



Why is the Death Penalty not Applied to Corruptors? Islamic Criminal Law Perspective

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Abstract

Corruption, although not explicitly mentioned in Islamic law, is still considered a serious offense, especially when considering the application of the death penalty for perpetrators. In Indonesia, the death penalty for criminal acts of corruption is regulated in Article 2 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crime. However, no perpetrator has yet been sentenced to death. This research aims to understand why the death penalty is not applied in corruption cases. The research method uses a normative and empirical legal approach, with primary and secondary data sources and data collection techniques through literature studies and interviews with law enforcement. The research results show that the elements in Article 2, paragraph (1) of the Eradication of Corruption Crime Law, especially the phrase "under certain circumstances," are poorly defined, making its implementation problematic. Apart from that, the death penalty raises pros and cons in society. In the context of Islamic law, corruption is categorized as a *ta'zir* crime, which allows *Ulul Amri* to impose the death penalty if deemed necessary in the public interest, considering that corruption not only harms the state but also endangers society in terms of lives, security, and social order.

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I. Introduction

Corruption is a severe threat that undermines the country's economy and damages society's social and political stability and morality (Hartanti, 2016; Hasan et al., 2017; Buamo, 2019; Nelson, 2020). Although the law allows the death penalty for perpetrators of corruption under certain conditions in Indonesia, its implementation is sporadic (Chazawi, 2016). This fact can be seen from the series of heavy sentences received by many corruptors, such as M. Akil Mokhtar and Adrian Waworuntu, who were sentenced to life imprisonment, as well as Setya Novanto and Irman, whom

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each received only 15 years imprisonment. In comparison, Juliari Batubara was only sentenced to 15 years in prison. 12 years sentence (Aditya & Asril, 2022). This reality raises profound questions regarding the effectiveness of the criminal system and corruption prevention mechanisms implemented in Indonesia. In Islamic law, corruption is categorized as *jarīmah ta'zīr* (Jumali, 2014), where the death penalty can be applied if deemed necessary for the public benefit. However, the application of these penalties is highly dependent on judges' interpretation of the law, indicating an urgent need to re-evaluate the country's existing sentencing approaches and corruption prevention policies.

Previous studies regarding the death penalty for perpetrators of criminal acts of corruption in Indonesia show that there are differences in perspective between positive law and Islamic law. The first group examines the comparison between the two legal systems, where Rahmayanti (2017), Arwan (2020), and Rahman (2020) highlight that Islamic law allows the application of the death penalty as *jarīmah ta'zīr*. Meanwhile, Maswandi (2016) and Sudrajat (2017) emphasized that the application of this punishment in Indonesia is still limited and comparative. The second group focuses on the application of the death penalty in certain conditions, such as in the context of the COVID-19 pandemic discussed by Daipon (2021) and Jihad (2019), considering that extraordinary conditions can justify the death penalty. The final group discussed the development of the concept of corruption in positive law, with Aswari (2011) and Alias & Suryaningsi (2022) examining the human rights perspective, while Pasmatusi (2019) highlighted the evolution of the definition of corruption in Indonesian law. Together, these studies form the basis for understanding the application of the death penalty in various legal contexts in Indonesia.

This research aims to fill the gap in the existing literature regarding the application of the death penalty for perpetrators of corruption in Indonesia by exploring the reasons why the death penalty has not been implemented. While previous research has highlighted the formal legal aspects and social controversies surrounding the death penalty, no comprehensive analysis has linked ambiguities in defining "particular circumstances" to broader political, social, and legal constraints. Apart from that, the perspective of Islamic criminal law, which allows the application of *ta'zīr* penalty up to the death penalty, has not been explained in detail in the Indonesian context. This research will offer an in-depth review of how Islamic law can be applied in corruption cases by examining the barriers and opportunities for more effective law enforcement. Thus, this research contributes to a better understanding of the integration of Islamic and positive law in the context of corruption criminal law enforcement and offers concrete solutions to strengthen the legal system in Indonesia.

