

CRIME OF CORRUPTION FROM LEGAL PERSPECTIVE POSITIVE AND ISLAMIC LAW

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Abstract

Corruption is the act of rotten, dirty, and cheating, and from the positive Law and legal perspective Islam. corruption is an extraordinary crime and can even be categorized as transnational organized crime. However, the social reality in Indonesia and the World is that there is still a lot of corruption in Muslim countries or countries with a majority Muslim population, including Indonesia. Thus, this paper examines how Corruption is studied as a crime (jarimah) from the perspective of Islam. The research was conducted by optimizing library data and analyzing secondary data. This study shows that this criminal act of corruption does not get a single discussion in Islamic Law but is likened to theft.

Keywords: *Crime, Corruption, Islamic Law*

Abstrak

Tindak pidana korupsi adalah perbuatan busuk, kotor dan curang dari segi positif, dan dari segi hukum Islam. Korupsi adalah kejahatan luar biasa dan bahkan dapat diklasifikasikan sebagai kejahatan lintas batas yang terorganisir. Realitas sosial di Indonesia dan dunia adalah masih banyak korupsi di negara-negara Muslim atau di antara penduduk mayoritas Muslim, termasuk Indonesia. Oleh karena itu, tulisan ini mengkaji bagaimana korupsi sebagai kejahatan (jarimah) dikaji dari perspektif hukum Islam. Penelitian dilakukan melalui optimalisasi data pustaka dan analisis data sekunder. Penelitian ini menunjukkan bahwa tindak pidana korupsi ini tidak dibahas satu kali dalam hukum Islam, melainkan disamakan dengan pencurian.

Keywords: *Kejahatan, Korupsi, Hukum Islam*

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A. Introduction

The criminal act of corruption has been the central issue of law enforcement in recent years, which seems to be commonplace in this country, which of course,

will affect people's welfare and make people less educated so that, in the end, they are indifferent to it, as it is. The punishment for corruptors is minimal, so there is no deterrent effect for the perpetrators. Instead of reducing but increasing the number of acts of corruption everywhere, it even seems unfair compared to the crime of theft.

In Indonesia's current condition, the practice of corruption is so severe and disturbing the public. There have been many depictions of corrupt practices that have surfaced. The criminal act of corruption is like cancer that spreads to the cells of public organs, attacking high state institutions such as the executive, legislative, and judiciary up to State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). In Indonesia today, Corruption is a chronic, almost incurable disease that permeates all aspects of life and is seen as a bad cultural image for the nation (Pujiyono, 2007).

There are already laws and regulations that specifically regulate criminal acts of Corruption. In Indonesia, the Corruption Law has been amended four times, namely Law No. 24 of 1960 concerning the Eradication of Criminal Acts of Corruption, Law No. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption, Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Corruption Crimes and Law Number 20 of 2001 concerning the Eradication of Corruption Crimes Amendments to Law Number 31 of 1999 on the Eradication of Corruption Crimes (Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning Eradication of Corruption Crimes, 2001)

Based on the rules above, it requires the participation of all parties to eradicate Corruption. Still, law enforcement agencies such as the Corruption Eradication Commission, the Attorney General's Office, the police, and others are responsible as the front guard. The government must enlighten the public that Corruption is terrible and affects many people who should be societal role models. a breakthrough is also needed in religious teachings to make the crime of corruption a common enemy whose fiqh arrangements are precise in religion. Still, issues regarding Corruption in the Koran, hadith, and classical fiqh are not found in the books but in the books. the role of religion institutionally and personally is still needed to fight corruption problems; institutionally, religion must explain to the public that corruption is unlawful in social and religious life, while privately (Mas'Udi & Suyitno, 2006), religious values must be a guide for someone to avoid acts of corruption. Indonesia is a country based on God, a religious country. The religion of the majority of Indonesia's population is Islam, which runs the state; both members of the executive, legislature, and judiciary are Muslims. From this, it can be concluded that most corruptors in Indonesia are Muslims. Islamic religious teachings are perfect;

universal spiritual teachings govern all aspects of the universe's life and humans, from opening the eyes to closing the eyes. There are three aspects of Islamic teachings, namely Faith, Sharia, and Morality. Where Islamic teachings contain rules and sanctions for violators who break the rules. Because Islam is a religion that spreads mercy and compassion throughout the universe (Nurul, 2012).

