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Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future

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Abstract: The current job transformation is one of the challenges for the state of Indonesia. Crimes over time have been carried out systematically, including corruption. The interesting thing about the development of efforts to combat corruption is the development of the concept of returning state finances. Legal entities in Indonesia have long experienced legal pluralism, as can be seen from the configuration of the community that carries out Islamic criminal law and customary law as local wisdom. This study uses a normative approach with secondary data support with the specification that the confiscation of corruptor's property in Islamic criminal law is divided into: Reproaches and reprimands/warnings, dismissing from his position (*al-azl min al-wadzifah*), by beating (whipping), punishment in the form of property (fines) and physical punishment, exile, crucifixion, death penalty. The relevance between these concepts is a form of legitimacy for the legal significance that comes from the beliefs and needs of the community. This article raises the concept of positive law with concepts in Islamic criminal law to find the relevance of the two which will later become part of the effort to function Islamic criminal law into Indonesian positive law in order to achieve the goal of a fair law and reduce corruption.
Keywords: Corruption; Islamic Criminal Law; Crimes; Sanction; Punishment.

Introduction

Crime is seen as a social phenomenon because, as a behavior, crime is inseparable in social interaction so that the form and influence of these actions can be found in human relationships. Considering the relationship between humans and crime, it is not wrong if Thomas Hobbes calls humans *homo homini lupus* (humans are wolves to other humans), considering that humans naturally have desires/will that can harm if not controlled the interests of other humans. Seeing the relationship between crime and human behavior, Paul Ricoeur provides four characteristics of crime, namely, crime as a fluid, dynamic, and contextual entity (Runturambi, 2017). Seeing the characteristics of these crimes, it is not wrong if crime continues to develop following the development of human civilization (Halim, 2018).

Crimes that continue to develop along with the development of human civilization also affect the types and forms of crime today, which are starting to move from conventional crimes to developing various forms of non-conventional crimes. Broadly speaking, conventional crimes occur a lot in society, and the perpetrators come from the lower middle class, or what is commonly referred to as Blue-Collar Crime, such as theft, murder, molestation, rape, etc. Indonesia's positive law regulates these crimes in the 2nd book of the Criminal Code (KUHP). Meanwhile, in this modern era, crime has developed in the form of White-Collar crimes whose perpetrators come from upper-middle-class people and have high social status. Most of these White-Collar crimes are regulated in-laws and regulations outside the Criminal Code, such as Corruption, Narcotics, and Money Laundering (Al-Fatih, 2018).

Non-conventional crimes have differences from conventional crimes, especially in terms of the consequences. Non-conventional crimes can have a broad damaging impact and cause long-term suffering, and the victims are not only individuals but also the community or even the state (Kristian, 2014).

In addition, these non-conventional crimes also differ from conventional crimes in terms of perpetrators and their modus operandi. There is more than one perpetrator for conventional crimes, organized and carried out in a structured and even transnational manner (Cahyani & Al-Fatih, 2020). Looking at the characteristics of the White-Colar Crime, it is not wrong if the United Nations includes corruption and White-Colar Crime as part of the types of crimes that deserve special attention starting from the 5th United Nations (UN) Congress in September 1975, which was held in Geneva Switzerland to discuss Criminal Legislation, Judicial Procedures and Other Forms of Social Control in the Prevention of Crime (Amrullah, 2003).

Considering Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the researcher can underline that corruption is an act of enriching or benefiting oneself, other people, or corporations that have or have the potential to harm the state finances. Taking into account this definition, attention to the crime of corruption does not only lie in the issue of prevention and law enforcement, which leads to the punishment of a corruptor, but which is no less important is the issue of recovering state losses due to corruption. State losses due to corruption and the amount that was successfully returned to the state can be seen from the following table:

Table 1. State Losses Due to Corruption Crime (Triwijaya, 2019)

Year	State Losses	Returning State Losses
2016	3 trillion	497,7 billion
2017	6,5 trillion	188 billion
2018	9,29 trillion	846 billion