Research regarding the application of death penalty sanctions for corruptors in Indonesia is significant because corruption is a crime that hurts various aspects of people's lives, including economic, social, and political stability. Although Indonesian positive law has provided for the death penalty in corruption cases committed under "certain circumstances," to date, this penalty has never been implemented. The lack of clarity in legal interpretation, coupled with political and social pressure, makes enforcement of the death penalty law ineffective, thus providing an opening for corruptors to continue to harm the state without a significant deterrent effect (Buamona, 2019). In addition, the Islamic criminal law perspective that regulates *ta'zīr* penalty provides space for the application of the death penalty but has not been explored comprehensively in the context of Indonesian law. Therefore, this research is needed to explain these obstacles, examine the potential for applying Islamic law in a modern context, and offer concrete recommendations for strengthening law enforcement against corruption to impact efforts to eradicate corruption in Indonesia positively.

II. Methods

This research uses legal research methods to understand and analyze legal issues related to death penalty sanctions for perpetrators of corruption from the perspective of Islamic law and positive law in Indonesia. Legal research methods are a series of scientific activities that help to

understand existing legal problems, provide solutions, and conclude findings that can be implemented in legal practice (Benuf & Azhar, 2020). This research is qualitative, which is the right approach considering that the focus of this research is to interpret legal phenomena in depth. A qualitative approach is used because it allows researchers to explore the natural background of corruption and the application of the death penalty law, involving various methods to obtain rich and detailed insights. This research aims to interpret the phenomena that occur, considering the social and legal context surrounding corrupt practices in Indonesia and the normative and empirical aspects of applying the death penalty law.

The approach used in this research is sociological in qualitative methods. This sociological approach seeks to reveal the socio-cultural meanings and experiences experienced by research subjects in the context of legal application. This research aims to describe and interpret existing conditions, develop opinions, and examine ongoing processes and effects related to implementing the death penalty law for corruptors. Thus, this research relies on numerical data and focuses on an in-depth analysis of complex social and legal phenomena. Descriptive methods present existing phenomena as they are, emphasizing a comprehensive understanding of the legal and social dynamics that influence the enforcement of death penalty laws. With this approach, research aims to answer existing legal problems without data manipulation.

This research's primary and secondary legal sources and materials are primary and secondary. Primary legal materials include legal sources that have binding authority, such as interviews with prosecutors and judges, as well as legal documents such as the Al-Qur'an, Hadith, the Criminal Code (KUHP), and Law Number 31 of 1999 concerning Eradication Corruption Crime, which has been amended by Law Number 20 of 2001. Interviews were conducted with corruption judges and prosecutors in Semarang, the capital of Central Java because there is only one corruption court in each province. In addition, secondary legal materials are used to clarify primary legal materials, including books, scientific journals, articles, and other literature relevant to criminal law on corruption. These sources provide a broader and deeper context for the legal issue being researched.

Data collection techniques in this research used interviews and document study. Semi-structured interviews were chosen to obtain in-depth and specific data, allowing researchers to explore further information by adjusting questions based on the responses. This interview method involves open questions that encourage participants to provide more in-depth and varied answers (Alijoyo et al., 2021). Document studies involve collecting data from various written sources, including legal books, scientific papers, official documents, journals, and articles relevant to the research topic. The data obtained was then compiled and analyzed to support research findings. The data analysis process was carried out using qualitative methods, using the Spradley Model, which involves four stages of analysis to draw relationships between data, identify patterns, and draw objective and systematic conclusions to answer research questions comprehensively.

III. Results and Discussion

Death Penalty in Islamic Criminal Law

The death penalty in Islam is often considered cruel, sadistic, and inhumane. However, Islam pays excellent attention to fundamental human values in every legal regulation. In Islam, the death penalty is known as *qisās*; that is, the punishment is applied in proportion to the perpetrator's actions against the victim. *Qisās* is called the death penalty because it is by several verses in the Koran.

