



## Remission of corruption convicts maslahat perspective

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### ABSTRACT

The grant of remission is a state award to prisoners who always attempt to perform good behaviour based on laws. Besides, it can contribute to the creation of safe conditions in prisons and save the cost of inmates' food budget. However, the grant of remission is considered to foster corruption. This research aimed: 1) to reveal the facts of the implementation of remission for corruption convicts in Indonesia; 2) to examine the perspective of the community towards grant of remission for corruption convicts. This research applied normative theological approaches (Islamic law) and normative juridical (positive law). Further, the normative theological approach refers to an approach used in a study which the problems to be discussed are based on norms or rules reflected from Islamic law. Moreover, this study also concerned on normative juridical aspects by looking at laws and regulations and their determination. The results indicated that remission to corruption convicts has not been implemented according to the maslahat principle in Islam because it will pose a greater danger so that remission should not be granted. Besides, the government should educate society to anticipate potential attempts of corruption at early stage through education and local government. Furthermore, officials election must consider those who are honest, trustworthy, zuhud, and are able to fulfill their basic needs. Also, it is essential to record and audit the amount of wealth of officials. If someone remains to break the rule, strict sanctions must be applied to give deterrent effect based on Islamic law.

**Keywords:** Remission; corruption; Maslahat (Maslahat)

### 1. INTRODUCTION

Every rule of law has the concept of maqasid al-shariah in the form of the meaning and purpose desired by the shari'a in stipulating a law for the good of mankind. Maqasid al-shariah among ushul fiqh scholars is also called asrar al-shariah, namely the secrets

contained behind the laws stipulated by *syara'*, in the form of *maslahat* for humanity, both in this world and the hereafter.

Related to the main vision of Islam as *rahmatan lil' alamin*, every living creature has the right to enjoy life, both animals, plants and humans who are mandated as *khalifatullah* on earth. In this case, Islamic teachings with the *maqasid al-shariah* concept attach great importance to the maintenance of five things, namely religion, soul, intellect, lineage, and wealth. Maintenance of these five things is included in *al-mashlahah al-haqiqiyah*.

In Indonesia, the problem of maintaining the mandate still needs attention from many parties, especially the big problem of corruption which is now almost happening on various fronts, both in the executive and legislative circles both at the center and in the regions. The problem of corruption in this country has entered all areas of social life and government and is deeply rooted in the culture of life, behavior and ways of thinking. The problem of corruption in this country is constantly being reported, it increases day by day.

The latest Transparency International report shows that Indonesia's corruption perception index (CPI) is recorded at 34 points from a scale of 0-100 in 2022. This figure has decreased by 4 points from the previous year. This decrease in the GPA also dropped Indonesia's GPA ranking globally. It is noted that Indonesia's GPA in 2022 is ranked 110th. In the previous year, Indonesia's GPA was ranked 96th globally. The decline in Indonesia's CPI indicates that public perception of corruption in public and political positions in the country has worsened over the past year.<sup>1</sup>

Meanwhile, according to data from the Indonesia Corruption Watch (ICW), there were 579 corruption cases that had been prosecuted in Indonesia throughout 2022. This number has increased by 8.63% compared to the previous year of 533 cases. From these various cases, there were 1,396 people who were made suspects of domestic corruption. The number also increased by 19.01% compared to 2021 with 1,173 suspects.<sup>2</sup>

The Indonesian Anti-Corruption Society (MAKI) proposed revocation of remission rights in order to create a deterrent effect for corruptors. MAKI Coordinator Boyamin revealed, one of the rules regarding the revocation of remission rights for corruptors is already implemented in the United States. Remission for corruptors became easier after the Supreme Court granted the request for judicial review rights to Government Regulation Number 99 of 2012 concerning Terms and Procedures for Granting Prisoners' Rights in October 2021. In its decision, the Supreme Court abolished the justice collaborator (JC) requirement for corrupt convicts to get deductions punishment. The rules regarding granting remissions are also further explained in Regulation of the

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<sup>1</sup>Cindy Mutia Annur. "Indeks Persepsi Korupsi Indonesia Memburuk pada 2022." *Databoks.katadata.co.id*, 01 February 2023. <https://databoks.katadata.co.id/datapublish/2023/02/01/indeks-persepsi-korupsi-indonesia-memburukpada2022#:~:text=Laporan%20Transparency%20Internasional%20terbaru%20menunjukkan,urutan%20IPK%20Indonesia%20secara%20global> (17 May 2023).