Source: processed from various sources

Observing the table, among the state losses caused by corruption, it is still higher than the value of losses that have been successfully returned to the state. Therefore, the mindset of law enforcement in Indonesia for corruption cases is the time to move on; shift from the paradigm of punishment to the paradigm of returning state losses. The focus on recovering state losses through the asset recovery mechanism has been encouraged by the United Nations in the United Nations Convention Against Corruption (UNCAC) in 2003 and was ratified by Indonesia in 2006 through Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003. (United Nations Convention Against Corruption, 2003). Chapter V of UNCAC emphasizes the importance of confiscating the proceeds of criminal acts of corruption in settling corruption cases. As a country that ratifies UNCAC, Indonesia should have regulated the provisions in UNCAC in its legal system. Conventions related to criminal acts of corruption with various derivatives indicate that corruption crimes, according to Eddy O.S Hiariej have undergone internationalization, which is related to significant consequences for international interests, especially international peace and security, from a criminal act (Hiariej, 2019). The situation that is developing in the global world regarding efforts to eradicate corruption as above, should also be followed by Indonesia.

Considering the explanation above, it is interesting to study the idea of returning state losses by perpetrators of criminal acts of corruption in Indonesia in the form of criminal sanctions for returning corrupt assets in the Indonesian legal system in the future, especially the relevance of these types of sanctions from the point of view of Islamic law. The point of view of Islamic (criminal) law is considered important by researchers. In efforts and efforts to develop national law (including in terms of reforming national criminal law), it is necessary to pay attention to various aspects, including exploring legal sources that will be used as part of the reference for the formation of national law. In von Savigny's opinion (Soekanto, 2007), that law is the embodiment of public legal awareness (*volksgeist*) so that national law, ideally, comes from customs and beliefs and not from legislators (Luhukay & Jaelani, 2019).

According those explanation above, Ade Mahmud (Mahmud et al., 2022) found that the confiscation of assets in Indonesian criminal law is conceptually divided into 2 (two) namely (a) the concept of confiscation of assets through criminal charges against movable and immovable objects (b) the concept of confiscation of assets using a civil lawsuit by the Prosecutor against assets that have not been confiscated after a court decision, while in *fiqh jinayah* or Islamic criminal law asset seizure is qualified as one type of sanction from *jarimah takzir*, namely crime whose type of punishment is not described in the Qur'an and the Hadith of the Prophet Muhammad however to the judge in a fair manner and pays attention to the benefit of the people (Mahmud et al., 2022). Another researcher, Mohammad Darudin on Criminal Sanctions as an Eradication Strategy of Corruption: A Critical Study from the Perspective of Islamic Criminal Law found that the concept of sanctions in Islamic criminal law imposed on the perpetrators must be comparable with their evil deeds (Qur'an Surah 42, verse 40), with the aim to benefit for human both individual and collective (Darudin, 2018).

Given that this research is aimed at examining the idea of sanctions for confiscation of corruptors' assets as an alternative to Indonesian criminal sanctions in the future (in the optics of reforming the national criminal law), and considering the ideal principles of law formation according to von Savigny above, the study from the perspective of criminal law Islam has become an urgent matter. Moreover, Islam and Islamic law (including Islamic criminal law) have become part of the life of the Indonesian people, long before the establishment of Indonesia as a state, even before the Dutch colonial period (Muzammil & Natsir, 2021) (Noor, 2022). Contextual studies of legal texts, both those listed in the Qur'an and Sunnah, contain the basic lines (principles) of policies regarding Islamic criminal law. This contextual study is intended to seek and find the "contemporary" relevance of these legal texts so that they remain current to answer various legal problems (especially in terms of the development of corruption crimes) in any situation or era and any social context (universal applicability). In addition, this contextual study is also functioned to straighten out the views and suspicions, and accusations of several groups who perceive Islamic criminal law as dehumanize and out of date law or not adaptive to the trend of the international community, which increasingly shows the phenomenon of humanization of criminal law and punishment.

Literature Review

Corruption comes from the Latin, *corruptio* or *corrumpere*, which means rotten, damaged, destabilizing, twisting, bribing. This Latin derivative became English (corruption) and Dutch (*corruptie*, *korruptie*), later adopted into Indonesian, namely corruption, which means crime, immoral rot, and depravity (Putra, 2017). Meanwhile, Black's Law Dictionary defines corruption as "an act done with an intent to give some advantage inconsistent with official duty and the right of others" (Black, 2007). According to Transparency International, corruption is seen as the behavior of public officials, both politicians/politicians and civil servants (Prakasa et al., 2022) (Prakasa et al., 2021), who unfairly and illegally enrich themselves or enrich those close to them by abusing the public power entrusted to them (perpetrators) (Shoim, 2018).

