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Criminal Imposition on Perpetrators of Joint Violence Resulting in Death from the Perspective of Islamic Jurisprudence

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Abstract: Collective violence resulting in death remains a serious criminal offense, often arising from acts of vigilantism (*eigenrichting*). Such conduct violates both positive criminal law and the Islamic legal principle of protecting human life. This study analyzes the judicial considerations in Decision Number 681/Pid.B/2024/PN Smg and examines the offense from the perspective of *fiqh jinayah*. Using a normative legal method with case and conceptual approaches, the research relies on the Indonesian Criminal Code, court decisions, the Qur'an, and relevant legal literature. The findings show that the court imposed criminal sanctions under Article 170 paragraph (2) point 3 of the Criminal Code after determining that all legal elements of the offense had been proven through witness testimonies, defendants' statements, documentary evidence, and *visum et repertum*. From the perspective of *fiqh jinayah*, the defendants' actions are classified as *qatl syibh al-'amd* (quasi-intentional homicide) because the violence was intentional but not aimed directly at causing death. The collective nature of the offense also reflects the concept of *isytirak fi al-jarimah*, which attributes criminal responsibility to all participants involved in the resulting death.

Keyword: Judicial Consideration, Collective Violence, Death, Fiqh Jinayah, Isytirak fi al-Jarimah

INTRODUCTION

Indonesia is a state based on the rule of law, upholding the principle of the supremacy of law as the foundation for organizing social, national, and state life. The concept of a state based on the rule of law places law as the primary instrument for maintaining public order, upholding justice, and guaranteeing legal certainty for all citizens (Damar et al., 2025). However, in practice, various forms of legal violations, committed by both individuals and groups, remain, potentially disrupting public order and threatening human rights.

One form of legal violation that is still frequently encountered in society is collective violence against individuals suspected of committing a crime. This situation is generally triggered by a lack of public understanding of the law, ineffective social oversight, group emotional impulses, and low trust in the law enforcement process, leading some people to resort to self-punishment (*eigenrichting*) (Asif & Weenink, 2022). However, according to

Indonesian criminal law, the authority to determine someone's guilt and impose criminal sanctions rests solely with law enforcement officials and authorized judicial institutions (Prang et al., 2024).

Collective violence has special characteristics because it is carried out by more than one perpetrator collectively against the victim. This form of violence can be in the form of beatings, kicking, or repeated abuse that can cause serious injury or even death (Myers, 2025). This action is regulated in Article 170 paragraph (2) 3 of the Criminal Code which regulates the increased criminal penalties for perpetrators of violence carried out openly and collectively if the act results in the death of the victim (Purba & Rahaditya, 2026). This regulation shows that Indonesian criminal law pays serious attention to collective violence because such acts not only cause harm to the victim, but also threaten social order and security.

The issue of violence in a case of collective violence resulting in death can be seen in Semarang District Court Decision Number 681/Pid.B/2024/PN Smg. In this case, the perpetrators committed a series of violent acts against the victim, who was suspected of stealing a cell phone. The repeated violence, which included beatings, kicks, and stomping, resulted in the victim suffering serious injuries and even death (Putri & Fauziyah, 2024). This incident demonstrates that actions initially motivated by the desire to impose sanctions on the perpetrators of alleged crimes have instead developed into new criminal acts that deprive a person of their right to life.

From a positive criminal law perspective, criminal responsibility for perpetrators of collective violence that causes death is determined based on the fulfillment of all elements of the crime as formulated in Article 170 paragraph (2) 3 of the Criminal Code. The determination of responsibility does not only depend on the consequences caused, but also takes into account the element of error and the level of involvement of each perpetrator in the series of criminal acts that occurred. Therefore, the judge's consideration is a very important aspect to analyze in order to determine the legal and non-legal basis used in handing down criminal decisions against the defendants.