Table 1. *Qisās* verses in the Qur'an

Names of Surahs and Verses of the Qur'an	Translation of Qur'an Verses
Al-Baqarah (2):178	O you who have believed, prescribed for you is legal retribution

	for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother [i.e., the killer] anything, then there should be a suitable follow-up and payment to him [i.e., the deceased's heir or legal representative] with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.
Al-Baqarah (2):179	And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.
Al-Baqarah (2):194	[Battle in] the sacred month is for [aggression committed in] the sacred month, and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allāh and know that Allāh is with those who fear Him.
Al-Mā'idah (5): 45	And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allāh has revealed - then it is those who are the wrongdoers [i.e., the unjust].

The verses above show that Allah determines the death penalty as an appropriate punishment for perpetrators of murder because of its enormous impact. However, implementing *qisās* does not have to be carried out if the victim's family apologizes and receives *diyāt* (a fine instead of life). *Diyāt* is an alternative punishment that can cancel the death sentence with payment to the victim's family. Fiqh and tafsir scholars agree that the punishment of *qisās* must be applied in cases of intentional or premeditated murder. However, there are differences of opinion among scholars regarding whether a Muslim should be subject to *qisās* if he kills a non-Muslim or *ahl al-dzimmi*, as well as whether a free person should be subject to *qisās* if he kills a slave.

The death penalty is not applied to all types of murder. The threat of the death penalty only applies to murder that is carried out intentionally and involves an element of unjustified hostility. The application of the death penalty to perpetrators of unlawful killing is only applied if the killing is carried out intentionally or premeditated while taking into account the conditions. If the murder was not committed intentionally, then the *qisās* penalty is not applied. Allah strictly prohibits murder committed without a valid reason, as stated in the Qur'an Surah Al-Isrā' (17) verse 33:

" And do not kill the soul [i.e., person] which Allāh has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]."

From the explanation above, it can be concluded that the death penalty is also an alternative punishment given to perpetrators of *hudūd* crimes. However, the death penalty is only given to four types of *jarīmah* perpetrators *hudūd* (Taqiyuddin, 2021),

Jarīmah Zina

Zina is divided into *zina muhsan* (those who are married) and *zina ghairu muhsan* (those who are unmarried). *Zina muhsan* is adultery committed by someone who is already married or married. The perpetrator of adultery was sentenced to death. The death penalty for the perpetrator of *zina muhsan* is called stoning (*rajam*), namely by drowning the adulterer in the ground up to his chest and then throwing stones at him until he dies. Even though *rajam* is not mentioned explicitly in the

Qur'an, all scholars agree that this punishment is valid (*sahih*) based on many hadiths that hint at this (Ali, 2004). Abu Hurairah narrated the following hadith:

"A Muslim man came to Rasulullah PBU while he was in the mosque. Then the man said, 'O Rasulullah, indeed I have committed adultery.' He turned away from him. The man moved in front of him and said, 'O Messenger of Allah, indeed I have committed adultery.' He turned away from him until the man repeated his words four times. After the man had testified against him four times, Rasulullah called him and asked, 'Are you crazy?' The person answered, 'No.' He asked, 'Are you married?' The man answered, 'Yes.' Rasulullah said, 'Take this person, then stone him.'" (HR Muttafaq Alaih)"

A similar message was also conveyed in the Hadith of the Prophet Muhammad through Abdullah bin' Abbas.

"Umar bin Al-Khaththab said when he was sitting on the pulpit of the Messenger of Allah, 'Indeed Allah has sent Muhammad with *al-Haq* and revealed the Book (Qur'an) to him. Among what was revealed to him was the verse of *rajam*. We have read it, memorized it, and understood it. The Messenger of Allah has implemented the law of stoning; we have also implemented the law of stoning (*rajam*) after he died,' so that they will go astray because they ignore an obligation that Allah has revealed. Indeed, the law of stoning is indeed in the book of Allah for people who commit adultery. At the same time, they are married, from among men and women, if the evidence is powerful (with four witnesses, or proven pregnant, or confession)."