In the positive law of Indonesia, the definition of corruption itself was first affirmed in Article 1 of Government Regulation No. 24 of 1960 concerning Investigation, Prosecution, and Examination of Corruption Crimes. Historian Ong Hok Ham (Siegel, 2008) explained that corruption began with the distinction between personal finances and public finances. This kind of separation was never recognized in the traditional concept of power so that new corruption emerged along with the emergence of the modern political system. Ham noted that corruption arose at the beginning of the 19th century, when there was a lot of abuse of power for personal gain, especially in public finances. From a sociological point of view, corruption in Indonesia can be divided into three models. *First*, corruption by need, meaning that people commit corruption due to circumstances or conditions. *Second*, corruption is due to greed (corruption by greed), meaning that people do corruption because they are greedy even if they are economically sufficient. *Third*, corruption by chance, meaning that corruption is carried out or occurs because of an opportunity (Sridjaja, 2018).

Corruption as a crime has not received an adequate portion in Islamic law. The discussion about corruption offenses may be analogous to the concept of fiqh scholars about the crime of consuming human property/orphans in a false sense as forbidden in the Qur'an, and when referring to the word corruption as it is known in the modern era, perhaps in the sense of damaging.

Among the forms of crime that seem to bear some resemblance to corruption is *ghulul* (treason). Ibn Hajar al-'Asqalani defines *ghulul* with contempt in terms of spoils of war. This understanding was also emphasized by the Muhammadiyah Tarjih Council with the meaning of anything that was taken from the spoils of war secretly before distribution or it could be interpreted as taking something and hiding it in its property (Cahyani & Al-Fatih, 2020) (Aprilianto & Zahidi, 2021). On the other hand, Imam al-Mawardi analogizes corruption as *sariqah* (theft) and is included in the category of *jarimah* (criminal act) with the explanation that every asset whose amount reaches the level of zakat is stored in a certain place, if it is stolen by a person who has reached puberty and has good sense (*mukallaf*), and there is no doubt (*syubhat*) in the property or the place where it is stored, then his right hand is cut off from the wrist bone (Al-Mawardi, 2016).

In the study of Islamic criminal law (Analiansyah & Abubakar, 2021), an act can be said to be a *jarimah* if it fulfills formal elements, material elements and moral elements. The formal element can be understood from the prohibitions and sanctions for thieves as clearly stated in the Qur'an and Hadith. Meanwhile, regarding the material elements for theft, it can be understood from the opinion of Imam Nawawi who stated that there are 6 elements of the finger, namely: the stolen goods reach the minimum limit, the property does not belong to the perpetrator, the stolen property is nominal and valuable property, the property is owned by the perpetrator. the victim is perfect, not joint property, there is no element of *subhat* in terms of ownership between the perpetrator and the victim, and the property is stored in a storage area commonly used to store wealth.

Corruption cases in Indonesia are caused by several factors so that Marwan Effendy is seen as a social phenomenon that does not end, and the more widespread action is taken, even its development continues to increase from year to year, both in the number of cases, the number of state losses and quality (Effendy, 2007). Various factors cause corruption in Indonesia, including weak law enforcement, the weak mentality of central and local government officials, games from economic power holders, and a lack of appreciation of the ideology of the Indonesian nation. Seeing the increasingly serious phenomenon of corruption, it is not wrong if it is seen as part of an extraordinary crime by the United Nations and by most countries in the world. Considering the seriousness of the criminal act of corruption, in its development, the state, through law enforcement, is encouraged to be responsible for restoring economic losses caused by corruption based on social justice. Thus, the theory and responsibility of the state to realize social justice provide moral justification for the state to make efforts to recover assets resulting from criminal acts of corruption (Mahmud, 2018). Michael Levi suggests that justifications for asset forfeiture include (Mahmud, 2018): First, Preventive reasons (*prophylactic*), namely to prevent criminals from having control over illegally obtained assets to take other actions in the future; Second, The reason for propriety, namely that the perpetrators of the crime do not have proper rights over the illegally obtained assets; Third, The reason for priority/preceding, namely because criminal acts give priority to the state to claim assets obtained illegally rather than the rights owned by the perpetrators of the crime; and Fourth, The reason for ownership (*proprietary*), namely because the asset was obtained illegally, then the state has an interest as the asset owner.

