

Commendable Attitudes And Deeds As A Condition For Commutation Of The Death Penalty Perspective Q.S. Al-Maidah (5): 33-34

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Abstract

Article 100 of Law Number 1 of 2023 concerning the Criminal Code makes "commendable attitudes and deeds" a condition for commutation of the death penalty. However, these provisions do not provide clear parameters so that they have the potential to cause legal uncertainty and subjectivity in their assessment. This study aims to analyze the criteria of "commendable attitudes and deeds" as a requirement for the commutation of the death penalty in Indonesian criminal law and examine it based on the perspective of Q.S. Al-Maidah (5): 33–34. This research is a normative legal research with legislative, conceptual, and comparative approaches. Data were obtained through literature studies and analyzed qualitatively using interpretive and comparative methods. The results of the study show that Article 100 of the Criminal Code has not provided normative indicators regarding "commendable attitudes and deeds", thus opening up a wide range of interpretations. Meanwhile, Q.S. Al-Maidah (5): 33–34 through the concept of repentance provides more concrete parameters, namely real behavior change, cessation of criminal acts, confession of guilt, self-improvement, and fulfillment of the rights of victims. The concept of repentance in Q.S. Al-Maidah (5): 33–34 can be a normative perspective in formulating the parameters of "commendable attitudes and deeds" as a condition for the commutation of the death penalty.

Keywords: Death Penalty Commutation; Commendable Attitudes and Deeds; Q.S. al-Maidah (5): 33-34.

A. Introduction

Since Law Number 1 of 2023 concerning the National Criminal Code (National Criminal Code) came into effect on January 2, 2026, the death penalty has undergone quite fundamental changes in the Indonesian penal system. The death penalty is no longer placed as a main crime, but as a special crime.¹ This change reflects a paradigm shift in Indonesia's criminal law that no longer views the death penalty solely as an instrument of retribution, but also opens up space for the evaluation and possibility of self-improvement of convicts.²

¹ Susanto, Jonaedi Efendi, and Imam Suroso, "Conditional Death Penalty Sentencing in the New Indonesian Criminal Code: A Human Rights Perspective", *IUS POSITUM: Journal of Law Theory and Law Enforcement* (2025), pp. 66–77.

² Abraham Hadonganan Manurung and Bambang Waluyo, "Reformulation of the Existence of the Death Penalty Based on the 2023 Criminal Code", *PALAR (Pakuan Law review)*, vol. 11, no. 4 (2025), p. 155.

In Article 100 of the Criminal Code, it is explained that: 1) The judge imposes the death penalty with a probation period of 10 (ten) years by taking into account: a. the defendant's remorse and there is hope to improve himself; or b. the role of the defendant in the Criminal Act. (2) The death penalty with a probation period as intended in paragraph (1) must be included in the court decision. (3) The grace period of 10 (ten) years of probation begins 1 (one) day after the court decision obtains permanent legal force. (4) If the convict during the probation period as intended in paragraph (1) shows commendable attitude and deeds, the death penalty may be changed to life imprisonment by Presidential Decree after obtaining the consideration of the Supreme Court. (5) The sentence of life imprisonment as intended in paragraph (4) shall be calculated from the date of the Presidential Decree. (6) If the convict during the probation period as intended in paragraph (1) does not show a commendable attitude and deeds and there is no hope of improvement, the death penalty may be carried out on the order of the Attorney General.

This provision shows that every death penalty imposed is not immediately implemented. The convict was first given a probation period of 10 years as part of the evaluation mechanism for the possibility of behavior change and self-improvement.³ If during that period the convict shows positive behavioral development, the death penalty can be changed to life imprisonment through the commutation mechanism.⁴ Thus, the ten-year probation period not only serves as a postponement of the execution of the death penalty, but also as an assessment instrument for the state to determine whether the convict is still eligible to serve the death penalty or actually obtains a change in sentence.⁵

However, this arrangement leaves quite serious problems. As stated in Article 100 of the Criminal Code, the condition of "commendable attitudes and deeds: as an indicator in determining whether or not the commutation of the death penalty can be given to the convict.⁶ The problem is that the terminology is not accompanied by an adequate explanation or parameters regarding the measures and criteria that can be used to assess whether a person has shown commendable attitudes and deeds during the probationary period.

The absence of clear legal standards makes these requirements vulnerable to diverse and subjective interpretations. As a result, the assessment process has the potential to depend heavily on the interpretation of the party who evaluates the convict. Without objective, measurable, and accountable indicators, decisions regarding the granting or refusal of the death penalty commutation have the potential to create legal uncertainty and

³ Muhammad Faras Abyan, "Conditional Death in the New Criminal Code: An Analysis of the Arrangement of Probation and Conversion of the Death Penalty in the Perspective of Human Rights and Principles", *Journal of Legal and Public Policy Studies* / E-ISSN: 3031-8882, vol. 3, no. 2 (2026), p. 560.