<sup>2</sup>Dimas Bayu, "ICW: Penindakan Kasus Korupsi Meningkat pada 2022," *DataIndonesia.id*, 21 March 2023. <https://dataIndonesia.id/varia/detail/icw-penindakan-kasus-korupsi-meningkat-pada-2022> (15 May 2023)

Minister of Law and Human Rights Number 7 of 2022 concerning the Second Amendment to Regulation of the Minister of Law and Human Rights Number 3 of 2018 concerning Terms and Procedures for Granting Remissions, Assimilation, Leave to Visit Family, Conditional Exemption, Procurement of Leave Prior to freedom, and Conditional Leave. Boyamin also encouraged that similar rules should also be applied in Indonesia. But on the other hand, even though many parties oppose the granting of remissions to corrupt convicts, this does not make a significant difference. In fact, Muslim convicts of corruption cases receive special remissions for Eid 2023.

## **2. METHODS**

The research that was carried out was library research whose data source was obtained from books or written works that were relevant to the subject matter under study and the research approach used in this study was a normative theological approach (Islamic law) and normative juridical (positive law). In this study, the researcher used primary and secondary data sources. Primary data sources include al-Qur'anul Karim, laws, and books on corruption, while secondary data sources are taken from several other works such as articles on the internet

## **3. RESULTS AND DISCUSSION**

### **A. Remission of Corruption Based on Positive Legal Perspective**

#### **(1) The Definition of Remission**

According to law and jurisprudence dictionaries, remission is a crime reduction; and reduction of prison sentences by correctional institutions which are generally due to good behavior. Meanwhile, in Article 10 of Law No. 22 of 2022, remission is a reduction in the period of crime given to convicts who fulfill the requirements of the provisions of the laws and regulations.<sup>3</sup>

#### **(2) Legal Basis for Granting Remissions**

- (a) Gouvernement Besluit on 10 August 1935 number 23 Bijblad number 13515 jo. 9 July 1941 number 12 and 26 January 1942 No. 22; It is a gift that is solely given on the birthday of the Queen of the Netherlands.
- (b) Presidential Decree No. 156 on 19 April 1950 contained in the State Gazette Number 26 April 28, 1950 jo. Republic of Indonesia Presidential Regulation Number 1 on 8 August 1946 and Regulation of the Minister of Justice of the Republic of Indonesia Number G.8/106 on 10 January 1947 jo. Decree of the President of the Republic of Indonesia Number 120 of 1955, July 23, 1955 concerning Special Amnesty.
- (c) Presidential Decree Number 5 of 1987 jo. Decree of the Minister of Justice of the Republic of Indonesia Number 01.HN.02.01 of 1987 concerning Implementation of

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<sup>3</sup> Republic of Indonesia, “RI Law Number 2 of 2022 Concerning Corrections,” 2022, Jakarta. 47.

Presidential Decree Number 5 of 1987, Decree of the Minister of Justice of the Republic of Indonesia No. 04.HN.02.01 of 1988 on May 14, 1988 concerning Additional Remissions for Prisoners Who Become Organ Donors and Blood Donation and Decree of the Minister of Justice of the Republic of Indonesia Number 03.HN.02.01 of 1988 on March 10, 1988 concerning Procedures for Requesting a Change of Life Imprisonment to Provisional Prison based on Presidential Decree of the Republic of Indonesia Number 5 of 1987.

- (d) Presidential Decree Number 69 of 1999 concerning Reduction of Criminal Period (remission).
- (e) Presidential Decree Number 174 of 1999 jo. Decree of the Minister of Law and Legislation of the Republic of Indonesia Number M.09.HN.02.01 of 1999 concerning Implementation of Presidential Decree Number 174 of 1999, Decree of the Minister of Law and Legislation Number M.10.HN.02.01 of 1999 concerning Delegation of Authority to Grant Special Remissions .
- (f) Government Regulation Number 28 of 2006 as amended by Government Regulation Number 32 Years. 1999, and finally amended by Government Regulation Number 99 of 2012 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assisted Residents.
- (g) Letter circulated by the Minister of Law and Human Rights Number M.HH-04.PK.01.05.06 of 2013 concerning Instructions for the Implementation of Presidential Regulation 99/2012. Then, Regulation of the Minister of Law and Human Rights Number 21 of 2013 has been amended by Regulation of the Minister of Law and Human Rights Number 21 of 2016 and it was revoked by Regulation of the Minister of Law and Human Rights Number 03 of 2018. Then, Regulation of the Minister of Law and Human Rights Number 03 of 2018 was amended by Regulation of the Minister of Law and Human Rights number 18 of 2019 then it was amended by Regulation of the Minister of Law and Human Rights number 7 of 2022.
- (h) Law Number 22 of 2022, Regulation of the Minister of Law and Human Rights number 16 of 2023 concerning humans number 03 of 2018 concerning terms and procedures for granting remission, assimilation, leave to visit family, parole, leave before release, and leave with certain conditions.

