




The Practice of the Death Penalty in Middle Eastern Countries Reviewed from the Perspective of International Law

Fahira Ode Damura^{1*}, Josina Augustina Yvonne Wattimena², Popi Tuhulele³

^{1,2,3} Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 : fahiraodedamura01@gmail.com

Corresponding Author*

Abstract

Introduction: Issues surrounding the application of the death law are still a topic of concern, especially in the context of its implementation. The debate continues, especially between countries that have abolished the death penalty and countries that still apply it. Those who support the death penalty argue that this step is still necessary for cases of serious crimes that threaten other individuals' human rights.

Purposes of the Research: To study and understand how the death penalty is carried out in Middle Eastern countries and also to study and understand the views of international law in minimizing the practice of the death penalty in Middle Eastern countries.

Methods of the Research: This writing uses a normative juridical research method, with the problem approaches used being the statutory approach, conceptual approach and case approach. The sources of legal materials in this writing are primary, secondary and tertiary legal materials. The technique for collecting legal materials uses library research which is then analyzed qualitatively to answer the problems being studied.

Results of the Research: The research results show the practice of the death penalty in Middle Eastern countries, especially Saudi Arabia, Iran and Egypt, as well as the suitability of its implementation with international legal instruments such as the ICCPR and UDHR. It found that although several countries have ratified these instruments, the practice of the death penalty often contravenes human rights principles, especially regarding the fairness of legal proceedings and the death penalty for the most serious crimes. To minimize the use of the death penalty, it is recommended that Middle Eastern countries carry out in-depth legal reforms, including abolishing the death penalty for non-serious cases and increasing dialogue with the international community to respect and protect human rights.

Keywords: Death Penalty; Middle Eastern Countries; Internasional Law.

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INTRODUCTION

The issue surrounding the application of the death penalty is still a source of heated debate, especially in the context of its implementation. The debate continues, especially between countries that have abolished the death penalty and countries that still apply it. Proponents of the death penalty argue that this measure is still necessary in cases of serious crimes that threaten the human rights of other individuals. On the other hand, critics of the death penalty consider it a cruel act and a violation of humanitarian principles. Although the International Covenant on Civil and Political Rights (ICCPR) and its additional protocols explicitly advocate abolishing the death penalty, the reality is that some countries still

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maintain such policies, especially countries with large populations and authoritarian governments.¹

In essence, the death penalty is a form of sanction imposed on law violators, especially in cases of serious crimes. However, the death penalty is often considered a cruel and inhumane form of punishment,² In the progress of the penal system, the emphasis on the method of carrying out the death penalty is increasing. This is due to Iran's concern over the uncivilization of the method, which has even prompted some countries to commit to the abolition of the death penalty on their territory. However, the abolition of the death penalty remains uneven around the world, despite provisions in international law calling for the abolition of the death penalty as a measure to protect human rights. The number of executions recorded in 2022 reached a peak in the last five years, especially as leading countries in the Middle East and North Africa carry out mass executions.

A total of 883 people are known to have been executed in 20 countries, making an increase of 53% compared to 2021, in the Middle East and North Africa, the number recorded increased from 520 in 2021 to 825 in 2022. The number of people who lost their lives increased dramatically. Saudi Arabia, Iran, and Egypt, which are regions in the Middle East, have seen a number of increases in the practice of the death penalty in 2022, where these three countries still impose the death penalty in their countries. Recorded executions in Iran jumped from 314 in 2021 to 576 in 2022 the figure tripled in Saudi Arabia, from 65 people in 2021 to 196 in 2022, while Egypt executed 24 people.

Based on a case that occurred in Saudi Arabia, where a Saudi court sentenced a man to death solely because of his activities on Twitter and YouTube. Muhammad al-Ghamdi, 54, a retired Saudi teacher, was sentenced to death for several crimes solely because of his peaceful expressions online. The court sentenced the man to death, using his tweets, retweets and YouTube activity as incriminating evidence. During his four-month solitary confinement, he was subjected to unfair treatment where, his family could not contact him during this period and had no access to a lawyer, and when he was granted access to a lawyer, he could only speak to the lawyer shortly before the trial.³

In addition to Saudi Arabia, Iran as part of the Middle Eastern country that still implements the practice of the death penalty in its country, where the Iranian government has executed three of its citizens accused of violence that led to the death of three security officers, during a protest against the death of Mahsa Amini. Three men named Majid Kazemi, Saleh Mirhashemi, and Saeed Yaqoubi were executed in the city of Isfahan on Friday 19 May 2022, the three Iranians were accused of attacking and causing the death of three security officers during a demonstration in Isfahan in November 2022 This is Iran's latest execution of protesters protesting the death of Mahsa Amini. The 22-year-old woman died while in the custody of Iranian police, because she was considered to have violated the dress code in Iran. Protests broke out in various parts of Iran, which led to clashes between residents and security officers. this case is an affront to human rights and basic human dignity in Iran and elsewhere.

