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COMPARISON OF THE CONCEPTS OF *MENS REA* AND *NIYYAH* IN THE ENFORCEMENT OF ANTI-CORRUPTION LAW ACCORDING TO THE PRINCIPLES OF *MAQĀṢID AL-SHARĪ AH*

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ABSTRACT

This study discusses the comparison between the concept of mens rea (malicious intent) in positive criminal law and the concept of niyyah (intention) in Islamic criminal law, as well as its relevance in the enforcement of criminal law on corruption in Indonesia through the perspective of maqāṣid al-syarī 'ah. The focus of the study is directed at efforts to integrate the moral and spiritual values of Islamic law into a positive legal system that tends to be legalistic and rational. The results of the study show that mens rea is oriented towards external wrongdoing and objective evidence, while niyyah emphasises inner awareness, morality, and the spiritual purpose of an act. In the context of eradicating corruption, the application of niyyah within the framework of maqāṣid al-syarī 'ah enriches the ethical and substantive justice aspects of criminal law. The principles of ḥifẓ al-māl (protection of property), ḥifẓ al-dīn (protection of morality), and al-'adl (justice) affirm that eradicating corruption requires more than formal legal instruments; it must be based on sincere intentions and moral integrity. Thus, the integration of maqāṣid al-syarī'ah values can become the philosophical basis for a more humanistic, just, and socially oriented reform of Indonesian criminal law.

Keywords: Criminal law, socially oriented, maqāṣid al-syarī'ah

1. INTRODUCTION

Corruption is one of the most destructive crimes against the social, economic and moral order of a nation. Corruption is not classified as a common crime but as a serious crime.[1] In Indonesia, corruption has become a structural practice that not only erodes state finances but also undermines public trust in legal institutions and the government. Current efforts to eradicate corruption are based on a positive law paradigm that focuses on proving the mens rea or malicious intent of the perpetrator. In the context of Western criminal law, mens rea is considered an important element in determining a person's guilt and responsibility for a criminal act, as it is

[1] Dwi Oktafia Ariyanti dan Nita Ariyani, "Model Pelindungan Hukum Terhadap Justice Collaborator Tindak Pidana Korupsi Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 328–44, https://doi.org/10.20885/iustum.vol27.iss2.art6.

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seen as a reflection of the perpetrator's moral awareness of their actions.[2] This legal principle emphasises that it is not enough for a person to simply commit an act that violates the law (actus reus). Positive law emphasises external evidence such as mens rea and actus reus, whereas Islamic law focuses on internal aspects, namely *niyyah* (intention). In Islamic law, *niyyah* (intention) plays a strong role in determining the moral and legal value of an act. As the Prophet Muhammad SAW said, "*Indeed, every deed depends on its intention*" (HR. Bukhari and Muslim). This hadith not only assesses actions from an external perspective, but also the internal motivations behind them. Thus, *niyyah* becomes a fundamental basis for assessing a person's legal and moral responsibility. In Islamic law, the value of an action cannot be assessed as worship or sin without a sincere intention to draw closer to Allah SWT.[3] This concept emphasises that a person's inner dimension has a direct influence on the legitimacy of their outward actions. Furthermore, this is in line with the values of *Maqāṣid al-Sharī'ah*, which emphasise the importance of upholding justice and public interest (*tahqiq al-maslahah*).

In the context of modern society, the principle of niyyah is highly relevant when faced with the issue of corruption, which is rampant in various countries, especially Indonesia. Data from the 2024 Corruption Perceptions Index (CPI) released by Transparency International reveals that corruption remains a serious problem, with more than two-thirds of countries scoring below 50 out of 100, and the global average index remaining stagnant at 4.4 This data shows that corruption is not only a structural and institutional problem, but also reflects a moral crisis and a crisis of human integrity. This is further emphasised in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, which comprehensively regulates various forms of criminal acts of corruption and imposes severe criminal sanctions on perpetrators, both in the form of active and passive acts that cause losses to state finances.5 Although regulations have provided a strong legal basis, corruption remains rampant, indicating that its eradication requires not only formal law enforcement but also moral guidance and the strengthening of individual niyyah as the basis for ethical integrity.