### **(3) Kinds of Remission**

Based on the provisions of Article 3 of the Regulation of the Minister of Law and Human Rights Number 3 of 2018, remission is divided into two types, namely:

- (a) General remission is a type of remission given on the anniversary of the Proclamation of Independence of the Republic of Indonesia on 17 August.
- (b) Special remission is a type of remission that is given on religious holidays adhered to by convicts or juvenile offenders with the stipulation that if a

religion has more than one religious holiday in a year, the holiday chosen is the one that is most venerated by convicts who adhere to that religion.<sup>4</sup>

#### **(4) The Purpose of Granting Remission**

- (a) Psychologically, giving this piece of punishment has a lot of influence in reducing the level of frustration.
- (b) Remission is given twice at different times each year. General and special remissions can be used as a way to remind convicts and juvenile offenders with the aim that they always behave well.
- (c) Granting remissions to recidivists and possibly to convicts of corruption has contributed a lot to create safe conditions in correctional institutions.
- (d) Remission is a reflection of the protection of human rights.<sup>5</sup>

#### **(5) The Requirements of Remission Acceptance**

Requirements for convicts who receive remission as stated in the Regulation of the Minister of Law and Human Rights article 5 Number 3 of 2018 are as follows :

Good behavior, the requirements of good behavior are proven by:

- (a) Not serving a disciplinary punishment within the last 6 (six) months, starting from the date of granting remission.
- (b) Has participated in a coaching program organized by Correctional Institutions with good predicate.
- (c) Has served a criminal period more than 6 months (six) months.
- (d) Remission is not given to convicts who are on leave before release
- (e) Not Serving imprisonment as a substitute for fines.

#### **(6) Procedures for Granting Remission**

The procedures for granting remissions described in the Regulation of the Minister of Law and Human Rights Number 3 of 2018 are as follows:

- (a) The observer team of correctional institutions/LPKA recommends a proposal to grant Remission for Prisoners to the Head of Correctional Institutions/LPKA based on data of Prisoners who have met the requirements.

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<sup>4</sup> Republic of Indonesia, "Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 03 of 2018 concerning Terms and Procedures for Giving Remission, Assimilation, Family Visiting Leave, Parole, Prior Release Leave, and Conditional Leave,". 2018, Jakarta. 6.

<sup>5</sup> Bram Setiawan. "Jenis dan Tujuan Pemberian Remisi." *Tempo.co.*, 07 September 2022, <https://nasional.tempo.co/read/1631587/jenis-dan-tujuan-pemberian-remisi> (05 June 2023)

- (b) In this case, the Head of Correctional Institution/LPKA approves the proposal to grant Remission.
- (c) The head of the correctional institution/LPKA submits a proposal for granting remission to the Director General with a copy letter to the Head of the Regional Office.
- (d) The Head of the Regional Office verifies the copy of the proposal for granting Remission no later than 2 (two) Days from the date the Remission proposal received from the Head of Correctional Institution/LPKA.
- (e) Verification results are submitted by the Head of Regional Office to the Director General.
- (f) The Director General verifies the proposal for granting Remission no later than 3 (three) Days from the date the proposal for granting Remission received from the Head of Correctional Institution/LPKA.
- (g) Based on the results of the verification, it is necessary to make improvements to the proposal for granting remission. The Director General returns the proposal for granting Remission to the Head of Correctional Institutions/LPKA for improvement with a copy to the Head of the Regional Office.
- (h) The Head of a Correctional Institution/LPKA is obliged to make corrections to the proposal for granting Remission no later than 3 (three) Days from the date the proposal for granting Remission received.
- (i) The results of the revision of the proposal for granting Remission are submitted again by the Head of Correctional Institutions/LPKA to the Director General for approval with a copy to the Head of the Regional Office.
- (j) The Director General approves the proposal to grant Remission. The Director General on behalf of the Minister determines the decision to grant remissions.
- (k) The decision to grant remission is submitted to the Head of Lapas/LPKA to be notified to the Prisoner with a copy to the Head of the Regional Office.
- (l) The decision to grant remission is printed at the Correctional Institution/LPKA with the Director General's electronic signature on behalf of the Minister.
- (m) The decision to grant Remission is the Second Remission and thereafter, the decision to grant the Second Remission and thereafter is given directly by the Director General on behalf of the Minister through the correctional information system.
- (n) The decision to grant the Second Remission is printed at the Correctional Institution/LPKA with the Director General's electronic signature on behalf of the Minister.<sup>6</sup>