¹ Mei Susanto & Ajie Ramdan, Tahun 2017, Berjudul "Kebijakan Moderasi Pidana Mati: Kajian Putusan Mahkamah Konstitusi Nomor 2-3/PUU-V/2007" (*The Moderation Policy Of Capital Punishment: An Analysis of Constitutional Court's Decision Number 2-3/PUU-V/2007*), p. 193.

² Ban Ki-moon, Sekretaris Jenderal PBB, 2014, "Hukuman Mati Tidak Memiliki Tempat Di Abad Ke-21" p. 8.

³ Rakhmad Hidayatulloh Permana, Detik news, *Arab Saudi Hukum Mati Pengkritik Pemerintah karena Postingan di Medsos*. <https://news.detik.com/internasional/d-6901300/arab-saudi- hukum-mati-pengkritik-pemerintah-karena-postingan-di-medsos/amp>.

The same thing is still happening in Egypt, where Egypt is the only country that still applies the death penalty other than Arabs and Iran, one of which is the suffering experienced by Egyptian civilians where as many as 683 Egyptians who were considered sympathizers and members of the Muslim Brotherhood were sentenced to death, on charges of their involvement in an attack on a police station in the center. treason and triggered armed clashes in mid-August that left a policeman dead. The death penalty of more than 600 Egyptians is considered a shame. This is because the sentencing is carried out with insincere judgment and unclear on the exact accusations against each individual. This is because the sentencing is carried out with insincere judgment and unclear on the proper accusations against each individual.⁴

Some countries in the Middle East, such as Saudi Arabia, Iran, and Egypt, retain the death penalty in their legal systems. They believe that the imposition of the death penalty is still important for a variety of reasons, so they provide for it in their national law. One of the main reasons is the belief that the death penalty has a significant deterrent effect, which has led countries in the Middle East to maintain this type of punishment. However, countries that still apply the death penalty are expected to at least implement safeguards in the judiciary and the application of the death penalty. Based on Article 6 paragraph (2) of the ICCPR: In countries that have not abolished the death penalty, death sentences can only be imposed on some of the most serious crimes in accordance with the laws in force at the time of the crime, and do not contravene the provisions of the covenant and convention on the prevention and law of enosidal crimes. This punishment can only be carried out on the basis of a final decision handed down by an authorized court.

Article 6 paragraph (2) of the ICCPR, explains that countries that have ratified the covenant and still apply the death penalty, are allowed to impose the death penalty only for crimes that are considered "extraordinary crimes", as long as it is in accordance with applicable law and does not contradict other provisions of the ICCPR, the problem is that each country has a variety of interpretations and confessions of the crime of "extraordinary crimes". (most serious crimes) that vary from country to country, depending on the legal approach applied in each.⁵ This results in a situation where a person who is severely punished in one country may not face a similar punishment in another, even if he commits a similar crime, so the author would like to discuss further the practice of the death penalty in Middle Eastern countries from the perspective of international law.

RESULTS AND DISCUSSION

A. Contextual Middle Eastern Countries That Apply the Death Penalty

The death penalty in Middle Eastern countries is a practice that reflects the complex interplay between Islamic law, local culture, and state law. In the region, the application of the death penalty often has a deep and diverse background, influenced by strong legal traditions and unique cultural values. Historically, many Middle Eastern countries have integrated the principles of Islamic law in their legal systems. Sharia law, which is derived from the Qur'an and Hadith, stipulates the death penalty as a punishment for various serious offenses such as murder, adultery, and apostasy. In addition, the implementation of

⁴ Adiladjali, "Sistem Hukum Mesir Perlu Reformasi Ujar Ahli PBB dan Afrika Setelah Hukuman Mati Massa", <http://unic-jakarta.org/2014/05/16/sistem-hukum-mesir-perlu-reformasi-ujar-ahli-pbb-dan-afrika-setelah-hukuman-mati-massa/>,

⁵ I Wayan Parthiana. 1983. "Ekstradisi dalam Hukum Internasional dan Hukum Nasional." Bandung: Penerbit Alumni. p. 99.

these laws is often adapted to different local interpretations, reflecting the diversity of cultures and traditions that exist in each country.⁶

In addition to the influence of Islamic law, local culture and the national legal system also play an important role in the application of the death penalty. In some countries, this practice is influenced by political forces and stability, which can determine how often and in what context the death penalty is applied. Law enforcement and court decisions can also be influenced by political and social considerations specific to each country. Some countries in the Middle East region, such as Saudi Arabia, Iran, and Egypt, are actively implementing the death penalty for some examples of cases in their countries.⁷

The case of Muhammad Alhgamdi, who was sentenced to death for activity on Twitter and YouTube, is an important example of how the Saudi government handles cases involving social media and free speech. Muhammad Alhgamdi was sentenced to death and executed in August 2022. The case has attracted international attention because it involves the use of social media as a tool to spread views deemed threatening by the government. Alhgamdi was accused of using Twitter and YouTube to spread content that was considered subversive and detrimental to the government. These charges include the dissemination of information that is considered an attack on authority and national security. The content posted is considered to promote ideologies that oppose government policies and incite discontent among the public.

