

Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia

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ABSTRACT

Indonesia is a state of law related to the disparity in the decisions of different judges in deciding a case, especially in criminal decisions. A more in-depth study is needed, especially in the case of rape, where in rape cases in Indonesia, several judges have sentenced them to death. This study aims to uncover and explore the Internalization of Progressive Islamic Law (Mashlahat) in Amending Criminal Law in the Death Penalty by Judges Against Defendants in Rape Cases in Indonesia. Progressive Islamic Law promoting peace (Mashlahat) can realize legal protection and peace for the people of Indonesia. The approach in this study uses an empirical juridical approach. This research is also normative-legal, qualitative, and uses descriptive methods through literature studies. This research is sourced from various books, international journals, and national journals. The results of the study concluded that 1) Progressive Islamic Law Internalization in Indonesia in changing criminal law can be carried out by changing the law, which can be done through peace (maslahat) by prioritizing Islamic values rahmatan lil 'alamin in developing and incorporating Islamic legal values into the national legal system in Indonesia; 2) the occurrence of changes to criminal law in Indonesia which was decided by this Judge (Criminal Disparity), among others: a) the judge sentenced to life imprisonment; b) the death penalty; c) 12 years in prison; d) Castration punishment; e) 4 years imprisonment; 3) Internalization of Progressive Islamic Law towards changes in criminal law in Indonesia, when a court judge wants to decide his case, for example in a rape case, a decision can be made through the Mashlahat (peace) concept without having to decide the case with a life sentence or up to the death penalty, especially for perpetrators of rape.

Keywords: changes to criminal penalties; internalization of Islamic Law; progressive Islamic Law (Mashlahat); death penalty sentences.

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INTRODUCTION

Islamic law views a married adulteress (Muhsan) as punishable by stoning to death (Rokhmadi 2017). So far, there is no death penalty in Indonesia. However, death penalty cases in Indonesia are still dominated by narcotics cases (Institute for Criminal Justice Reform 2022). Recently regarding the death penalty in Indonesia, there have been decisions in other cases, such as the case of Herry Wirawan after being sentenced to death in a rape case (Shabrina 2022). As for one of the decisions related to life sentences in Indonesia in 2022, including the Bandung District Court Decision Number 989/Pid.Sus/2021/PN Bdg dated February 15, 2022. Continue to the death penalty stage related to rape cases that were carried out systematically. The decision was announced directly on the official website of PT Bandung. The Panel of Judges, chaired by the Head of the Bandung High Court, Herri Swantoro, read out 10 points in the verdict. In the first and second points, the panel of judges stated that they accepted the appeal from the public prosecutor and corrected the decision of the Bandung District Court Number 989/Pid.Sus/2022/PN.Bdg, dated February 15, 2022 (Febriyan 2022).

Furthermore, regarding the disparity of judges' decisions in Indonesia, there needs to be an in-depth study, especially in the case of rape, where in the case of rape in Indonesia, there are several judges who give their verdicts with the death penalty. The current criminal law is outdated and should be updated to keep up with the times, even though the formulation of the colonial legacy criminal law only focuses on individual aspects, even though the law should pay attention to individual and social aspects (Lisma 2019). Nowadays, it is related to changing the law from a life sentence to a death penalty, so this continues to be an endless discussion, aka unique and exciting to discuss. On the one hand, the death penalty is considered effective in deterring perpetrators, but on the other hand, the implementation of the death penalty is like usurping the author's authority (Muhammadiyah 2019). So that, the sentencing decision is formulated in Article 193 of the Criminal Procedure Code (KUHAP), which reads if the court thinks that the defendant is guilty of committing the crime, he is charged with, the court shall impose.

Moral and ethical values in the Pancasila system originate from the human will or willingness to do something. They are based on the element of positive will and the element of justification for actions that come from human reason. In addition, in contrast to other values, morals and ethics are still related to aesthetic and social feelings and religious feelings from advanced and high levels of human culture. Islamic law is one of the existing legal systems in the world; recognized and applied in Indonesia is not new. Various aspects regulated in Islamic law can answer various problems in legal practice that still use the Dutch heritage criminal law. Historical factors have led to the existence of Islamic law in Indonesia. The people who inhabit the archipelago have been practicing the values of Islamic law since the days of the kingdom so that civilized Indonesian people reject all actions that deviate from religious, moral, social, and legal norms. However, the practice of Islamic law during the colonial period could not be enforced because the rules of

legal politics required the political regime to influence the type of law applied. Since the enactment of the colonial penal code until now, many problems have arisen in society, such as cohabitation, blasphemy, gambling, and liquor (Sulistiyono, Purwadi, and Hartiwiningsih 2018). The internalization of Islamic law in criminal law reform is in line with customary law and customary law, which does not allow any activity that violates customary law and customary law in society (Maskur 2018).

