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REFORMULATION OF CORRUPTION CRIMINALIZATION IN THE PERSPECTIVE OF ISLAMIC LAW: A COMPREHENSIVE STUDY

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ABSTRACT

This research aims to analyze and reformulate the punishment for perpetrators of corruption crimes by integrating the perspective of Islamic law into the national legal system. Corruption in Indonesia has become a systemic crime that threatens the stability of the country and public welfare. Although there has been a legal update through Law Number 1 of 2023 concerning the Criminal Code, the change actually raises concerns because it no longer places corruption as an extraordinary crime, thus potentially weakening the effectiveness of law enforcement and the deterrent effect. In Islamic law, corruption is categorized as ghulul, risywah, treason, and other forms of jarimah which are considered great sins and serious crimes. Through the concepts of ta'zir and siyāsah shar'iyyah, Islamic law offers a flexible, adaptive, and benefit-oriented model of punishment (maqāṣid al-sharī'ah). This approach emphasizes prevention (al-zajr), recovery of state losses (al-jabr), and moral and spiritual development of perpetrators. This study uses normative legal methods with a qualitative approach through the analysis of positive legal texts and classical-contemporary literature of Islamic law. The results of the study show the need for a reformulation of corruption punishment that is not only oriented towards retributive punishment, but also combines preventive, restorative, and educational dimensions according to sharia values. This integrative criminal model is expected to be able to strengthen the eradication of corruption in Indonesia while providing stronger moral legitimacy in the context of a Muslim-majority society.

Keywords: Criminality; islamic law; ta'zir

1. INTRODUCTION

Corruption is a form of extraordinary crime that threatens the moral, economic, political, and legal foundations of a country. It not only causes financial losses to the state, but also undermines public trust, weakens the legitimacy of government, and deepens social inequality. In the context of developing countries, including Indonesia, corruption has become a systemic disease that has spread to almost all sectors of state administration: bureaucracy, judiciary, politics, education, and even basic public services such as health and social assistance. Although the positive legal system has provided a relatively complete set of criminal sanctions, empirical

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evidence shows that the level of corruption remains high and the deterrent effect of criminal law is still weak.

The failure of the conventional punishment system to eradicate corruption indicates a structural problem in the construction of the criminalization of corruption itself. Until now, criminal law has positioned corruption solely as an administrative and economic offense that harms state finances. This approach tends to emphasize material losses and procedural violations, but fails to address the ethical, moral, and social responsibility dimensions that are the main roots of corrupt behavior. As a result, corruption is often treated as a technocratic crime, rather than a moral crime and a betrayal of public trust.

On the other hand, modern positive law—including the Corruption Eradication Law—tends to be trapped in a legalistic and repressive approach. Punishment emphasizes imprisonment and fines, but pays little attention to the moral, social, and spiritual recovery of perpetrators and society. In many cases, imprisonment does not have a significant deterrent effect and instead gives rise to "repeat offenders" who commit crimes again after their release. This shows that a sentencing strategy based solely on retributive justice is not effective enough in dealing with systemic and cultural crimes such as corruption.

Corruption has become a common enemy of the Indonesian nation which has eaten away at the joints of the life of the nation and state. Data from Indonesia's Anti-Corruption Behavior Index (IPAK) in 2024 shows a figure of 3.85 on a scale of 0-5, down from the previous year which reached 3.92. This decline indicates that efforts to eradicate corruption still face significant challenges even though the Corruption Perception Index (GPA) has increased to 37/100.

The Corruption Eradication Commission (KPK) noted that in the 2020-2024 period, it had handled 2,730 cases in five priority sectors by receiving 21,189 complaints. More concerningly, the 2024 Integrity Assessment Survey revealed that 90 percent of bribery and gratuity cases occurred in ministries/institutions, while 97 percent occurred in local governments. This fact shows that corruption has permeated various levels of government. The change in the status of corruption from *extraordinary crime* to ordinary crime raises concerns about the effectiveness of corruption eradication in the future. This ineffectiveness is caused by various factors, including weak legal awareness from law enforcers and the public. In the perspective of criminal theory, Indonesia adopts a combined theory that combines the aspects of retribution (retributive) and prevention (preventive). punishment as a commensurate retribution for the perpetrators of criminal acts. According to this theory, the perpetrator of a criminal act must bear punishment as a consequence of the crime he committed. The Qur'an expressly prohibits the practice of corruption, as Allah SWT says in Surah Al-Baqarah Ayat 188.

