sanction is inadequate	Capital punishment is positioned as a last resort
Proportionality	Not expressly formulated	The offence, culpability, harm, and sanction must correspond	Capital punishment is prescribed as an alternative sanction
Certainty of guilt	Not formulated as a specific parameter	Requires an exceptionally high standard of proof because of irreversibility	Subject to criminal justice principles and procedures
<i>Maslahah</i>	Legal firmness and public order	Must constitute a demonstrable public benefit	Protection and safeguarding of society
Review and rehabilitation	Not expressly formulated	Meaningful opportunities for review must exist before execution	Probationary period and possible commutation to life imprisonment
Jurisprudential status	Permissibility	Conditional legitimacy	Exceptional and conditional punishment

Source: Compiled by the authors based on MUI Fatwa 2005, Law No. 1 of 2023, Law No. 1 of 2026, and relevant literature.

Table 1 demonstrates that the proposed reconstruction does not eliminate the legitimacy of capital punishment recognized in MUI Fatwa 2005. Rather, it transforms the character of the state authority associated with that recognition. The MUI fatwa provides normative authorization, *maqāsid al-sharī'ah* supplies jurisprudential constraints, and positive law establishes the institutional mechanisms through which those constraints are

operationalized.⁷² Together, these three dimensions establish a continuum linking the legitimacy, limitation, and implementation of capital punishment in the contemporary context.

Within Indonesian law, this reconstruction acquires an institutional form through Articles 98–100 of Law No. 1 of 2023, which classify capital punishment as an alternative sanction, designate it as a last resort, and provide for the possibility of its conversion into life imprisonment.⁷³ Existing scholarship suggests that this framework reflects a broader shift toward a more conditional model of punishment that incorporates humanitarian and rehabilitative considerations.⁷⁴ The development demonstrates that limits on state authority are not merely theoretical propositions but have acquired concrete expression in Indonesian positive law. Meanwhile, Law No. 1 of 2026 on Criminal Adjustment should be understood primarily as part of the broader harmonization of the national criminal-law system rather than as the principal source of the last-resort principle governing capital punishment.⁷⁵

On the basis of the foregoing analysis, this study reconstructs capital punishment as an exceptional, conditional, and proportionate exercise of state authority. This reconstruction neither transforms MUI Fatwa 2005 into positive law nor nullifies its jurisprudential legitimacy. Instead, it adopts a stricter interpretation of the word “may”: permissibility constitutes a normative space, whereas concrete legitimacy depends upon the satisfaction of substantive and procedural conditions. Within this framework, the fatwa provides the normative possibility, *maqāsid al-sharīʿah* provides the evaluative parameters, and positive law supplies the institutional mechanisms for constraining state power. Thus, the movement “from permissibility to proportionality” represents a shift from the abstract recognition of capital punishment toward a jurisprudential inquiry into when, under what conditions, and to what extent the state may legitimately exercise authority over human life.

Conclusion

This study demonstrates that MUI Fatwa No. 10/MUNAS VII/MUI/14/2005 provides normative legitimacy for capital punishment and recognizes state authority to implement it for certain criminal offences. The use of the term “may,” however, does not confer absolute authority. Through *maqāsid al-sharīʿah*, particularly *hifz al-nafs* and *maslahah*, together with the principles of necessity, proportionality, certainty of guilt, and procedural justice, this study reconstructs capital punishment as an exceptional, conditional, and proportionate exercise of state authority. The development of Law No. 1 of 2023, which positions capital punishment as an alternative and last-resort sanction, further strengthens this reconstruction. Thus, the shift from permissibility to proportionality does not eliminate capital punishment as a jurisprudential possibility within Islamic law, but raises the threshold for its legitimate application: normative permission constitutes the starting point, whereas concrete legitimacy requires heightened justification based on the seriousness of the offence, demonstrable necessity, proportionality, certainty of guilt, genuine public *maslahah*, and effective procedural safeguards.

⁷² Aswan and Ashufah, “Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia”; Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*; Mashdurohatun et al., “Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law: A Comparative Study of Justice and Penal Philosophy.”

⁷³ Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.”

⁷⁴ Wahyudi, Suryani, and Fahmi, “Hukuman Mati Dan Hak Untuk Hidup Di Indonesia: Tinjauan HAM Terhadap Undang-Undang Nomor 1 Tahun 2023”; Djatmika, Istiqomah, and Kurniawan, “Discourse on the Death Penalty: A Study of Public Perceptions in Indonesia”; M. Arief Amrullah, “Paradigm Shift of Death Penalty Regulation Inthe New Criminal Code (KUHP) of Indonesia,” *Lentera Hukum* 11, no. 1 (2024): 24–55, <https://doi.org/10.19184/ejhl.v10i1.45809>.

⁷⁵ Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2026 Tentang Penyesuaian Pidana,” 2026.

The principal contribution of this study lies in repositioning the debate from the binary question of whether capital punishment is permissible toward the more demanding question of when and under what conditions the state may legitimately exercise authority over human life in accordance with the objectives of Islamic law. The study is nevertheless limited by its normative-jurisprudential approach, which does not empirically test the proposed framework against judicial practice or patterns of criminal-law enforcement. Future research should therefore examine Indonesian judicial decisions involving capital punishment, investigate the operation of these standards in law-enforcement practice, and compare the framework with capital-punishment jurisprudence in other Muslim-majority jurisdictions. Such research would contribute to assessing the practical applicability and broader jurisprudential implications of the reconstruction proposed in this study.

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Author Contributions

M.R.Q.: Conceptualization, methodology, formal analysis, investigation, and writing—original draft preparation. D.A.R.: Methodology, investigation, data curation, and writing—review and editing. T.A.: Validation, data curation, and writing—review and editing. A.H.R.: Validation and writing—review and editing. All authors contributed to the intellectual development of the study, critically reviewed the manuscript, and approved the final version.

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