The judge's decision should provide certainty as a country that adheres to the civil law system. If in the case of rape that is carried out jointly (more than one perpetrator of a crime), the punishment is the same. On the other hand, several countries emphasize eliminating differences in judges' decisions or disparities, and this is intended so that similar cases are not possible. So far, efforts have been made to minimize disparities by, among others, making sentencing guidelines in the United States, Finland, Sweden, and New Zealand, including countries that have adopted and implemented these sentencing guidelines. Judges in Indonesia have realized that the problem of disparity is. Although the severity of the sentence is under the authority of the judge of first instance and appeal, in several decisions, the supreme judge corrected the verdict because the sentence was disproportionate (Bertin 2016).

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From the preceding, the author finds several cases related to the life sentence, not only this time. The first is the case of a death sentence against Herry Irawan's brother for the case of sexual violence against 13 female students in Bandung City, West Java Province, who received a life sentence. This verdict is lighter than the demand for the death penalty by the prosecutor from the West Java High Prosecutor's Office (Kejati). The panel of judges sentenced Herry Wirawan to life imprisonment on Tuesday, February 15, 2022. The judge considered that there was nothing that reduced Wirawan's sentence. Herry was guilty of raping 13 female students during pregnancy and childbirth. The judge also shared that Herry's actions constituted a grave crime to the prosecutor. Herry Wirawan's actions were found guilty by Article 81 paragraph 1, paragraph 3, and paragraph 5 in conjunction with Article 76D of Law Number 17/2016 concerning Amendments to Law Number 23/2002 concerning Child Protection in conjunction with Article 65 paragraph (1),

various convicts also received sentences. Life imprisonment in various cases. The following are among the convicts who received life sentences (Andryanto 2022):

First, Agus Ramadhan where former member of the Tanjungbalai Police Satnarkoba. Ramadhan was sentenced to sell 76 kilograms of crystal methamphetamine. He was sentenced to life in prison for violating Article 114 paragraph (2) of the Indonesian Law Number 35 of 2009 concerning Narcotics in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code on Thursday, February 17, 2022.

The second was Ahmad Muhailil Churi alias Gus Cholil on Tuesday, January 5, 2021. Cholil was sentenced to life in a trial led by the presiding judge, Priyanto, and two judges, members of Pandu Budiono and Heru Budyanto. Cholil was found guilty of committing the crime of premeditated murder against Sunarno and Triyani at a rented house on Jalan Pleret Utama Banyuwanyar on Thursday, April 9, 2020, because he wanted to control Sunarno's money amounting to Rp 725 million. The panel of judges considered several things that incriminate the defendant, among others, were sadistic acts by taking their lives. The defendant was also considered to have given convoluted information to interfere with the trial.

The third is the death sentence for the four defendants in the Jiwasraya Case. The Jakarta Corruption Court judges sentenced four defendants to life imprisonment for the alleged corruption case in the management of PT Asuransi Jiwasraya (Persero) investment funds Monday night, October 12, 2020. The four defendants were former Jiwasraya Director Hendrisman Rahim, former Jiwasraya Finance Director Hary Prasetyo, former Head of Investment and Finance Division of Jiwasraya Syahmirwan, and PT Maxima Integra Director Joko Hartono Tirto. The prosecutor previously assessed that the defendants had been proven guilty of corruption at the state-owned company Jiwasraya. Their actions are considered to have caused the state to lose Rp. 16.8 trillion.

Fourth, Ryan Helmi was sentenced to death by a judge at the East Jakarta District Court and sentenced Ryan Helmi to life in prison, the defendant in the murder of doctor Letty Sultri. Ryan killed Doctor Letty with six shots on November 9, 2017, at around 2 p.m. At that time, Letty worked at the Azzahra Clinic, Jalan Dewi Sartika, Cawang, East Jakarta. The murder was allegedly motivated by an argument because Letty often asked for a divorce.

Rape is a serious crime because it harms the victim, disturbs the future, and causes terrible influence on the victim, even death. However, in Indonesia, the judge punished the defendant as the representative of God, and there was a decision on the rape case with a prison term of 4 years (Hamsa, Sugiarta, and Karma 2021). Indonesia is a legal state that guarantees the fulfillment of people's rights and justice for their country (Hamzani 2014). One of these rights is Human Rights, which is called Human Rights. Human rights are a fundamental right of a person, which are most important inherent in a person's body since a person is born as a gift of God's creation. Nowadays, legal issues related to human rights are issues that are often

discussed or often become public attention in upholding the rule of law against suspects of sexual harassment where the suspect causes the victim to become a victim of sexual harassment. Always a case that needs to look. Punishments for suspects of sexual harassment, where in this case, the sense of justice for victims of sexual harassment does not have a sense of justice for victims of sexual harassment, relatives of victims, or residents who feel sorry for the victim.

Islamic law is not only in worship but has also begun to contribute to the development and legal point of view as a new feature of law in Indonesia (Hidayatullah 2020). The need for law cannot be separated from the development of Islamic law, which has begun to gain recognition, considering that Islamic law has historically influenced living law in Indonesia. In reality, the law that lives in society, especially the Islamic community, Islamic law becomes its style and influences each other with customary law that is indeed present and lives in society. From this influence, Islamic law that lives in society becomes something that needs to be taken and used, especially in the legal area, including civil and sometimes the realm of criminal law. Islamic law has the complexity of the law that is studied, both specific and general. The interpretation of progressive law in criminal cases is according to the opinion Christianto (2011), in his journal that the progressive law school emphasizes the discovery of law to explore the values that live in society. This idea is by the legal needs of the Indonesian people. Pancasila is an absolute limitation for judicial power in interpreting so that the ideals of the Indonesian nation genuinely direct legal discovery.