Corruption is an act or act of self-enrichment that aims to gain good personal gain. The urgency of reformulating the criminalization of corruption in the perspective of Islamic law is also driven by the fact that a purely secular approach has not succeeded in effectively eradicating corruption. The ta'zir dimension in Islamic law provides the necessary flexibility in dealing with various forms of modern corruption. This flexibility allows adaptation to the development of increasingly sophisticated modes of corruption. In the context of implementation, the reformulation of corruption punishment from the perspective of Islamic law does not mean replacing the entire existing legal system, but rather integrating relevant Islamic values and principles into the national legal system. The importance of this reformulation is also supported by the fact that alternative approaches in punishment can provide better results than conventional approaches.

Thus, the background of this research shows the urgency to reformulate punishment for perpetrators of corruption crimes by integrating the perspective of Islamic law.

2. METHODS

This research is normative in nature because it is oriented towards an in-depth analysis of the meaning, interpretation, and conceptual construction of legal or doctrinal norms in the reformulation of criminal penalties for corruption that cannot be reduced to quantitative variables. The legal research method involves examining vague or unclear legal norms, especially the provisions of Article 2 paragraph 2 of the Anti-Corruption Law, then the author attempts to interpret and organize the text into categories, using an Islamic legal approach. This study is multidimensional, integrating several perspectives in contemporary law as well as Islamic law, which has its sources in the Quran and Hadith. The legal research methodology certainly examines and involves critical analysis of various legal systems to examine how the outcome of a legal issue can differ under each legal system. This approach allows for the identification of similarities and differences between the two legal systems in the context of corruption crimes. This research is important to ensure that the proposed reformulation is in line with the objectives of Sharia in protecting key and fundamental matters, including (al-kulliyyāt al-khams), particularly ḥifẓ al-māl (preservation of property).

The establishment of law must be based on legal sources that have strong evidence and provide fair certainty in determining the applicable law. In the classification of Islamic criminal law, corruption is included in jarīmah ta'zīr, which are criminal acts whose form and sanctions are not specifically determined in the Qur'an and Hadith, so that the determination of the type and severity of the punishment is left to the authorities (ulil amri). However, the penalties in the current Indonesian criminal justice system do not have a deterrent effect on perpetrators of corruption. This study provides a basis for how penalties in the modern criminal justice era do not have a deterrent effect but rather provide another perspective, for example, a criminal justice system that opens up opportunities for perpetrators to continue committing corruption. The integration of Islamic law into the national criminal justice system, with modern criminal punishment, should be oriented not only towards physical punishment but also towards the confiscation of the assets of corruptors, so that the deterrent effect can be more effective.

Islamic law in this research interprets legal texts with uṣūl al-fiqh, which includes linguistic analysis (taḥlīl lughawī), contextualization (asbāb al-nuzūl for verses of the Qur'an and asbāb al-wurūd for hadith), and identification of 'illah (ratio legis) of each law/legal norm. Synthesis is carried out through the construction of legal arguments that integrate findings from various sources of norms. The main tool in this study is the researcher himself as a human tool equipped with various tools. Document analysis guidelines were developed to ensure consistency in data extraction and interpretation. These guidelines include criteria for assessing the authenticity of sources, relevance to research questions, and weight of authority in the hierarchy of legal sources.

In this research, the author also attempts to use a comparative law approach, whereby this research is used to systematically compare the concept of punishment between positive law and Islamic law in several countries in terms of the practice of determining punishment for corruptors/perpetrators of corruption. Malaysia, for example, is known for the Malaysian Anti-Corruption Commission Act 2009 (Act 694). As a country with a common law legal system, Malaysia has a specific legal framework for combating corruption that emphasizes prevention, enforcement, and asset recovery through a relatively pragmatic and administrative approach.

Although the legal systems are different, the regulation of corruption crimes certainly has differences in terms of regulation and punishment.