When viewed from the perspective of Islamic criminal law, this issue is not only related to the fulfillment of the elements of a criminal act, but also concerns moral aspects, the objectives of sharia, and the protection of human life as one of the basic needs that must be maintained. In the perspective of Islamic criminal law, an act that results in the loss of a person's life is called *al-qatl* and is classified as a *jarimah* included in the groups of *qisas* and *diyat*. Based on the level of intent, the crime of murder is divided into three categories, namely *qatl al-'amd* (murder committed intentionally), *qatl syibh al-'amd* (semi-intentional murder), and *qatl al-khata'* (murder that occurs due to negligence or error). This classification is based on the elements of intent, the tools used, the method of implementation, and the consequences resulting from the perpetrator's actions (Moazzam & Attirmidzi, 2025).

In addition to recognizing the classification of murder based on the element of intent, Islamic jurisprudence (*fiqh jinayah*) also regulates criminal liability for collective actions through the concept of *isytirak fi al-jarimah*. This concept emphasizes that everyone who contributes to a crime can be held accountable according to their role and involvement (Hamim, 2020). Therefore, analyzing collective violence resulting in death is not only relevant from a positive legal perspective, but also crucial to examine through an Islamic jurisprudence (*fiqh jinayah*) approach to gain a more comprehensive understanding of the perpetrators' accountability.

The phenomenon of violence resulting in the loss of life has been extensively analyzed in previous research, resulting in diverse findings and perspectives in legal studies. Asmi Nurfitriani, Muhamad Kholid, and Syahrul Anwar, in their study entitled "Assault Causing Death from the Perspective of Islamic Criminal Law," discusses the element of intent and the form of criminal sanctions against perpetrators of assault causing death from the perspective

of Islamic criminal law (Nurfitriani et al., 2026). Furthermore, Syaiful Munandar Zari's research on the act of *eigenrichting* examines the comparison between Islamic criminal law and positive criminal law regarding perpetrators of violence causing death (Zari, 2024). These previous studies indicate that many studies on violence resulting in death have been conducted, but they still focus on individual acts of assault and have not specifically examined acts of violence committed together from the perspective of Islamic jurisprudence.

Based on previous research, there is a research gap in the form of no study that specifically analyzes the legal arguments of the panel of judges in Decision Number 681/Pid.B/2024/PN Smg by linking them to the concepts of *isytirak fi al-jarimah* and *qatl syibh al-'amd* from the perspective of Islamic jurisprudence. Therefore, the novelty of this research lies in the integrative analysis between the judge's considerations in positive law and the concept of criminal responsibility in Islamic jurisprudence regarding joint acts of violence resulting in death.

Based on this description, this study focuses on two main issues. First, how the panel of judges considered sentencing perpetrators of violence committed together resulting in death based on Decision Number 681/Pid.B/2024/PN Smg. Second, how the violence is qualified when analyzed using the perspective of Islamic jurisprudence (*fiqh jinayah*). This study aims to examine the basis for the judges' considerations in the decision and analyze the forms of criminal responsibility of the perpetrators from the perspectives of Islamic criminal law and Indonesian positive criminal law.

METHOD

This research uses a normative legal research method. Normative legal research is research that positions law as a norm or rule that applies in society and is conducted through a study of legal materials obtained from laws and regulations, court decisions, doctrines, and relevant legal literature (Muhaimin, 2020). This research focuses on the analysis of judges' considerations in imposing criminal sanctions on perpetrators of collective violence that resulted in death as reflected in the Decision of Case Number 681/Pid.B/2024/PN Smg and its analysis from the perspective of Islamic jurisprudence (*fiqh jinayah*). This research uses a case approach to examine the court decision that is the object of research in order to understand the ratio decidendi and legal considerations used by judges in issuing decisions. Meanwhile, a conceptual approach is used to examine legal concepts that develop in the doctrine of criminal law and Islamic jurisprudence (*fiqh jinayah*), especially regarding collective violence, criminal responsibility, *qatl syibh al-'amd*, and *isytirak fi al-jarimah* (Ali, 2009).