Starting from the problems above, where corruption is like a tangled thread that has not been appropriately resolved and is like a problem that has no end, various methods have been tried, but the results are not visible. The author raises the issue of corruption because corruption seems to be commonplace and a massive social problem in Indonesia. Note-Bene is visibly run by good religious people who continue to commit corruption. Another problem is the regulation of corruption in religion which is still absurd, apart from theft, which is regulated in the Koranic text; according to the Writer of Corruption Crimes, it is necessary to study from the point of view of Islamic Law so that the nature and sources of corruption can be identified. There are solutions to prevent someone from committing a criminal act of corruption, and based on this, the author then investigates what corruption is. Criminal acts are seen from the perspective of Islamic Law; why do people commit corruption, and how is the assessment of Islamic Law related to the criminal act of corruption?

B. Research Methods

Type of research This research is descriptive, which only explains (*describes*) one variable with other variables (Wirartha, 2005). The approach used is a qualitative method research approach. The research method uses normative legal procedures, which are carried out to learn to analyze data by referring to legal norms contained in laws and regulations and the perspective of Islamic Law from an Islamic perspective as a basis for solving problems and upgrading in the process. The data used are primary data and secondary data. The data collection method used in this research is a literature search. At the same time, the data analysis used is qualitative, namely by describing the data in a quality manner in sentences that are orderly, coherent, logical, not overlapping, and practical to facilitate interpretation and analysis of data.

C. Result and Discussion

1. Corruption Positive Legal Perspective

a. Understanding Corruption According to Positive Law

Etymologically, Corruption comes from the Latin 'Corruption,' which means damaged, rotten, depraved, and dishonest, related to finance. Corruption in the

Black Law Dictionary is an act committed to obtain an advantage that is not following official obligations and the rights of other parties by abusing one's position or character for the benefit of oneself or another person to gain profit, as well as with obligations and the rights of other parties (Effendi, 2012).

Regarding the development of criminal acts of Corruption, quantitatively and qualitatively, it can be said today that corruption in Indonesia is no longer an ordinary crime but has become an illegal act of corruption (Jaya, 2008). In Indonesia, corruption is a chronic disease that is almost incurable, pervasive in all aspects of life and appears as a reflection of the destructive culture of the Indonesian nation (Pujiyono, 2007). One can cynically say that Indonesian identity is corrupt behavior. This image is correct because the complexity of corruption is not only perceived as a legal problem but is a violation of people's social and economic rights. Currently, the crime of Corruption has created great poverty and social inequality. The people cannot enjoy an equal distribution of development results and do not enjoy the rights that should be obtained as a whole. Corruption has weakened the social and economic resilience of society. It is believed that Corruption in Indonesia is widespread and ingrained and will eventually undermine and destroy its people (*self-destruction*). The criminal act of corruption as a parasite that sucks a tree will cause the tree to die, and if the tree dies, then the corruptor will die too because there is nothing else to suck (Satjipto, 2000). Therefore Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, taking into account the ratification of the Law, namely:

First, while the prevalence of Corruption is not only detrimental to state finances but is also a violation of the social and economic rights of the community, Corruption must be classified as a crime that must be eradicated extraordinarily. ; and *Second*, to further guarantee legal certainty, avoid differences in legal interpretation, and ensure the protection of the socio-economic rights of the community as well as fair treatment in eradicating corruption, it is necessary to promulgate Law Number 31 of 1999 concerning corruption eradication to amend corruption offenses.

Eradicating corruption is not only the pursuit of the wider community but an urgent need for the people of Indonesia. To prevent and eliminate as much as possible from this homeland, because then law enforcement on corruption eradication will be able to reduce and eliminate or reduce poverty as much as possible. The eradication of criminal acts of corruption is to create prosperity for the Indonesian people suffering greatly from increasingly rampant corruption.

Talking about politics, in this case, the eradication of criminal acts of corruption must be seen from a legal perspective, considering that Indonesia is a

constitutional state. According to Mochtar Kusuma Atmadja (1996) Law as a means of social renewal functions as a channel for human action toward the desired development. Every organized society can find a pattern of relationships that exist between its members, which is a society that has clear goals. While politics is a community field related to the organization's purposes. Therefore, politics is also an activity to choose a particular destination. In this case, he agreed with Satjipto, (2000), who conveyed that legal politics is an activity to make choices about the goals and methods to achieve legal goals in society. Regarding the destination to be chosen, L.J. Van Apeldoorn defines legal policy as legal policy, meaning that legal policy means determining the purpose and content of legal regulations. This understanding of legal politics is limited to written law (Satjipto, 2000).