3. RESULTS AND DISCUSSION

A. Corruption Crimes Using a Practical and Theoretical Approach.

Corruption remains a systemic challenge deeply rooted in Indonesia despite the existence of a comprehensive legal framework and special institutions such as the Corruption Eradication Commission (KPK). This research attempts to analyze the fundamental weaknesses in Indonesia's criminal justice system, particularly in the concept of punishment based on normative studies and the latest research findings. The analysis covers weaknesses in the regulations and legislation of Law No. 31/1999 jo. Law No. 20/2001 on the Eradication of Corruption Crimes, which have an impact on law enforcement issues. The formulation provided is vague, thus having consequences for the law enforcement process. Inconsistencies in prosecution, significant disparities in sentencing, fragmentation among law enforcement agencies, systematic political intervention, and limited resources and institutional capacity. Efforts to weaken the KPK through legislative revisions and the criminalization of its leadership also constitute structural obstacles that threaten the effectiveness of corruption eradication. In the context of Islam, punishment is not merely an instrument of retribution for criminal acts, but an integral part of the Sharia system that aims to maintain social order, uphold justice, and protect the welfare of the people. Islamic criminal law (fiqh jinayah) views humans as moral beings who are responsible for their actions, so that criminal sanctions have theological, moral, and social dimensions. With the passing of Law Number 1 of 2023 concerning the Criminal Code, which will come into full effect in 2026, there has been a paradigmatic shift in the handling of corruption. The new Criminal Code repeals some articles related to corruption offenses and no longer classifies corruption as an extraordinary crime. This change in status raises concerns about the effectiveness of corruption eradication in the future, given that the enforcement of criminal law on corruption has not been optimal and has dampened the spirit of eradicating corruption.

B. The Theory of Maqāṣid al-Sharī'ah as the Basis for Punishment

Maqāṣid al-sharī'ah (the objectives of Islamic law) is the philosophical basis for understanding the punishment of corruption. This theory focuses on the protection of five basic things: religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), offspring (ḥifẓ al-nasl), and property (ḥifẓ al-māl). Corruption threatens almost all dimensions of maqāṣid. It directly violates the principle of preserving wealth, threatens life when public funds intended for health and infrastructure are corrupted, corrupts reason by creating a culture of dishonesty, threatens offspring through systemic impacts on future generations, and can even threaten religion by undermining public trust in Islamic values. The Concept of Maqāṣid al-Syarī'ah Maqāṣid al-syarī'ah are the main objectives to be realized by Islamic law. In the context of punishment, maqāṣid become a normative framework to ensure that punishment is not only textually valid, but also brings substantive benefits. In terms of integration with modern criminalization theory, it can be integrated with the concept of Islamic law. Retributive theory, which emphasizes retribution, is in line with the principle of qiṣāṣ in Islam. The theory of deterrence is identical to the concept of al-zajr, which emphasizes the preventive function of punishment. The theory of rehabilitation is in line with the concepts of iṣlāḥ (improvement) and taubat in Islam. The fundamental difference lies in the spiritual dimension in Islamic law, which views punishment as a means of atonement (kaffārah) and preparation for the afterlife—a dimension not found in modern secular theory.

Corruption as Jarimah Ta'zīr. From the perspective of fiqh jinayah, corruption is not explicitly mentioned in the Qur'an or Hadith with specific forms and sanctions such as ḥudūd or qiṣāṣ. Therefore, corruption is categorized as jarimah ta'zīr, a criminal offense whose type and degree of punishment is left to the ulil amri (ruler/judge) for the benefit of the people. Corruption has the following characteristics as an act:

The Prophet Muhammad SAW said:

"Whoever we give a position to, then he hides something (ghulūl), then that is treason." (HR. Muslim). This Hadith confirms that abuse of position is a despicable act that must be punished.

In addition to the actual sentencing formulation stipulated in Law No. 31 of 1999 concerning the Eradication of Corruption, other models or designs can be implemented through an Integrative Sentencing System Design.

The integrative sentencing system is a model for imposing sanctions/sentences that combines various types of punishment (criminal, administrative, and socio-moral) in an integrated and complementary manner. The aim is not only to punish the perpetrator, but also to: provide a deterrent effect, restore the losses incurred, maintain social order and justice, and shape public moral and ethical awareness. This approach is in line with modern punishment theory (deterrence, rehabilitation, restorative), Islamic law (ta'zir) which emphasizes benefit, and positive law that is responsive to crimes with widespread impact such as corruption. Additional criminal sanctions are complementary punishments imposed along with the main punishment to strengthen the effect of punishment. Forms of additional criminal sanctions include: confiscation of property and assets resulting from crime, revocation of political rights, prohibition from holding public office, payment of compensation for state losses, and public announcement of court decisions. In addition, the function of additional criminal sanctions can be carried out by eliminating the profits from crime, preventing the recurrence of crime, and restoring public trust. Punishment is one of the main instruments in the criminal justice system that aims to maintain social order, protect the public interest, and uphold justice. From an Islamic legal perspective, punishment is not merely understood as a form of retribution for criminal acts, but as a means to achieve the overall welfare of humanity. Therefore, Islamic criminal law is built on fundamental principles derived from the Qur'an, Sunnah, and the ijtihad of scholars. These principles reflect the humanistic, proportional, and goal-oriented (maqāṣid al-syarī'ah) nature of Islamic law. The four main principles that are often used as the basis for Islamic criminal punishment are justice ('adālah), prevention (zawājir), retribution (jawābir), and benefit (maṣlaḥah). The integration of these four principles is highly relevant in the context of modern criminal law reform, including in Indonesia's national legal system, which is currently seeking to develop a more restorative and socially just approach to punishment. This study will provide an in-depth description of each of these principles, explain their normative and philosophical basis, and analyze their relevance in the development of a contemporary punishment system.