The punishment of stoning for *adultery Muhsan* can be applied if it fulfills the elements of *adultery*, namely: (1) having sexual relations outside of legal and intentional marriage, (2) the perpetrator is an adult (*mukallaf*), (3) the act of adultery committed in a conscious state without any pressure or coercion, namely that both parties of the perpetrator have agreed to commit adultery, and (4) there is valid evidence that shows that adultery has occurred, as explained in the hadith above, namely bringing in witnesses, confession, or evidence already contained.

Jarimah Hirabah (Robbery)

Hirabah is taking property using violence. The way to take this treasure is by killing or simply scaring. In essence, the perpetrators of *hirabah* disturb the security of the community environment so that the community feels their safety is disturbed. Therefore, maintaining security is a must. This crime is punishable by death, even crucifixion, according to what they did. Allah says in the Qur'an Al-Mā'idah (5) verse 33-34:

"Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment (33), Except for those who return [repenting] before you overcome [i.e., apprehend] them. And know that Allāh is Forgiving and Merciful (34)."

Qur'an Al-Mā'idah (5) verse 33-34 above emphasizes that the law is for perpetrators of *jarimah hirabah*, which means being killed or crucified or having their hands and feet cut off in reciprocity or being expelled from the country (where they live). According to Imam Taqiyuddin, if during a robbery, there is a murder involving a security disturbance (*hirabah*), then the sanction imposed on the perpetrator is the death penalty; and if it is carried out cruelly, disrupting people's minds, then the death penalty can be carried out simultaneously with the cross. This punishment can be a tool to frighten society in general so that the same action will not happen again. However, if

the act is only robbery and not murder, then the sanctions are cutting off hands and feet and/or exile (Rahmi, 2018).

Jarimah Al-Baghyu (Rebellion)

Al-Baghyu is a rebellion carried out to fight and overthrow a legitimate ruler or who commits treason outside the constitution simply because of political motives, while the ruler or regime is the leader of an Islamic government. The perpetrator of treason is a criminal act in which the perpetrator is threatened with the death penalty by fighting unless they surrender and return to the truth (to Allah) in the sense of submitting to the leader and not committing acts of treason again. Allah says in the Qur'an Al-Hujurāt (49) verse 9:

“And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allāh. And if it returns, then make settlement between them in justice and act justly. Indeed, Allāh loves those who act justly.”

Qur'an Al-Hujurāt (49) verse 9 above explains that it has become a legal decree of Allah to give the death penalty to perpetrators of treason, namely to groups who do injustice to other groups and create widespread planned slander among the community and even commit murder or oppose the legitimate government by gathering strength from various aspects. Therefore, people who commit treason or insubordination and enmity can be subject to the death penalty if they carry out an attack that results in the death of the victim of the party being attacked.

Jarimah Riddah (Apostate)

Jarimah The next thing that is also threatened with the death penalty is *riddah*, namely, leaving the Islamic religion, or what is known as apostasy. People who apostatize are given the opportunity to repent. If they do not want to repent and return to Islam, the punishment is death, they do not need to have their hands and feet cut off, and they are not exiled or exiled (Rahmi, 2018). Death penalty for *jarimah riddah* is explained in the Qur'an and hadith.

Table 2. Qur'anic Verses about Apostasy

Qur'an and Hadith	Translation of Qur'an Verses and Hadith
Qur'an Al-Baqarah (2): 217	They ask you about the sacred month - about fighting therein. Say, "Fighting therein is great [sin], but averting [people] from the way of Allāh and disbelief in Him and [preventing access to] al-Masjid al-Ḥarām and the expulsion of its people therefrom are greater [evil] in the sight of Allāh. And fitnah is greater than killing." And they will continue to fight you until they turn you back from your religion if they are able. And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally.
Qur'an At-Taubah (9): 73-74	O Prophet, fight against the disbelievers and the hypocrites and be harsh upon them. And their refuge is Hell, and wretched is the destination (73). They swear by Allāh that they did not say [anything against the Prophet Sallallaahu' alaihi wa Sallam] while they had said the word of disbelief and disbelieved after their [pretense of] Islām and planned that which they were not to attain. And they were not resentful except [for the fact] that Allāh