The direction of legal policy currently proclaimed by the Indonesian government focuses on efforts to eradicate criminal acts of Corruption and accelerate the implementation of bureaucratic reform. Considering that the practice of Corruption is very detrimental to the joints of society and the state, efforts to eradicate Corruption must be carried out systematically so as not to give corruptors even the slightest opportunity to steal the rights of their people. In Presidential Decree No. 5 of 2004 concerning accelerating the eradication of corruption, efforts to reform the legal system must reflect the acceleration of eradicating corruption itself.

Seeing the condition of Indonesia's population, which is predominantly Muslim, it is essential and logical to examine its relation to corruption and its contribution, especially to corruption cases in Indonesia, from the perspective of Islamic Law. The author believes that Islam came to liberate and fight injustice systems, not even to legalize practices that lead to exploitation and injustice in society and the state. The crime of corruption is undoubtedly one of the things that Islam must oppose because it can cause big problems. In other words, Islamic Law must also take responsibility for reflecting on past corrupt behavior and offering solutions. Of course, Islam cannot speak for itself; there must be efforts to articulate Islamic concepts, including dismantling the dogmas of Islamic Law. To the author's knowledge, the word corruption does not exist in the lexicon of Islamic Law. Still, its contents and similarities can be searched for and traced in Islamic Law that the analogy of corruption can lead to the ghou, tariqah, treason, and others. In addition, if you study the concept of Islamic Law to participate in eradicating corruption in depth. On this occasion, it is essential not only to clarify the concerns felt above but more than to hope that we can provide a solution to the rampant crime of Corruption and be equally involved in upholding the rule of Law in a country with the largest Muslim population in the world (Fatakh, 2015).

b. Factor People Commit Corruption

Some of the factors that cause people to commit Corruption are:

- a) Greed (*Greeds*) is related to the existence of greedy behavior that potentially exists within everyone;
- b) Opportunities related to the condition of an organization or institution, or society in such a way that a prospect is opened for someone to commit fraud against them;
- c) Needs, related to the factors needed by individuals to support an everyday life; And
- d) They have exhibited/disclosed (*Exposures*) related to the actions or consequences that the fraud perpetrators will face if they are found to have committed fraud (Effendi, 2012).

c. Awareness and Law Enforcement

Law enforcement is an effort to maintain or function legal norms as a guideline for behavior in traffic or legal transactions in society and the state today. From the subject's point of view, this coercion can be carried out by the topic broadly and interpreted as an attempt to coerce the issue in a narrow or limited sense. In the broadest sense, the criminal prosecution process includes all legal subjects in every legal relationship; anyone who implements normative rules or does or does not do something based on applicable legal norms deals with legal authorities or regulations. In a narrower and more limited sense, law enforcement is understood only as an effort by certain law enforcement officials to guarantee and ensure law enforcement itself; if necessary, law enforcement officials must be allowed to use force.

In law enforcement, it can also be seen from the object's point of view, namely in relation to the Law. In this case, the meaning also includes narrow and broad implications. In the most general sense, criminal prosecution also consists of the values of justice contained in the sound of formal rules and values of justice that live in society. Strictly speaking, law enforcement only concerns enforcing legal and written regulations. Therefore, in translating the word 'law enforcement' into Indonesian, the word 'law enforcement' is used in the broadest sense. The term 'enforcement of regulations' can also be used in a narrower sense. This distinction between the formality of written legal norms and the various values of justice they contain occurs even in English itself, with the development of the term "the rule of law" versus "the rule of just law" or in terms of "the rule of law and not human rights". . ' versus the phrase 'the rule of law,' meaning 'the rule of law of men.' in a formal sense, but also includes the values of justice. Therefore the term the rule of Law. The time the power of Law and not the tradition of men is used to emphasize

the Rule of Law in the current order. Law essentially governs the state and not the people. In contrast, the term 'the rule of law' intended a government by the people; rights are only mere power. They were using instruments (Asshiddiqie, n.d.).