The types and sources of legal materials used in this study consist of primary legal materials, including the Criminal Code (KUHP), Semarang District Court Decision Number 681/Pid.B/2024/PN Smg, and the Quran as the normative basis for Islamic legal studies. Secondary legal materials include books, scientific journals, articles, and other scholarly works relevant to the research object.

The legal material collection technique was carried out through library research, namely by inventorying, identifying, and reviewing various legal materials that are relevant to the main problem being studied. All legal materials obtained were then selected and classified based on research needs to facilitate the analysis process (Muhaimin, 2020). The analysis of legal materials was carried out qualitatively using a descriptive-analytical method. The analysis began by outlining the legal facts contained in Decision Number 681/Pid.B/2024/PN Smg, then examining the judge's considerations based on positive criminal law provisions. Next, the results of the analysis were compared with concepts in Islamic jurisprudence, particularly regarding *qatl syibh al-'amd* and *isytirak fi al-jarimah*, so that conclusions were drawn regarding the conformity between the judge's considerations and the principles of Islamic criminal law.

RESULTS AND DISCUSSION

The Judge's Consideration in Determining Criminal Sanctions for Perpetrators of Collective Violence Causing Death in Decision Number 681/Pid.B/2024/PN Smg

The judge's reasoning is a crucial part of a criminal decision because it serves as the basis for establishing the relationship between the facts proven in court and the applicable legal norms. These considerations can reveal the legal and non-legal reasons used by the judge in sentencing the defendant (Ferdiansyah Ferdiansyah, 2025).

Based on Decision Number 681/Pid.B/2024/PN Smg, the panel of judges assessed that the defendants had been legally and convincingly proven to have committed the crime of "openly and with joint force committing violence against a person resulting in death" as regulated in Article 170 paragraph (2) 3 of the Criminal Code. This evidence was based on witness statements, the defendant's statement, post-mortem examination, and evidence presented in the trial (Putusan Nomor 681/Pid.B/2024/PN Smg, n.d.).

The revealed legal facts show that the defendants jointly beat, kicked, and stamped on the victim who was suspected of stealing a cell phone. These actions were carried out repeatedly until the victim suffered serious head injuries and ultimately died. According to the panel of judges, there was a clear causal relationship between the defendants' actions and the victim's death so that the element of "causing death" in Article 170 paragraph (2) 3 of the Criminal Code had been fulfilled (Putri & Fauziyah, 2024).

From a criminal law perspective, causality (causal verband) is a crucial aspect in determining criminal responsibility. A person can only be held responsible for a specific consequence if there is a direct connection between their actions and the resulting consequence (Sudarto, 2018). Therefore, the post-mortem examination (visum et repertum) in this case plays a crucial role as evidence to prove that the victim's death was the result of the defendants' violent actions (Damar et al., 2025).

In imposing criminal sanctions, the judge considered not only legal aspects but also non-legal aspects. From a legal perspective, the judge's considerations were based on evidence presented at trial, such as witness testimony, the post-mortem examination (visum et repertum), the defendants' statements, and other evidence (Ferdiansyah et al., 2025). The witnesses' testimony showed that the victim was brutally beaten to the point of unconsciousness before eventually dying. Furthermore, the judge also considered that the violent acts continued even though the victim was weak and unable to resist.

Meanwhile, from a non-juridical perspective, the judge considered the consequences, including the loss of the victim's life and the public unrest caused by the collective violence. The defendants' actions were deemed contrary to humanitarian values, public order, and the principles of the rule of law. The judge also considered the defendants' family's attempts to reconcile with the victim's family, even though these attempts were rejected (Trisna et al., 2025). Furthermore, mitigating circumstances for the defendants included their polite behavior during the trial and their confessions to their actions. These considerations are crucial for achieving a sentencing that is not merely legalistic but also reflects substantive justice. Therefore, the imposition of a prison sentence of 5 (five) years and 6 (six) months in this case demonstrates that the panel of judges attempted to achieve a balance between legal certainty, substantive justice, and the purpose of sentencing in sentencing the defendants.