The case revolves around the death of Mahsa Amini, an Iranian woman who died in police custody after being arrested for allegedly violating sharia dress codes. Amini's death sparked massive protests across Iran, with thousands of people taking to the streets to demand justice and reforms. During these protests, tensions between demonstrators and security officers increased, and clashes took place in various locations. In the context of these tensions, three men were accused of involvement in the violence that resulted in the deaths of three security officers. These allegations revolved around allegations that they used violence in demonstrations that turned into chaos. The case of the execution of 683 Egyptians who were considered sympathizers and members of the Muslim Brotherhood was one of the most controversial cases and attracted international attention. The case stems from political tensions and conflicts between the Egyptian government and the Muslim Brotherhood, the country's largest and most influential Islamic organization. Tensions between the Egyptian government and the Muslim Brotherhood have been going on for a long time, but this conflict peaked after a military coup in July 2013. The coup toppled President Mohamed Morsi, who was a member of the Muslim Brotherhood and a democratically elected president.

B. Comparison of the Application of Cultural Relativism and Islamic Law in the Implementation of the Death Penalty in Middle Eastern Countries

Cultural relativism and Islamic law have significant implications in the implementation of the death penalty in Middle Eastern countries. These two concepts have different perspectives on responding to the death penalty, with cultural relativism paying attention to cultural differences and Islamic law focusing on the interpretation of Islamic law.

⁶ Ferdian Ananda Majni, Media Indonesia, 2023 4 Negara yang Paling Banyak Melakukan Hukuman Mati Selama 2022. <https://mediaindonesia.com/internasional/581710/4-negara-yang-paling-banyak-melakukan-hukuman-mati-selama-2022>.

⁷ Tedy Nopriandi dan Risky Fany Ardiansyah, Paradigm of Death Penalty (Comparative Study in Indonesia, Saudi Arabia and China. *Lampung Journal of International Law* 2, no. 1 (2020): p. 57-68

Comparison of the application of cultural relativism and Islamic law in the implementation of the death penalty in Saudi Arabia, Iran, and Egypt. shows that there are differences in the approach used by each country. Although the three countries both apply Islamic law in their countries, they have different legal systems and cultures that are unique to each country. The following is a comparative analysis of the application of cultural relativism and Islamic law in the implementation of the death penalty in the three countries.⁸

Saudi Arabia still applies the death penalty widely, especially for perpetrators of crimes such as murder, treason, and drug use. This punishment is based on Islamic law, which is considered the main source of law in the country. Cultural relativism in the execution of the death penalty in Saudi Arabia can be seen in several aspects. For example, the death penalty in Saudi Arabia is not only applied to serious crimes, but also to crimes that are considered moral crimes i.e., adultery or sexual relations outside of marriage and treason against the state. The death penalty, in some cases, is also applied to non-serious crimes, such as drug use, which can be seen as an example of cultural relativism in the application of Islamic law.

A comparison of the application of cultural relativism and Islamic law in the execution of the death penalty in Iran shows significant differences in the approaches and principles used. Cultural relativism, which focuses on different cultural contexts and values, can be applied to the execution of the death penalty in Iran by taking into account the dominant culture and values in Iranian society. The death penalty in Iran can be seen as part of the accepted culture and values of Iranian society, although it may not be universally accepted. In contrast, Islamic law applied in Iran focuses on religious principles and values that are considered universal and absolute.

Islamic law views the death penalty as part of the law of Allah that must be followed, and does not depend on different cultures or values. The death penalty in Iran is seen as part of God's law that must be carried out, not just as part of the culture and values of Iranian society. In synthesis, the application of cultural relativism in the execution of the death penalty in Iran can be seen as a more flexible and open approach to cultural differences, while the application of Islamic law can be seen as a more detailed approach and focuses on absolute values.

Cultural relativism and Islamic law, as two different concepts in approach to law and morality, have significant implications in the execution of the death penalty in Egypt. The Egyptian state, with a strong culture and religion, has faced challenges in integrating the principles of Islamic law with the principles of universality of human rights in the use of the death penalty. The use of the death penalty in Egypt is based on Islamic law, which views the death penalty as part of a legal system based on the Qur'an and hadith. In Islamic law, the death penalty is considered an effective way to punish people who commit serious crimes, such as murder, theft, and treason. However, the use of the death penalty has also caused controversy and criticism from some who view that the death penalty is not in accordance with universal human rights principles.