	and His Messenger had enriched them of His bounty. So if they repent, it is better for them; but if they turn away, Allāh will punish them with a painful punishment in this world and the Hereafter. And there will not be for them on earth any protector or helper (74).
Hadith narrated by Bukhari and Muslim	From Ibn Mas'ud he said: Rasulullah PBUH said: It is not halal for the blood of a Muslim who has testified that there is no god worthy of worship except Allah and I am the messenger of Allah, except from the following three people; someone who apostates from Islam and leaves the congregation, someone who is married but commits adultery and someone who kills another person.
Hadith narrated by Abu Dawud and Nasa'i	From 'Aisyah that Rasulullah PBUH said: "It is not halal to kill a Muslim except for one of three things: A married person who commits adultery, he is stoned; a person who kills a Muslim intentionally, he is killed; and People who leave Islam and fight against Allah and His Messenger are killed or crucified or exiled far from their country.

The verses and hadith in the Table 2 emphasize that the death penalty for apostasy is not only caused by someone leaving Islam but because they have committed a betrayal of the agreement between the Muslim Ummah and the State. The Prophet once accepted the repentance of some apostates and rejected others. This is because, behind a person's apostasy, there is a problem or something else that is no less important, namely that there are other opportunities to harm Muslims and the country. So, sanctions are not just about apostasy.

According to A. Hanafi, the purpose of the law is prevention, teaching, and education. This is done to restrain the perpetrator from repeating the *jarīmah* act or to avoid repeating the same actions. Islamic jurists classify the broad objectives of the Shari'a as follows:

1. Guarantee security

Ensuring the security of life's necessities is the main objective of the Shari'a because these things cannot be separated. If these needs are not guaranteed, there will be chaos and disorder everywhere. The needs that need to be taken care of are as mentioned above, namely, *dharuriyāt khamsah*.

2. Guarantee secondary needs

These matters concern what is important for providing various facilities for the population and facilitating their hard work and burden of responsibility. In other words, these necessities consist of things that remove difficulties from people and make life easy for them.

3. Make improvements

The third aim of Islamic law is to make improvements, namely making things that can decorate social life and make humans capable of doing things and living things better. The death penalty in Islam is also applied as a maximum form of punishment, which can be imposed when it has a robust legal basis and evidence, and the conditions for implementing the death penalty have been fulfilled. In Islam itself, the death penalty is essentially a guarantee of survival, not an attempt to take away the right to life as believed by human rights, such as stating that the death penalty must be abolished because the taking of life is the prerogative of God.

The death penalty is maintained in Islam to protect the interests of individuals and society from crimes that endanger the basic principles of humanity. Unfortunately, the death penalty has often been directed at Islamic law, which is depicted from a cruel, sadistic, and inhumane perspective, so this perception makes society anti-Islamic law. In this case, Islamic law pays excellent attention to basic human values in the world, which are covered by five things, namely protecting religion (*hifd al-din*), protecting the soul (*hifd al-nafs*), protecting property (*hifd al-māl*), guarding reason (*hifd al-aql*), and guarding offspring (*hifd al-nasl*). The protection of these rights is

in no way a gift from the authorities or society but a gift from God. In order to maintain these five fundamental human rights, Islamic law consequently includes the death penalty as one of the basic punishments, as well as the maximum penalty.

Application of the Death Penalty for Corruptors According to Islamic Criminal Law

The forms of punishment that are punishable by death have been explained above, namely *qisās*, *diyāt*, and *hudūd*. It should be noted that apart from these punishments in Islam there is also the punishment of *ta'zīr*. In trouble *ta'zīr*, the death penalty imposed for some instances, namely those that fall into the category of *ta'zīr* penalty called '*al-qatl al-siyāsī*', namely the death penalty which is not regulated by the Qur'an and Sunnah, but handed over to the authorities or state, both the implementation and the procedures for execution. If we look at the forms of punishment that can be categorized as the death penalty and the purpose of implementing the death penalty, then can perpetrators of criminal acts of corruption be sentenced to death in Islam? (Rifa'i, 2014).