According to the author, the application of Article 170 paragraph (2) 3 of the Criminal Code in this case is deemed appropriate because all elements of the crime can be legally proven in court. However, upon further analysis, the defendants' actions of repeatedly committing violence against the victim's vital body parts also indicate an awareness of the possibility of death. This condition is related to the concept of *dolus eventualis*, which is known in criminal law doctrine (Ropei, 2021).

Analysis of the Application of Article 170 Paragraph (2) 3 of the Criminal Code and its Relevance to the Concept of Dolus Eventualis

The application of the provisions of Article 170 paragraph (2) 3 of the Criminal Code in case Number 681/Pid.B/2024/PN Smg is based on the proof of all elements of the crime as formulated in the provision. The element of "whoever" is considered fulfilled because the defendants are legal subjects who have the capacity and to be responsible for their actions according to criminal law (Sudarto, 2018). The element of "openly and with joint effort committing violence against people" is also proven through trial facts which show that the defendants were proven to have committed collective acts of violence against the victim through beatings, kicking, and stomping in a series of events in a place that can be known to the general public. In addition, the element of "causing death" is considered to have been fulfilled because based on the post-mortem examination and other evidence it is proven that the victim's death cannot be separated from the acts of violence committed by the defendants, because these acts are the main causal factor in the emergence of consequences prohibited by law (Putusan Nomor 681/Pid.B/2024/PN Smg, n.d.). Thus, normatively there is no doubt regarding the appropriateness of the application of the norm of Article 170 paragraph (2) 3 of the Criminal Code in the case which is the object of the study, because all the elements of the criminal act required in the provision have been proven to be fulfilled.

However, if analyzed more deeply from the perspective of criminal law doctrine, there are interesting aspects related to the form of guilt of the perpetrators. In criminal law, there is a concept of *dolus eventualis*, which is a form of intent. *Dolus eventualis* occurs when the perpetrator is aware of the possibility of consequences that are prohibited by law, but continues with his actions and accepts this possibility as a consequence of his actions (Ropei, 2021).

In this case, the defendants committed repeated acts of violence against the victim, including to the head, a vital organ of the human body. Objectively, any person with normal reasoning ability can understand that repeated beatings and kicks to the head have the potential to cause serious injury or even death (Al-Jamas et al., 2025). Therefore, the absence of evidence of direct intent to kill does not necessarily negate the defendants' awareness of the potential for serious consequences, including the loss of the victim's life, as a consequence of their actions.

This view aligns with criminal law doctrine, which states that intent does not always have to be a direct intention to cause a particular consequence, but can also be an awareness of the possibility of a prohibited consequence (Sudarto, 2018). In other words, a perpetrator is considered to have accepted the risk of their actions when they continue with a dangerous act despite knowing the potential consequences.

However, the panel of judges did not construct the defendants' actions as a criminal act of murder as regulated in Article 338 of the Criminal Code. The judges placed more emphasis on the characteristics of the actions carried out collectively so that the approach of Article 170 paragraph (2) 3 of the Criminal Code was considered more appropriate to use (Kristanto, 2022). This consideration shows that the judges' main focus was on proving the elements of joint violence and the causal relationship with the result of death, not on proving the intention to take the victim's life.

According to the author, the approach used by the judge is in accordance with positive legal construction because all elements of Article 170 paragraph (2) 3 of the Criminal Code have been proven legally and convincingly. However, an analysis of the concept of *dolus eventualis* remains important to carry out because it provides a picture of the actual level of culpability of the perpetrators. The higher the level of awareness of the perpetrator of the possibility of death, the greater the level of culpability for which he can be held responsible (Purba & Rahaditya, 2026).

Thus, Decision Number 681/Pid.B/2024/PN Smg shows that joint acts of violence resulting in death are not only relevant to be analyzed in terms of fulfilling the elements of a

criminal act, but also in terms of the form of the perpetrator's fault as a basis for determining the level of criminal responsibility.