So that the legal protection for victims of sexual harassment, as viewed (Paradias and Soponyono 2022), has become an urgent matter, given the rise of cases of sexual violence in Indonesia. Making laws that protect victims of sexual violence, settlement of cases of sexual violence, and protection of victims of cases of sexual violence can be carried out correctly. Where progressive law puts forward the sociology of law rather than legal certainty, the focus of legal positivism. In Indonesia, this law was coined by Satjipto Rahardjo as followed by (Reda, Budiarta, and Widyantera 2020), that progressive law prioritizes legal sociology rather than legal certainty, which is the focus of legal positivism. Where progressive law has been regulated, namely precisely in Article 2 paragraphs (1) and (2), in Law no. 48 of 2009 Judicial Powers also stipulates that in administering the judiciary to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the State of Law of the Republic of Indonesia. In Islamic law itself, it has been explained that rape is a had *hirabah* (Surat al-maidah: 33). The sanctions include the death penalty, crucifixion, cutting off the hands and legs crossed, or being exiled (Wahyuni 2016).

The Diversion Program in the current Juvenile Criminal Justice System provides opportunities for victims to get protection, in which the perpetrator and the victim make peace and fulfill compensation for the victim. The diversion program in the juvenile criminal justice system is currently limited to crimes punishable by imprisonment for under seven years. With this limitation, as a result, the protection of victims of child crimes is minimal (S. Wahyudi 2022). Children

have human rights, as do adults, but there are not many parties who think about and take concrete steps to protect children's rights. Likewise, efforts to protect children's rights that are violated are carried out by the state, adults, the environment itself, or their parents, who do not pay much attention to the interests of the children's future. However, children are soul mates, images and mirrors of the future, family assets, religion, nation, and state. Indonesia, as a country based on Pancasila, must provide legal protection to its citizens because legal protection will give birth to recognition. Protection of human rights as individual beings and social beings in a unitary state upholds the spirit of kinship to achieve general welfare (Harahap 2016).

Regarding the case of rape, it is a very deviant behavior carried out by humans who have crossed the limits of humanity, even beyond the animal side. Currently, rape is a crime that gets enough attention in the community. It is often reported in newspapers or magazines that a crime of rape has occurred. If you study history, this type of crime has existed for a long time, or it can be said to be a classic crime that will always follow the development of human culture itself. It will always exist and develop all the time even though it may not be too much different from before. The crime of rape does not only occur in big cities, which are relatively more advanced in culture and awareness or legal knowledge, but also in rural areas which still hold traditional values and customs (Nairazi 2017). Indonesia is not an Islamic country, but most of the population is Muslim. As stated by Ahyani et al. (2021) in their journal, true Islamic brotherhood needs to be prioritized in upholding justice, legal values in Indonesia, and sanctions in the application of material criminal law, with careful legal considerations (Nasution 2017).

From the above background, the death penalty cases dominated by narcotics are now spreading to other cases, such as the rape case in Indonesia. Therefore, it is necessary to reveal and explore the Derivatives of Progressive Islamic Law (Mashlahat) concerning the death penalty for the accused. Rape Cases in Indonesia. So the author tries to analyze how the Internalization of Progressive Islamic Law (Mashlahat) in the Death Penalty Sentence for Defendants of Rape Cases in Indonesia can be realized to promote legal protection and peace for the Indonesian people.

METHODS

This study uses an empirical juridical approach that provides a more in-depth, objective, systematic, and general explanation than simply describing the meaning of a text (Soejono and Abdurrahman 2003). An in-depth study of the internalization of progressive Islamic law toward a criminal change from life imprisonment to the death penalty in the case of rape in Indonesia can find common ground to realize legal certainty. In addition, this research is research that is focused on examining the application of rules or norms in law in society (J. Ibrahim 2007), where the Indonesian people, who incidentally have the largest Muslim population in the world, so that people cannot be separated from the rules or regulations. Legal norm. Legal norms are considered to have the toughest sanctions in the world. Sanctions for violating legal norms are given the appropriate punishment. And this

case of sexual harassment or rape is very against the law because it harms many parties. Also, the victim can have their trauma. Therefore, it must be punished. This research is also normative legal because it tries to find a concrete law and examines written law from various aspects (Muhammad 2004). The author tries to analyze how the derivation of progressive Islamic law toward criminal changes from life imprisonment to imprisonment is carried out on the death penalty in rape cases in Indonesia. Furthermore, in concreto legal research is intended to determine the extent to which existing laws and regulations can be applied. Namely by analyzing secondary data and researching the level of synchronization both vertically and horizontally in written legal regulations related to criminal changes from life imprisonment to the death penalty in cases of rape involving is in Indonesia.