Cultural relativism, on the other hand, views that the death penalty must be adapted to the values and culture that prevail in each society. In Egypt, cultural relativism can mean that the death penalty must be adapted to the dominant Islamic values and culture in the

⁸ Muhammad Tahir Azhary, *Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah Dan Masa Kini*, (Jakarta: Kencana, 2003), p. 9.

country. The death penalty can be applied as an effective way to punish people who commit serious crimes, as considered in Islamic law. However, differences between cultural relativism and Islamic law in the execution of the death penalty in Egypt can also be found. For example, Islamic law views that the death penalty should be carried out in a manner that is consistent with the principles of justice and honesty, while cultural relativism can mean that the death penalty can be applied in different ways depending on the culture and values that prevail in each society.

A comparison in the synthesis of the application of cultural relativism and Islamic law in the execution of the death penalty in Egypt shows that both concepts have significant implications in the approach to law and morality. While Islamic law views the death penalty as part of a legal system based on the Qur'an and hadith, cultural relativism views that the death penalty should be adapted to the values and culture that prevail in each society. In Egypt, differences between the two concepts can be found, but both have significant implications in the approach to law and morality.⁹

A comparison of the application of cultural relativism and Islamic law in the implementation of the death penalty in the three countries shows that there are differences in the approach used. Saudi Arabia has a more traditional and conservative approach, focusing on Islamic law as the primary source of law. Furthermore Iran has a more complex approach, with several different levels of courts and a wider application of the law, and Egypt has a more moderate approach, focusing on Islamic law as the main source of law, but also paying attention to the country's culture and politics.

The application of the death penalty based on cases in Saudi Arabia, Iran, and Egypt shows a pattern of using the death penalty as a tool to enforce the law and maintain political stability in a way that often violates human rights and the principles of justice. The use of the death penalty for peaceful or political activities, and the emphasis on freedom of expression and the right to peaceful demonstration, are characteristic of the practice of the death penalty in these countries. Each case demonstrates the need for reforms in the justice system and the protection of human rights in the region, including an end to the use of the death penalty for cases that do not involve the most serious crimes and ensuring that all defendants receive a fair trial and proper legal procedures.¹⁰

This means that the application of cultural relativism and Islamic law in the execution of the death penalty in Middle Eastern countries is recognized, and can be accepted and enforced but must be in accordance with the correct procedures. The death penalty is a sanction for violations of national laws in force in those countries. National law must take precedence in the above cases or problems because it is only a violation of the rules in one's own country, this is in accordance with the theory of legal positivism.

C. The Death Penalty Understands the International Covenant Civil and Political Rights (ICCPR) 1966 Study and the Universal Declaration of Human Rights (UDHR), ICTY and ICTR.

Two important documents that address the issue of the death penalty are the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The ICCPR, adopted by the United Nations in 1966, expressly states in Article 6 that the right to life is a fundamental human right, with the death penalty

⁹ Ibrahim Lubis, *Agama Islam Suatu Pengantar*, (Jakarta:Ghalia Indonesia, 1982), p. 118

¹⁰ Yesmil Anwar Adang, *Pembaruan Hukum Pidana: Reformasi Hukum*, (Jakarta: Grasindo, 2008), p. 73.

only to be applied to the most serious crimes and in accordance with applicable law. On the other hand, the DUHAM, adopted in 1948, affirms that every individual has the right to life, liberty, and security (Article 3), although it does not explicitly mention the death penalty. The ethical aspects of the death penalty are in important focus, given that both reflect Iran's fear of potential abuse and inhumane treatment, especially in a political context.¹¹

The ratification of the ICCPR and DUHAM by Middle Eastern countries provides an important context in analyzing the application of the death penalty in the region. Saudi Arabia, Iran, and Egypt are the three major countries in the Middle East that have the practice of the death penalty, but only a few of them have ratified the ICCPR and the Human Rights Council, which have an impact on how international principles are applied in their national laws.¹²

Saudi Arabia is one of the countries that has taken steps to participate in the international legal framework related to human rights by ratifying the International Covenant on Civil and Political Rights (ICCPR) in 1996. However, this ratification process is not completely without limitations. Saudi Arabia submitted a number of reservations, which showed disapproval of some provisions that were considered incompatible with the principles of Islamic law, especially Sharia. This creates challenges in the full implementation of the standards set by the ICCPR, as the country puts forward certain interpretations of human rights that often differ from international views. However, Saudi Arabia rejects or reserves articles relating to freedom of religion, the right to free expression, and several other aspects that are considered to be contrary to Sharia. This creates challenges in the application of universal human rights standards.