According to Islamic law, the death penalty for corruptors can be applied if the corrupt act meets the provisions or is similar to a violation of the law or a crime that can be threatened with the death penalty (Maswandi, 2016; Daipon, 2021; Iswandi & Bukhari, 2023). Corruption cannot be analogous (*qiyās*) to adultery because the *illat* is different. Nor can it be analogous to murder and *riddah*, because in corruption, there is an element of taking property, which is not present in the crime of murder and *riddah*. The only death penalty in *hadd* that can be analogous (*qiyās*) to corruption is *jarīmah hirābah*. Both have similarities in the element of stealing property and can cause death.

Corruption not only takes illegal assets but can impact the death of other parties, such as if someone corrupts the budget for social assistance funds or disaster recovery funds (Asa'ari et al., 2023). Funds that should be sufficient to help victims of hunger or restore health are instead cut, which ultimately results in not being able to help many people, only being able to help a few parties, and ultimately causing deaths among disaster victims (Arifin, 2015; Ulinnuha, 2018). This means that the corruption committed causes death, which is the same as the crime of *hirābah* (Sirin, 2013).

Those who commit *hirābah* can be sentenced to death, crucified, have their legs and arms amputated crosswise, or be exiled. However, if the perpetrator's actions result in the death of the victim, the ulama agrees to sentence him to death. Thus, death can punish corruption if it is analogous to *jarīmah hirābah*, which causes death (Rajab, 2022).

This view aligns with the opinion of Ibnu Katsir (Purwanto & Fauzy, 2017), who makes an analogy of corruption with *hirābah* so that the death penalty can be applied (Arief, 2013; Fazzan, 2015). The word *hirābah* means an act of resistance. It is not only defined in crimes of mugging, robbery, or rebellion but can be developed by the development of the act of crime at any time.

Ibnu Katsir further explained that corruption can be included in the act of *hirābah* because the effects it causes are categorized as a significant crime (*fasad kabir*), because it has caused damage on the face of the earth; this is in line with the punishment for *jarīmah hirābah* explained in the Qur'an Al-Mā'idah (5) verse 33:

"Indeed, the penalty for those who wage war against Allāh and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment."

According to some scholars, the punishment for perpetrators of corruption falls into the category of *ta'zīr*, because the punishment for corruption is not explicitly stated in the Qur'an. Therefore, the punishment falls under *Ulul Amri's* (Islamic Government) authority. *Ulul Amri* has the authority to impose the death penalty for criminal acts of corruption, taking into account the benefit of society. This opinion is supported by contemporary scholars such as Abdul Qadir' Audah

in *Al-Tasyri' al-Jina'i al-Islami*, Abdul' Aziz Amir in *Al-Ta'zīr fi asy-Syariah al-Islamiyah*, and Wahbah az-Zuhaili in *Al-Fiqhu al-Islami wa Adilatuhi* (Sutamaya et al., 2022).

The punishment of *ta'zīr* can reach the death penalty as scholars still debate the maximum punishment. According to Sayyid Sabiq, some scholars allow it, while others prohibit it. The Hanafiyah school of thought allows *Ulul Amri* to apply the death penalty for perpetrators of repeated crimes, such as theft. The Maliki school of thought and some Hanabilah scholars also allow the death penalty as the highest *ta'zīr* penalty, for example, for spies and perpetrators of destruction on earth. Some Shafi'i clerics allow the death penalty in cases of homosexuality and the spread of heretical sects that deviate from the Qur'an and Sunnah (Arifin, 2015; Ulinnuha, 2018; Asa'ari et al., 2023).

Basically, according to Islam, the *ta'zīr* penalty is intended to provide teaching (*ta'dīb*) and not to cause death. Therefore, in *ta'zīr* law, it is not permissible to cut off body parts or take life. However, the death penalty as the highest *ta'zīr* penalty may be given only to perpetrators of *jarīmah* who are very dangerous, especially those related to life, security, and public order, or if previous sentences have not had a deterrent effect (Jumali, 2014; Rajab, 2022). However, some scholars argue that *ta'zīr* is a sanction for corruptors, not *hudūd*. Equating corruption with theft means making an analogy in the field of *hudūd*, even though *hudūd* cannot be analogous to any case.