Meanwhile, Matthew H. Fleming argues that asset confiscation emphasizes three factors, namely: first, asset recovery as a process of revocation, confiscation, disappearance; secondly, what is revoked, confiscated, and lost is the proceeds/profits obtained from criminal acts of corruption; and third, one of the purposes of revocation, confiscation, disappearance is so that the perpetrator of a criminal act cannot use the proceeds/profits from a criminal act as a tool/means to commit other criminal acts. In the rights of the state, some obligations are the rights of individual citizens, so that this principle is equivalent to the principle of "give the people what they are entitled to." In essence, fair means putting something in its place

and giving to anyone what is their due. In dealing with corruption cases so far, Indonesia has tended to prioritize the criminal method, which focuses more on punishing the perpetrators of corruption than on returning state assets. However, in reality, the criminal pathway is not effective enough to suppress, prevent, eradicate, and reduce the number of criminal acts of corruption (Mulyadi, 2011). Especially in terms of returning state losses due to corruption.

Currently, corruption has entered across national borders. This is stated in the fourth paragraph of the Preamble of the United Nations Convention Against Corruption 2003 (UNCAC), "Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control is essential"(Prayitno, 2019). Asset recovery or asset recovery is a process of handling assets resulting from crimes that are carried out in an integrated manner at every stage of law enforcement so that the value of these assets can be maintained and fully returned to victims of crime, including the state. Asset recovery also includes all preventive actions to keep the asset's value from decreasing (Widyopramono, 2019). The return of stolen state assets (stolen asset recovery) is significant for the development of developing countries because the return of stolen assets is not only to restore state assets but also aims to uphold the rule of law where no one people are immune to the law (Widyopramono, 2019).

Method

This study uses a normative approach (Irwansyah, 2020) which is carried out by seeking and finding legal sources that are relevant to the subject matter studied. In this case, various available legal materials will be used, both primary legal materials, secondary legal materials, and tertiary legal materials. The data examined by prescriptive analysis. The data examined with prescriptive analysis (Efendi & Ibrahim, 2016) to found any concept of the confiscation of corruptor's property in Islamic criminal law.

Results and Discussion

The Existence of Islamic Criminal Law in the Indonesian Legal System

National law must protect the entire nation and state in all aspects of life so that efforts to reform national law (including reform of national criminal law) must be based on the same national insight in the field of national law development. As once conveyed by Ismail Saleh, the national insight as intended includes national insight, archipelago insight, and Bhineka Tunggal Ika insight as an integral unit of insight that underlies the implementation of Indonesia's national development (Arief, 2008). So that efforts to reform Indonesian criminal law must be supported and equipped with various in-depth studies of legal sources. As in Sunaryati Hartono's opinion (Hartono, 1993), that in the process of developing and fostering national law, it can be taken from various sources, if the legal materials/sources: (a) do not conflict with or are following the legal needs of all Indonesian people, both now and in the future. And (b) does not conflict with the values of Pancasila and the 1945 Constitution. Considering the criminal law as public law, the law will later apply to all citizens, including Muslims, as most of the Indonesian population. So, it is necessary to study the extent to which national criminal law will truly accommodate and manifest Islamic religious values, especially Islamic criminal law.

Based on the description above, the existence of Islamic criminal law as an aspect of the value of religious teachings adopted and believed by much of the Indonesian population should receive great attention in every aspect of legal development in Indonesia. Or in other words, Islamic criminal law has the same opportunity as a source of legal material for criminal law reform in Indonesia. In fact, the values of Islamic law should be the foundation of the construction of national law, in addition to the national values which are the driving force behind the formation of the Indonesian nation and the Republic of Indonesia, as well as other noble values as contained in customary law and laws of religions other than Islam which the 1945 Constitution legally recognizes (Hartono, 1993). Regarding the justification of religious law in Indonesia (including Islamic law), it lies in:

1) Pancasila, the First Precept, which reads: "*Belief in One Supreme God*";

2) Preamble of the third paragraph of the 1945 Constitution, "*By the grace of Allah the Almighty and motivated by a noble desire to live a free national life, and the Indonesian people hereby declare their independence.*";
3) Article 29 of the 1945 Constitution, "*The State is based on One Godhead.*";
4) The principle of the exercise of judicial power, in Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which reads: "Judgments are conducted "for JUSTICE BASED ON THE ALMIGHTY GOD".