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<sup>6</sup> Republic of Indonesia, "Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 03 of 2018, 2018, Jakarta.12

## B. Granting for Remissions to Corruption Convicts Based on Maslahats Perspective

### Remission in Islam

#### (1) The Definition of Remission in Islam

Islamic Sharia does not yet have a specific term that is more specific about remission. However, in Islamic law, there are several terms whose meanings are close to the meaning of remission. They are intercessors, takhfiif, rukhshah, 'afwu. The term *Syafa'at*. *Syafa'at* comes from the word *syafa'a* which means "ask *syafa'at* (forgiveness) for so and so." *Takhfiif* comes from the word *khaffafa* which means to relieve. *Rukhshah* comes from the word *rokhkhoshah* which means relief and 'afwu means to forgive him, forgive his sins.<sup>7</sup>

#### (2) Kinds of Remission

Remission in Islamic criminal law is included in a *jarimah* sharing. In terms of the aspect of punishment, *jarimah* is divided into three parts, namely *jarimah hudud*, *jarimah qisas*, *jarimah ta'zir*

##### (a) Remission in *Hudud*

*Had* punishment is the right of Allah, so this punishment cannot be aborted by individuals (victims or their families) or by the community represented by the state. This is based on the action of the Prophet who refused to intercede for Usamah bin Zaid ra. regarding the women of Bani Makhzum who stole. He was angry because of that. He said:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا: «أَنَّ فَرِيثًا أَهَمَّتْهُمُ الْمَرْأَةُ الْمُخْرُومِيَّةُ الَّتِي سَرَقَتْ، فَقَالُوا مَنْ يُكَلِّمُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ، حِبُّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَكَلَّمَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: أَتَشْفَعُ فِي حَدِّ مَنْ حُدِّدَ مِنْ حُدُودِ اللَّهِ، ثُمَّ قَامَ فَخَطَبَ، قَالَ: يَا أَيُّهَا النَّاسُ، إِنَّمَا ضَلَّ مَنْ قَبْلَكُمْ، أَنَّهُمْ كَانُوا إِذَا سَرَقَ الشَّرِيفُ تَرَكَوهُ، وَإِذَا سَرَقَ الضَّعِيفُ فِيهِمْ أَقَامُوا عَلَيْهِ الْحَدَّ، وَإِنَّمَا اللَّهُ، لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَفَطَعُ مُحَمَّدٌ يَدَهَا»<sup>8</sup>

It is permissible to forgive, but before the matter reaches the leader or government based on the words of the Prophet SAW. to a man whose sash was stolen and he wants to forgive the thief.

<sup>7</sup> Mahmud Yunus, *Kamus Arab-Indonesia* (Jakarta: Mahmud Yunus Wa Dzurriyyah, 2009).121.

<sup>8</sup> Bukhari, Abu Abdillah Muhammad Bin Ismail Al-Bukhari, *Shahih Bukhari Bab Karahiyatu Syafaati Fil Haddi Idza Rufi'a Ila Sulthon* (1<sup>st</sup>, Beirut: Dar Thuq al-Najah: 1422H ), Juz 8, p. 160, no.6788.

عَنْ عَبْدِ اللَّهِ بْنِ صَفْوَانَ عَنْ أَبِيهِ «أَنَّهُ نَامَ فِي الْمَسْجِدِ وَتَوَسَّدَ رِدَاءَهُ فَأُجِدَّ مِنْ تَحْتِ رَأْسِهِ فَجَاءَ بِسَارِقِهِ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَمَرَ بِهِ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يُقَطَّعَ فَقَالَ صَفْوَانُ يَا رَسُولَ اللَّهِ لِمَ أُرَدُّ هَذَا رِدَائِي عَلَيْهِ صَدَقَهُ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَهَلَّا قَبْلَ أَنْ تَأْتِيَنِي بِهِ»<sup>9</sup>