There is a fundamental difference between theft and corruption. In cases of theft, the property, as the object stolen, is beyond the control of the perpetrator and has nothing to do with the perpetrator's position. Meanwhile, in corruption, assets are under the perpetrator's control and are related to his position. The perpetrator's power or ownership of shares in the corrupted property gives rise to doubt, which becomes the basis for the cancellation of the *hudūd*. Therefore, *hudūd* penalties are not applied in corruption cases.

Al-Buthi's opinion (Laily, 2018) on the benefit theory regarding the death penalty for corruptors is as follows:

1. The death penalty for corruptors can be given when no other alternative is effective in providing a deterrent for the perpetrators of corruption and giving fear to those who intend to commit corruption; this does not conflict with the five objectives of the Shari'a (*maqashid al-syari'ah al-khamsah*).
2. Al-Buthi did not object to the death penalty for *ta'zīr*. He considered that the punishment was appropriate for the crimes they had committed. Some scholars are of the view that government employees who are unjust towards the people can be killed based on the analogy of five animals that do a lot of bad and hurt (*al-faqâsiq al-khamsah*), and equate everyone who causes damage on the face of the earth and causes harm to society at large, can be killed.
3. The crimes of corruptors damage the economic order, thereby disrupting the stability of the country and harming society at large. In this context, there are two benefits that we need to pay attention to, namely, the benefit of protecting the lives of corrupt parties and the benefit of protecting the religion, reason, property, and character of the wider community. When a dilemma like this occurs, the greater benefit must be prioritized over the smaller benefit. According to al-Buthi, one of the barometers of the size of the benefit is the scope of the benefit. The public benefit must take precedence over the benefit of the individual. Thus, based on this review, it is permissible to sacrifice the life of one corrupt person in order to protect the benefit of many people.

According to Nahdlatul Ulama (NU) clerics, the death penalty for corruptors is permitted through *ta'zīr* on the grounds that corruption damages public welfare. NU clerics believe that the injustices carried out by state employees who continuously commit corruption are far greater than those carried out by other ungodly actors. Imposing the death penalty for perpetrators of corruption is considered legal as a form of saving society from injustice. This argument is used to justify the permissibility of the death penalty, which is equated (*ilhaq*) with *hirābah*. The *ilhaq* procedure is

justified because there is no opinion that explicitly answers this problem. Through *ilhaq*, ulama finds the answer, so this argument is chosen as the ideological basis (Nurdin, 2020).

In the concept of *zawājir* and *jawābir* theory regarding the death penalty for corruptors, *zawājir* theory regulates the death penalty as a deterrent against future criminal acts. The death penalty as a *ta'zīr* penalty against corruptors functions as a deterrent, following the concept of *zawājir*. The function of punishment in this theory is to make the perpetrator aware so that he does not repeat the crime and to serve as a lesson for the wider community. Furthermore, according to the *jawābir* theory, sanctions are applied by the Al-Qur'an and Sunnah, so that the death penalty for corruptors in the *jawābir* theory functions as a *hadd* punishment, which has the connotation of the afterlife (Arifin, 2015; Yuhermansyah & Fariza, 2017).

The description above leads the author to the view that there is no single agreement regarding the application of the death penalty in Islam for corruption cases because there is no Qur'an and Hadith that explain this explicitly. Therefore, some scholars believe corruption should be subject to *ta'zīr* penalties, with the maximum limit being the death penalty. However, the death penalty can only be applied to criminal acts that seriously damage human welfare (Ulinnuha, 2018; BW et al., 2023; Zulkarnain et al., 2023). Some other scholars disagree with the application of the death penalty in *ta'zīr*, which exceeds the *hadd* penalty. Some scholars also believe that criminal acts of corruption can be punished by death if it is analogous to *jarīmah hirābah*. *Hirābah* refers to the actions of a person or group of people who cause chaos, murder, or confiscate property, which openly disturbs society and defies applicable law.