In addition, the justification of religious law in Indonesia is also based on the Theory of Legal Arrangement. According to this, every Muslim is basically commanded to obey Allah and the Messenger who has determined human laws with certainty and clarity. So, the consequence, according to the teachings of this theory, applies to Muslims that Islamic law applies without any sociological situation in which the legal community exists (Aulia & Al-Fatih, 2017). Because that's the essence of Islamic teachings. Islamic law has been recorded to have lived and fused into one living unit of the Indonesian nation. This was confirmed by the opinion of several experts who came to Indonesia, such as Solomon Keyzer (1823-1868), Lodewijk Willem Christian van den Berg (1845-1927), Carel Frederik Winter (1799-1859) (M. Idris Ramulyo, 1995).

In fact, Van den Berg explicitly stated that the law that applied to the indigenous people during the VOC administration and the early days of the Dutch East Indies government was their religious law (Kooria, 2018). For Muslims, Islamic law was fully applied because they had embraced Islam. Van Vollen Hoven, who conducted a study in Aceh and several regions in Indonesia, said that cutting off hands for thieves had been applied in these areas long before the Europeans (the Netherlands) introduced the western legal system. Snouck Hourgronje, who also conducted research specifically in Aceh, said that many people were without hands because of stealing or other crimes; they were exiled (punishment of exile) to the island of We. Islamic law began to be eliminated in the legal system in Indonesian society when the *Wet op Staats in richting van Nederlands-Indie* or *Indische Staatsregeling* (IS) was implemented. In particular, the provisions in Article 134 paragraph (2), which confirms that Islamic law can only be used as a basis for resolving cases/disputes if the law has been accepted and integrated into their customary law and to the extent that an ordinance does not otherwise stipulate it (as the reception theory put forward by Snouck Hourgronje).

Nevertheless, the Draft Law on the Criminal Code, which has not been finalized since the beginning while legal problems have begun to become complex, contains articles that provide a deterrent effect, where one of the contributions in Islamic law is weakness in law enforcement. The Criminal Code is related to adultery, this is the first priority for the strong influence of Islam in morality, for example in addition to adultery, among others related to homosexual articles, same-sex marriage, prohibition of sex outside of marriage, pornography as well as sanctions for criminal acts of corruption. But in terms of punishment, it does not refer to Islamic criminal law at all.

Corruption in the View of Islamic Criminal Law

According to Islamic criminal law, there are 6 (six) types of jarimah that are similar to corruption, namely *ghulul* (embezzlement), *al-risywah* (bribery), *al-ghasab* (forcibly taking other people's property), *khiyanat* (abuse of authority), *al-sariqah* (theft), and *al-hirabah* (robbery). (Nafia & Gumiandari, 2019) In the following, the authors describe the six types of jarmah that are similar to criminal acts of corruption in Indonesia.

1) *Ghulul* (embezzlement)
   The definition of *ghulul* is the act of separating one of the soldiers, whether he is a leader or not a soldier, against the spoils of war before it is divided, without first handing it over to the leader to be divided into five parts, even though the embezzled property is only a little.
2) *Al-Rishwah* (Bribery)
   Al-Jurjani put forward the definition of *risywah* is something that is given to cancel the right or launch the false. With regard to sanctions for perpetrators of *risywah* in Islamic criminal law, it seems that sanctions for perpetrators of *risywah* are not much different from legal sanctions for perpetrators of

ghulul, namely *ta'zir* sanctions because both are not included in the category of *jarimah* (criminal acts) *hudud* and *qishash*.

3) *Treason* (Abuse of Authority/Position)
   Treason is everything (actions/efforts that are) in violation of promises and beliefs that have been required in them or have been applied according to customs, such as acts of annulment against Muslims or an attitude of showing hostility towards Muslims.
4) *Ghasab* (Forcibly Taking Assets/Rights of Others)
   According to Khatib al-Syarbini ghasab is the use of the rights of others in a hostile manner, namely through violating the law and returning them after using them according to custom.
5) *Al-Sariqah* (Theft)
   According to Nurul Irfan, theft is taking property worth ten dirhams that are still valid, stored in a safe place or guarded and carried out by a *mukallaf* secretly and there is no element of doubt so that if the item is less than ten dirhams, the If it is still valid then it is not categorized as theft.
6) *Al-Hirabah* (Robbery)
   Al-*Hirabah* are those who carry out attacks with weapons to a community of people so that the perpetrators confiscate their wealth in open places openly.