2. Corruption in the Perspective of Islamic Law

The problem of corruption is not found explicitly in the Qur'an, hadith or other classical books of Islamic law. This is a problem, because in order to understand the problem of corruption comprehensively, a fiqh concept is required, such as the case of theft, which has clear laws in QS. al-Ma'idah, verse: 38 namely:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءُ بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

It means: "As for men and women who steal, cut off their hands (as) recompense for what they have done and as punishment from Allah. And Allah is Mighty, Most Wise." (Kementerian Agama, 2012).

In substance, the problem of corruption can be identified with several indicators, including: Erstens ist das Verbrechen der Korruption im Islam dem Leben einer Person sehr ähnlich, die oft schmutzige oder unreine Handlungen (*rijsun min 'amal shaithan*) begeht, was als Lüge dargestellt wird. Zweitens ist das Verbrechen der Korruption im Islam eng mit jemandem verbunden, der gerne Betrug begeht oder sich nicht an das erteilte Mandat hält. Drittens ist das Verbrechen der Korruption auch mit der Praxis verbunden, das Gleichgewicht in einer Kauf- und Verkaufspraxis zu verringern, nicht viel anders als das Verbrechen der Korruption, das durch das Verhalten der Vermischung von Richtig und Falsch, Richtig und Falsch unterstützt wird. Viertens ergibt sich aus psychologischer Sicht das Verbrechen der Korruption aus dem Auftauchen gieriger und gieriger Menschen, derer, die undankbar sind und immer ihre eigenen Interessen und die ihrer Gruppe in den Vordergrund stellen. Fünftens, das Verbrechen der Korruption aufgrund der Verbreitung von Lebensstilen entsteht, die mit verschiedenen Freuden der Welt zufrieden sind und sich nicht um das öffentliche Interesse (*die Gesellschaft*) kümmern.

The grouping of corruption can be identified in Islamic teachings with dirty or unclean acts, namely: First, acts of Corruption as lightly cluttered property (*mukhoffafah*) in the private sector, Article 23 concerning laundering proceeds of crime, Article 24 concerning concealment. Second, acts of corruption as unclean means (*mutawasithah*). This type of corruption tends to have personal and social impacts on society; Article 18 is influence, Article 19 deals with abuse of functions, and Article 20 deals with illegal enrichment. Third, the criminal act of Corruption is a najis severe (*mugholladzoh*). This type of Corruption directly or indirectly impacts national or national and international gains, for example, in Article 15 concerning

state officials' bribery, Article 16 concerning the Corruption of foreign officials and public officials: international organizations, and Article 17 on fraud. The various categories mentioned above do not necessarily deny the existence of convenience for corruptors; this classification is based on the importance of the impact of the acts of Corruption they committed (Tanthawi, 2013).

Of the many causes of ummah corruption described above, the author then classifies that the causes of ummah corruption are caused by external factors and internal factors (*greed*). Still, for writers who also have an impact, here internal factors are internal factors. The factor in question is the malfunctioning of the intelligence possessed by that person, which Ari Ginanjar calls spiritual intelligence, which causes a person to be greedy and greedy. Spiritual intelligence has actual truth from the voice of conscience that cannot be deceived by anyone or anything, including ourselves.

The eyes of the heart can reveal the essential truth that appears before the eyes; even Sufi Jalaluddin Rumi said: 'The heart has 70 times greater ability to see the truth compared to the two senses of sight'. In this conscience, Ary Ginanjar calls God's point, often covered by various shackles that cause people to become blind in the heart so that a person can no longer hear essential information from his conscience, causing a person to lose consciousness. Falling into disobedience and evil, and when it is associated with corruption itself.

The various phenomena of Corruption that have occurred in our country, if at first glance corruption is carried out by religiously good people, it is ironic that they should be used as examples. Still, on the contrary, if we examine, according to the author's opinion, the problem of spiritual intelligence, in this case, of them is the problem of prayer which should be a shield from immoral and immoral acts because it is clearly stated in religion in Surat al-Ankabut: 45.