The author uses a qualitative and descriptive approach through library research (H. M. Putra, Abdurohman, and Ahyani 2022). The qualitative approach is expected to describe the internalization of progressive Islamic law toward criminal changes from life imprisonment to the death penalty in cases of rape in Indonesia. This research is also normative legal research using a literature study on research materials. Data collection was carried out by studying the internalization of progressive Islamic law on criminal changes from life imprisonment to the death penalty in cases of rape in Indonesia.

Furthermore, the author uses a descriptive method to describe the internalization of progressive Islamic law against criminal changes from life imprisonment to the death penalty in cases of rape in Indonesia. In addition, the authors adopt the opinions of criminal law experts and criminal law practitioners, whose sources are from international books, journals, and national journals (Ahyani et al. 2022). Where are these scientific journals that understand the issue of punishment in cases of rape in Indonesia which is applied relative to the violators? The object of this scientific study, the approach, is carried out by analyzing and interpreting theoretical matters related to research (Kurniati et al. 2021), namely around the internalization of progressive Islamic law towards criminal changes from life imprisonment to the death penalty in rape cases in Indonesia. After that, a literature search will be carried out according to the research topic (Naisabur and Putra 2021).

RESULTS AND DISCUSSION

Analysis of Progressive Islamic Law Internalization in Indonesia

The concept of benefit in Islamic law, where Najmuddin Al Thufi coined this concept, is that when a dispute/dispute occurs, it can be resolved through the peace system, and also puts forward the Islamic concept of *rahmatan lil 'alamin* (Kholili, Makturidi, and Muharir 2021). In addition, Progressive Islamic Law, which At-Thufi offers, is an Epistemology for the Development of National Law in Indonesia, where the benefits that exist in Islamic law are in line with the concept of law in Indonesia, which incidentally, Indonesia is a state of law (Sarifudin 2019). Thus the Internalization of Progressive Islamic Law in Indonesia can be carried out

through peace (*maslahat*) by prioritizing the Islamic values of *rahmatan lil 'alamin* in developing and incorporating Islamic legal values into the national legal system in Indonesia.

To internalize progressive Islamic law in Indonesia, in the context of efforts to achieve the goals of Islamic law (*maqasid shari'ah*) and the obligation to maintain the soul takes precedence over maintaining religion. Practicing religious teachings can only be done when one's soul is preserved (Mashuri, Nur, and Muttaqin 2021). In addition, the ideal concept of supervision in certain criminal cases in Indonesia, in the process of alleged criminal acts, it is necessary to make supervision the investigation process first so that a judge in deciding his case can be carried out by what should be (Wantu, Tijow, and Yusuf 2020).

Regarding the progressive internalization of Islamic law in Indonesia, it can also be done through customary law mechanisms, where customary law can create a bargaining justice where customary law is used as the first line in resolving conflicts between victims, perpetrators, and the community (Tijow, Hasibuan, and Hayat 2021). Where progressive law is a legal development thought initiated by Prof. Satjipto Rahardjo, is of the view that the law is made for humans, not humans for the law. His rationale is that current legal studies have reached deep ecology based on anthropocentrism. In addition, progressive law in Indonesia can be applied as a legal solution for the welfare of the people.

In contrast, progressive law is also very concerned about truth, humanity, and justice (Mukhidin 2014). Another thing is related to the application of progressive law, such as the existence of "exceptions" related to financing in certain judicial cases. The issue of fee waivers for law enforcers who wish to proceed in court can be freed from relatively expensive fees. This can be achieved by prioritizing the Progressive Law paradigm that cares about truth, humanity, and justice. The release of the perpetrators and those who proceed in court can run smoothly to applicable judicial regulations (A. Ibrahim 2006).

In addition, the implementation of progressive Islamic law in the decisions of religious courts in Indonesia can be carried out through mainstreaming *ijtihad*, either in the form of interpretation (interpretation) or discovery (construction) of law and or through the legal *istinbath* method or by *ittiba'* (following) the opinions of scholars. This method provides solutions to community problems that cannot be answered by the Compilation of Islamic law and applicable national law through justice answers. For example, what happened in the Religious Courts in Indonesia, where cases that were *contra legem* were casuistic and not all cases could be treated equally. The judge must examine these cases in detail to decide whether to follow the laws and regulations or to interpret or form a new law. This implementation is done solely to fulfill the conscience of justice and benefit the community (Islami 2021).

In terms of the concept of *maqasid al-Sharia* in Indonesia, a basic guideline for the formation of Islamic law. Although in the end, it affects traditional and

political values. *Maqasid al-syari'ah* also plays a vital role in understanding various sources of law such as the Qur'an, Sunnah, ijma, qiyas, and others. Therefore, the validity of an *ijtihad* result depends on the level of attainment of *maqashid* al-Shariah. As a doctrine, *maqashid* as-shari'ah intends to achieve, guarantee, and maintain the welfare of humanity, especially Muslims (Mukhlisi 2014). The application of Islamic law, as in the opinion of Imam Abu Hanifah, who was famous for his rational thinking. The application of Islamic law needs to be adjusted to the logic of human reason, which means that the concept of equitable justice in Islamic law must be put forward (Busyro 2016). Especially in terms of crime and punishment in the era of 4.0 (disruption), it needs to be developed to realize national development. The concept of justice in punishment for criminal acts is not only in the context of realizing retributive justice but also on the principle of benefits generated in the sense that it aims to prevent the recurrence of similar crimes (Makturidi, Rusyana, and Ahyani 2022). Furthermore, Satjipto Rahardjo said that law always develops following human development and follows the needs and values that live in humans to make it happen (Ahyani, Makturidi, and Rusyana 2021).