Qualification of Collective Acts of Violence that Result in Death from the *Jinayah Fiqh* Perspective

According to the *fiqh jinayah* perspective, every act that causes someone to lose their life is classified as *jarimah al-nafs* or a criminal act that attacks the human soul. Protection of human life is one of the main objectives of Islamic law (*maqashid al-syari'ah*), so that every act that results in a threat to life or loss of someone's life without the legitimacy recognized by the provisions of the law is categorized as a serious violation of Islamic law (Rokhmadi, 2022). In Surah Al-Ma'idah verse 32, it is emphasized that taking someone's life without a basis justified by the Shari'a is seen as equivalent to killing all of humanity, which shows the high position of the right to life in Islam (Indonesia, 2015).

Islamic jurisprudence scholars divide the crime of murder into several categories: intentional murder (*qatl al-'amd*), semi-intentional murder (*qatl syibh al-'amd*), and culpable homicide (*qatl al-khata'*) (Az-Zuhaili, 2003). These classifications are based on the elements of intent, the method of carrying out the act, and the tools or means used by the perpetrator when committing the crime.

Based on the trial facts contained in Decision Number 681/Pid.B/2024/PN Smg, the defendants were proven to have committed collective violence against the victim through beatings, kicks, and stamping that had a causal relationship with the victim's death. However, in the case, no evidence was found to indicate any planning or specific intention to take the victim's life. The violence was initially a form of emotional venting against the victim who was suspected of stealing a cell phone (Putusan Nomor 681/Pid.B/2024/PN Smg, n.d.).

When viewed from the perspective of *jinayah fiqh*, these characteristics are more appropriately classified as *qatl syibh al-'amd* rather than *qatl al-'amd*. This is because the perpetrators intended to commit violence against the victim, but there was no evidence of a direct intention to take his life. However, the actions taken still contain a high level of danger and ultimately cause the victim to lose his life (Alviyan, 2020).

According to Wahbah Az-Zuhaili, *qatl syibh al-'amd* occurs when someone consciously carries out an action directed at the victim using a method that has the potential to cause harm, but not with a tool that is generally used to kill (Az-Zuhaili, 2003). In this case, even though the defendants did not use sharp weapons or other deadly instruments, repeated acts of beating and kicking vital body parts still had great potential to cause death.

A similar view was expressed by Khairul Hamim, who stated that murder committed with limited intent occurs when the perpetrator intended only to commit an act of assault, but the resulting consequences went beyond the initial intent, resulting in the loss of the victim's life (Hamim, 2020). Therefore, the victim's death still gives rise to criminal liability even if there was no direct intent to take life.

Based on the author's study, the actions carried out by the defendants in Decision Number 681/Pid.B/2024/PN Smg are more appropriately qualified as *qatl syibh al-'amd* because there is an element of deliberate violence, but no evidence was found of direct intent to take the victim's life. This conclusion is also in line with the construction of positive law which does not apply Article 338 of the Criminal Code, but rather Article 170 paragraph (2) 3 of the Criminal Code which focuses on the fatal consequences that arise from acts of joint violence.

Thus, from the perspective of *jinayah fiqh*, acts of collective violence that cause someone to lose their life in Case Number 681/Pid.B/2024/PN Smg can be placed in the category of *qatl syibh al-'amd* so that all parties involved still bear the consequences and legal responsibility for the resulting consequences.

In Islamic jurisprudence, acts classified as intentional murder (*qatl syibh al-'amd*) are not subject to the qisas sanction, as is the case with intentional murder (*qatl al-'amd*), because there is no direct intention to take the victim's life. However, the perpetrator is still burdened with responsibility in the form of payment of *diyat mughallazah* (aggravated *diyat*) to the victim's family as a form of compensation for the loss of the victim's life. In Islamic jurisprudence, this aggravated *diyat* generally takes the form of payment of one hundred camels, which is charged to the perpetrator and can be paid in installments over a period of three years. In addition, Islamic criminal law also authorizes judges or competent authorities to determine *ta'zir* sanctions according to the level of the perpetrator's culpability and the intended public good (Rokhmadi, 2022).