Several experts also emphasise the integration of the concept of niyyah into thecorruption eradication system through the perspective of Maqāṣid al-Sharīah, which can strengthen the ethical and substantive dimensions of corruptive acts, as stated in the research by Fadli Januaris et al., which mentions that "corruption in Islamic law is a violation of trust and justice, (al-amanah and al-'adl)," so that its prevention and enforcement need to consider the aspects of intention and social responsibility.6 Meanwhile, critical views also highlight the application of moral principles such as niyyah in modern criminal law, which emphasises certainty and objectivity. As Fitri Wahyuni et al. State, current criminal sanctions for corruption are still limited to imprisonment and fines, so legal reforms need to consider Islamic moral elements, even though their application

[2] Zul Khaidir Kadir, "Dari Dualisme ke Monisme: Transformasi Konsep Mens Rea dalam Kodifikasi KUHP di Negara-Negara Poskolonial," *Jurnal Litigasi Amsir* 1, no. Special issue (2024): 146–146.

[3] Arenawati Sehat Omar dan Zalina Mohd Desa, "The Role of Intention (Niyyah) in Islamic Work Ethics," *Proceedings Borneo International Islamic Conference* 14 (2023): 82–85.

[4] Ransparency International, "INDEKS PERSEPSI KORUPSI 2024: 'KORUPSI, DEMOKRASI, DAN KRISIS LINGKUNGAN,'" Transparency International Indonesia, 2024, https://ti.or.id/indeks-persepsi-korupsi-2024-korupsi-demokrasi-dan-krisis-lingkungan-2/?

[5] the Goverrntment of Indonesia, "the Amendment of Law No. 31 of 1999 Eradication of Corruption," 1999, 1–20, http://peraturan.go.id/common/dokumen/ln/2001/uu20-2001.pdf.

[6] Fitri Rahma Yani, Muhammad Pryambudi, dan Sherly Syafira, "Pemberantasan Korupsi Menurut Fiqh Siyasah," *Journal Sains Student Research* 1, no. 2 (2023): 1051–60.

is still minimal.7 The conflict between the moral-spiritual and legal-instrumental paradigms shows that although the concept of niyyah in maqāṣid is comprehensive, its application in modern criminal law still faces major challenges.

This study aims to fill the academic void by comparing the concepts and norms of mens rea (malicious intent) and niyyah in the context of corruption law enforcement using the epistemological framework of Maqāṣid al-Sharīʿah. Theoretically, this study enriches the integration of Islamic law and positive law to develop a law enforcement model that balances formal, moral, and substantive justice aspects. Practically, this study contributes to the formation of an anti-corruption legal paradigm based on ethics, intention, and social welfare. Based on Al-Syātibī's Maqāṣid al-Sharīʿah theory, which emphasises the protection of religion, life, intellect, lineage, and property, corruption as a crime against al-mal not only violates positive law but also damages the public interest.8 Therefore, the integration of the concepts of niyyah and mens rea is believed to result in fair and moral law enforcement against corruption

2. METHODS

This study employs a descriptive-comparative qualitative method with a normative-philosophical approach. Data sources were obtained through library research on Western criminal law literature, classical Islamic law, and contemporary sources discussing maqāṣid al-syarī 'ah and anti-corruption law in Indonesia. The analysis was conducted using a conceptual comparative method, namely comparing the principle of mens rea in positive law and the concept of niyyah in Islamic law to find epistemological and normative common ground. In addition, the maqāṣid al-syarī 'ah approach was used as an analytical framework to assess the extent to which the integration of these two concepts could strengthen the moral and public interest aspects of corruption law enforcement. The results of the analysis were presented deductively, starting from the general theory of criminal wrongdoing to its application in the context of Indonesian national law.