So that the inclusion of Islamic law in line with *maqashid* sharia can be realized in Indonesia through progressive Islamic law, where here there are values of responsibility and fair punishment based on law. So with, progressive Islamic law, when viewed from a social practice perspective, is very much needed by the community for order, benefit, and legal certainty. The purpose of sentencing is based not only on the concept of retributive justice but also on the principle of consequentialist utility. Punishment is more aimed at avoiding the potential for similar crimes to create order (Kabir 2019). So that in, the application in Indonesia regarding this progressive law, when applied it will make it more progressive and non-discriminatory against criminals (lawbreakers) (M. I. Wahyudi 2018).

On the other hand, the moderate *ijtihad* paradigm built by Ahmad Hasyim Muzadi does not have to be based on texts of Islamic law alone. Still, it must also be based on purity and clear, honest, and sincere thinking. Thus, the resulting moderation of Islamic law discourse will give birth to an inclusive legal system that accommodates the dynamics of human life. Islamic legal discourse has balance and justice in its enforcement at the empirical level (Dahlan 2016). So, it needs to be put forward to internalize progressive Islamic law in Indonesia. In addition, the gradual principle has been applied in the legislative process in Islamic law in Indonesia. Still, it does not yet have a formal legal basis in the form of a law governing the formation of national law, although it has been implemented in the legislative process (Bakry and Gunawan 2018).

Legal Analysis of Death Sentences for Rape Defendants in Indonesia

In Indonesia, of course, there are many considerations for a judge, including the punishment for perpetrators of sexual violence against children is castration (Muliyawan 2021). A judge punishes the perpetrators of the crime of rape which causes death, with a prison sentence of 4 years. This was done by the provisions of

Articles 285, 288 paragraphs (3), 359, 291 paragraphs (2) of the Criminal Code, Articles 76D, and 81 paragraphs (1) of Law Number 35 of 2014 on amendments to Law Number 23 of 2002 concerning Child Protection, and violates the provisions of Article 71 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. Some judges make decisions regarding life sentences for Defendants of Rape Cases, such as the Bandung District Court Decision Number 989/Pid.Sus/2021/PN Bdg dated February 15, 2022.

The crime of rape is a crime regulated in Book 2 of the Criminal Code, namely Article 285. Rape is a crime of morality that greatly damages women's dignity, so the criminal sanctions imposed by judges on perpetrators based on the Criminal Code are a maximum of 12 years in prison. Judges' freedom in deciding cases is limited by statutory regulations (criminal procedural law), as regulated in the Criminal Procedure Code. Article 183 of the Criminal Procedure Code, in which a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has occurred and that the defendant is guilty of committing it. As a result, a judge in deciding a case is not only given freedom but is given limitations so that in making a decision, it is based on a minimum of two pieces of evidence. In deciding a case, the judge must fulfill two or more pieces of evidence presented in the examination at trial. Thus, judges are prohibited from deciding cases based only on conditions determined by law (Bertin 2016).

Analysis of the Death Penalty for Defendants of Rape Cases in Indonesia shows various kinds of judges' decisions (Criminal Disparities). How the judge used his analysis in making decisions and sentenced to life imprisonment, and some were sentenced to death. Applying the principle of restorative justice in criminal and civil cases in Indonesia is essential. For example, good faith in the law prioritizes mediation in medical disputes as the first mechanism before being brought to court (Karjoko, Handayani, et al. 2021). Furthermore, in the case of the death penalty, the life sentence imposed by this judge is a paradigmatic difference. The difference in this decision lies in the order and epistemological construction between rights and obligations (Riyanto and Muhammadin 2019). So in the judge's decision that imposes the death penalty or life imprisonment in criminal cases in Indonesia, what needs to be considered is related to protection in the administrative, civil and criminal fields so that it remains intact and fair (Supraptiningsih 2017). So granting remissions to terrorism convicts, for example, provides more significant benefits (*masalahah*) than removing the policy on the grounds of extraordinary crimes committed by inmates. In addition, allowing them to change is better considered to be more important. It deserves to be prioritized over giving maximum punishment without any effort to change their behavior (Aprilianto and Zahidi 2021), meaning that in cases of rape, it is also the case, namely the need for granting remissions to perpetrators of the crime of rape. It was sentenced to death to become a life sentence so that the concept of *masalahah* in the application of criminal law in Indonesia puts forward the concept of justice and raises awareness of the perpetrators of the crime

of rape, such as the imposition of the death penalty law which recently occurred in Indonesia.