Saudi Arabia has not formally ratified the Universal Declaration of Human Rights (DUHAM), although the country is a member of the United Nations and bound by several other international commitments. This non-ratification reflects the view of the Saudi government which tends to judge that some of the principles contained in the DUHAM are contrary to Islamic teachings and local cultural norms. For example, freedom of religion and the right to change religion are often considered incompatible with the Sharia law in force in the country. The Saudi Arabian government argues that human rights must be understood in a context that is aligned with Islamic values, which leads to a more limited interpretation of internationally recognized rights.

The case of Mohammed al-Ghamdi, who was arrested for retweeting content deemed insulting to the government and Islam, reflects significant challenges in the context of human rights in Saudi Arabia, particularly related to the ratification of the ICCPR and the non-ratification of the DUHAM. Al-Ghamdi's case was sentenced to prison for actions that should be protected under the right to freedom of expression, which is a fundamental principle in the ICCPR, specifically Article 19 which regulates the right to express opinions. However, Saudi Arabia applies strict interpretations of freedom of expression, often treating criticism of the government or religion as an offense. This shows that there is a tension between the commitment that the state should have to human rights and the application of laws based on Islamic norms that can limit those rights. Although the ICCPR has been ratified, the reservations submitted by Saudi Arabia indicate that they are not fully

¹¹ Adnan Buyung Nasution, A. Patra M. Zen, *Instrument Internasional Pokok Hak-Hak Asasi Manusia*, (Jakarta: Yayasan Obor Indonesia, 2001), p. 188.

¹² Prihandono, Iman, Deklarasi Universal Hak Asasi Manusia, *International Law Making* 4 no. 1 2006. p. 134.

committed to implementing all relevant provisions, especially those relating to civil liberties¹³.

Ketidakratifikasian Arab Saudi terhadap DUHAM juga memperburuk situasi, karena tanpa pengakuan terhadap dokumen ini, negara tersebut tidak terikat untuk mengikuti norma-norma internasional yang mengedepankan perlindungan hak asasi manusia. Sehingga kasus al-Ghamdi tidak hanya menjadi contoh individual dari pembatasan kebebasan berekspresi, tetapi juga mencerminkan kelemahan sistem hukum yang ada, di mana tindakan hukum dapat digunakan sebagai alat untuk menekan dissent dan mengekang suara-suara kritis.

This case highlights the importance of revising and strengthening human rights policies in Saudi Arabia, taking into account the principles contained in the ICCPR and DUHAM. While there are some reforms proposed by the government, real practices on the ground often conflict with international commitments, and situations such as al-Ghamdi's show the need for a more inclusive approach and respect for human rights as a whole, it is important for the international community to continue to put pressure on Saudi Arabia to improve human rights conditions, especially in terms of freedom of expression and individual protection against arbitrary legal actions.

Iran ratified the International Covenant on Civil and Political Rights (ICCPR) in 1975, but with a significant number of reservations. The Reservation states that the application of the provisions of the ICCPR must be in accordance with Islamic principles and Sharia law. This shows that although Iran acknowledges the obligation to follow the ICCPR, the country maintains an interpretation that is in accordance with their religious norms and values. This leads to tensions between commitments to international human rights and the application of religion-based law. Nonetheless, Iran did not announce specifically which articles were ratified with reservations. Generally, the reservation states that the application of the provisions of the ICCPR must be in accordance with the principles of Islamic law. On the other hand, Iran has not formally ratified the Universal Declaration of Human Rights (DUHAM). Although the DUHAM is a fundamental document that recognizes universal human rights, Iran considers some of its principles incompatible with Islamic teachings. This results in a gap between Iran's international commitment to human rights and the application of those principles in daily practice. The non-ratification of the DUHAM demonstrates Iran's selective approach to human rights, in which the country prioritizes Sharia law and Islamic interpretations in law enforcement. For example, women's rights, freedom of religion, and the protection of minorities are often questioned in the context of Iranian law. Many international organizations and human rights observers have criticized Iran for its poor human rights situation, including arbitrary detention, torture, and the death penalty that are often applied.

The case of Three Men, who was sentenced to death after taking part in protests following the death of Mahsa Amini, is particularly relevant in the context of Iran's ratification of the International Covenant on Civil and Political Rights (ICCPR) and the non-ratification of the Universal Declaration of Human Rights (DUHAM). Iran ratified the ICCPR in 1975, but with a number of reservations that emphasize that the implementation of the provisions in the covenant must be in accordance with Islamic law. One of the key articles is Article 6, which regulates the right to life and states that the death penalty should only be applied to the

¹³ Arie Siswanto, *Yurisdiksi Material Mahkamah Kejahatan Internasional*, (Bogor: Ghalia Indonesia, 2005), p. 8.

most serious crimes. The application of the death penalty against the Three Men for actions related to protests shows a potential deviation from this principle, with the government classifying the act of protest as a serious violation. In addition, Article 14 of the ICCPR guarantees the right to a fair trial, but many critics point out that legal processes in Iran often do not meet this standard, with individuals like the Three Men facing limited courts without adequate access to legal defense.