3. RESULTS

In the Indonesian criminal law system, mens rea or criminal intent is one of the main components in determining criminal guilt. This principle emphasises that an act cannot be considered criminal without the perpetrator having the requisite intent. In positive law, the principle of fault forms the basis of criminal liability, as reflected in Article 4 of the Criminal Code, which states that there can be no punishment without fault (geen straf zonder schuld). This element requires the perpetrator to have acted with intent (dolus) or negligence (culpa) as a form of awareness of the consequences of their actions. One example of its implementation can be seen in Supreme Court Decision No. 1986 K/Pid/2019 regarding a corruption case, which demonstrates the complexity of proving mens rea. The panel of judges had to prove that the defendant knew and intended to commit acts that would harm the state's finances.[9] In this case, the judges used evidence of communication through an online chat application and evidence of

[7] Fitri Wahyuni, Ishaq Ishaq, dan Aris Irawan, "Criminal Sanctions for Corruption Crimes Based on Perspective Study of Renewal Law and the Relationship with Islamic Criminal Law," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, no. 2 (2021): 219–33, https://doi.org/10.30631/al-risalah.v21i2.795.

[8] Suhaimi, "Al-Maqashid Al-Syari'ah; Teori dan Implementasi," *Sahaja: Journal Shariah And Humanities* 2, no. 1 (2023): hlm. 162-166.

[9] Humam Balya, "PERAN MENS REA DALAM SISTEM HUKUM : ANALISIS HUBUNGAN DENGAN PRINSIP ETIKA DAN KEADILAN" 14, no. 1 (2025): 99–107, https://doi.org/https://doi.org/10.51226/assalam.v14i1.713.

cash flow to prove malicious intent, but the defendant argued that he was only carrying out his superior's instructions without knowing the legal consequences. This shows that mens rea is a crucial aspect in assessing the guilt of a perpetrator of corruption, even though the evidence is often subjective.

In the context of *maqāṣid al-syarī'*ah, the aspect of *niyyah* (good intention) becomes an important moral consideration that an action is not only judged by its legal consequences, but also by the awareness and inner purpose of the perpetrator.[10] The integration of the concept of mens rea into Indonesian positive law can be synergised with the concept of *niyyah* to ensure that law enforcement against corruption is not merely formalistic, but also reflects the protection of *maqāṣid al-syarī'ah* such as *ḥifẓ al-māl* (protection of property) and *ḥifẓ al-dīn* (protection of morals and public trust). In a case of criminal corruption, the focus of assessment is often on the consequences that cause losses to the state, not merely the perpetrator's intent. If an act is proven to have fulfilled all the elements in the Corruption Criminal Law, the perpetrator can still be punished even without strong evidence related to mens rea. However, the concept of mens rea is still necessary to maintain a balance between formal justice and substantive justice in the enforcement of criminal law. By balancing actus reus and mens rea, the legal system not only punishes in a legalistic manner, but also ensures that punishment reflects proportional moral responsibility.

The proof of mens rea often focuses only on empirical evidence such as financial transaction records, instructions, or electronic communications, so that the inner aspects of the perpetrator tend to be neglected. Within the framework of *maqāṣid al-syarī'ah, niyyah* has a more profound position because it relates to moral and spiritual awareness of social responsibility.[11] The moral approach through *niyyah* broadens the basis for assessing criminal offences, especially in corruption cases involving abuse of public trust. From an Islamic legal perspective, *niyyah* reflects the ethical awareness and spiritual responsibility that underlies a person's actions. The *maqāṣid al-syarī'*ah framework integrates moral, spiritual, and rational values into the positive legal system to realise a just government free from corrupt practices.[12] In this case, the law not only functions as a tool to enforce formal certainty, but also as a means of restoring moral values in society. The integration of *niyyah* values ensures that the assessment of criminal offences takes into account the moral moties and intentions of the perpetrator.