أَتْلُ مَا أُوْحِيَ إِلَيْكَ مِنَ الْكِتَابِ وَأَقِمِ الصَّلَاةَ إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَلَذِكْرُ اللَّهِ أَكْبَرُ ۗ وَاللَّهُ يَعْلَمُ
مَا تَصْنَعُونَ

Meaning: "*Indeed, prayer prevents abominable and evil deeds*" (Kementeriaan Agama, 2012).

Observing the verse above, prayer should be a shield that protects and prevents someone from carrying out prohibited actions, but the fact is that nowadays, a lot of Corruption is also being carried out by people who are considered good (whole), as happened in Islam, the parties involved in this matter country.

In the classical Islamic studies literature, no separate chapter is devoted to the crime of Corruption. Therefore, to see how the criminal act of Corruption according to Islamic Law, there are at least eight terms that can be related to the criminal act

of corruption below:

a. Ghulul (darkening)

The etymological meaning of ghoul is a betrayal of the spoils of war. While ghoul, in terminology, is taking something and hiding it in his possessions in the sense of the word betraying the trust that has been given to him. The etymological and terminological meaning of ghouls can be seen in Surah Ali Imran's verse 161.

وَمَا كَانَ لِنَبِيٍّ أَنْ يَغُلَّ ۚ وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَمَةِ ۚ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

Meaning: *"It is not possible for a prophet to be unfaithful in dealing with the spoils of war. Whoever betrays in the matter of the spoils of war, then on the Day of Judgment, he will come with what he crossed, then each person will be repaid for what he did with a corresponding punishment, while they are not persecuted"* (Kementerian Agama, 2012)

The verse above clearly states that a ghoul is a form of betrayal of people's trust in him. Ghulul occurs because there is an intention to enrich oneself, and ghoul occurs because of an abuse of authority. Ghoul harms many people because the rights of other people and the state's rights are scattered (Tajdid, 2006).

b. Risywah (bribery)

Etymologically, risywah is a gift, a mandate, or a bribe. Ibn Manzhur gives the meaning preserved. The term risywah is giving something from a person to a judge as a law enforcement officer or another so that everything goes smoothly or according to the wishes and legal certainty is immediately obtained; this is known as isti'jal fi al-qadhiyah, which is a way to expedite all matters in the eyes of the Law and other issues without going through the applicable procedures, or it can be called going through the road without obstacles. Risywah is not the same as corruption, but the Risywah is a manifestation of corruption seen from its impact. Rasulullah SAW cursed bribes and those who received bribes, as follows:

لعن رسول الله صلى الله عليه وسلم الراشى والمرتشى والرائش يعنى الذى يمشى بينهما (رواه أحمد)

It means: *"The Messenger of Allah cursed bribers, bribe takers, and intermediaries from both of them"* (Narrated by Ahmad).

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ لَعَنَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- الرَّاشِيَ وَالْمُرْتَشِيَ

Meaning: *"And it was narrated from Abdullah bin 'Amar that he said: The Messenger of God cursed those who give bribes and those who accept bribes"* (HR. Abu Daud, al-Tirmidhi, Ibnu Majah, Hakim and Ahmad).

c. Ghasab (forcibly taking the rights of others)

According to Muhammad al-Khatib al-Syarbini, the term ghasab is to take something unjustly. Before taking it unjustly, he does it openly, whether it is

property or something else. It is not the same as robbery because there is no act of murder, and ghazal is also not the same as theft because theft is done secretly while ghazal is done openly (Tajdid, 2006). In QS. al-Baqarah verse: 188 as follows:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ وَتُذِلُّوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Meaning: *"And don't one of you eat the property of another part of you vainly and don't take the matter of the property to the judge so that you can eat a part of the other person's property by (the way of committing) sin, even though you know it"* (Kementerian Agama, 2012)

Betrayal is an attitude that does not follow the trust given to him, besides taking something secretly and showing good behavior to the owner. In addition, betrayal can also be done by unilaterally canceling an agreement that has been agreed upon. In QS. al-Anfal verse 27, as follows:

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

Meaning: *"O you who believe, do not betray Allah and His Messenger, and (also) do not betray the mandates entrusted to you while you know"* (Kementerian Agama, 2012)

d. Sariqah (theft)

Term tariqah secretly takes other people's goods or assets from the storage area customarily used to store said goods or support. Unlawful transfer of property rights is usually carried out clandestinely and through fraud. Stolen items are typically stored in a vault where the treasure is kept. Sariqah is an act whose punishment has been determined by Allah SWT; the penalty is in it QS. al-Ma'idah verse 38 as follows:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

It means: *"As for men and women who steal, cut off their hands (as) recompense for what they have done and as punishment from Allah. And Allah is Mighty, Wise"* (Kementerian Agama, 2012)

e. Hirabah (robbery)

The term hirabah is almost the same as ghazal. Still, the difference between the two is that hirabah takes other people's rights utilizing violence, sometimes to the point of murder, while ghazal takes other people's rights but does not go so far as to sacrifice lives.