Meanwhile, Iran's non-ratification of the DUHAM creates a selective approach to human rights, where the universal principles set out in the DUHAM are not officially recognized, thus exacerbating human rights violations, including the imposition of the death penalty for protests that should be protected by freedom of expression. So the case of the Three Men reflects the incompatibility between legal practice in Iran and international commitments that should be respected, demonstrating the need for profound reforms in the legal system and human rights policies in the country to ensure the protection of human rights in accordance with recognized international standards. Egypt ratified the International Covenant on Civil and Political Rights (ICCPR) in 1982, but with some reservations that insist that the application of the provisions in the convention must be in accordance with national law and Islamic principles. Although Egypt claims to comply with the ICCPR, practices on the ground often point to human rights violations, including arbitrary arrests, restrictions on freedom of expression, and excessive use of force by security forces.

The death penalty in Egypt has one of the highest execution rates in the world, with the death penalty often applied to a wide range of offenses, including political crimes and terrorism. This creates tension between Egyptian legal practice and Article 6 of the ICCPR, which limits the application of the death penalty to only the "most serious crimes." In addition, other articles in the ICCPR, such as Article 14 on fair trial, are also often not met, with many cases being tried in a non-transparent process.¹⁴ Egypt also does not formally ratify the Universal Declaration of Human Rights (DUHAM), although as a member of the United Nations, the country is expected to respect the principles contained therein. This non-ratification demonstrates a selective approach to human rights, in which some internationally recognized principles are not adopted in the Egyptian legal system. Overall, although Egypt is a signatory to the ICCPR, the implementation of human rights in the country is often inconsistent with international commitments that should be respected, including the application of the death penalty and access to fair justice. This signals the need for significant reforms in the legal system and human rights policies to ensure that individual rights are protected in accordance with international standards.

The case of 683 citizens sentenced to death in Egypt, comprising members of the Muslim Brotherhood, is particularly relevant to be discussed in the context of the ratification of the International Covenant on Civil and Political Rights (ICCPR) and human rights practices in the country. Egypt ratified the ICCPR in 1982, but with reservations that allow for the application of national law and Islamic principles, which often leads to interpretations of Iran that expand the definition of serious crimes. The death sentences handed down to these 683 individuals show the tension between the practice of law in Egypt and Article 6 of the ICCPR, which limits the application of the death penalty to only the "most serious crimes." Many human rights observers have criticized that these sentences are applied arbitrarily, often without due process, contrary to Article 14 of the ICCPR which guarantees the right

¹⁴ Theo Van Boven, *The International System of Human Rights: An Overview in Manual on Human Rights Reporting: Under Six Major International Human Rights Instruments*. Jenewa; United Nation, 1997.

to a fair and transparent trial. The rapid legal process and lack of opportunities for a defense are a serious concern, indicating that the justice system does not meet the expected international standards.

Moreover, this situation reflects Egypt's selective approach to human rights, where repressive policies against the Muslim Brotherhood and other opposition groups are often justified on national security grounds. Egypt's formal non-ratification of the Universal Declaration of Human Rights (DUHAM) further worsens the situation, as the universal principles contained in the DUHAM are not a reference in the country's legal system. Overall, the cases of 683 citizens sentenced to death show that although Egypt has ratified the ICCPR, the application of the death penalty and injustice in the judicial process reflects the need for profound reforms in the legal system and human rights policies. It is important to ensure that individual rights are respected and protected in accordance with recognized international standards.¹⁵ When associated with the ICTY Statute (Article 24) and the ICTR Statute (Article 23), it is clearly stated that the death penalty is prohibited, with the maximum sentence that can be imposed being life imprisonment. Both tribunals deal with cases of serious violations of international law, such as genocide, war crimes, and crimes against humanity, which in many countries can be punishable by the death penalty. However, the ICTY and ICTR chose to impose sentences that are in line with human rights principles, in particular those guaranteed by the Universal Declaration of Human Rights (DUHAM) and the International Covenant on Civil and Political Rights (ICCPR).

Article 3 of the DUHAM states that everyone has the right to life, liberty, and personal security, and Article 5 affirms that no one shall be subjected to cruel, inhuman, or degrading treatment or punishment. Article 6 of the ICCPR stipulates that the right to life must be protected, although allowing the death penalty for the "most serious crimes," ratifying countries are expected to seek to phase out the death penalty.¹⁶ The ICTY and ICTR's approaches are aligned with the theory of legal positivism, which emphasizes that law is a set of rules set by an authoritative authority, as well as the theory of the universality of human rights, which states that human rights apply to all individuals without exception. The death penalty ban implemented by the ICTY and the ICTR set a positive precedent in international law, demonstrating that justice does not have to violate the right to life of individuals. Although challenges remain in countries that still apply the death penalty based on tradition or religious law, the commitment of these two tribunals to human rights principles contributes to the development of more humane and just international law.

