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Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of *Maqāṣid al-Syarī'ah*

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Abstract: The implementation of the death penalty for corruptors has never been decided by any judges throughout the history of law enforcement in Indonesia. However, Law No. 31 of 1999 jo Law No. 20 of 2001 on Corruption Eradication has established the criteria or conditions for a corruptor to be sentenced to death. This was an empirical legal study which was conducted by library research. This article examines judge decisions by a descriptive analysis. The theory used in this research was *maqāṣid al-syarī'ah*. The paradigm was used to determine the dynamics of Islamic law in analysing the death penalty for corruptors. This study was based on the Social Assistance (Bansos) corruption committed by former Minister of Social Affairs, Julia Peter Batubara, during the Covid-19 pandemic. The corruption was committed by Julia Peter Batubara when there was an epidemics and national economic crisis. This study found that the death penalty for corruptors is affected by political power, allowing corrupt officials to escape the death penalty.

Keywords: Corruption, death penalty, Islamic law, *Maqāṣid al-Syarī'ah*

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Abstrak: Pemberlakuan hukuman mati bagi para koruptor sepanjang catatan sejarah penegakan hukum di Indonesia belum terdapat putusan hakim yang mengabdikan. Padahal di dalam Undang-Undang No. 31 Tahun 1999 jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi sebenarnya telah mengatur mengenai kriteria atau syarat-syarat seseorang koruptor dapat dijatuhi hukuman mati. Penelitian ini merupakan penelitian yuridis-empiris, dengan jenis penelitian yang digunakan library research. Artikel ini mengkaji putusan hakim yang kemudian dideskriptif-analitis. Teori yang digunakan dalam penelitian ini *maqāṣid al-syarī'ah*. Paradigma tersebut digunakan untuk mengetahui dinamisasi hukum Islam dalam memandang hukuman mati bagi para koruptor. Penelitian ini berangkat dari kasus korupsi Bantuan Sosial (Bansos) yang dilakukan mantan Menteri Sosial Julia Peter Batubara di masa pandemi Covid-19. Korupsi yang dilakukan Julia Peter Batubara dilaksanakan di masa wabah dan krisis ekonomi nasional. Penelitian ini menemukan bahwa hukuman mati bagi koruptor dipengaruhi oleh kekuatan politik, sehingga para pejabat yang melakukan korupsi lolos dari hukuman mati. **Kata Kunci:** Korupsi, hukuman mati, hukum Islam, *maqāṣid al-syarī'ah*

Introduction

Corruption in Indonesia is systematic and it can be found in many sectors at both the central and regional government. Almost all the officials of state institutions, including executive, legislative, and judicial bodies, are involved in various types of corruption that are categorized as extra ordinary crimes.¹ In Indonesia, corruption has become the main topic of news in various mass media, including print and online media. The cases are increasingly worrying because the punishment for corruptors is considered not quite severe and detrimental to the country. According to the Corruption Perception Index, Indonesia is one of the top ten countries with the highest number of corrupt politicians. Despite the implementation of the decentralization system and corruption campaign, the number of corruption cases did not decrease but increase.²

Corruption has been deep-rooted and tends to be easily accepted by the society, especially due to the fact that the punishment for corruptors is considered very light. Currently, being involved in corruption scandals seems to no longer bring shame to politicians. Such actions, however, have a negative impact on economic, political, and social growth.³ Corruption not only disadvantages the

¹ Simon Butt, *Corruption and Law in Indonesia* (New York: Routledge Contemporary Southeast Asia Series, 2012), p. 15.

² Nils Bubandt, "Sorcery, Corruption, and the Dangers of Democracy in Indonesia," *Journal of the Royal Anthropological Institute* 12, no. 2 (June 2006), p. 414.

³ Paul M. Heywood, *Routledge Handbook of Political Corruption* (New York: Routledge, 2015), p. 1.

state, but also damages and afflicts society as a consequence of poverty.⁴ This can be seen in the New Order era led by Suharto, where there were many corruption, collusion, and nepotism practices in Indonesia.⁵ In the authoritarian regime, corruption was influenced by both political and economic factors. The governance in this regime had a lack of accountability, transparency, democratic values, and freedom of the press. The non-existent freedom of the press had an impact on the high level of corruption in the New Order era.