The position of an advocate (lawyer) in Indonesia, as a legal advisor in every investigation process, must be central because he must place himself as a suspect's representative to get proper rights (Rifai 2008). In addition, as a form of recognition and protection of human rights for criminals in Indonesia, it is permissible to use criminal law politics, where the method of penal policy through the government in dispute resolution is formed in the codification of positive legal norms (Nadir 2010). In addition, the discourse regarding the existence of Hudd in Islamic law has experienced a paradigm shift from time to time. And the formulation of Hudd, which is identical to forms of punishment (*al-'uqûbât al-muqaddara*) is the *ijtihad* of the jurists on the prophetic tradition (Sunnah). As a result of *ijtihad*, the existing Hudd formulation is a scientific space open to criticism (Abdillah 2018). For example, in the case of criminal acts in Islamic criminal law, it is called *jarimah*, all actions prohibited by Allah SWT. and threatened with had and *ta'zir* punishment. Had is a crime, and the criminal sanctions have been regulated in the Qur'an and Al-Hadith texts, while *ta'zir* is a crime whose criminal sanctions are determined by the leader. Criminal acts or *jarimah* hudud are: Had adultery, punished for those who *ghairu muhsan* 100 lashes and Muhsan sentenced to stoning, had *qadhaf* (accusing someone of adultery) was sentenced to 80 lashes, had *sariqah* (theft), when it reached the *nisab* was sentenced to cut off hands, Had to drink alcohol was punished with 40 lashes, had *hirabah* (robbery) was punished according to the criteria of the act committed, had *al-baghyu* (rebellion) was sentenced to death, and had *riddah* (apostasy) was sentenced to death if he did not want to be invited to repent. The seven forms of *hadd* are the rights of Allah SWT. It is proven that the judge decides according to what is determined by the Qur'an and Al-Hadith (Surya 2019).

Thus, progressive law being implemented in Indonesia will positively impact the development of law in Indonesia (Jayusman et al. 2021). The codification of Islamic law in Indonesia has received constitutional status based on philosophical, sociological, and juridical reasons (Sonafist et al. 2020). The case of *Taqnîn* (codification of Islamic law) that exists in Indonesia, it must be adapted to current demands whose implementation and by certain legal fields, for example, *taqnn* for Civil Law, Criminal Law, Family Law, Judicial Law, State Administrative Law, State Administrative Law, and State Finance. Furthermore, regarding the concept of *maslahat* as a consideration of Islamic law in the view of Imam Malik, Islamic law reform can be carried out through considerations of benefit (Syarifuddin 2020). To provide legal answers to the problems faced by society so that Islamic law seems to live dynamically in a society that continues to experience changes and developments.

In Indonesia, especially regarding the issue of adultery, using a socio-legal approach and Islamic criminal law, the best solution is the spirit of adultery sanctions in Islamic criminal law which is expected to be an alternative to reforming the Indonesian criminal law system in the future. Although some elements of the

nation may not expect a form of adultery sanction in Islamic punishment, the spirit aims to have solid legal certainty and maintain human life (Supardin and Syatar 2021). The judiciary in Islamic law, which observes the constitutional system and legal system of democratic countries, is united by the principle of judicial independence into a constitutional principle related to the protection of human rights, which is a natural consequence of the existence of a judicial institution that stands in the same position as the legislative power. And executives. The principle of judicial independence is considered the first of the general principles governing the judiciary's work (Hamad, binti Halim, and others 2021). Thus, in progressive law in Indonesia, especially the implementation of Islamic law, the most important thing is the values of a more significant benefit, namely protecting the soul (*Hifdzun an-Nafs*) and (*Hifdzun al-Aql*) (Hamid and Putra 2021). The relationship between progressive Islamic law and cases of imposing the death penalty on perpetrators of rape that needs to be put forward is the legal basis used by a judge in deciding the case which needs to be reviewed from Islamic law (Fitriani and Aziz 2019). In addition, other alternatives related to punishment for the crime of rape can be done with chemical castration (Tarigan 2020).

So that the most important thing in imposing the law for the crime of rape in Indonesia is law enforcement that goes well. If the suspect is not aware of the importance of justice as a legal goal, an alternative to the imposition of the law is needed (Hejaziey 2015). Where good law enforcement in Indonesia is related to legal compliance and regulatory uncertainty, it will only help certain criminals not to repeat them (Bariyyah and Muttaqin 2016). In addition, to create progressive Islamic law in Indonesia, it is necessary to apply Islamic law by Islamic law, one of which is the concept of *urf shahih*, which is maintained, while those that contradict *urf* faced are abandoned (Mutawali 2021). In addition, in deciding certain cases, a judge also needs to consider the validity of the law, where the judge also uses verses of the Qur'an, hadith, opinions of scholars, and fiqh principles as legal considerations (Karjoko, Jaelani, et al. 2021). One of the efforts is to incorporate progressive Islamic law to be included in national law. This is because there is a different concept of political ideology that occurred in the early years after the independence of the Republic of Indonesia in terms of the debate centered on whether the new state will officially implement Islamic law in Indonesia (Salim and Arskal 2017).