D. The Validity of the Death Penalty in Middle Eastern Countries in Universalita Contradiction

The practice of the death penalty in Middle Eastern countries, including Saudi Arabia, Iran, and Egypt, is often discussed in the context of human rights. International instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (DUHAM) emphasize that every individual has the right to the protection of the right to life, and the death penalty should be applied with extreme caution and only for the most serious crimes. However, many countries in the region still maintain the practice, claiming that the death penalty is necessary to maintain social order and public morality. For example, the case of Muh Al-Ghamdi, a man sentenced to death

¹⁵ Hikmahanto Juwana, *Konsekuensi Ratifikasi ICCPR*, http://www.unisosdem.org/article_detail.php?aid=5160&coid=4&caid=33&gid=2.

¹⁶ Made Darma Weda, *Exceptions to the Principle of Legality in Criminal Law*, *Journal of Law and Justice*, 2 no. 2 2013, p. 210.

for a retweet deemed insulting to religion, shows how the application of the law can be carried out arbitrarily, without considering the right to life and freedom of expression.

This case reflects the injustices that can occur in a legal system that does not provide adequate protection of individual rights. The practice of the death penalty, which is often carried out without the guarantee of due process, is in contradiction with the universal principles of human rights. Article 6 of the ICCPR states that the death penalty should only be imposed for the most serious crimes and must be accompanied by the guarantee of due process. In Iran, however, the case of three protesters sentenced to death after protests over Mahsa Amini's death illustrates how these guarantees are often ignored. In such situations, the court did not provide a fair opportunity for the defendant to defend himself, suggesting that this practice not only violated the rights of individuals but also created a climate of fear among the public. The rushed legal process and lack of transparency in the country's judicial system often lead to unfair outcomes, where defendants are convicted without considering the broader context.

a) Monism

The monism system in international law is considered an integral part of national law. When a country ratifies an international instrument, those norms automatically apply without the need for additional legislation. Countries that implement this approach, such as Tunisia, have managed to integrate human rights principles into their national laws, even abolishing the death penalty in some cases. For example, in the context of the ratification of the ICCPR, Tunisia has shown a strong commitment to aligning national law with international standards. This can be seen from the better enforcement of civil and political rights compared to other countries in the region.

The application of this trend of monism allows the country to be more responsive to international pressure to reduce or eliminate the practice of the death penalty. In the context of the case of Muh Al-Ghamdi, who was sentenced to death for a retweet deemed insulting to religion, if Saudi Arabia adopts a monism approach, the country will have to consider international norms that protect freedom of expression. Unfortunately, in practice, the country still applies very strict laws that are contrary to the principles of international human rights.¹⁷

b) The Dualism Stream

On the other hand, the dualism system separates international and national law, so international norms do not automatically apply in national law. Countries that embrace this approach, such as Saudi Arabia and Iran, ratify the ICCPR but often do not integrate provisions that conflict with Sharia law. In the case of Iran, three demonstrators were executed after protests over the death of Mahsa Amini, reflecting how the country uses existing laws to crack down on dissent without considering international rights that have been ratified. Their national laws can remain in force despite being contrary to international norms, creating loopholes that allow for human rights abuses. In Egypt, the dualistic approach is evident in the case of mass executions of Muslim Brotherhood sympathizers, in which more than 683 people were executed without a transparent legal process. These countries can claim to ratify the ICCPR, but the unfair and political application of the law

¹⁷ Theo Van Boven, *The International System of Human Rights: An Overview in Manual on Human Rights Reporting: Under Six Major International Human Rights Instruments*. Jenewa; United Nation, 1997.

shows that despite their international commitments, their national legal practices are not in line with those values. By using a dualistic approach, the Egyptian government can ignore international norms on the grounds of maintaining security and social order.

The inconsistency between ICCPR ratification and the practice of the death penalty in Middle Eastern countries underscores the challenges faced in integrating international norms into national law. While some countries are trying to conform to international commitments, others remain dependent on national laws that give them the flexibility to continue practices that often violate human rights. This creates a situation where international norms only exist on paper, while actual practices do not reflect those commitments.¹⁸ This means that countries that commit international violations should make a formal apology when the state realizes that the actions violate international law. This is also related to the principles of human rights which basically have a moral content that affects all aspects of human life, to respect and appreciate human dignity in equality.¹⁹

CONCLUSION

The practice of the death penalty in Middle Eastern countries such as Saudi Arabia, Iran, and Egypt, while legally legal nationally, is often contrary to international legal instruments such as the ICCPR, the United Nations Human Rights Watch, ICTY and ICTR. Although legally Islamic law is positive, the death penalty is considered a violation of human rights because the right to life is an absolute universal right, in order to minimize the death penalty in Middle Eastern countries, more profound legal reforms are needed, including the consistent application of international legal standards. These countries also need to strengthen their commitment to human rights instruments by abolishing the death penalty for non-serious cases and raising awareness and intercultural dialogue, so that the practice of the death penalty can be minimized in accordance with the principles of international law.