According to Wahbah Az-Zuhaili, *diyat mughallazah* in the *qatl syibh al-'amd* category is based on the absence of a direct will to take the victim's life, even though the perpetrator deliberately carried out an action that factually caused the death (Az-Zuhaili, 2003). Meanwhile, *ta'zir* sanctions are given as an instrument of prevention so that similar acts do not happen again and to maintain public order (Rokhmadi, 2022).

In relation to Decision Number 681/Pid.B/2024/PN Smg, the defendants who collectively participated in the violent act that resulted in the victim's death can in principle be held accountable under the concept of *isytirak fi al-jarimah*. Therefore, all perpetrators proven to have participated in the crime can be burdened with responsibility for *diyat* (retribution) and subject to *ta'zir* sanctions according to the extent of their respective involvement (Hamim, 2020).

According to the author, although the Indonesian criminal law system does not recognize the *diyat* mechanism, the purpose of punishment applied by the judge through imprisonment in Decision Number 681/Pid.B/2024/PN Smg is similar to the purpose of *ta'zir* in Islamic jurisprudence, namely to provide a deterrent effect on the perpetrator, protect the community, and prevent the recurrence of similar crimes in the future. Thus, there is a harmony of values between positive criminal law and Islamic jurisprudence in providing accountability for perpetrators of joint violence resulting in death (Pratama & Winarni, 2025).

Analysis of *Isytirak fi al-Jarimah* on Perpetrators of Joint Acts of Violence Resulting in Death

In addition to its relevance to the classification of crimes against life, the actions of the parties named as defendants in case No. 681/Pid.B/2024/PN Smg are also relevant to analysis through the concept of *isytirak fi al-jarimah* in Islamic jurisprudence. This concept regulates collective participation involving two or more individuals in the commission of a crime that gives rise to certain legal consequences (Rokhmadi, 2022). In Islamic criminal law, a crime is not always committed by an individual perpetrator, but can involve several individuals who jointly contribute to carrying out an act prohibited by sharia.

According to Wahbah Az-Zuhaili, *isytirak fi al-jarimah* (a crime committed by several individuals) is the collaboration of several individuals in committing a crime, whether through direct action, assistance, incitement, or other forms of participation closely related to the commission of the crime (Az-Zuhaili, 2003). Therefore, criminal responsibility is not only imposed on the primary perpetrator, but also on every party who significantly contributed to the commission of the crime, according to their role and level of involvement.

Based on the trial facts, the violent acts against the victim were committed by several defendants together through beatings, kicks, and stamping, which occurred in a series of events (Putusan Nomor 681/Pid.B/2024/PN Smg, n.d.). Although the level of violence perpetrated by each defendant was not always the same, all of these actions were interconnected and contributed to the victim's death. Therefore, no single perpetrator is exclusively responsible for the consequences, but rather all perpetrators were causally connected to the victim's death.

Within the framework of Islamic jurisprudence, this condition can be classified as *tawafuq*, a form of participation involving several perpetrators in a series of criminal acts that collectively give rise to the same legal consequences (Hamim, 2020). According to the majority of Islamic jurisprudence scholars, if a death occurs due to the collective actions of several perpetrators and the contribution of each perpetrator to the resulting consequences cannot be determined with certainty, then all perpetrators can be held criminally responsible based on the concept of *isytirak fi al-jarimah*. This responsibility is based on the existence of a shared will and mutually supportive contributions in the occurrence of the criminal act that resulted in the loss of the victim's life (Wahyuni, 2018).