In addition to the terms above, there are also the terms al-maks (*illegal collection*), al-initials (*pickpocketing*), and al-ijihad (*confiscation*). The term al-maks is a rule set or agreed upon by rulers with a tyrannical nature towards material (property). This rule is created as a law that is deliberately made and designed. In

addition, the irresponsible attitude usually impacts many layers of the authorities. The term al-initials is the act of someone taking property using confiscation. There is an element of violence or the opportunity of a person to control another person's property by way of appropriation, with lightning force (*quickly*) and done openly by deceiving the victim, the meaning of the word is to make the victim sleepy, and if the victim does not want then, the perpetrator does it by force. While the term al-ihthab openly takes other people's rights, the perpetrator does not need to make sacrifices.

Judging from the definition above, no clear and specific punishment for Corruption in Islamic Law exists. However, Corruption and theft have the same thing, which is the same in unilateral loss, even though there is a difference between the two only in the type and meaning, not in principle. However, for more clarity, we can look at the sources of Islamic Law, namely the Quran, and hadiths, that discuss punishment from each definition above.

Once the writer understands the principles of Law that must exist in a procedure that applies to lawbreakers, the writer can use those principles as guidelines to determine punishment. In Islamic Law, several sentences can be imposed on perpetrators of Corruption; the ruling is based on the Qur'an and hadith, and the various types of Law are as follows.

3. Moral sanctions on ghulul perpetrators

Moral sanctions in this case are sanctions imposed on ghulul law violators, these sanctions are in the form of not praying the bodies of ghulul perpetrators. While the actions of al-max or will be humiliated before Allah SWT later on the day of resurrection. This is based on the hadith of the Prophet SAW :

حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ عَنْ ثَوْرِ بْنِ زَيْدٍ الدِّلِيِّ عَنْ أَبِي الْعَيْثِ مَوْلَى ابْنِ مُطِيعٍ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ خَرَجْنَا مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَامَ خَيْبَرَ فَلَمْ نَعْنَمْ ذَهَبًا وَلَا وَرَقًا إِلَّا الثِّيَابَ وَالْمَتَاعَ وَالْأَمْوَالَ قَالَ فَوَجَّهَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَحْوَ وَادِي الْقُرَى وَقَدْ أُهْدِيَ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَبْدٌ أَسْوَدُ يُقَالُ لَهُ مِدْعَمٌ حَتَّى إِذَا كَانُوا بِوَادِي الْقُرَى فَبَيْنَا مِدْعَمٌ يَحْطُ رَجُلٌ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذْ جَاءَهُ سَهْمٌ فَقَتَلَهُ فَقَالَ النَّاسُ هَنِيئًا لَهُ الْجَنَّةُ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَلَّا وَالَّذِي نَفْسِي بِيَدِهِ إِنَّ الشَّمْلَةَ الَّتِي أَخَذَهَا يَوْمَ خَيْبَرَ مِنَ الْمَغَامِ لَمْ تُصِبْهَا الْمَقَاسِمُ لَتَشْتَعِلَ عَلَيْهِ نَارًا فَلَمَّا سَمِعُوا ذَلِكَ جَاءَ رَجُلٌ بِشِرَاكِ أَوْ شِرَاكَيْنِ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شِرَاكِ مِنْ نَارٍ أَوْ قَالَ شِرَاكَانِ مِنْ نَارٍ