The application of *niyyah* values within the framework of *maqāṣid al-syarī'ah* encourages a legal paradigm that is more oriented towards substantive justice through a reconstructive and restorative approach. The eradication of corruption does not stop at criminal sanctions, but is also directed at the recovery of public assets, increasing public trust, and improving the integrity of state institutions. The integration of mens rea and *niyyah* in the criminal justice system requires a paradigm shift among law enforcement officials so that the interpretation of norms is not only legalistic, but also takes into account ethical and spiritual values. Moral guidance and increased ethical awareness for judges, prosecutors, and investigators are important steps towards ensuring that the legal process is oriented towards dignified justice. The law is not only an instrument of

[10] Zulkifly Muda et al., "The Authoritative Role of Maqasid Shariah As A Basis for Determining Hukm When Dealing with Contemporary Issues," *International Journal of Academic Research in Business and Social Sciences* 13, no. 4 (2023): 671–79, https://doi.org/10.6007/ijarbss/v13-i4/16685.

[11] Faizatur Rochmah et al., "SEBERAPA PENTING TERPENUHINYA UNSUR MENS REA DALAM PENETAPAN PERKARA PIDANA PADA KASUS KORUPSI DI INDONESIA," *Triwikrama: Jurnal Multidisiplin Ilmu Sosial* 01, no. 3 (2023): 23–40, https://doi.org/https://doi.org/10.9963/8sj41q49.

[12] Kunkun Abdul Syukur, "Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens Rea Dalam Tindak Pidana Korupsi," *Jurnal Ilmiah Galuh Justisi* 3, no. 2 (2015): 218, https://doi.org/10.25157/jigj.v3i2.420.

social control, but also a means of moral guidance and strengthening the character of the nation.[13] The principle of *maqāṣid al-syarī'ah* through a deep understanding of *niyyah* can be the philosophical basis for the development of a more humanistic, just, and community-oriented criminal law system. The synergy between the concepts of mens rea and *niyyah* ultimately strengthens the orientation of Indonesian criminal law towards a system that not only imposes formal punishment but also upholds moral values, substantive justice, and protection of the public trust as the main objectives of law enforcement.

4. DISCUSSION

The concept of mens rea in criminal law has elements that point to a mental condition or state of mind, the intent of a perpetrator at the time of committing a criminal act. The term mens rea is known in Latin, meaning intent or a guilty state of mind accompanying a criminal act. In positive criminal law systems, mens rea is understood as the mental element or guilty state of mind that must accompany a criminal act (actus reus). The classical principle of actus non facit reum nisi mens sit rea asserts that an act cannot be considered a crime if it is not accompanied by criminal intent (guilty mind). This element forms the moral and juridical basis that a person cannot be punished without fault, as explained by Fatemeh Ahadi that mens rea is 'the mental element that forms the psychological basis of criminal liability,' which requires intent, knowledge, or negligence on the part of the perpetrator before criminal liability is imposed.[14] Thus, positive criminal law emphasises that fault is the result of a combination of outward actions and inner elements that can be proven objectively through the judicial process.

Meanwhile, the concept of *niyyah* in Islamic law has a broader meaning than just the psychological element of the perpetrator. *Niyyah* is an intention that serves as a determinant of the moral and legal value of an act. In the context of Islamic criminal law (jinayah), niyyah plays a role not only in distinguishing between intentional and unintentional acts, but also in determining the type of punishment to be imposed. According to Armaya Azmi, *niyyah* means "*Al-Umūru bi Maqāṣidihā*" in Criminal Murder Cases, "*niyyah* is a determining factor for judges in distinguishing between intentional murder (*qatl al-'amd*), semi-intentional murder (*qatl shibh al-'amd*), and negligent homicide (*qatl al-khaṭa'*).[15] Thus, *niyyah* not only assesses the mental state, but also contains a spiritual dimension that connects the perpetrator's consciousness with moral responsibility before God.