The formulation of integrative punishment has not yet been fully regulated in normative terms in legislation. One of the main weaknesses of integrative punishment is the lack of clarity regarding the hierarchy of punishment objectives. The combination of various objectives often causes internal conflicts, for example between:

1. The interest of retribution, which demands severe punishment
2. The interest of rehabilitation, which emphasizes the guidance of the perpetrator
3. The interest of restoration, which prioritizes the recovery of the victim

In practice, judges often find it difficult to determine which objective should be prioritized in a specific case, so that sentencing decisions have the potential to be inconsistent and subjective.

C. The formulation of punishment for corruption crimes and punishment in several countries.

The formulation of punishment in Islamic law is an integral part of the Islamic legal system, which is based on the Qur'an, Sunnah, ijma', and qiyas. Punishment is not understood solely as an instrument of retribution for criminal acts, but as a normative mechanism to protect the interests of humanity (maqāṣid al-syarī'ah). Thus, Islamic criminal law has a moral, social, and spiritual orientation that is integrated into the framework of upholding justice and public order. From an Islamic legal perspective, punishment is designed to protect the five main objectives of Sharia, namely the protection of religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), lineage (ḥifẓ al-nasl), and property (ḥifẓ al-māl). Every formulation of criminal sanctions is always linked to these objectives, so that the application of criminal law is not merely repressive, but also preventive and educational. Conceptually, Islamic criminal law divides criminal acts into three main categories, namely jarīmah ḥudūd, jarīmah qiṣāṣ–diyāt, and jarīmah ta'zīr. This division reflects the different sources of law, the degree of certainty of the sanctions, and the discretion of the authorities or judges in imposing penalties. Jarīmah ḥudūd are criminal acts whose penalties are explicitly determined by the Qur'an and Sunnah. Examples of these crimes include adultery, qadzaf (accusing someone of adultery), theft, robbery, drinking alcohol, and riddah. In the context of sentencing, hudud penalties are fixed and cannot be changed by judges, either in terms of type or severity. This certainty is intended to provide a strong deterrent effect and maintain moral and social stability in society. However, Islamic law also sets very strict standards of proof in hudud cases, so that their application is not easy and must avoid miscarriages of justice.

Furthermore, jarīmah qiṣāṣ–diyāt relates to crimes against life and limb, such as murder and assault. The formulation of punishment in this category places the victim or the victim's family as the subject who has the right to determine the resolution of the case. Qiṣāṣ as a form of retribution reflects the principle of retributive justice, but Islam also opens up space for forgiveness through diyat (ransom) or pardon without compensation. Thus, punishment in jarīmah qiṣāṣ–diyāt is not solely oriented towards retribution, but also towards social reconciliation and the restoration of human relations.

As for jarīmah ta'zīr, it is a criminal act whose sanctions are not explicitly determined in the text. Therefore, the formulation of punishment is left to the discretion of the ruler or judge, taking into account the degree of guilt, the circumstances of the perpetrator, and the impact of the act on society. The forms of ta'zīr punishment are highly varied, ranging from reprimands, fines, imprisonment, to light physical punishment. This flexibility shows that Islamic criminal law is adaptive and contextual, able to adjust to the times and social needs.

The main principles in the formulation of Islamic punishment are justice ('adl) and balance (tawāzun). Punishment must not be arbitrary, excessive, or cause new injustices. Therefore, Islam strongly emphasizes the principles of legality, fault (al-mas'ūliyyah al-jinā'iyyah), and proportionality between the act and the punishment. A perpetrator can only be punished if they are proven to have committed a criminal act with awareness and free will, and if they fulfill the elements of criminal responsibility. In addition, the formulation of punishment in Islamic law also emphasizes the aspects of prevention (zajr) and reform (iṣlāḥ). Punishment is imposed not only to punish the perpetrator, but also to prevent others from committing similar acts and to encourage

the perpetrator to repent and reform. In this context, punishment has a spiritual dimension that is not explicitly found in modern criminal law systems. In practice, the application of Islamic punishment requires a fair judicial system, judges with integrity, and a society that understands the values of Sharia. Without these prerequisites, the application of criminal sanctions has the potential to deviate from the objectives of Sharia and cause injustice. Therefore, scholars emphasize that the application of Islamic criminal law cannot be separated from the social, political, and moral context of a society. The formulation of punishment in Islamic law reflects a balance between legal certainty and flexibility, between retributive and restorative justice, and between the interests of individuals and society. This system shows that Islamic criminal law is not a rigid and cruel system as is often misunderstood, but rather a legal system oriented towards benefit, justice, and the protection of human dignity.

