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THE CONCEPT OF THE CRIME OF CORRUPTION: PERSPECTIVE OF ISLAMIC LAW AND INDONESIAN LAW

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Abstract

Abuse of public power for personal gain is called corruption. When a person in charge of a particular position receives money or other gifts and uses them to abuse his official power by committing inappropriate acts, this is called an act of corruption. In the current view, it is possible that corruption has also entered the private sector in addition to the public sector. In law, perpetrators of corruption can be punished in the form of ta'zir, which is a punishment decided by a judge based on how serious their actions are. Meanwhile, in Indonesia, perpetrators of corruption can face punishment, namely imprisonment, fines and the deprivation of political rights. In this research, the type of research used is normative legal research with. The problem approach used is a statutory regulation approach, which is used to look at statutory regulations that are relevant to the problem or legal issue being discussed. This research will discuss the concept of criminal acts of corruption and punishment mechanisms for criminal acts of corruption in Islamic law and Indonesian law.

Keywords: Corruption; Islamic Law and Indonesian Law.

INTRODUCTION

Corruption has now developed into a serious and ingrained problem in Indonesia. Corruption existed long before the founding of Indonesia, as historical evidence shows. Since the time of the kingdom, feudal structures that tend to be characterized by tyrannical acts have become a culture.¹

Abuse of public power for personal gain is called corruption. When a person in charge of a particular position receives money or other gifts and uses them to abuse his official power by committing inappropriate acts, this is called an act of corruption. In the current view, it is possible that corruption has also entered the private sector in addition to the public sector.²

In general, corruption can be caused by two types of factors. The first is internal factors, which consist of the trust holder's desire to abuse power, such as being greedy for wealth, jealous of other people, or because of urgent needs. The second is external factors, consisting of an unbalanced government or leadership system, which can provide opportunities for trustees to commit corruption.³

Corruption is defined in Islam as transgressing the Shari'a. The goal of Islamic law, known as *maqāsid asy-syarī'ah*, is to create benefits for everybody. In order to accomplish convenience, it is necessary to safeguard assets (*hifdzul ma'l*) against many kinds of infractions. Property is governed and valued in Islam from the moment it is acquired until it is put to use. It requires that property be acquired morally and in compliance with Islamic law, which includes refraining from deceitful acts like stealing, treason, usury consumption, cheating in measurements and scales, corruption, and other offences.⁴

The scope of the crime of *ta'zir* is very broad, both relating to Allah's rights and individual rights, because the criminal act of corruption in Islamic law includes *ta'zir*, because

¹ Ali Maulida et al., "TINDAK PIDANA KORUPSI DALAM PERSPEKTIF HUKUM INDONESIA DAN PIDANA ISLAM," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 08, no. 1 (2020): 53–54.

² Bambang Slamet Riyadi, "The Sociology Law: Corruption and Abuse of Power in Indonesia," *International Journal of Religion* 5, no. 7 (2024): 599–613, <https://doi.org/10.61707/64fp5z33>.

³ Muh Kurniawan Bw et al., "Analisis Undang-Undang Nomor 31 Tahun 1999 Tentang Korupsi Dalam Perspektif Hukum Islam," *Jurnal Hukum Islam* 9, no. 1 (2023): 38–52.

⁴ Asa'ari Asa'ari et al., "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of *Maqāsid Al-Syarī'Ah*," *Samarah* 7, no. 2 (2023): 920–36, <https://doi.org/10.22373/sjkh.v7i2.14944>.



the form and punishment of this form and punishment are not explicitly mentioned in the Qur'an and al-Sunnah.¹

While Law (UU) Number 3 of 1971 concerning the Eradication of Corruption Crimes has existed in Indonesian law since 1971, but was deemed no longer appropriate to the changing needs of society, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was issued, which was then revised or amended through Law Number 20 of 2001.

The criminal act of corruption in Indonesian law is part of special criminal law and is different from general criminal law because there are deviations from procedural law and examination of regulated materials. As a result, the aim of criminal acts of corruption, both directly and indirectly, is to reduce the level of leakage and irregularities in the country's finances and economy as much as possible.

By anticipating deviations as early as possible and as much as possible, it is hoped that the economy and development can run as they should. This will gradually result in increased development and general welfare of society.

FORMULATION OF THE PROBLEM

1. What is the concept of criminal acts of corruption in Islamic law and Indonesian law?
2. What is the mechanism for criminal acts of corruption in Islamic law and Indonesian law?