The main difference between mens rea and *niyyah* lies in the philosophical basis behind them. Mens rea is rooted in a rational-legal paradigm derived from utilitarian theory and the principle of secondary justice, in which the element of fault is measured through conscious intent to cause consequences prohibited by law. In its application, the positive legal system places mens rea as part of the legal proof process, where prosecutors must prove the element of intent or the perpetrator's intention through direct or indirect evidence, such as motive, tools, or the perpetrator's statements. In contrast, *niyyah* in Islamic law is a theological and ethical concept that makes intention the moral foundation of every human action.[16] Thus, Islamic law does not

[13] Zumiyati Sanu Ibrahim et al., "Integration of Maqaṣid al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity," *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44, https://doi.org/10.28918/jhi.v23i1.04.

[14] Fatemeh Ahadi, "Re-visiting the Concept of Mens Rea: Challenging the Common Approaches Employed under Islamic Jurisprudence and Statute Law," *Journal of Politics and Law* 9, no. 4 (2016): 1, https://doi.org/10.5539/jpl.v9n4p1.

[15] Armaya Azmi, "Niat Baik," *TAQNIN: Jurnal Syariah dan Hukum* 1, no. 2 (2019): 61–74, https://jurnal.uinsu.ac.id/index.php/taqnin/article/view/6360/2771.

[16] Muhammad Al Amin Bancin dan Sudirman Suparmin, "An Examination of Attempted Murder in Islamic Criminal Law," *Jurnal Daulat Hukum* 7, no. 3 (2024): 319, https://doi.org/10.30659/jdh.v7i3.40635.

strictly separate intention and action, because intention is seen as the spiritual core of every deed that determines the legal and moral value of an action.

Meanwhile, in the context of legal proof, mens rea is considered an essential element that must be proven in court through a rational and empirical approach. The process of proving it is objective because it is based on legal facts and logical reasoning, without considering the moral or spiritual dimensions of the perpetrator. Conversely, in Islamic law, *niyyah* does not always require strict empirical proof, because judges are allowed to assess based on the social context, motives, and inner conditions of the perpetrator. This is in line with the view that emphasises the importance of applying the concept of *al-Mas'ūliyyah al-Jinā'iyyah*, which explains that *niyyah* is an integral part of the concept of *al-mas'ūliyyah al-jinā'iyyah* (criminal responsibility in Islam) which combines the elements of law, morality, and society comprehensively.[17] Therefore, the Islamic legal system is more holistic in nature, as it assesses wrongdoing not only based on the consequences of the act, but also on the intent, sincerity, and purpose in line with the principles of *maqāṣid as-syarī'ah.* Based on this analysis, it can be understood that the concept of mens rea has characteristics that lean towards positivism, rationality, and objectivity, while *niyyah* is more normative, subjective, and theocentric in nature. Mens rea views humans as legal subjects who are rationally responsible in the social and juridical order, while *niyyah* places humans as moral and spiritual subjects who are not only responsible before society but also before God. The two differ in their philosophical foundations but have the same normative function, namely as the basis for determining a person's eligibility to be held accountable for prohibited acts.

In the context of Indonesian criminal law, which is currently undergoing reform and codification of national law, the integration of *niyyah* values into the principle of mens rea is relevant to creating a legal system that not only emphasises legal certainty but also guarantees substantive justice and strengthens the dimension of social morality. This integration is necessary because a legal system oriented solely towards formal rationality often loses the ethical and spiritual touch that is the source of moral legitimacy in society. By incorporating the values of *niyyah* into the principle of mens rea, the law can function not only as a mechanism of social control, but also as a means of moral and spiritual guidance for citizens.

The principle of *maqāṣid al-syarī'ah* is the philosophical foundation of Islamic law, which aims to realise benefit (*al-maṣlaḥah*) and prevent harm (*al-mafsadah*). In the context of law enforcement against criminal acts of corruption, this principle is highly relevant because corruption not only causes economic losses but also damages the social justice system and public trust.[18] From the perspective of *maqāṣid*, corruption is viewed not merely as a violation of positive law, but also as an act that contradicts moral values, betrays public trust, and hinders the achievement of *taḥqīq al-maṣlaḥah* (the realisation of public interest).[19] Therefore, the eradication of corruption must be balanced with the strengthening of spiritual and moral values that foster the integrity of law enforcement officials and the ethical awareness of society. This approach emphasises that *maqāṣid al-syarī'ah* is not merely normative in nature, but also has the potential

[17] Junaidi Abdillah et al., "Contribution Model of al-Mas'ūliyyah al-Jinā'iyyah in the Formulation of Criminal Liability in Indonesia's New Criminal Code," *Al-Ahkam* 34, no. 2 (2024): 367–92, https://doi.org/10.21580/ahkam.2024.34.2.22592.