⁴ Muhammad Zaki Mubarak and Muhammad Husni Mubarak, "The Paradox of Trial and Commutation of the Death Penalty in the New Criminal Code: Reform Vs Denial of the Absolute Right to Life", *Al-Zayn : Journal of Social Sciences & Law*, vol. 3, no. 6 (2025), pp. 9753-63.

⁵ Calvin Calvin and Noor Azizah, "A Review of Islamic Criminal Law on the Parameters of the Death Penalty in the National Criminal Code," *Mutawasith: Journal of Islamic Law* 7, no. 1 (2024), h. 17-39, <https://doi.org/10.47971/mjhi.v7i1.923>.

⁶ Indah Lestari et al., "Analysis of Article 100 of Law Number 1 of 2023 concerning the Conditional Death Penalty Based on the Principles of Justice and the Principle of Legal Certainty", *Sui Generis Journal of Law*, vol. 4, no. 3 (2024), h. 1-12, <https://ejournal2.undiksha.ac.id/index.php/JIH/article/view/5030>, accessed 13 Jun 2026.

open up the space for subjectivity in determining the fate of a convict.⁷

The uncertainty of the meaning of the condition "commendable attitude and deed" as a condition for commutation of the death penalty has attracted the attention of a number of researchers. Various studies have been conducted to examine the position, parameters, and implications of the use of these terms in Article 100 of the Criminal Code. First, it was explained that the provisions of commendable attitudes and deeds as a condition for commutation of the death penalty failed to achieve the basic purpose of the law. This shows that the commutation of the death penalty arrangement that requires "commendable attitudes and deeds" does not provide legal certainty because it creates prolonged uncertainty, does not realize justice because it prolongs psychological suffering for both convicts and victims' families, and does not reflect the benefits of consuming state resources to maintain legal ambiguity for a decade.⁸

Second, the formulation of clear assessment standards and transparent supervision mechanisms is needed so that the goals of criminalization and substantive justice can be achieved in a balanced manner.⁹ Third, in a more technical perspective, the government is asked to immediately issue an implementing regulation in the form of a Government Regulation (PP) that regulates the operational definition of the requirements of "commendable attitudes and deeds", a transparent assessment system, as well as the involvement of multidisciplinary experts, such as psychologists and criminologists, measurable and objective criteria, legal certainty for convicts and a sense of justice for the community can be realized in a balanced manner.¹⁰

The main problem in the commutation arrangement of the death penalty does not lie in the commutation mechanism, but in the unclear meaning of the conditions of "commendable attitudes and deeds" that are used as conditions for criminal reform. To answer this problem, most of the research still focuses on trying to formulate parameters in a positive legal perspective. Studies that examine the phrase from the perspective of Islamic law, especially in the approach of interpretation, are still relatively limited. In fact, Islamic law also recognizes the concept of changing legal consequences related to repentance, self-improvement, and repentance of criminal offenders. One of the foundations that is often used as a reference is Q.S. Al-Maidah (5): 33–34 which reads:

T إِنَّمَا جَزَاُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ
مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ٣٣ إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ
أَنْ تَقْدَرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ رَحِيمٌ ٣٤

Translation: 33. The retribution for those who fight against Allah and His Messenger and cause havoc on earth is simply to be killed, crucified, cut off their hands and feet, or exiled

⁷ Muhammad Firdaus and Mar'ie Mahfudz Harahap, "Commendable Attitudes and Deeds as a Condition for Modification of the Death Penalty," *Reslaj: Religion Education Social Laa Roiba Journal* 6, no. 4 (2024): 2735–42, <https://doi.org/10.47467/reslaj.v6i4.1988>.

⁸ Fanita Aditia et al., "Conditional Death Penalty: A Shift in Criminal Philosophy from Retributive to Rehabilitative in the National Criminal Code", *PAMPAS: Journal of Criminal Law*, vol. 7, no. 1 (2026), p. 45.

⁹ Bon Bon Yesita Putri, "Parameters of 'Commendable Attitudes and Deeds' for Death Row Convicts Who Are Serving a Probation Period in Article 100 of Law Number 1 of 2023" (undergraduate, SULTAN AGENG TIRTAYASA UNIVERSITY, 2026), <https://eprints.untirta.ac.id/58595/>.