This concept shares similarities with the construction of Article 170 of the Criminal Code, which does not require proof of who directly caused the fatal injury. The primary focus is on the existence of a concerted act of violence and the proven outcome, which is the death of the victim (Kristanto, 2022). Therefore, both positive criminal law and Islamic jurisprudence recognize collective responsibility for perpetrators acting in a single act.

Any party involved in a crime can be held responsible for the consequences as long as there is a causal relationship between their actions and the commission of the crime (Rokhmadi, 2021). Therefore, a person cannot escape responsibility simply because their role is considered less significant than that of other perpetrators. As long as their actions contributed to the commission of the crime, they can still be held legally accountable.

In addition to creating accountability for the occurrence of *jarimah*, the concept of *isytirak fi al-jarimah* also has implications for imposing sanctions on perpetrators. In Islamic jurisprudence, if a crime resulting in death is committed by several people together and each person contributes to the occurrence of the consequence, then all perpetrators can be held accountable according to the degree of their involvement (Az-Zuhaili, 2003). In the context of *qatl syibh al-'amd*, this accountability can take the form of an obligation to pay *diyat mughallazah* jointly and the possibility of imposing *ta'zir* sanctions by the judge based on the role of each perpetrator in the criminal incident (Afriyanti et al., 2024).

This view demonstrates that Islamic jurisprudence (*fiqh jinayah*) not only views cooperation in committing a crime as a basis for criminal liability but also as a basis for imposing legal consequences on all parties involved. Therefore, the involvement of the defendants in Decision Number 681/Pid.B/2024/PN Smg cannot be separated from each other, as their collective actions contributed to the victim's death (Hamim, 2020).

According to the author's analysis, the application of Article 170 paragraph (2) 3 of the Criminal Code in Decision Number 681/Pid.B/2024/PN Smg has a strong relevance to the concept of *isytirak fi al-jarimah*. This is evident in the way the judge assessed the involvement of the defendants as a single act that collectively caused the victim's death. This consideration demonstrates the compatibility between the principle of collective responsibility in Indonesian criminal law and the concept of inclusion in Islamic criminal law.

Thus, the analysis of *isytirak fi al-jarimah* shows that all perpetrators involved in a collective act of violence can be held responsible for the victim's death because each contributed to the prohibited outcome. This concept also strengthens the legitimacy of sentencing all defendants in Decision Number 681/Pid.B/2024/PN Smg.

The Relevance of Positive Criminal Law and Islamic Jurisprudence in Addressing the Practice of Eigenrichting

Based on the results of the analysis carried out, it can be confirmed that both positive criminal law perspectives and *jinayah fiqh* have the same orientation in protecting human rights to life and maintaining social order. Both legal systems place acts of violence that result in death as prohibited acts and must be legally responsible (Rokhmadi, 2022). These similarities show that the protection of the human soul is a basic value that is universal and is a principle

that is recognized and upheld both in the Indonesian positive legal framework and in Islamic legal doctrine.

One form of respect for the right to life in positive criminal law is realized through the regulation of various criminal acts that result in the loss of a person's life, reflected in the criminalization of violent acts carried out collectively as regulated in Article 170 paragraph (2) 3 of the Criminal Code. This provision functions as a criminalization instrument aimed at preventing the recurrence of similar acts, providing a deterrent effect on the perpetrator, and ensuring the maintenance of public order and security from the threat of violence that can result in loss of life (Amani, 2025). Through the criminalization mechanism, the state emphasizes that the resolution of an alleged criminal act must be resolved through legitimate law enforcement instruments in accordance with the principles of the rule of law, not through unilateral actions that ignore applicable legal procedures and authorities.

Meanwhile, in jinayah fiqh, protection of the soul is part of *maqashid al-syari'ah* known as the concept of *hifz al-nafs*. This concept emphasizes that the right to life is a human right inherent in every individual so that the state and society are obliged to guarantee protection from all forms of actions that threaten the safety of their lives (Nurrizkiya & Sulyati, 2025). Therefore, vigilantism that results in death not only violates legal provisions, but also contradicts the principles of justice and respect for human dignity which are fundamental values in Islamic teachings.