Sanctions for Islamic Criminal Acts

The sanction of a corruptor is also in the form of a fine. The fine in question is certainly not just to return money or assets resulting from corruption (Quah, 2020). In addition, the proceeds must be for the general or state treasury and not for the judge. In this case, Abdul Aziz Amir divides it into three things: the destruction of an object, replacing it and possessing it, or seizing it as the state treasury (Amir, 1969). Corruption sanctions are included in the *ta'zir* punishment because corruption is not specifically described in the text. However, this is a crime because it has several factors in crimes prohibited by the nas, deprivation of rights, abuse of authority, and harming others. So that in this case, it can be included in the *ta'zir* punishment related to property, the benefit of people, and the universal benefit as the division attempted by Abdul Aziz Amir (Amir, 1969). In criminal acts of corruption, takzir can be classified according to the method's severity or consequences. Among them:

1. Reproaches and reprimands/warnings. This punishment is imposed on the executors of certain criminal acts, which are considered light but are considered to be detrimental to others. As the Messenger of Allah (Peace be Upon Him) said, "*Are you slandering, O Muadh?*" The expression was uttered by the Prophet Muhammad when his companions complained about the very long Muadz prayer. In another hadith, the Messenger of Allah (saw) rebuked Abu Dharr, who said to a man, "*O son of a dark-skinned woman.*" Then the Messenger of Allah said to him, "*Actually, you are still attached to the attitude of the Jahiliyah.*"(Faraj, 1983)
   The warnings are intended to educate the perpetrators, threaten the criminal if he repeats his crime with the threat of imprisonment, whipping up to the heaviest punishment. These penalties can be applied to perpetrators of minor crimes (Audah, 703).
2. Fired from his position (*al-azl min al-wadzifah*). This can be applied to actors who hold public office, whether paid a salary or a voluntary position (Aditya, 2018).
3. With a blow (whip). This punishment is given to criminal actors with the intention of not injuring or disrupting their work productivity. On the contrary, it is applied to deter the perpetrator. According to Abu Hanifah, a minimum of 39 lashes (Alotaibi, 2021). Meanwhile, according to Imam Malik, the maximum size may be more than a hundred times if conditions so require. This form of *ta'zir* punishment was taken based on the Hadith of amr bin Shuaib from his father from his grandfather; he said: The Messenger of Allah said, "*Tell your children to pray when they reach the age of seven. And beat them if they do not do it when their age has reached ten years and separate them in bed.*" (Al-Zuhaili, 1997) (Erdianti & Al-Fatih, 2019)
4. Punishment in the form of property (fines) and physical punishment. This punishment is like the punishment imposed on the theft of fruits that are still on the tree. Rasulullah SAW said, "*Whoever takes*

other people's goods (steals), then he must replace double the value of the goods he has taken, and he must be punished."(An-Nasai, n.d.)

5. Prison. Imprisonment can be short-term or long-term, life imprisonment, for example. The short-term punishment is at least one day, and the longest is not determined because the scholars do not agree upon it. Some say 6 months, while other scholars argue that it should not exceed one year, and according to another group, the decision is left to the government. As for indefinite imprisonment,(Badar, 2011) it is necessary to pay attention to the perpetrator. If his morals improve, then the sentence can be stopped at that time. However, if the perpetrator keeps repeating his crime and the type of crime is very dangerous, the punishment is imprisonment to death. This form of punishment was taken based on the hadith of Amr bin Syarid and his father from the Messenger of Allah, who said, "*A rich person who procrastinates to pay his debt without any excuse is unjust, then his pride is lawful, and his punishment is imprisonment."*(Audah, 703)
6. Exile. To exile the convicts, the islamic schoolar have different opinions about the maximum length of exile. According to the Syafi'iyah and Hanabilah scholars, the exile should not be more than one year because the exile was first imposed on the adulterer for one year. Meanwhile, Abu Hanifah allows more than one year because the purpose of takzir is to provide awareness, and it does not mean the imposition of limits like for adulterers. This was done by the Prophet Muhammad and Umar bin Khattab to Nasr bin Hajjal. The exile of criminal offenders is revoked when the perpetrator is aware and has good behavior.(An-Nawawi, n.d.)
7. Crucifixion. The Messenger of Allah once did it to the perpetrators of riots, disturbances, and disobedience commonly referred to as hirabah.
8. The death penalty. This punishment can be applied if the benefit really wants. For example, the death penalty for spies, provocateurs, slanderers, perpetrators of rape crimes, drug dealers, and of course, corruptors. The death penalty for corruption has been implemented in several countries. Because, after all, corruption is dangerous. According to the Hanafi school of thought, this form of the death penalty is called the death penalty with certain political motives (*al-qatl al siyasah*) (Butt, 2018).