[18] Moh Thamsir, Mukhtar Latif, dan Pauzi Muhammad, "Islamic Criminal Law Reform in Corruption Cases: Maqasid al-Shariah Perspective," *Jurnal Ius Constituendum* 10, no. 1 (2025): 16–27, https://doi.org/10.26623/jic.v10i1.10932.

[19] Agung Nugroho Reformis Santono1 dan Anfasa Naufal Reza Irsali , Luqman Hakim 2, "Can Islamic Law Mitigate Corruption? A Maqāṣid-Based Critique of Village Governance in Indonesia" 4, no. issue 2 (2025): 97–121, https://doi.org/https://doi.org/10.59001/pjrs.v4i2.314.

to be applied in the development of the national legal system.[20] Law enforcement that is detached from sharia values will lose its moral dimension, because corruption is not only a crime

5. CONCLUSION

This study confirms that the concepts of mens rea and *niyyah* have different philosophical and juridical foundations, but both play an important role in determining criminal liability and the moral value of an act. In positive criminal law, mens rea is understood as an element of malicious intent or internal error that must be proven objectively in court. This approach emphasises the rational and formal aspects of legal evidence oriented towards certainty and procedural justice. Conversely, in Islamic law, *niyyah* is not merely a psychological element, but a moral and spiritual foundation that assesses the purity of the perpetrator's intentions and the orientation of their actions towards benefit and responsibility before Allah SWT. The integration of these two concepts is highly relevant in the context of enforcing corruption law in Indonesia. Corruption crimes not only cause financial losses to the state, but also undermine public morality and social justice. Therefore, the eradication of corruption cannot rely solely on a legalistic approach that focuses on the formal proof of mens rea, but must be enriched with the ethical and spiritual values contained in the concept of *niyyah*. This approach is in line with the principle of *maqāṣid al-syanī'ah*, which emphasises the protection of religion (*ḥifẓ al-dīn*), property (*ḥifẓ al-māl*), reason (*ḥifẓ al-'aql*), and justice (*al-'adl*). Thus, the application of the principle of *maqāṣid al-syanī'ah* in the enforcement of corruption law can become the philosophical basis for a more humanistic and substantively just reform of Indonesian criminal law. The law no longer functions solely as an instrument of punishment, but also as a means of moral guidance, social rehabilitation, and strengthening public integrity. The synergy between mens rea and *niyyah* is expected to create a legal system that not only guarantees certainty and order, but also upholds dignified justice and the welfare of the entire community.

CRediT Authorship Contribution Statement

Meilani Putri Basri: Conceptualisation, Writing of Introduction, Review and Editing, and Finalisation of Manuscript. Risdawati Syam: Research Design, Writing of Results and Conclusions, and Contribution to Discussion. Andri P Nirwanto: Writing of Abstract and Contribution to Discussion. All authors have read and approved the final version of this manuscript and are fully responsible for all aspects of the research to ensure the integrity and accuracy of every part of this scientific work.

Declaration of Competing Interest

The authors declare that they have no financial interests or personal relationships that could influence or potentially bias the results of the research presented in this manuscript.

Data Availability

All data obtained and analysed in this study have been included in the published article along with supporting information. No additional data sets were used beyond those presented.

[20] Syamsuar et al., "Integration of Maqashid Syaria in Nurcholish Madjid's Thingking about Principles for Effective Good Governance," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 45–62, https://doi.org/10.29240/jhi.v9i1.9701.

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