Meaning:

"From Abdullah bin Shafwan from his father. He was sleeping in a mosque with his shawl as a pillow, then someone took the shawl from under his head. Then he met the Prophet with the thief of his shawl. The Prophet ordered that the thief's hand be cut off Shafwan said: "O Messenger of Allah! I don't want this. Let my shawl be a charity for him." The Messenger of Allah said: "Why don't you do that before you bring this problem to me! " (Narrated by Ibn Majah)

### (b) Remission in *Qishash*

Forgiveness of *Qishas* is permissible according to the agreement of the *fuqaha*. It is even more important than the implementation. This is based on the word of God in QS. Al-Al-Baqarah:02/178:

... فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْهُ بِالْمَعْرُوفِ وَأَدِّئْ إِلَيْهِ بِإِحْسَانٍ

Translation:

"... But if one is granted any extenuation by his brother, let the follow-up [for the blood money] be honorable, and let the payment to him be with kindness....."<sup>10</sup>

In Hadith, Anas bin Malik stated:

مَا رُفِعَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَيْءٌ فِيهِ الْقِصَاصُ إِلَّا أَمَرَ فِيهِ بِالْعَفْوِ<sup>11</sup>

Meaning:

"Every case that was reported to the Prophet related to qishas law, Rasulullah saw. always command forgiveness.

The statement to grant pardon can be made orally or in writing. The editorial can be in the form of words (words) forgive, release, abort, let go, give, and so on. In the case

<sup>9</sup> Ibnu Majah, Abū ‘Abdillāh Muḥammad ibn Yazīd ibn Mājāh al- Rab‘ī al-Qazwīnī., *Sunan Ibnu Majah, Bab Man Saraqa Minal Hirz* (2<sup>nd</sup>, Beirut: Dar al-Fikr ), Juz 2, p.126, no.2595.

<sup>10</sup> Ministry of Religion of The Republic Indonesia, *Al-Qur’an dan Terjemahnya* (Bandung: Mikraj Khazanah Ilmu, 2010). 27

<sup>11</sup> Muhammad Bin Abdul Hadi., *Kifayatul Hajah Fii Syarhi Sunan Ibnu Majah* (2<sup>nd</sup>, Beirut: Dar al-Fikr, 1138H), Juz 2, p.154, no.2692.



of *jarimah qishas*, a reduced punishment or *qishas* is replaced with a *diyat* if the victim's family forgives. And as for forgiveness other than from the victim's family, forgiveness is not considered even if it is from the authorities themselves and then the *qadhi* does not reduce the punishment.

### (c) Remission in *Ta'zir*

Deciding on the type and size of the *ta'zir* sanction must pay attention to the signs and instructions of religious texts carefully and in depth, because this concerns the affairs and *maslahat* of the public or society in a country. Many factors cause the abolition of this *ta'zir* punishment and vary according to the type of punishment, including the death of the perpetrator, forgiveness, repentance from the perpetrator, and expiration.

*Ta'zir* punishment may and must be applied following the demands of *maslahat*, in this connection there is a rule namely:

التعزير يدور مع المصلحة

Meaning:

"*Ta'zir* is very dependent on the demands of *maslahat*"

### (1) Corruption Crimes Are Included in *Hudud* or *Ta'zir* Cases

The *ulama* require several things to pass the law of cutting off the hands of thieves. Among the items stolen are in (*hirz*) places that are protected from the reach of other people, such as a strong safe/cabinet in the bedroom for valuables, such as: gold jewelry, money, securities and others. If these conditions are not met, it is not permissible to cut off the hand of a thief. This is based on the words of the Prophet when asked by a man from the Muzainah tribe about the punishment for stealing date palms.

عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ رَجُلًا مِنْ مَرْيَنَةَ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ النَّمَارِ، فَقَالَ: "مَا أُجِدُّ فِي أَكْمَامِهِ فَاحْتُمِلْ، فَتَمْنُهُ وَمِثْلُهُ مَعَهُ، وَمَا كَانَ مِنَ الْجَرَانِ، فَفِيهِ الْقَطْعُ إِذَا بَلَغَ ذَلِكَ تَمَنَ الْمَجَنِّ....."<sup>12</sup>

Meaning:

"Rasulullah saw. said about the fruit: "A thief who steals dates from the tree and then takes them away, the punishment is that he has to pay twice as much. A thief who steals dates from a drying area after picking the fruit, the penalty is cutting off the hand, if the price of the stolen dates is equivalent to the price of a shield, which is 1/4 Dinar ( $\pm$  1.07 grams of gold)." (Narrated by Ibn Majah).