It means: "From Malik conveyed to me, from Thaur bin Zaid al-Dili, from Abi al-Gais, the former slave of Ibn Muthi from Abu Hurairah, that he said; we went out with Rasulullah SAW at the time of the conquest of Khaibar. We did not get spoils of war in

the form of gold and silver, what we got were intangibles, clothing and goods. At that time, a slave named Mid'am. The Prophet departed for Wadi al-Qura. When he arrived at Wadi al-Qura, Mid'am, while unloading the Prophet's belongings, suddenly a mysterious arrow (hit Mid'am), causing him to die. So the people who saw said "hopefully he will go to heaven." Indeed, the mantle that he took at the time of the conquest of Khaibar from the spoils that had not been distributed would ignite the fires of hell that would burn him. (HR.Abu Daud).

a. Takzir Sanction

The sanction of takfir is a punishment set and made by the responsible parties, namely the law enforcers (judges); this is because there are no strict provisions in the Qur'an and hadith in the matter of ghou, risyah, treason, al-maks, al-initials and al-ihthab are only affected by the punishment of taking. Takzir punishment is indeed not included in the category of hudud law. However, taking punishment does not mean it cannot be harsher than hudud law; in fact, it is possible that takfir Law can reach the severest punishment in hudud punishment, which is the death penalty.

Regarding this punishment, there is a hadith from Jabir bin 'Abdullah al-Anshari who said, the Messenger of God, may God bless him and grant him peace, said: There is no punishment for hand-cutting for pickpocketing, embezzlement, and treason.' (HR. al-Baihaqi, Abu Daud, al-Tirmidhi and Malik).

b. Returning other people's property or rights

In addition to taking sanctions, there are also sanctions for returning property or other people's rights in ghazal cases. Imam al-Nawawi classifies the sanctions for the perpetrators of ghazal into three parts, first, returning the property in its entirety if the goods taken are intact and good; second, the goods carried are of reduced grade, shape, and size, then the perpetrator is obliged to return the property and also return it lack of assets that have changed in form and time, third, the spoils are lost, then the perpetrator is obliged to replace the goods according to the goods he took.

c. Jarimah hudud

Jarimah hudud is a law that Allah SWT has established. In the sense of the word, finger hudud law is non-negotiable. What is meant by the hudud finger category is tariqah (theft). This is as contained in the word of Allah QS. al-Ma'idah verse 38 as follows:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءُ بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

It means: "As for men and women who steal, cut off their hands (as) recompense for what they have done and as punishment from Allah. And Allah is Mighty, Wise" (Kementerian Agama, 2012)

From the explanation above, it can be seen that Corruption cannot be equated with ghoul (embezzlement), Irish (bribery), ghazal (forced taking of other people's rights/wealth), treason, tariqah (theft), hirabah (robbery), al-max (illegal work), al-initials (pickpocketing), al-ijtiḥad (stealing) because everyone has a different definition and behavior. However, the Law that is applied can be equated with other laws; even the punishment of cutting off a hand or the death penalty can be carried out if the act fulfills one's lineage, and the consequences that are felt are very troubling to many people. In addition, the sentence imposed must also comply with the principles of justice, the focus of legal certainty, and the direction of practicality. Thus, perpetrators of Corruption can be punished with the Law of cutting off hands, in addition to fulfilling existing legal principles, and there is a deterrent effect so that perpetrators do not repeat it and those who do not do it.

D. Simpulan

Based on the descriptions in the previous discussion above, it can be concluded that an act of Corruption is a nasty, dirty, and fraudulent activity, both in terms of positive Law and Law in the perspective of Islamic Law. However, according to Islamic Law, Corruption is not the same as a ghoul (*embezzlement*), Irish (*bribery*), ghazal (*taking other people's rights/properties by force*), makar, tariqah (*theft*), hirabah (*robbery*), al-maks (*illegal donations*), al-initials (pickpocket), and al-ijtiḥad (deprivation). Because each has its scope, one cannot be equated with the other. Even though, in principle, they have the same goal: to harm one person and many people. Islamic Law assumes that Corruption is not included in the realm of hudud because there is not a single verse in the Qur'an or hadith that addresses the issue of Corruption. Therefore, corruption cases are only included in the scope of taking sanctions, sanctions determined by law enforcement agencies. However, corruption cases are not an easy matter because the impact of Corruption is very detrimental to many people, so the taking sanctions that are imposed must also be high-level takfir sanctions so that the perpetrators of Corruption will feel deterrent and afraid to do so. For example, the Law of taking cutting off hands or the death penalty can be applied to perpetrators of Corruption.

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