¹⁰ Arron Jonatan Lim, Elizabeth Siregar, and Dheny Wahyudhi, "The Dilemma of Conditional Death Between Legal Certainty and the Phenomenon of Waiting for Death", *PAMPAS: Journal of Criminal Law*, vol. 7, no. 1 (2026), p. 33.

from their homes. That is a disgrace for them in this world, and in the Hereafter they will have a severe punishment. 34. Except for those who repent before you can catch them. Know, then, that Allah is Forgiving and Merciful.¹¹

Q.S. Al-Maidah (5): 33–34 is one of the verses that regulates sanctions for perpetrators of serious crimes that cause damage on earth.¹² In the verse, several forms of punishment are mentioned, including the death penalty.¹³ However, after explaining the forms of sanctions, the Qur'an also provides an exception for perpetrators who repent before being arrested. This provision shows that the punishment aspect in the paragraph also opens up space for changes in legal consequences based on the self-improvement of the perpetrator.¹⁴

The study of Q.S. Al-Maidah (5): 33–34 is important because the requirement of "commendable attitudes and deeds" in Article 100 of the Criminal Code is basically related to changes in the attitude and behavior of the convict as a condition for commutation of the death penalty. In the absence of clear parameters regarding the meaning of these terms, the perspective of the Qur'an can contribute to understanding the form of self-change that is worthy of being used as a basis for granting legal relief. Therefore, it is important to examine "commendable attitudes and deeds" as a condition for commutation of the death penalty in the perspective of Q.S. Al-Maidah (5): 33–34.

Therefore, this article explores the following research questions: How can the criterion of "commendable attitudes and deeds" be a condition for granting commutation of the death penalty? What is Q.S. Al-Maidah's (5): 33–34 perspective on the condition of "commendable attitudes and deeds" as a condition for commutation of the death penalty?

B. Research Methods

This research is a normative legal research. In simple terms, this type of research is focused on the analysis of the text of laws and regulations, court decisions, legal doctrines, and other legal sources.¹⁵ For this reason, the focus of this research is the legal norms in laws and regulations, in this case Article 100 of Law Number 1 of 2023 concerning the Criminal Code, as well as its relationship with the principles in Islamic criminal law. In other words, this research is only focused on analysis in the form of principles, concepts, and legal provisions that are doctrinal in nature.

The approaches used include: (1) a *statute approach* to examine the provisions of Article 100 of the Criminal Code and regulations related to the death penalty; (2) a *conceptual approach* to examine the concepts of commutation, repentance, and the purpose of punishment; and (3) a *comparative approach* to compare the commutation of the death penalty in the Criminal Code with the concept of changing legal consequences in Islamic

¹¹ Ministry of Religious Affairs of the Republic of Indonesia, *The Qur'an and Its Translations Revised Edition 2019* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019), p. 152.

¹² Makinuddin Makinuddin, "Repentance for the Perpetrators of the Crime of HlraBah in the Qur'an (Study of Surah Al-Maidah: 33-34)", *Al-Jinayah : Journal of Islamic Criminal Law*, vol. 5, no. 2 (2019), p. 311.

¹³ This verse is descended with regard to a group of people from the tribe of 'Urainah who initially embraced Islam and received help from the Prophet (peace be upon him). However, after recovering from illness, they killed the camel herders, plundered the treasure, and fled. This act is considered to be an act of making damage on earth and fighting against Allah and His Messenger. Therefore, Allah has sent down verse 33 as a punishment for the perpetrators of serious crimes, while verse 34 emphasizes that those who repent before being caught still have the opportunity to obtain forgiveness from Allah.

¹⁴ Quraisy Shihab, *Tafsir al-Misbah: Message, Effect, and Compatibility of the Qur'an*, vol. V (Jakarta: Lentera Hati, 2012), p. 88.

¹⁵ Ahmad Tamami, *Islamic Law Research Methodology: An Introduction* (Deli Serdang: Iyyaka Publishers, 2024), pp. 36–7.

criminal law.

The legal materials used consist of primary legal materials in the form of Law Number 1 of 2023 concerning the Criminal Code and related regulations. Secondary legal materials include books, scientific journals, research results, and relevant tafsir literature, especially *Tafsir al-Munir* by Wahbah az-Zuhaili, *Tafsir al-Jami' li Ahkam al-Qur'an* by al-Qurtubi, *Tafsir al-Mishbah* by M. Quraish Shihab, and *Tafsir al-Azhar* by Buya Hamka. The tertiary legal materials are in the form of dictionaries, encyclopedias, and other supporting sources.

The collection of legal materials is carried out through library research. Furthermore, the collected legal materials are analyzed qualitatively with interpretive and comparative methods to examine the regulation of "commendable attitudes and deeds" as a condition for the commutation of the death penalty in Article 100 of the Criminal Code and examine its relevance to the concept of repentance in Q.S. Al-Maidah (5): 33-34 as interpreted by the mufasir.