Analysis of the internalization of progressive Islamic law on criminal changes from life imprisonment to the death penalty in cases of rape in Indonesia

The National Commission on Violence against Women of the Republic of Indonesia disagreed, responding to the death penalty decision against Herry Wirawan in the rape case. The death penalty decision is contrary to international human rights norms, which are the most basic right to life (Luxiana 2022). Furthermore, regarding the death penalty for the accused case of the rape of a dozen female students by Herry Wirawan, this decision will set a bad precedent for the process of seeking justice for victims of sexual violence because the state's focus is on retaliation against the perpetrators, not the victims. It is assisted in its recovery

(Ryn 2022). According to the United Nations High Commissioner for Human Rights (UN High Commissioner for Human Rights) Michelle Bachelet, Erasmus said that the death penalty and torture are not the solutions to solving sexual violence cases. Therefore, the death penalty should not be imposed to overcome this chaos, especially in sexual violence, where the victim needs restitution to support recovery. Erasmus assessed that the judge's logic was similar to how restitution is constructed in Indonesian legislation, as evidenced by the fact that a substitute sentence is still imposed if the perpetrator cannot pay the restitution. He explained restitution should be positioned in the discourse on victims' rights, not perpetrators' punishment.

Internalization Analysis of Progressive Islamic Law Against Death Penalty for Defendants of Rape Cases in Indonesia, when a court judge wants to decide a case, the decision can be made through the concept of *mashlahat* (peace) without having to decide on cases with life sentences or death sentences. For perpetrators of rape. The death penalty handed down to Herry Wirawan is a milestone in Indonesia's history of sexual violence cases. The death penalty for sexual violence has indeed been regulated in Law (UU) Number 17 of 2016, especially in Article 81 Paragraph 5, but regarding the development of victims as regulated in-laws and regulations, and can change decisions at a higher court level (J. Putra 2022). Furthermore, to child protection, nowadays it has become an important issue in the modern world. To ensure the future of the next generation, children must obtain protection from all forms of harassment, threats, violence, and exploitation by adults. This protection is not only borne by parents but also the responsibility of the community, nation, and state (Nurjanah 2017). So that in the context of legal development for the protection of child victims of sexual crimes in a progressive legal perspective, it is in the form of ideology and dedication that legal actors have the main place to restore legal improvements in Indonesia (Harahap 2016).

Looking at the criminal law regulations (KUHP in Indonesia), *Ius Constitutum* is a legacy of Dutch colonialism. The theory of punishment in the death penalty currently applies to the Relative Theory (Theory of Purpose). Still, it is not explicitly regulated in the form of norms. The death penalty is in positive law. Indonesia is contained several laws in and outside the Criminal Code. The RKUHP has established and emphasized the Relative Theory (Theory of Objectives) in the form of crime prevention norms. Article 100 paragraph (1) of the RKUHP also regulates the concept of a conditional death penalty which focuses on increasing the behavior of convicted criminals to obtain criminal charges from the death penalty to criminal prosecution. RKUHP, as the *Ius Constituendum* in general, has reflected a progressive criminal law reform that focuses on humanity in sentencing. UN still needs improvement in determining the proper criteria as a condition for imposing conditional death sentences by judges (Kapojos 2021).

So that related to the death penalty policy, when viewed from human rights, is very contrary to human rights. This is because the right to life is an essential human right. The 1945 Constitution, as the written fundamental law for the Indonesian nation, has stated that everyone has the right to live and defend life and

life. The death penalty imposed on perpetrators of crimes in Indonesia is very ineffective. Among others, in drug crimes. Many drug offenders have been sentenced to death, but drug crimes are increasing in quality and quantity (Pane 2019). The death penalty in Indonesia, compared with positive and Islamic law in terms of humanism, is the main debate on the death penalty issue is whether the death penalty violates the rights of everyone. For that reason, it must be stopped or applied, considering the significant interests of the community that must be protected from harm. its implementation (Samsudin 2016). The renewal of criminal law must be done as a form of adjustment to the applicable law with changes in values, times, technology, and national and international perspectives. As a result, the current law in Indonesia has not yet regulated the conditional death penalty, so there is still a conflict between those who want to abolish the death penalty and those who want to continue to apply the death penalty. The two groups need the conditional death penalty as a middle ground. The conditional death penalty is also needed as an evaluative process for prisoners serving sentences and respecting human rights from national and international perspectives (A. W. Putra and Sutanti 2020).

In contrast to the case of the death penalty for perpetrators of corruption in Indonesia, this is in the perspective of the sociology of law, so as an effort to prevent corruption from happening again, it must be carried out thoroughly, both for law enforcers of corruption, and must be utterly free from intervention. Any party with the study of the sociology of law (Munasto 2022). Furthermore, in the perspective of Islamic criminal law, the death penalty policy for perpetrators of criminal acts of corruption is the category of *ta'zir* punishment, where legal decisions and decisions are left to the government. By paying attention to the public interest threatened very seriously by corruption, the imposition of the most severe *ta'zir* punishment in the form of the death penalty for corruption perpetrators can be justified (Marpaung 2019). Regarding the results of the analysis regarding the Internalization of Progressive Islamic Law Regarding the Death Penalty for Defendants of Rape Cases in Indonesia, a court judge wants to decide on a case, for example, a rape case. Decision-making can be done through the concept of *mashlahat* (peace) without having to decide on cases with punishment. Life imprisonment or up to the death penalty for the perpetrators of rape.