RESEARCH METHODS

In this research, the type of research used is normative legal research. Normative legal research studies various aspects of written law, such as theory, history, philosophy, comparison, structure, composition, scope, material, consistency, formality, binding force, and the language used. However, this research does not study the practical aspects or implementation of the law. In the following research, the problem approach used is the statue

¹ Ali Maulida et al., "TINDAK PIDANA KORUPSI DALAM PERSPEKTIF HUKUM INDONESIA DAN PIDANA ISLAM Ali."

approach, which is used to look at the legal regulations that are relevant to the problem or legal problem being discussed.¹

DISCUSSION

A. Concept of Corruption Crime

1. Islamic Law Perspective

Corruption is related to Islamic law, fuqaha does not find criminal acts of corruption in classical jurisprudence. This is because in ancient times there was no administrative system like today. Because, in cases of criminal acts of corruption, it is clear that there is a wrong administrative system that is misused by individuals that allows these crimes to occur.

Corruption in Islamic Law has several understandings of its meaning, namely²:

- 1) *Risywah* means bribe. Etymologically, the word *risywah* comes from the Arabic *rasya-yarsyu*, with the masdar meaning *risywah*, *rasywah*, or *rusywah*, which means *al-ju'l*, which means wages, gifts, commissions, or bribes. *Riswah* is a gift from someone to an influential official or institution to achieve goals.
- 2) *Sariqah* is theft, but is generally defined as taking someone else's property that does not belong to them and is stored in a safe place. Therefore, theft is taking other people's things that do not belong to them and storing them in a safe place.
- 3) *Khiyanah* is traitor. When someone is given confidence, this is often seen as denial. Corruption is considered an act of treason by most Shafi'iyah scholars. Because the perpetrators were those who were previously trusted to look after state finances.

The fact that the Qur'an and Hadith do not specifically explain corruption means that corruption is not understood as a *jarimah* in Islamic criminal law. However, scholars agree that corruption, even though it is not regulated, can be equated with theft because the goods taken are not their rights, but belong to other people or the state, which causes loss and harm to society. As explained in Surah Al-Baqarah verse 188 which reads:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْأَلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

¹ Joenadi Efendi dan Prasetyo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris*, Cetakan ke (Kencana, 2022).

² Maswandi et al., "The Role of Islamic Law and Tradition in the Prevention of Corruption by Political Experts in Indonesia," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 114–27, <https://doi.org/10.5281/zenodo.4756114>.



Meaning: "And do not let some of you consume the property of others among you in a false way and (do not) bring (the affairs of) that property to the judge, so that you can consume part of the property of others by (doing) sin. , even though you know."¹

There are several explanations in the Qur'an regarding the prohibition of committing criminal acts of corruption, including:

وَأَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: "O you who believe, do not consume each other's wealth in a false way, except by means of commerce that is carried out mutually between you. and do not kill yourselves. Indeed, Allah is Most Merciful to you."²(An-Nisa': 29)

وَمَا كَانَ لِنَبِيِّ أَنْ يَعْلَلَّ مَن يَعْلَلُ يَأْتِ بِمِ آ غَلَّ يَوْمَ الْقِيَامَةِ ثُمَّ تُوْفَى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

Meaning: "It is impossible for a prophet to betray the spoils of war. "Whoever betrays the spoils of war, then on the Day of Resurrection he will come with what he betrayed. Then each person will be repaid for what he did with (retribution) in proportion, while they are not wronged."³(Al-Imran: 161)

Political, economic, business (muamalah), social and social mandates must not be betrayed. However, treason is specifically for denying the loan of goods that have been borrowed ('āriyah) in fiqh. However, ghulul also has the trait of betrayal, because carrying out ghulul actions means betraying. In verse 27 of Surah Al-Anfāl, it is stated that deceiving fellow humans is the same as deceiving Allah and His Messenger.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمْنِيَّتَكُمْ وَأَنْتُمْ تَعْلَمُونَ

It means:"O you who believe, do not betray Allah and the Messenger (Muhammad) and (also) do not betray the trusts entrusted to you, even though you know."⁴(Al-Anfal: 27)

¹ Kementrian Agama RI, "Al-Qur'an Dan Terjemahannya" (Jakarta, 2016).

² Kementrian Agama RI.

³ Kementrian Agama RI.

⁴ Kementrian Agama RI.

2. Indonesian Legal Perspective

In Dutch criminal law, the term *Strafbaar feit* comes from three words: *straf*, *baar*, and *feit*. The word *straf* means criminal and the word *baar* means can or may. Acts, events, violations, and deeds are all translations of the term "crime".

The Latin word "corruption" comes from the words "korruptus" and "corruption", which means "bad, depraved, deviated from purity, insulting or slanderous speech." In KPK's Corruption Crime Module, the Black Law Dictionary defines corruption as an act committed with the intent to obtain multiple benefits that are contrary to official duties, truths, or beliefs of an individual who, through breaking the law and making mistakes, obtains multiple benefits for themselves or another individual who is contrary to official duties, truths, or other beliefs.¹

Perpetrators of criminal acts are groups or individuals who commit the act or crime in question, without considering whether the act was carried out on their own decision or with the encouragement of a third party. Perpetrators of criminal acts can also include individuals who commit acts intentionally or unintentionally as required by the Law or who have caused consequences that are not intended by the Law.