Corruption is considered a crime because this act is very detrimental to social order, trust, property, reputation, honor, and life, which, according to Islamic law, must be protected (Arifin, 2015; Ulinnuha, 2018; Asa'ari et al., 2023; Rahman et al. 2024). Based on the provisions of the Qur'an and Hadith, the most appropriate sanctions for perpetrators of *hirābah* or corruption are contained in Qur'an Al-Mā'idah verse 33, consisting of four types: being killed, crucified, having their hands and feet cut off crosswise, and being thrown out of their place of residence (Rahmi, 2018).

However, scholars still debate the classification of types of sanctions for actions carried out by perpetrators, depending on the level. This is due to the absence of a *qath'i* text that regulates corruption. This means that the sanctions given are not *qath'i* punishments from Allah but include *ta'zīr* penalties, where a judge has full authority to choose the most effective form of sanction and is appropriate to the conditions of the time and place where the crime occurred.

IV. Conclusion

The death penalty for corruptors in Indonesia is regulated in Article 2 paragraph (2) of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crime. However, its implementation still faces various obstacles. Inhibiting factors include the failure to fulfill the elements of the article, which are conditions for implementing the death penalty, as well as the lack of demands for the death penalty from the public prosecutor. Apart from that, the death penalty is often considered not to provide a practical deterrent effect; there are repeated reviews that hamper legal certainty, as well as views of the pros and cons regarding human rights. In Islamic criminal law, corruption is defined by *jarīmah*, such as *ghulul*, *risywah*, *khianat*, *sariqah*, and *hirābah* (Siroj, 2016; Syarbaini, 2024), so it is subject to *ta'zīr* penalty. Although Ulul Amri can impose the death penalty based on merits, some ulama argue that the *ta'zīr* penalty should not exceed *hadd*. However, considering that corruption is categorized as a *fasad* of *kabir* or a major crime that destroys the order of society, the death penalty is considered relevant, in line with the punishment of *jarīmah hirābah* mentioned in the Qur'an al-Mā'idah (5) verse 33.

This theoretical research shows that although the death penalty has been regulated in Indonesian positive law and can be considered in Islamic criminal law through the *ta'zīr* penalty, its implementation is still hampered by unclear legal definitions and varying interpretations. This shows the need for a more in-depth study of the integration of Islamic law in the Indonesian legal system, especially in eradicating corruption. Practical recommendations that can be given include the need for revisions and more detailed explanations in the law regarding "certain circumstances" for the application of the death penalty, as well as increasing the courage of public prosecutors to demand the death penalty in cases of corruption that damage society. In addition, before implementing the death penalty for corruptors, the main focus must be on proving guilt and recovering assets obtained from criminal acts of corruption. In Indonesia, disparity in judges' decisions is often a problem, so new regulations are needed to ensure that restitution of state losses is balanced with punishment. In Islamic criminal law, the social aspect is essential, and the most urgent punishment is the return of state losses and hefty fines for corruptors.

Further research from this study could focus on a more in-depth exploration of the legal and sociocultural aspects that hinder the implementation of death penalty sanctions for perpetrators of corruption in Indonesia. Future research could explore how political, social, and cultural factors influence the application of criminal law by considering a comparative approach between various countries that have successfully implemented the death penalty for corruptors. In addition, research can be conducted to examine the role of legal education in shaping the perception of the public and law enforcement officials regarding the effectiveness of the death penalty as a deterrent to corruption crimes. Quantitative approaches can also be used to measure the impact of the death penalty on levels of corruption in various countries. This research can also explore how Islamic law can play a role in building a more effective and fair legal system, including policy proposals and legal reforms that can strengthen the enforcement of criminal corruption laws in Indonesia. Thus, further research could provide more comprehensive insights into how to increase the effectiveness of law enforcement and fight corruption more efficiently.

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VI. Disclosure Statement

The author reported no potential conflict of interest.

VII. Author Contributions Statement

SH collected, presented, and analyzed research data. JB developed the theoretical framework underlying the study. MST is responsible for developing research methods and instruments, ensuring the validity and reliability of data collection.

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