C. Research and Discussion Results

1. The Criterion of "Commendable Attitude and Deed" as a Condition for Commutation of the Death Penalty in Indonesian Criminal Law

Article 100 of Law Number 1 of 2023 concerning the Criminal Code introduces a new concept in the Indonesian penal system, namely the commutation of the death penalty. This provision is part of the national criminal law reform that seeks to place the death penalty no longer as an absolute and final punishment, but as a crime that still opens up the possibility of evaluation of the perpetrator. Thus, the death penalty in the new Criminal Code is placed as a special and alternative crime, the execution of which can be suspended through the mechanism of probation.

In Article 100 paragraph (4) it is explained that if during the probation period the convict shows commendable attitudes and deeds, then the death penalty can be changed to a life imprisonment sentence. The criminal change was carried out through a Presidential Decree after receiving consideration from the Supreme Court. This procedure shows that changes to the death penalty are not carried out automatically, but through an assessment process involving certain state institutions. Thus, the decision to convert the death penalty to life imprisonment remains within the framework of a controlled legal mechanism.¹⁶

The involvement of the President and the Supreme Court in the criminal reform process also reflects that the implementation of the death penalty is a problem that has a legal as well as a humanitarian dimension. Therefore, decisions regarding criminal changes are not only based on administrative considerations, but also require careful juridical considerations. In this context, the Supreme Court plays a role in providing judgment from a legal point of view, while the President makes the final decision based on these considerations.¹⁷

¹⁶ Gregorius Eka Januario Carvalho Amaral Borgeous, Fareh Prameswari, and Adelia Trisna Juniar, "The Enactment of Article 100 of the Criminal Code Number 1 of 2023 in the Case Study of the Premeditated Murder of Brigadier Norfriansyah Yosua Hutabarat", *Harmonization : Journal of Social Sciences, Law, and Economics*, vol. 1, no. 1 (2023), pp. 32-9.

¹⁷ Ismail Ismail et al., "The Essence of the Imposition of the Death Penalty in Law Number 1 of 2023 concerning the Criminal Code", *To Ciung Journal : Journal of Law*, vol. 6, no. 1 (2026), pp. 1-23.

However, the "commendable attitudes and deeds" condition formulated in the provision is not accompanied by normative indicators describing concrete forms of behavior that can be qualified to meet these criteria. The absence of clear parameters causes the assessment of whether or not these conditions are met depends heavily on the interpretation of the party conducting the assessment. This condition has the potential to cause legal uncertainty, unequal treatment, and open up space for arbitrariness in its application.

The use of conditions that do not have a clear and measurable measure has the potential to shift criminal law from the principle of normative certainty to a subjective assessment. As a result, the application of the law becomes difficult to predict and has the potential to reduce the guarantee of fair legal certainty. In practice, behaviors that factually share the same characteristics can be judged differently due to the absence of a standard definition of the meaning of "commendable attitudes and deeds." Such circumstances allow for different treatment of convicts who are in similar legal conditions without a clear, objective, and measurable normative basis.¹⁸

On that basis, Article 100 of Law Number 1 of 2023 concerning the Criminal Code, especially paragraphs (1) and (4), contains constitutional issues because it uses conditions that are not defined normatively. The absence of definitions, objective indicators, institutions authorized to conduct assessments, evaluation methods, and objection mechanisms have the potential to cause legal uncertainty and open up the space for subjectivity in its application.

For comparison, some countries also recognize a mechanism for changing or reducing penalties based on the behavior of convicts during the coaching period. However, the indicators used are generally formulated in a more concrete and measurable manner than the requirement of "commendable attitudes and deeds" in Article 100 of the Indonesian Criminal Code.

In the United States, the concept of relatively commensurate is known as *satisfactory behavior*. Although it is not used as the basis for changing the death penalty to a life sentence, this concept is used as the basis for providing a reduction in prison terms (*good conduct time credit*). In Section 3624(b) of Title 18 of the United States Code, *satisfactory behavior* is defined as exemplary compliance with institutional disciplinary regulations. The assessment is carried out by the *Bureau of Prisons* based on clear indicators, such as compliance with correctional institution discipline and progress in required education and coaching programs.¹⁹ Thus, the behavior on which the legal award is based has been formulated in a more objective and measurable manner.²⁰

Meanwhile, in China, the death penalty system is known to have a two-year suspension of execution. In the Criminal Code of the People's Republic of China, the death penalty can be commuted if during the period of suspension the convict does not commit

¹⁸ Calvin Calvin and Noor Azizah, "A Review of Islamic Criminal Law on the Parameters of the Death Penalty in the National Criminal Code," *Mutawasith: Journal of Islamic Law*, 7, no. 1 (2004).