<sup>12</sup> Ibnu Majah, Abū ‘Abdillāh Muḥammad ibn Yazīd ibn Mājah al- Rab‘ī al-Qazwīnī., *Sunan Ibnu Majah, Bab Man Saraqa Minal Hirz*, Juz 3, p.622, no.2596.

This hadith explains the meaning of the verse which orders the cutting of hands, that the stolen item is in the care of the owner and costs up to 1/4 of a dinar. This requirement does not apply to corruption cases, because a corruptor embezzles state-owned money that is in his hands through a position entrusted to him and he does not steal state money from the state treasury. Therefore, the ulama never impose sanctions on corruptors by cutting off their hands.

### **c) The Concept of *Maslahat* in Islam**

#### **(1) The Meaning of *Maslahat* in Islam**

Etymologically, *Maslahat* comes from the Arabic word.

المصلحة ضد المفسدة، وهي بمعنى المنفعة

Meaning:

"Maslahat is the opposite of damage and also means "something useful".<sup>13</sup>

In terminology, *maslahat* means something good or useful to show pleasure, comfort and the media used to obtain that pleasure. The opposite of benefit is damage or harm which is an expression to show misery, pain and media that can cause harm. *Al-maṣlahah* is also referred to as something that rejects harm and with this rejection, benefit or benefit can be achieved.<sup>14</sup>

#### **(2) Kinds of Maslahat**

##### **(a) Maslahat Based on the Level of Human Needs**

###### **(a.a) *Maslahah Dharuriyah***

*Dharuriyat* is a necessity and an emergency for human life. In terms, *Wahbah al-Zuhaili Al-dharuriyat (maslahat dharuriyat)* is what is the basis of human life in matters of religion and the world.

###### **(a.b) *Maslahah Hajiyah***

*Hajiyat* means something that is needed by humans. Meanwhile, in terminology, Wahbah al-Zuhaili defines *hajiyat* as *maslahah* that is needed by humans for convenience for them and to reject all difficulties from them.

###### **(a.c) *Maslahah Tahsiniyah***

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<sup>13</sup> Aby Islam Mustafa Bin Muhammad bin Salamah, *al-Ta'sîs Fî Ushûl al-Fiqh 'Alâ Dhaw'al-Kitâb wa al-Sunnah*, (5<sup>th</sup>, Kairo: Al-Maktabah Al-Islamiyah 2007). 364

<sup>14</sup> Abdul Helim, *Maqasid Al-Shariah Versus Ushul Al-Fiqh* (1<sup>st</sup>, Yogyakarta : Pustaka Pelajar, 2019). 44

*Tahsiniyat* is an ornament or something that is needed by humans to beautify their life. Meanwhile, in terminology, *tahsiniyat* is defined as follows: *Maslahah Tahsiniyah* is using all that is appropriate and proper which is justified by good customs and is covered by the *mahasinul akhlak* section.

The existence of the *hajiyyat maslahat* is a complement to the *dharuriyat maslahat*. It functions to strengthen the *maslahat* that is upheld by the *dharuriyat maslahat*, so that the *dharuriyat maslahat* may not be lost with the loss of the *hajiyyat* or *tahsiniyat maslahat*.<sup>15</sup>

### **(b) Maslahat Based on the Sharia**

Based on Al-Gazali's description, it can be concluded that *maslahah* has three types as follows:

(a.a) *Maslahah* that is justified/indicated by certain texts/arguments. This is known as *maslahat mu'tabarah*. This kind of benefit can be justified as a consideration for establishing Islamic law and included in the study of *qiyas*.

(a.b) *Maslahah* that are canceled/aborted by certain texts/arguments. This is what is known as *maslahat mulgah*. This kind of benefit cannot be taken into consideration in determining Islamic law.