During the Reformation era, corruption eradication efforts had been regulated in Law of the Republic of Indonesia Number 31 of 1999 on Corruption Eradication⁶ as amended in Law of the Republic of Indonesia Number 20 of 2001 on Amendments to Law Number 31 of 1999 on Corruption Eradication.⁷ There are no less than 8 categories of corruption crimes in the Law, including: fraud that could be detrimental to the finance or economy of a country; bribery; embezzlement; extortion; forgery; outsourcing; gratification; and any actions that hinder the handling of corruption cases. By the issuance of Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Eradication of Money Laundering⁸ (UUTPPU), corruption crimes can also be accumulated with money laundering crimes.

The elucidation of Law Number 20 of 2001 explicitly conveys that corruption in Indonesia is systematic and widespread so as to disadvantage the country's finances. This also violates the social and economic rights of the community in general. This condition should serve as the basis for the government to make corruption eradication efforts by taking decisive actions or giving severe punishment. In addition, the Corruption Eradication Commission (KPK) states that corruption has caused extraordinary consequences in various aspects of life, such as high poverty rates due to unemployment, an increase in foreign debt, and environmental damage.⁹ Therefore, corruption eradication activities, especially punishment, should create a deterrent effect for corruptors in Indonesia.¹⁰

⁴ Dennis F. Thompson, "Theories of Institutional Corruption," *Annual Review of Political Science* 21, no. 1 (2018), p. 3.

⁵ Fiona Robertson-Snape, "Corruption, Collusion and Nepotism in Indonesia," *Third World Quarterly* 20, no. 3 (June 1999), p. 35.

⁶ Law of the Republic of Indonesia Number 31 of 1999 on Corruption Eradication.

⁷ Law of the Republic of Indonesia Number 20 of 2001 on Amendments to Law Number 31 of 1999 on Corruption Eradication.

⁸ Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Eradication of Money Laundering.

⁹ Elsa R. M. Toule, "Eksistensi Ancaman Pidana Mati Dalam Undang-Undang Tindak Pidana Korupsi," *Jurnal Hukum PRIORIS* 3, no. 3 (May 2013), p. 105.

¹⁰ Vishnu Juwono, *Melawan Korupsi: Sejarah Pemberantasan Korupsi Di Indonesia 1945-2014* (Jakarta: Kepustakaan Populer Gramedia, 2018), p. 14.

Corruption eradication efforts have actually been formulated into Law as an instrument to punish and bring deterrent effects to corruptors, including the death penalty for corruptors. The policy of formulating these articles is certainly based on the goal to eradicate corruption. Unfortunately, the formulation policy is not accompanied by an application policy. In addition to the fact that a reverse onus clause is not implemented in corruption trials, judges in corruption trials are unwilling to apply the death penalty to corruptors either, despite the fact that the country has lost billions, even trillions of rupiah, causing the society to live a more miserable life.

Since the emergence of Coronavirus Disease (Covid-19) in Indonesia, many companies have suffered negative effects due to the paralysis of the economic sector. The Covid-19 pandemic has caused many companies to go bankrupt, stock prices to fall, and many employees to be laid off. This certainly worsens poverty. However, in recent months the government has made efforts to address the disaster throughout Indonesia, through social assistance program distributed gradually to the community. The government has also allocated additional funds to the 2020 state budget for the handling of Covid-19, amounting to IDR 405.1 trillion. Some of this budget (75 trillion) was spent on health equipment, social protection (110 trillion), tax incentives and People's Business Credit (KUR) stimulus (70.1 trillion), and national economic recovery program (150 trillion).¹¹

The reallocation and refocusing of the 2020 State Budget and Regional Budget in each local government are regulated in Regulation Number 1 of 2020 on State Financial Policy and Financial System Stability to handle the Covid-19 Pandemic in dealing with threats that endanger the national economy as approved by President Jokowi on March 31, 2020. The fund allocated by the government to the Indonesian people affected by Covid-19 should be appropriately and properly targeted. This way, authorized officials both at the central and local governments who were entrusted to distribute the funds should be careful and not misuse the funds for their self-interests.¹² However, former Minister of Social Affairs, Juliari Batubara, was involved in the corruption of Social Assistance (Bansos) for Covid-19 on December 6, 2020. This then caused the discourse of the death penalty for corruptors to be brought up as a consequence of officials abusing their authority during the epidemic.