¹⁹ Title 18 United States Code Section 3624(b), Credit Toward Service of Sentence for Satisfactory Behavior, (1984).

²⁰ Haerunnisa Baiq Vidia, "Analysis of the Regulation of 'Commendable Acts' in the Provisions of the Death Penalty Probation Period in Law Number 1 of 2023 concerning the Criminal Code", Thesis (University of Mataram, 2023), p. ix, <https://eprints.unram.ac.id/44220/>, accessed 13 Jun 2026.

a deliberate crime and shows major meritorious service.²¹ In other words, criminal relief is not only based on changes in attitudes in general, but also on concrete actions that show certain contributions or achievements that are considered to have significant utility value. In addition, the assessment is carried out through a legal mechanism involving judicial institutions so that it has a clearer basis for evaluation.²²

The comparison shows that both the United States and China set relatively more measurable parameters in assessing convict behavior. On the contrary, Article 100 of the Indonesian Criminal Code still uses the condition of "commendable attitudes and deeds" without providing a clear definition or indicator of the form of behavior in question. As a result, the standard of assessment of the requirements for the commutation of the death penalty becomes uncertain and highly depends on the interpretation of the party conducting the assessment.

This condition shows that the commutation of the death penalty in Article 100 of the Criminal Code still requires the formulation of clearer and measurable parameters. This is in line with the development of modern penal goals which are no longer solely oriented towards retributive *justice*, but also emphasize aspects of rehabilitation and social reintegration of criminal offenders.²³

2. Q.S. Al-Maidah's Perspective (5): 33–34 on "Commendable Attitudes and Deeds" as a Condition for Commitment of the Death Penalty

a. Q.S. Al-Maidah (5): 33

One of the discussions of the Qur'an related to the death penalty is found in Q.S. Al-Maidah (5): 33. This verse explains the punishment for evildoers who fight against Allah and His Messenger and do damage on earth. In the verse, several forms of punishment can be imposed on the perpetrator, including the death penalty. Therefore, this verse is one of the important foundations in the discussion of Islamic criminal law related to the application of sanctions against crimes that are classified as severe.

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ٣٣

Translation: The retribution for those who fight against Allah and His Messenger and cause damage on earth is simply to be killed, crucified, cut off their hands and feet crossed, or exiled from their dwellings. That is a disgrace to them in this world, and in the Hereafter they will have a severe punishment.²⁴

According to Wahbah az-Zuhaili, Q.S. Al-Maidah (5): 33 descends with regard to *quththā' al-tariq* (the perpetrators of robbery or beheading on the road) and not with regard to polytheists or apostates. According to him, this verse is related to the

²¹ Criminal Law of the People's Republic of China, Article 50, adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, as amended.

²² Calvin and Azizah, "A Review of Islamic Criminal Law on the Parameters of the Death Penalty in the National Criminal Code."

²³ Rizky Owen Ardhana dan Syofiaty Lubis, "The Existence of the Death Penalty in Indonesia: History Debates and Legal Developments," *Al-Qanun: Journal of Social Studies and Islamic Law* 4, no. 1 (2023), h. 20–26, <https://doi.org/10.58836/al-qanun.v4i1.21428>.

²⁴ Ministry of Religious Affairs of the Republic of Indonesia, *The Qur'an and Its Translations Revised Edition* 2019, p. 152.

criminal act of *hirabah* that threatens public security. Wahbah az-Zuhaili explained that the perpetrator of *hirabah* who repents before being arrested can have his hadd sentence forfeited, while if the repentance is carried out after being under the power of the ruler, then the punishment of hadd is still enforced.²⁵

Meanwhile, al-Qurthubi as the opinion held by the majority of scholars, explained that the verse came down in relation to an event involving a group of people from the tribes of 'Ukl and 'Urainah. They came to Medina and then became ill due to not being suitable for the local conditions. On the instructions of the Prophet (peace be upon him), they were allowed to drink camel milk and urine as medicine. But after recovering, they killed the camel herder belonging to the Prophet (peace be upon him) and took the camels away. After being successfully arrested, they were sentenced to severe punishment according to the deeds that had been committed. It is based on this event, according to the majority of scholars as quoted by al-Qurṭubi, Q.S. Al-Maidah (5): 33 is revealed.²⁶

It is on the basis of this event, according to the majority of scholars as quoted by al-Qurṭubi, Q.S. al-Mā'idah (5): 33 is revealed. Therefore, this verse is understood as the basis for determining sanctions against the perpetrators of *hirābah*, namely crimes that cause unrest, threaten the safety of life, and damage public order.