The phenomenon of *eigenrichting* essentially arises from low public trust in the law enforcement process or an emotional urge to directly punish someone suspected of committing a crime (Kuswandi & Oktaviani, 2025). However, such actions have the potential to give rise to new crimes with consequences more serious than those for which the victim is accused. In the case studied, the alleged theft of a cell phone by the victim resulted in the loss of life due to uncontrolled mob violence (Putusan Nomor 681/Pid.B/2024/PN Smg, n.d.).

According to the author, law enforcement efforts against *eigenrichting* perpetrators are not solely aimed at providing punishment, but also act as a preventive instrument to increase public legal awareness. The criminal decisions handed down to the defendants send a message that every form of legal violation must be resolved through a mechanism determined by the state. This approach is in line with the objectives of jinayah fiqh which prioritize the creation of benefit, protection of the right to life, and prevention of crime in society (Prang et al., 2024).

Thus, there is a strong relevance between positive criminal law and Islamic jurisprudence in viewing collective acts of violence that result in death. In addition to placing the protection of life as the main objective, both legal systems also recognize the existence of collective responsibility for perpetrators who jointly cause the death of the victim. The main difference between the two lies in the type of sanctions imposed. In the positive criminal law system, the perpetrator's responsibility is realized through the imposition of imprisonment as a form of punishment determined by the state, while Islamic jurisprudence recognizes *diyat mughallazah* and *ta'zir* sanctions against perpetrators of *qatl syibh al-'amd*. Although different in the form of punishment, both legal systems have the same goal to realize the function of punishment, namely to provide a preventive effect, guarantee community protection, and minimize the possibility of similar crimes occurring again (Nurfitriani et al., 2026).

CONCLUSION

Based on the results of the research and analysis that have been carried out, it can be concluded that the judge's consideration in imposing criminal sanctions on the perpetrators of collective violence that caused the loss of the victim's life as decided in case Number 681/Pid.B/2024/PN Smg, it can be concluded that the panel of judges imposed a criminal penalty based on the fulfillment of all elements of Article 170 paragraph (2) 3 of the Criminal Code, namely the existence of an act of violence carried out openly and with joint effort which

resulted in the death of the victim. The judge's considerations were based on legal aspects in the form of witness statements, the defendant's statement, evidence, visum et repertum, and legal facts revealed in court. In addition, the judge also considered non-legal aspects in the form of the consequences of the defendant's actions which took someone's life, caused public unrest, the defendant's attitude during the trial, and aggravating and mitigating circumstances. The application of Article 170 paragraph (2) 3 of the Criminal Code in this case was in accordance with the proven legal facts because there was a causal relationship between the defendants' actions and the victim's death.

According to the perspective of Islamic jurisprudence, the act of violence committed collectively and resulting in the death of the victim in Decision Number 681/Pid.B/2024/PN Smg can be qualified as *qatl syibh al-'amd* (semi-intentional murder), because the perpetrators intentionally committed violence against the victim but were not proven to have a direct intention to take the victim's life. The collective involvement of the defendants also fulfills the concept of *isytirak fi al-jarimah*, so that all perpetrators who participated in the crime can be held accountable for the consequences caused. In Islamic jurisprudence, such acts are not subject to qisas sanctions, but rather give rise to the obligation of *diyat mughallazah* and can be subject to *ta'zir* sanctions by the judge according to the level of involvement and the intended benefit. Thus, there is a conformity between positive criminal law in placing all perpetrators as responsible parties for the victim's death, even though the forms of sanctions applied are different.

For future researchers, this study is still limited to analyzing a single court decision and using the perspective of Islamic jurisprudence. Therefore, future research could expand the scope of study by comparing several decisions regarding joint violent crimes resulting in death or examining the application of the concept of participation (*isytirak fi al-jarimah*) in various other crimes to gain a more comprehensive understanding.

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