Various laws made in Indonesia to handle and eradicate corruption regulate criminal acts of corruption. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has been amended by Law Number 20 of 2001, explains the definition and classification of criminal acts of corruption. Abuse of authority, bribery, embezzlement, and extortion are some types of corruption.²

Types of Corruption Crimes according to Indonesian Law are:

1. Abuse of authority is when an official or person who has authority does something for personal or group interests that has a negative impact on state finances. One example is budget embezzlement and use of the budget for personal interests.

¹ Dr Mohammed Nasir Uddin Derry Angling Kesuma, "THE ENFORCEABILITY AND EFFECTIVENESS OF ANTI-CORRUPTION LAWS IN REDUCING CORRUPTION CASES IN INDONESIA Derry," *Kanun: Jurnal Ilmu Hukum* 26, no. 1 (2024): 158-73.

² Bima Suprayoga, Hartiwiningsih, and Muhammad Rustamaji, "Reconstruction of State Economic Losses in Criminal Acts of Corruption in Indonesia," *RGSA: Revista de Gestao Social e Ambiental* 17, no. 4 (2023): 1-15, <https://doi.org/10.24857/rgsa.v17n4-024>.



2. Bribery is a gift or promise to an employee or state administrator in the form of money, goods or services so that they do or not do something that is contrary to their obligations.
3. Embezzlement occurs when someone who is given responsibility for state assets uses them for personal gain. using state money for personal interests, for example. Blackmail is the act of forcing someone to give something in an illegal way. In the context of corruption, this often occurs in the form of extortion by officials or civil servants.

The criminal act of corruption is defined as an unlawful act committed by a person to enrich himself, another person, or a corporation in a way that is detrimental to state finances or the state economy, according to Article 2 and Article 3, which states¹:

Article 2

- 1) Any person who unlawfully commits an act of enriching himself or another person or a corporation which may harm the state's finances or the state's economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah);
- 2) In the event that the criminal act of corruption as intended in paragraph (1) is committed under certain circumstances, the death penalty can be imposed;

Article 3

"Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which could harm the state's finances or the state's economy, shall be punished by life imprisonment or a minimum imprisonment of 1 (one) years and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."²

B. Punishment Mechanisms for Corruption Crimes in Islamic Law and Indonesian Law

¹ Pemerintah Indonesia, "Undang-Undang No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 1999.

² Pemerintah Indonesia.

Those who commit corruption receive severe punishment according to Islamic law. This punishment can be in the form of *ta'zir*, which is a punishment decided by the judge based on how serious the action was. *Ta'zir* can take the form of a fine, imprisonment, or other physical punishment. In addition, the perpetrator must return items that were embezzled or obtained through bribery.

In Islamic law, corruption is also called *jarimah takzir*. Fiqh scholars say that Islamic law does not stipulate detailed and strict punishments for every violation of the *Takzir Jarimah*. In contrast, the *Shari'ah* only mentions a number of punishments that can be applied for the desired benefit.

Therefore, it is entirely up to the authorities and judges to determine the punishment appropriate to the crime committed. In determining the punishment for the *takzir*, they must always consider the condition of the convict, his environment and the interests of society. They must also be oriented towards the goal of social punishment, namely preventing and discouraging someone from committing a criminal act.

Sariqa or theft sanctions applied in Islamic law are hud punishment. Both the *Ghulûl* and *Risywah* concepts apply *Ta'zir* sanctions.¹ The Hudud punishment for theft (*sariqah*) is explained in Surah Al Maidah verse 38:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Meaning: "The man who steals and the woman who steals, have their hands cut off (as) retribution for what they did and as a punishment from Allah. and Allah is All-Mighty, All-Wise."² (Al-Maidah: 38)

Perpetrators of criminal acts of corruption should carefully consider the punishment of cutting off their hands, also known as *qath' al-yad*. In addition, because of the complex components of corruption, there is usually a component of politicization of various regulations that helps the implementation of corruption crimes appear clean and legitimate. However, *hirâbah* is based on verse 33 of Surah Al-Maidah, which reads:

¹ Sidik Sunaryo and Sholahuddin Al-Fatih, "How Corruptor Should Be Punished? A Comparative Study Between Criminal Law, Islamic Law, and Customary Law," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 91–100, <https://doi.org/10.5281/zenodo.4756112>.

² Kementrian Agama RI, "Al-Qur'an Dan Terjemahannya."