Corruption is one of the crimes that can damage the five main elements that must be maintained (*maqashid al-syari'ah*), one of which is the maintenance of property/wealth (*hifdz al-mal*). For the sake of maintaining property/wealth which is one of the core needs in life, which humans will not be able to separate from. Therefore, religion forbids its people from committing crimes/crimes against property/wealth (one of which is a criminal act of corruption), because doing so will damage the purpose or principles of the law. One of the efforts to protect property (*hifdz al-mal*) is to impose a penalty for anyone who violates these provisions, namely by confiscation of assets resulting from corruption for perpetrators of criminal acts of corruption must be enforced if the judge sees that there is benefit in it. The purpose of confiscation of the proceeds of corruption is part of the *ta'zir* punishment in Islamic criminal law is to refuse damage and maintain and obtain a benefit. If the confiscation of the property is difficult, the final solution is the death penalty.

The author argues that the permissibility of the death penalty as *ta'zir* is argued by the *jumhur* (majority) of fiqh scholars (Harisudin, 2021). To address differences of opinion among scholars regarding ta'zr sanctions, the scholars formulate a fiqh rule which reads: "The punishment of *ta'zir* is left to the policy of the leadership (government) depending on the size of the violation". Thus, this is in accordance with the opinion of the Hanabilah scholars who allow the death penalty as *ta'zir* if the perpetrator of a crime repeatedly commits a crime. When viewed from the concept of *maqashid al-syari'ah* (Lathifah et al., 2022) (Kasdi et al., 2021), the threat of the death penalty as *ta'zir* is in accordance with the concept of *maqashid al-syari'ah*, because in it there is benefit for the State and can provide a deterrent effect to the perpetrators of corruption where So far, the punishments set in Indonesia are no longer effective.

Confiscation of Corruptor Assets

Asset's confiscation of corruptor in Europe, facing difficult and complex procedure, as mentioned by Johan Boucht on his paper, Asset Confiscation In Europe – Past, Present, And Future Challenges

(Boucht, 2019). In another hand, Stoyan Panov on his paper *Pecunia non olet?* Legal norms and anti-corruption judicial frameworks of preventive confiscation disagree with the concept of confiscation of corruptor assets, due to human rights reason (Panov, 2017). The similar view, also mentioned by Michele Simonato, that he also disagree with confiscation of corruptor assets, due to human rights reason, according to the practice in the European Court of Human Rights (Simonato, 2017). However, on Islamic criminal law, those argument was debatable.

The obligation of Muslims as described in this issue is not a light thing. Facing evil and advocating good has the aim of protecting society from the principal damage. Allah SWT explains that these obligations and duties are the identity of Muslims (Pradhan, 2021). Imam Malik explained, "What is meant by people who commit acts of injustice against humans, both in the community and in other areas, and transgress boundaries by spilling blood and seizing human property, not because of previous enmity, revenge, or hatred." On the other hand, Ibn Mundhir said, "There is a dispute about the narration of Imam Malik in this matter; sometimes he mentions it in the community, sometimes he doesn't." Some other scholars said, "If it is done in the community, or houses, or on the streets, or in rural areas and villages, the law is the same, and the law against them is the same. This is the opinion of Imam ash-Shafi'i and Abu Thaur." Some argue, and it is not considered muharib (fighting Allah SWT and His Messenger) if he does it not in the city but outside the city. This opinion is supported by Sufyan ats-Tsauri, Ishaq, and Nu'man. However, this opinion was criticized by Ibn Mundzir. He reinforces the opinion that does not distinguish between the city and outside the city. He said, "Because every one of them has the right to be said to be muharib, and this verse is general. It is not permissible to exclude a people from the generality of the verse without proof"(Sholeh et al., 2021; Al-Qurtubi, n.d.).