From these two opinions, it can be understood that Q.S. Al-Maidah (5): 33 is related to the crime of *hirabah* or crimes that cause serious disturbances to public security and order. Therefore, this verse is the basis for a discussion of the types and forms of sanctions that can be imposed on the perpetrators of these crimes in Islamic criminal law.

According to Wahbah az-Zuhaili, Q.S. Al-Maidah (5): 33 is a verse that regulates the crime of *hirabah*, which is a crime that includes disobedience, robbery, terror, and various forms of damage that threaten public security. Because these crimes cause fear, anxiety, and disturb public order, Allah sets severe sanctions for the perpetrators. Wahbah az-Zuhaili explained that the punishment mentioned in this verse is applied according to the level of the crime committed. Perpetrators who kill and seize property at the same time are subject to the death penalty and crucifixion, perpetrators who only seize property are punished with cross-cutting of hands and feet, while perpetrators who only spread fear and terror are subject to exile.

In line with that, al-Qurṭubi explains that Q.S. Al-Maidah (5:33) regulates sanctions for those who fight against Allah and His Messenger and do damage to the earth (*hirabah*). Among the sanctions mentioned in the verse are the death penalty, in addition to crucifixion, cross-cutting of hands and feet, and exile. According to al-Qurṭubi, the severity of the sanction shows the magnitude of the danger of the crime of *hirabah* to public security and order. This crime not only threatens lives and property, but also creates fear, disrupts public safety, and hinders people's social and economic activities. Therefore, Allah has established severe punishment as a form of *khizy* (humiliation) in the world as well as a means of prevention against wider damage.

Meanwhile, Buya Hamka explained that the category of fighting Allah and His Messenger in this verse refers to acts of robbery and crimes committed openly with force that is capable of disturbing the security of the community. According to him,

²⁵ Wahbah Al-Zuhaili, *Tafsir al-Munir: Aqidah, Shari'ah, Manhaj*, vol. 3, Terj. Abdul Hayyie al-Kattani (Jakarta: Gema Insani, 2026), h. 493.

²⁶ Imam Al-Qurthubi, *Al-Jamik li Ahkam al-Quran wa al-Mubayyin lima Tadhammanahu min al-Sunnah wa Ay al-Quran*, Terj. Muhyiddin Mas Rida, vol. 6 (Jakarta: Pustaka Azam, 2009), pp. 353-4.

the punishment mentioned in this verse shows that Islam pays great attention to the protection of public security. Hamka also explained that the imposition of one of the punishments mentioned in the verse is the authority of the leader after considering the level and form of the crime committed by the perpetrator. Thus, the three mufasir agreed that Q.S. Al-Maidah (5): 33 contains provisions regarding strict sanctions, including the death penalty, against the perpetrators of *hirabah* because of the magnitude of the threat posed to public security and order.²⁷

Based on the interpretation of the mufasir, it can be understood that Q.S. Al-Maidah (5:33) affirms the legitimacy of imposing severe sanctions, including the death penalty, on the perpetrators of *hirabah* who threaten public security and order. This verse shows that punishment is not solely intended as retribution for the perpetrator's actions, but also as an effort to protect the public interest and prevent wider damage. However, the discussion of sanctions in this paragraph cannot be separated from the next paragraph which provides special provisions for perpetrators who change their attitude before being under the power of law enforcement.

b. Q.S. Al-Maidah (5): 34

If Q.S. Al-Maidah (5:33) explains the forms of sanctions that can be imposed on the perpetrators of *hirabah*, then Q.S. Al-Maidah (5): 34 contains provisions that are directly related to the change in the perpetrator's condition after committing the crime. This verse has the closest relevance to the condition of "commendable attitudes and deeds" as a condition for commutation of the death penalty, because it introduces the concept of repentance as a form of change in the attitude and behavior of the perpetrator. Therefore, in order to understand the concept of "praiseworthy attitudes and deeds" in the perspective of the Qur'an, it is necessary to first examine how Q.S. Al-Maidah (5:34) interprets repentance and its position in relation to the legal consequences that can be imposed on the perpetrators of evil.

إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ رَحِيمٌ ٣٤

Translation: Except for those who repent before you can catch them. Know, then, that Allah is Forgiving and Merciful.²⁸

Based on Q.S. Al-Maidah (5): 34, repentance is an indicator of a change in the attitude and behavior of the perpetrator after committing a criminal act. In this context, repentance can be understood as a normative foundation that indicates self-improvement. Therefore, the concept of repentance in the verse has relevance to the condition of "commendable attitudes and deeds" as a condition for commutation of the death penalty, because both emphasize the existence of self-change that is shown through better behavior after committing a mistake.