إِنَّمَا جَزَاؤُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

Meaning: "Indeed, the only retribution for those who fight against Allah and His Messenger and cause mischief on the face of the earth, is that they be killed or crucified, or have their hands and feet cut off in reciprocity, or be thrown out of the land (where they live). such things are (as) a humiliation for them in this world, and in the afterlife they will suffer a great torment."¹ (Al-Maidah: 33)

The legal basis for ta'zir is found in the hadith of the Prophet and the actions of his companions. These hadiths are as follows:

"From Abi Burdah Al-Ansari that he heard the Messenger of Allah say, "You cannot be whipped more than ten times, except in the punishment determined by Allah."(HR. Muttafaq 'Alaih)

This hadith explains the limits of ta'zir punishment. So, one can distinguish between jarimah hudud and jarimah ta'zir with the limit of punishment for ta'zir, namely that there should be no more than ten lashes to differentiate it from hudud.

Meanwhile, in Indonesia, perpetrators of corruption can face the following punishments: First, prison sentences for perpetrators of corruption can be sentenced to prison for years, even life, or even death, depending on the severity of the crime committed, and the Corruption Crime Court (Corruption Crime Court) Corruption Eradication Commission) has the authority to impose prison sentences on perpetrators of corruption. Second, perpetrators of corruption can also be punished with fines. This fine is added as an additional sanction to strengthen the deterrent effect against perpetrators of corruption. Finally, revocation of political rights is an additional sanction given by the Corruption Court. The main aim is to provide a stronger deterrent effect against perpetrators of corruption, so that they can no longer participate in the political process for several years.

¹ Kementrian Agama RI.

CONCLUSION

This research shows that Islamic and Indonesian law have strong concepts and mechanisms in dealing with criminal acts of corruption. Maintaining justice, integrity and social stability are the common goals of these two legal systems, even though their methods are different. It is possible that a strong foundation for a more efficient eradication of corruption can be built by combining the legal-institutional approach of Indonesian law and the moral principles of Islamic law.

المصادر

- 1- Ali Maulida, Didin Hafidhuddin, Ulil Amri Syafri, and Abas Mansur Tamam. "TINDAK PIDANA KORUPSI DALAM PERSPEKTIF HUKUM INDONESIA DAN PIDANA ISLAM Ali." *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 08, no. 1 (2020): 53–54.
- 2- Asa'ari, Asa'ari, Jafar Ahmad, Zufriani Zufriani, Doli Witro, and Muhamad Taufik Kustiawan. "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāsid Al-Syarī'Ah." *Samarah* 7, no. 2 (2023): 920–36. <https://doi.org/10.22373/sjkh.v7i2.14944>.
- 3- Bw, Muh Kurniawan, Aditya Fajri Kurnia Pradana, Yahya Ibadu Rahman, and Salman Alfarisi. "Analisis Undang-Undang Nomor 31 Tahun 1999 Tentang Korupsi Dalam Perspektif Hukum Islam." *Jurnal Hukum Islam* 9, no. 1 (2023): 38–52.
- 4- Derry Angling Kesuma, Dr Mohammed Nasir Uddin. "THE ENFORCEABILITY AND EFFECTIVENESS OF ANTI-CORRUPTION LAWS IN REDUCING CORRUPTION CASES IN INDONESIA Derry." *Kanun: Jurnal Ilmu Hukum* 26, no. 1 (2024): 158–73.
- 5- Kementrian Agama RI. "Al-Qur'an Dan Terjemahannya." Jakarta, 2016.
- 6- Maswandi, Jamillah, Rizkan Zulyadi, Arie Kartika, and Fitri Yanni Dewi Siregar. "The Role of Islamic Law and Tradition in the Prevention of Corruption by Political Experts in Indonesia." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 114–27. <https://doi.org/10.5281/zenodo.4756114>.
- 7- Pemerintah Indonesia. "Undang-Undang No. 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi,," 1999.
- 8- Rijadi, Joenadi Efendi dan Prasetijo. *Metode Penelitian Hukum Normatif Dan Empiris*. Cetakan ke. Kencana, 2022.
- 9- Riyadi, Bambang Slamet. "The Sociology Law: Corruption and Abuse of Power in Indonesia." *International Journal of Religion* 5, no. 7 (2024): 599–613. <https://doi.org/10.61707/64fp5z33>.
- 10- Sunaryo, Sidik, and Sholahuddin Al-Fatih. "How Corruptor Should Be Punished? A Comparative Study Between Criminal Law, Islamic Law, and Customary Law." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 91–100. <https://doi.org/10.5281/zenodo.4756112>.



- 11- Suprayoga, Bima, Hartiwiningsih, and Muhammad Rustamaji. "Reconstruction of State Economic Losses in Criminal Acts of Corruption in Indonesia." *RGSA: Revista de Gestao Social e Ambiental* 17, no. 4 (2023): 1–15. <https://doi.org/10.24857/rgsa.v17n4-024>.