Therefore, the repentance of corruptors is not enough to serve a prison sentence. Because the sin he committed is a big sin that harms many parties. Not only that, the return of the assets resulting from corruption must be carried out by the perpetrator so that repentance is accepted because the property he took did not belong to him. In addition, a corruptor is also obliged to apologize to all the people for his actions. The theological basis for the perpetrators of corruption is the Qur'an Surah al-Nisa' (4): 29: "*O you who believe! You. And don't kill yourself. Verily Allah is Most Merciful to you*" (Al-'Iyasyi, n.d.). From the verse above, the essence of repentance of a corruptor is the confiscation or return of all assets belonging to the corruptor to be managed by the state and used for the livelihood of many people. The seizure of assets belonging to perpetrators of corruption is inspired by corruption, which is not balanced between allegations, demands, and legal decisions for someone accused of committing a criminal act of corruption. A person is suspected of committing a criminal act of corruption. Still, in the proof, it is only proven that a small amount of what is alleged causes the perpetrator of corruption to enjoy the rest of the proceeds of his corruption still freely.

This fact then gave birth to permissiveness on the one hand and apathy on the other hand towards the pattern of corruption enforcement (Sachs, 2018). Hence the idea of confiscation of these assets emerged. Therefore, the Indonesian Ulama Council agreed and encouraged the government to schedule a law on the seizure of assets belonging to perpetrators of corruption, which was then enshrined in Law no. 20 of 2001 (Robinson, 2019). The goal is none other than impoverishing corruptors so that it is expected to be able to provide a deterrent effect and minimize corruption cases in Indonesia. Procedures that can be applied to the process of returning assets resulting from criminal acts of corruption can be in the form of (Peters, 2020); (a) return of assets through criminal channels, (b) return of assets through civil channels, (c) return of assets through administrative or political channels. In the process of returning assets resulting from criminal acts of corruption carried out by the Attorney General's Office and the KPK as law enforcement authorities, there are also two mechanisms for returning assets, namely; (1) return of assets through the confiscation of assets without punishment, and (2) voluntary return of assets (M.Yanuar, 2007).

However, when a corruptor returns the goods resulting from corruption to its owner or is forcibly confiscated, that is, when the corruption has truly met the requirements to be cut off, the punishment is still cutting off the hands even though the stolen goods have been returned or confiscated and in a state

that has been seized. Whether it is known or not, those who return it must have their hands cut off, especially those confiscated by force. In the author's observation, there are a few oddities and indications of zero tolerance for corruptors who return goods resulting from corruption. The corruptors return the proceeds of corruption before the state finds out, which is still being cut off.

Conclusion

Although the punishment for confiscation of corruptor's assets is not specifically regulated in Islamic law, the application of sanctions is one part of *jinayah* law (Islamic criminal law), the sanctions are intended for corruptors who take other people's property or public property without the consent of citizens. The application of confiscation of corruptors' assets for corruptors has certain rules and regulations, both in terms of the frequency, motive, and level of the corrupted assets. For corruptors who have met these requirements, sanctions for confiscation of assets resulting from corruption can be carried out if a corruptor does not want to return assets resulting from corruption. When viewed from the formulation of Islamic criminal law, the Draft Criminal Code already reflects the fiqh of jinayah, namely the *ta'zir* punishment (the punishment determined by the judge). If the confiscation is difficult or even hindered, then the last alternative is the death penalty. This is in accordance with the opinion of the Hanabilah scholars who allow the death penalty as *ta'zir* if the perpetrators of crimes repeatedly commit crimes. when viewed from the concept of *maqashid al-syari'ah*, the threat of capital punishment as *ta'zir* is in accordance with the concept of *maqashid al-syari'ah*, because in it there is benefit to the state and can provide benefits to the state if the corruptor's assets return to the state. In addition, the confiscation of the assets of the corruptor can provide a deterrent effect for the perpetrators of corruption, where so far the punishments stipulated in Indonesia are no longer effective.

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