(a.c) *Maslahah* in which no specific/certain argument justifies or rejects/aborts it. This *maslahat* is known as *maslahah mursalah*.<sup>16</sup>

### **(3) The Requirements of Maslahah**

- (a) *Maslahah mursalah* should be a *dharuri* (primary need) *maslahat*. It is included in the category of five primary needs, which can be ascertained about the benefits derived from it.
- (b) The *maslahat* should be a general benefit, because it is for general benefits for all Muslims.
- (c) The *maslahah* should be relevant to the objectives of Islamic law (*maqasid al-shari'ah*) globally, not to become a foreign (odd) *maslahah*.
- (d) The benefit must be *qath'i*, or the existence of the benefit defeats *dhanniyy* knowledge, and there is nothing to dispute about that.<sup>17</sup>

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<sup>15</sup> Duski Ibrahim, *Al Qawaid Al Maqashidiyah (Kaidah-Kaidah Maqasid)* (1<sup>st</sup>, Jogjakarta : Ar-ruzz Media, 2019). 157

<sup>16</sup> Neneng Hasanah, *Panorama Maqashid Syariah, ed. Muhammad Wisnu* (Bandung: Media Sains Indonesia, 2021).36

<sup>17</sup> Agus Miswanto, *Ushul Fiqh Metode Ijtihad Hukum Islam* (Yogyakarta : Unimma Press, 2018).174

## (2) The Analysis of Remission of the Convicts in the Perspective of *Maslahat*

The granting of remissions to corruption convicts provides the following benefits:

- (a) Psychologically, it can reduce the level of frustration of prisoners. The Minister of Law and Human Rights, Yasonna H. Laoly revealed that riots in prisons occurred several times due to the frustration of prisoners.<sup>18</sup>
- (b) The granting of remissions twice which are given at different times each year, namely general and special remissions, can be used as a tool to remind convicts and juvenile offender to always have good behavior.
- (c) The granting of remissions to recidivists and convicts of corruption contributes a lot to create safe conditions in correctional institutions. Granting remission is the right of convicts.<sup>19</sup>
- (d) Being able to save the cost of food budget prisoners<sup>20</sup>
- (e) Increasing humanity because it gives remission to inmates who are in their 70s and people who are sick with no hope of recovery.

Granting remissions to corruption convicts has the following *mudhorot*/negative impacts:

- (a) Weakening enforcement efforts that have been carried out by law enforcement officials. The criminal justice system that regulates how law enforcement is carried out requires a good and integrated process between investigation, investigation, prosecution, and correctional. It is feared that the granting of remissions that tend to be lax will make the efforts that have been made by the police, prosecutors, Corruption Eradication Commission (KPK), and courts to convict perpetrators of corruption become futile.<sup>21</sup>
- (b) Granting remissions will certainly reduce the deterrent effect on perpetrators of corruption cases. According to data from Indonesia Corruption Watch (ICW), there have been 579 corruption cases that have been prosecuted in Indonesia throughout 2022. This number has increased by 8.63% compared to the previous year of 533 cases.<sup>22</sup>

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<sup>18</sup> Eka Permadi, dkk.. "Maslahat Revisi Pengetatan Remisi Napi Korupsi." *Viva.co.id*, 19 Augst 2016. <https://www.viva.co.id/ragam/fokus/810769-maslahat-revisi-pengetatan-remisi-napi-korupsi> (03 June 2023)

<sup>19</sup> Bram Setiawan.. "Jenis dan Tujuan Pemberian Remisi." *Tempo.co.*, 07 September 2022. <https://nasional.tempo.co/read/1631587/jenis-dan-tujuan-pemberian-remisi> (05 June 2023)

<sup>20</sup> Prayogi Dwi Sulisty, "271 Napi Korupsi Terima Remisi Lebaran, Salah Satunya Setya Novanto" *Kompas.id*, 23 April 2023. <https://www.kompas.id/baca/polhuk/2023/04/23/271-narapidana-korupsi-terima-remisi-idul-fitri-1444-h> (16 May 2023).

<sup>21</sup> Indonesia Corruption Watch, "Remisi Pelaku Korupsi", *antikorupsi.org*. 05 September 2016. <https://antikorupsi.org/id/article/remisi-pelaku-korupsi> (03 June 2023)

<sup>22</sup> Dimas Bayu. "ICW: Penindakan Kasus Korupsi Meningkat pada 2022." *DataIndonesia.id*, 21 March 2023. <https://dataIndonesia.id/varia/detail/icw-penindakan-kasus-korupsi-meningkat-pada-2022> (15 May 2023).