Although Q.S. Al-Maidah (5:34) makes repentance a factor that affects the legal consequences of the perpetrator of *hirabah*, the repentance referred to in this verse cannot be understood as limited to the confession of guilt or remorse in the heart. The mufasir gave various explanations about the nature of repentance referred to in the verse, including its terms, forms, and legal implications. Therefore, in order to find its relevance to the condition of "commendable attitudes and deeds" as a

²⁷ Hamka, *Tafsir Al-Azhar*, vol. 6 (Singapore: PTE LTD National Library, 1989), pp. 1712-4.

²⁸ Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and Its Translations*, 152

condition for commutation of the death penalty, it is necessary to first examine how scholars interpret the concept of repentance in Q.S. Al-Maidah (5): 34.

According to Wahbah az-Zuhaili, the exception given in Q.S. Al-Maidah (5): 34 does not apply to every confession of repentance, but only to repentance that is done in earnest before the perpetrator is in the power of law enforcement. According to him, such repentance shows that the perpetrator has truly abandoned destructive acts and fights against Allah and His Messenger, not just using repentance as a means to avoid punishment. Therefore, the repentance referred to in this verse is not only inward in the form of regret, but must also be reflected in changes in the attitude and behavior of the perpetrator.²⁹

Wahbah az-Zuhaili also emphasized that the repentance received is repentance that has a real impact on the behavior of the perpetrator. On the other hand, repentance carried out after being caught does not abort the *hadd* sentence because it contains the possibility of an element of pretense to avoid sanctions. Moreover, although repentance can abort Allah's right in the form of *hirabah* punishment, human rights related to soul and property must still be resolved.

In line with Wahbah az-Zuhaili, al-Qurthubi explained that Q.S. Al-Maidah (5): 34 gives an exception to the perpetrators of *hirabah* who repent before being successfully arrested or under the power of the ruler. According to him, the exception shows the loss of Allah's right in the form of punishment that has been stipulated in the previous verse. However, this repentance does not erase human rights arising from the criminal acts committed. Therefore, obligations related to *qishash*, *diyat*, and the return of property must still be fulfilled by the perpetrator.³⁰

The Qurṭubi also affirms that the *zhahir* verse shows that repentance made after the perpetrator is arrested does not abort the punishment that has been set. Thus, the repentance referred to in this verse is not just an admission of guilt after the perpetrator is faced with the threat of punishment, but a change of self born from one's own consciousness and will before being in the power of law enforcement. Therefore, the repentance that obtains forgiveness in this verse is repentance that is evidenced by the cessation of criminal acts and the willingness to fulfill the rights of others who have been violated.

Meanwhile, Quraish Shihab explained that what is meant by the condition "*before you take control of them*" is "before they are arrested or before they are in a state of no longer having the ability to escape." According to him, the redaction of the verse gave the impression that the perpetrator at that time still had the strength and ability to continue his crime. However, he chose to come and surrender voluntarily and regret his mistake. Therefore, all the sanctions mentioned in the previous paragraph can be eliminated from it. Quraish Shihab also affirms that this provision shows that the purpose of punishment in the Qur'an is not solely as a

²⁹ Al-Zuhaili, *Tafsir al-Munir: Aqidah, Shari'ah, Manhaj*, 3, p. 499.

³⁰ Al-Qurthubi, *Al-Jamik li Ahkam al-Quran wa al-Mubayyin lima Tadhammanahu min al-Sunnah wa Ay al-Quran*, 6, h. 370.

retribution, but also as a means of education and improvement.³¹

Buya Hamka explained that the exception in Q.S. Al-Maidah (5:34) is given to the perpetrator who realizes his mistake before being arrested, then performs repentance earnestly (*tarepent nasuha*) and no longer joins the group that commits the crime. According to him, the repentance must be proven concretely, among other things, by withdrawing from criminal acts, surrendering to the authorities, admitting the mistakes that have been committed, and trying to improve his life.³²

Buya Hamka also explained that the death penalty does not occur automatically just because of a confession of repentance. The judge must first assess and ensure the truth of the repentance made by the perpetrator. If the judge believes that the repentance is true and sincere, then the punishment mentioned in the verse may not be carried out against him. However, the losses caused to others must still be recovered. Property that has been damaged or confiscated must still be replaced, even according to some scholars, if the perpetrator is unable to replace it, then replacement can be done through Baitul Mal in order to maintain the benefit of the community and protect the rights of victims.