The Legal System in Force in Malaysia.

Malaysia, as a modern constitutional state, regulates the eradication of corruption through a relatively comprehensive legal framework. The main regulation that forms the basis for the criminalization of corruption in Malaysia is the Malaysian Anti-Corruption Commission Act 2009 (Act 694). This law provides a legal basis for law enforcement, including the regulation of types of corruption crimes, legal subjects, criminal sanctions, and the authority of the relevant law enforcement agencies. The punishment of corruption in Malaysia is not only retributive in nature, but also has preventive and repressive objectives, namely to prevent corruption and to take firm action against perpetrators in order to maintain the integrity of the government and the legal system. Malaysia adheres to the British common law system with limited Islamic law influence on personal and family matters. The handling of corruption is strictly regulated in positive law through specific legislation. The main legal instrument is the Malaysian Anti-Corruption Commission Act 2009 (MACC Act). This law provides a strong legal basis for combating corruption and establishes an independent agency, namely the Malaysian Anti-Corruption Commission (SPRM). Corruption is broadly defined to include:

a. Receiving and giving bribes;
b. Abuse of office;
c. Gratuities;
d. Misuse of official information.

Criminal sanctions for corruption in Malaysia include:

a. Imprisonment for up to 20 years;
b. A fine of at least five times the value of the bribe or a specified amount;
c. Confiscation of assets obtained through corruption;
d. Disqualification from public office.

Malaysia's approach is legalistic and emphasizes legal certainty and institutional accountability.

Malaysia has a modern law enforcement system with clear standards of proof, transparent judicial procedures, and a strong anti-corruption agency. The flexible ta'zir approach can inspire modern criminal law reform, particularly in responding to increasingly complex forms of corruption. A comparison of criminal law on corruption in Saudi Arabia, Malaysia, and Brunei Darussalam shows that although the goal of eradicating corruption is the same, the legal approaches used differ according to the legal systems and values of each country. The integration of legal certainty, effective sanctions, and religious moral values is key to the success of eradicating corruption. This study emphasizes the importance of a multidimensional approach to

criminal law on corruption, from normative, institutional, and cultural aspects, in order to create a legal system that is fair, effective, and sustainable.

4. CONCLUSION

Based on the discussion regarding the reformulation of punishment for perpetrators of corruption, it can be concluded that the punishment system that has been implemented so far has not been fully effective in providing a deterrent effect and has not been optimal in achieving the goal of eradicating corruption comprehensively. Although criminal sanctions for corruption have been clearly regulated in legislation, their enforcement still faces various obstacles, both in terms of legal substance, law enforcement structure, and the legal culture of society. The reformulation of punishment is an urgent necessity given the characteristics of corruption as an extraordinary crime that has a systemic impact on state finances, governance, and public trust. Therefore, the approach to punishment can no longer rely solely on imprisonment as the main instrument, but needs to be developed towards comprehensive, proportional punishment oriented towards recovering state losses and preventing the recurrence of corruption.

The reformulation of punishment for perpetrators of corruption must emphasize the optimization of fines, the confiscation of assets obtained through corruption, and the imposition of additional penalties such as the revocation of political rights, restrictions on access to public office, and other administrative sanctions. This approach is expected to close the space for perpetrators to continue enjoying the proceeds of their crimes, while strengthening the deterrent effect that cannot always be achieved through imprisonment alone. In addition, the reformulation of punishment also requires consistency and integration between legislative policy and judicial practice. Judges, as the executors of judicial power, need to be given clear sentencing guidelines so that the verdicts handed down reflect a sense of justice, legal certainty, and benefit. Thus, disparities in sentencing in corruption cases can be minimized and public trust in the criminal justice system can be increased. Thus, the reformulation of sentencing for perpetrators of corruption not only serves as an effort to renew criminal law norms, but also as a law enforcement strategy oriented towards protecting the public interest and the sustainability of clean governance. This reformulation is expected to strengthen the state's commitment to eradicating corruption in an effective, fair, and sustainable manner.

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