REFERENCES

- Adiladjali, "Sistem Hukum Mesir Perlu Reformasi Ujar Ahli PBB Dan Afrika Setelah Hukuman Mati Massa", <http://unic-jakarta.org/2014/05/16/sistem-hukum-mesir-perlu-reformasi-ujar-ahli-pbb-dan-afrika-setelah-hukuman-mati-massa/>.
- Adnan Buyung Nasution, A. Patra M. Zen, *Instrument Internasioanl Pokok Hak-Hak Asasi Manusia*, Jakarta: Yayasan Obor Indonesia, 2001.
- Arie Siswanto, *Yurisdiksi Material Mahkamah Kejahatan Internasional*, Bogor: Ghalia Indonesia, 2005.
- Ban Ki-moon, Sekretaris Jenderal PBB, "Hukuman mati tidak memiliki tempat di abad ke-21", 2014.
- Ferdian Ananda Majni, Media Indonesia, 2023 4 Negara yang Paling Banyak Melakukan Hukuman Mati Selama 2022. <https://mediaindonesia.com/internasional/581710/4-negara-yang-paling-banyak-melakukan-hukuman-mati-selama-2022>.

¹⁸ Joseph dan B. Sarah at.al, *International Covenant on civil and political Rights: Cases, Materials, and Commentary*, Konrad Adenauer Stiftung: New York 2005.

¹⁹ Josina Augustina Yvone Wattimena, Vondal Vidya Hattu. "Ketahanan Pangan Masyarakat Adat Sebagai Wujud Pemenuhan HAM Dalam Masa Pandemic Covid-19", *Sasi*, 21 no 2, April-Juni 2021, p. 247.

- Hikmahanto Juwana, Konsekuensi Ratifikasi ICCPR, http://www.unisosdem.org/article_detail.php?aid=5160&coid=4&caid=33&gid=2.
- I Wayan Parthiana. "Ekstradisi dalam Hukum Internasional dan Hukum Nasional." Bandung: Penerbit Alumni, 1983.
- Ibrahim Lubis, *Agama Islam Suatu Pengantar*, Jakarta: Ghalia Indonesia, 1982
- Prihandono, Iman, Deklarasi Universal Hak Asasi Manusia, *International Law Making*. 4 no 1 2006.
- Joseph dan B. Sarah at.al, *International Covenant on civil and political Rights: Cases, Materials, and Commentary*, Konrad Adenauer Stiftung: New York 2005.
- Made Darma Weda, Pengecualian Asas Legalitas dalam Hukum Pidana, *Jurnal Hukum dan Peradilan*, 2 no. 2 2013.
- Mei Susanto & Ajie Ramdan, 2017, dalam artikel berjudul "Kebijakan Moderasi Pidana Mati: Kajian Putusan Mahkamah Konstitusi Nomor 2-3/PUU-V/2007" (*The Moderation Policy Of Capital Punishment: An Analysis of Constitutional Court's Decision Number 2-3/PUU-V/2007*).
- Muhammad Tahir Azhary, *Negara Hukum Suatu Studi tentang Prinsip-prinsipnya dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan Masa Kini*, Jakarta, Kencana, 2003.
- Rakhmad Hidayatulloh Permana, Detik news, *Arab Saudi Hukum Mati Pengkritik Pemerintah karena Postingan di Medsos*. <https://news.detik.com/internasional/d-6901300/arab-saudi-hukum-mati-pengkritik-pemerintah-karena-postingan-di-medsos/amp>.
- Tedy Nopriandi dan Risky Fany Ardiansyah, Paradigm of Death Penalty (Comparative Study in Indonesia, Saudi Arabia and China. *Lampung Journal of International Law* 2, no. 1 (2020): p. 57-68
- Theo Van Boven, *The International System of Human Rights: An Overview in Manual on Human Rights Reporting: Under Six Major International Human Rights Instruments*. Jenewa; United Nation, 1997.
- Theo Van Boven, *The International System of Human Rights: An Overview in Manual on Human Rights Reporting: Under Six Major International Human Rights Instruments*. Jenewa; United Nation, 1997.
- Wattimena Yvone Augustina Josina, Vondal Vidya Hattu. "Ketahanan Pangan Masyarakat Adat Sebagai Wujud Pemenuhan HAM Dalam Masa Pandemic Covid-19", *Sasi*, 21. no. 2, 2021.
- Yesmil Anwar Adang, *Pembaruan Hukum Pidana: Reformasi Hukum*, Jakarta: Grasindo, 2008.