- (c) In the context of corruption, the party that becomes the victim is not the corruptor, but the people who have been harmed because of corruption so it is not appropriate to say the corruptor is a survivor/victim in a criminal act of corruption.<sup>23</sup>

After seeing and studying and analyzing the facts about *maslahah* and *mudhorot* remissions for corruption convicts, the researcher decides that remissions for corruption convicts are not following the principle of benefit in Islam for several reasons.:

- (a) Determining the greatest, biggest and strongest benefit from the results of the studies conducted is a must. It is intended that this benefit can cover all levels of Islamic society. In determining the benefit sometimes there is a clash. To overcome this, of course, what is chosen is the most powerful benefit taken as the reason. This is under the rules:

إذا تعارضت مصلحتان وتعذر جمعهما فإن علم رجحان إحداهما قدمت

Meaning:

"If there are two benefits that conflict and it is difficult to compromise both, then what is sought is the stronger of the two".

Granting remissions to corrupt convicts will receive greater benefits if remissions are not granted. It can give a deterrent effect to corrupt convicts so they don't do the same thing and create fear for others not to betray because of the punishment that creates a deterrent effect.

- (b) It is following the principle of benefit because it is based on the rules of argumentation in behavior that leaving damage is more important than taking advantage (*dar'ul mafasid muqaddamun min jalb mashalih*). The operationalization of this rule is related to the rule which states that general benefit takes precedence over specific benefit (*al-maslahah al-amma muqaddamatun min al-maslahah al-khashah*). Benefit which is a consideration in granting remissions refers more to the perpetrators of corruption while the mafsada is more to the state and society.
- (c) Imam ash-Syatibi has outlined benchmarks about which elements must be guided by when an object contains two elements of benefit and mafsada at once, that is, a mujtahid or an Islamic jurist must pay attention to the rules:

الأمر الأعظم من المصلحة أو المفسدة

The point is that when in an object there are *maslahah* and *mafsadat*, then the more dominant factor should be considered, whether the dominant one is the problem element or the mafsadat element. So what is guided by is the dominant element, while other

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<sup>23</sup>Andika Mulia Putra, Maju Mundur Pengetatan Remisi Narapidana Korupsi, detiknews, 16 February 2022. <https://news.detik.com/kolom/d-5944538/maju-mundur-pengetatan-remisi-napi-korupsi> (03 June 2023)

elements that are not dominant should be ignored. The more dominant factor in remission is *maslahah* to society and the state.

- (d) Shari'a laws are actually to uphold and develop the maintenance of its goals, which is known as *maqashid al-shariah* whose essence is *maslahah*. This is following the rules:

إن تكاليف الشريعة ترجع إلى إقامة وتنمية حفظ مقاصدها وهذه المقاصد لا تعدوا ثلاثة أقسام

Meaning:

"In fact, the burdens of the Shari'a return to upholding and developing the maintenance of its goals. These sharia objectives do not go beyond three kinds."

In a nutshell, *adh-dharuriyat* is a primary need to maintain the five principles of *maqashid al-shari'ah*. That is, if this is broken, then the stability of society will be chaotic in this world and will suffer losses in the hereafter.<sup>24</sup>

- (e) The legal reliefs are not misused to commit immorality (crime or sin). This is based on the rules:

الرخص لا تتاط بالمعاصي

Meaning:

"That relief is not associated with disobedience"<sup>25</sup>

- (f) Someone should prioritize rejecting damage rather than achieving benefit.

درء المفاسد أولى من جلب المصالح فإذا تعارض مفسدة وصلحة قدم دفع المفاسدة غالبا

Meaning:

"Rejecting damage is more important than attracting *maslahah* and if there is a conflict between the *mafsadah* and the *maslahah* then what takes precedence is rejecting the *mafsadah*".

That means if in a case there is a conflict between rejecting damage and taking benefit, then what is more important is to refuse damage. Giving remissions to corruption convicts is seen as not only bringing *maslahah* but also bringing *mafsadah*. So in this case not giving remission is preferred.

- (g) Someone cannot eliminate one hazard with another. This is as in the rules:

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<sup>24</sup> Duski Ibrahim, *Al Qawaid Al Maqhashidiyah (Kaidah-Kaidah Maqasid)*. 135

<sup>25</sup> Mif Rohim, *Qawaid Fiqhiyyah* (1<sup>st</sup>, Jawa Timur: LPPM Unhasy Tebuireng Jombang, 2019).92

Meaning:

“A disadvantage cannot be removed by another disadvantage”.

The purpose of this rule is that one cannot eliminate a hazard with another hazard because if removing the hazard and causing another hazard has the same level or even if the resulting hazard is greater, then the harm must be eliminated. Granting remissions to corrupt convicts will pose a greater danger, so remissions should not be given except to sick people who have no hope of recovery and whose case review is left to the competent judge.

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