Based on the interpretation of Wahbah az-Zuhaili, al-Qurthuubi, Quraish Shihab, and Buya Hamka, the change in the consequences of the law in Q.S. Al-Maidah (5:34) is not given to every perpetrator who confesses repentance, but to those who show repentance before being arrested or before being in the power of law enforcement. This position shows that the self-improvement referred to in the verse is not repentance born because of the threat of punishment that has been faced, but the change that arises when the perpetrator still has the opportunity to continue his crime but voluntarily chooses to stop it.

Based on the explanation of the mufasir above, it can be understood that repentance must be proven through real actions, such as abandoning criminal acts, separating oneself from the criminal environment, admitting mistakes, surrendering to the authorities, improving life, and fulfilling the rights of the aggrieved party. Thus, the standard of "commendable attitudes and deeds" that can be drawn from Q.S. Al-Maidah (5:34) does not stop at inner remorse, but must be manifested in the behavior that can be observed and objectively proven, i.e. repentance performed before the perpetrator is arrested or is in the power of law enforcement. This is different from Article 100 of the Criminal Code which makes "commendable attitudes and deeds" the basis for commutation after the convict is in the state penal system and serves a probationary period. In addition, the Criminal Code also does not provide clear indicators of the form of behavior that can be categorized as "commendable attitudes and deeds".

Differences are also noticeable when compared to the legal systems of the United States and China. In the United States, changes in legal consequences are based on *satisfactory behavior*, i.e. compliance with rules and coaching programs in

88. ³¹ Quraishy Shihab, *Tafsir al-Misbah: Message, Effect, and Compatibility of the Qur'an*, vol. V (Jakarta: Lentera Hati, 2012), p.

³² Hamka, *Tafsir Al-Azhar*, 6, h. 1717-8.

correctional institutions. As for China, the death penalty relief is given if the convict does not commit a new crime during the suspension period and shows *major meritorious service* or very meritorious service. Thus, although the three systems both make behavior change the basis for changing legal consequences, the indicators used in the United States and Chinese systems are formulated in a more concrete way than Article 100 of the Criminal Code.

However, there are similarities between the concept of repentance in Q.S. Al-Maidah (5): 34 and the legal systems of Indonesia, the United States, and China, namely that the assessment of behavior change is not left to the confession of the perpetrator alone. Buya Hamka emphasized that the judge must ensure the truth of the repentance carried out by the perpetrator before deciding on changes in legal consequences. In this context, this authority is in line with the concept of *ta'zir* which provides space for the ruler or judge to assess the circumstances of the perpetrator in order to realize the benefits. The same pattern is also found in the systems of Indonesia, the United States, and China, which both place certain authorities as the authorities to evaluate the behavior of convicts.

However, the mufasir also gave strict limits on the scope of the change in legal consequences. Wahbah az-Zuhaili and al-Qurtubi explain that repentance carried out before being arrested only has implications for the loss of Allah's rights related to the punishment of *hirabah*, while human rights remain unforfeited and must be fulfilled by the perpetrator. Therefore, obligations related to *qishash*, *diyat*, and the return of property must still be settled. Thus, the change in legal consequences in Q.S. Al-Maidah (5): 34 is not intended to remove all the responsibility of the perpetrator, but rather to place the protection of the rights of the victim as an inalienable part.

D. Conclusions and Recommendations

Based on the provisions of Article 100 of Law Number 1 of 2023 concerning the Criminal Code, the commutation of the death penalty is given to convicts who during the probation period show "commendable attitudes and deeds". However, these norms do not provide clear definitions or indicators of the forms of behavior that can be categorized as commendable attitudes and deeds. As a result, the assessment of whether or not the commutation requirements are met depends largely on the interpretation of the authorities. This condition has the potential to cause legal uncertainty, different treatment of convicts in similar conditions, and opens up a space for subjectivity in the application of Article 100 of the Criminal Code. For this reason, it is necessary to have a definition and indicators of "commendable attitudes and deeds" explained normatively through changes in laws and implementing regulations.

From the perspective of Islamic criminal law, these indicators also need to be aligned with the purpose of punishment (*maqāsid al-syarī'ah*), especially the protection of the soul (*hifz al-nafs*) and the principles of justice (*al-'adl*) and benefit (*maṣlaḥah*). Therefore, the measure of "commendable attitudes and deeds" is not sufficiently understood as formal adherence to discipline, but must reflect a change in morality (*taubah*), an improvement in morals (*iṣlāḥ al-sulūk*), and a readiness to return to responsible society. Therefore, the

death penalty commutation policy not only provides legal certainty, but also realizes the purpose of inmate development and the values of justice that are the orientation of the national penal system and Islamic criminal law. In addition, these indicators must be proven through systematic assessments and not solely based on subjective assessments of authorized officials.

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