The philosophy of law in Indonesia underlies various legal theories and ideas, one of which is Progressive Law. However, the progressive legal thinking of Satjipto Rahardjo's teachings has not been entirely based on legislators' thoughts in Indonesia, so the law enforced in Indonesia is still partly a product of Dutch law. Even the laws made by Indonesia itself are not based on progressive legal thinking, but most of them are still based on positivistic-legalistic thinking (Setiawan 2018). On the other hand, the primary purpose of the payment of compensation money is to recover state financial losses due to corruption which the convict must pay by the value of the state losses incurred (Mahmud 2019).

In the context of preventing and eradicating the abuse and illicit trafficking of narcotics and psychotropic substances, whose mode of operation is increasingly

sophisticated, it is also regulated regarding the expansion of wiretapping investigation techniques. Covert buying, controlled delivery, and other investigative techniques are used to track and uncover narcotics, psychotropic abuse, and illicit trafficking (Jainah 2019). So progressive law can be referred to as pro-justice law. Progressive law requires the return of legal thought to its basic philosophy, namely law, for the protection of the rights of every human being. Humans become the determinant and orientation point of the existence of law. The purpose of progressive law is to protect children's rights regardless of the child's status (Kurniawan 2017).

Moreover, the progressive law school emphasizes the discovery of law as an effort to explore the values that live in society. This idea is by the legal needs of the Indonesian people. Pancasila is an absolute limitation for judicial power in interpreting so that legal discovery is genuinely directed by the ideals of the Indonesian nation (Christianto 2011).

The objectives of Islamic law (*maqāṣid shari'ah*), the obligation to maintain the soul is prioritized over maintaining religion because practicing religious teachings can only be done when one's soul is preserved (Mashuri, Nur, and Muttaqin 2021). For example, in the case of the imposition of the death penalty on the perpetrators of the crime of rape that recently existed in Indonesia, it is necessary to put forward the objectives of Islamic law, where the decision of a judge-made through the concept of Mashlahat (peace), will result in a fair and equitable decision. Punishment for perpetrators of rape does not have to be in the form of a death penalty, in the sense that prioritizing the benefit of the perpetrators of the crime of rape can be made without having to decide on cases with life imprisonment or the death penalty. In progressive Islamic law, what needs to be emphasized is the Islamic values of *rahmatan lil 'alaim*, not punishment which incidentally is cruel, but the goal is to change the negative stigma of Islamic criminal law (Imaniyah 2019). The form of punishment in Islamic crimes, such as Hadd punishment, is the right of Allah SWT, where the evidence is complete, and the perpetrators of the crime have been proven and convinced by the judge. The judge must decide according to what is stipulated according to the Qur'an and Al-Hadith (Surya 2019). In addition, with the existence of a law containing elements of human rights, a study of the elements of human rights and Islam. As stated in Law no. 5 of 2018, it made a significant contribution to the substantive application of Islamic criminal law in the Indonesian context, as well as modernity, which also means the simultaneous application of Islamic law and human rights (Asmawi et al. 2019). Furthermore, in the transformation of Islamic legal values in the jurisprudence of constitutional court decisions from the perspective of integrative legal theory, it is necessary to apply noble values in the context of creating law, legal substance, benefit, and realizing benefits and justice in national law in Indonesia (Saifullah, Lutfi, and Azis 2020). Furthermore, applying the values of Islamic law in Indonesia to national law can be done through the concept of peace (Salmudin, Muntaqo, and Hasan 2021).

CONCLUSION

From the discussion above, the disparity of judges' decisions in deciding a case, especially in criminal decisions from life imprisonment to capital punishment, in rape cases in Indonesia needs to be studied more deeply. In an in-depth study of legal certainty, in the case of rape in Indonesia, several judges handed down their decisions regarding the death penalty. In this case, progressive Islamic law was internalized against perpetrators of crimes. Therefore it can be concluded that: 1). Changes in punishment from life imprisonment in cases of rape in Indonesia can be decided by looking at the Internalization of Progressive Islamic Law in Indonesia, which can be done through peace (*maslahat*) by prioritizing Islamic values *rahmatan lil 'alamin*. In developing and incorporating Islamic legal values into the national legal system in Indonesia. 2). The results of the analysis of the certainty of the death penalty for Defendants of Rape Cases in Indonesia and various judges' decisions (Criminal Disparities); depending on how the judge uses his analysis in making decisions, some are sentenced to life imprisonment, some are up to the death penalty. 3). From the results of the Internalization of Progressive Islamic Law concerning the Death Penalty for Defendants of Rape Cases in Indonesia. When a court judge wants to decide on a case such as rape, the decision can be made through the concept of *mashlahat* (peace), without having to decide on a case with life imprisonment or imprisonment—it life imprisonment, up to the death penalty, for the perpetrators of the crime of rape.

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