The Chairman of KPK, Firlil Bahuri, once said that he will impose severe punishment to corruptors of national disaster funding, "there is no other option for law enforcement, but to implement the death penalty." Firlil Bahuri gave such

¹¹ Anisa Mufida, "Polemik Pemberian Hukuman Mati Pelaku Korupsi Di Tengah Pandemi Covid 19," *Adalah: Buletin Hukum & Keadilan* 4, no. 1 (2020), p. 224.

¹² Mufida, "Polemik Pemberian Hukuman Mati Pelaku Korupsi Di Tengah Pandemi Covid 19."

statement during a working meeting with the legal commission of the House of Representatives, on Wednesday, April 29, 2020.¹³ In the abovementioned case, Juliari Batubara was alleged to have received money as much as IDR 17 billion from the social assistance project. In fact, before the corruption case involving Juliari Batubara was disclosed, Firli had stated that there were many corruption loopholes in the procurement of goods and services, third-party donations, budget reallocation, and the distribution of social assistance. Therefore, according to Law Number 31 of 1999 and Law Number 20 of 2001 on Corruption Eradication, the case involving Juliari Batubara could be given the most severe punishment, i.e., the death penalty.

Daipon in his research stated that in social assistance corruption cases, it should be noted that Indonesia, and all countries in the world, were facing the Covid-19 epidemic and economic crisis. This way, the community desperately needed help from the government to meet daily life needs during the regional quarantine period. Regarding this situation, Daipon continued that many parties wanted the corruption of social assistance funds to be sentenced to death. The corruption committed by Julia Pater Batubara has basically violated humanitarian norms and met the conditions to be sentenced to death.¹⁴ In addition, Daipon also examined the corruption case from the perspective of Islamic law. Explicitly, according to some Islamic scholars, corruption is an act of abusing power or trust given by the society members to a state leader. Therefore, according to Islamic law, the death penalty can be imposed and categorized as *ta'zīr* punishment¹⁵.

Muhyidin et al. in their research also said that the death penalty should be seen based on the benefits for the public, instead of the feeling of individuals. Muhyidin et al. believed that the death penalty is a preventive measure against any deviance that could cause one's life to be taken away. If the death penalty is abolished, people may have the courage to commit murder and harm human lives, including corruption cases. Thus, Muhyidin et al. concluded that, in terms of the contribution of Islamic law to the reform of the Indonesia's criminal law regarding the death penalty, it basically requires an understanding to see Islamic law in depth. In fact, Islamic law contains ontological and epistemological ideas.¹⁶ The

¹³ Tempo.co, "Menakar Hukuman Mati Bagi Koruptor Dalam UU Pemberantasan Korupsi," 2020.

¹⁴ Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional Dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (June 2021), p. 139.

¹⁵ Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022), p. 247.

¹⁶ Muhyidin Muhyidin, Yuli Prasetyo Adhi, and Triyono Triyono, "Contribution of Islamic Law Concerning The Death Penalty to the Renewal of Indonesian Criminal Law," *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022), p. 74.

source of Islamic law is God and it is open to interpretation, so *ijtihād* (independent reasoning by experts in Islamic law) is needed. This is based on *qiṣās-diyāt* punishment.

Schabas also conducted a study of the death penalty implemented in some Islamic countries. Schabas recommended that the implementation of the death penalty in Islamic countries be in accordance with the legal principles contained in the Qur'an. In Islamic law, there is a belief that everyone has the right to life, meaning that the death penalty has violated human rights. Schabas mentioned that the death penalty has been a quite significant debate for centuries. However, this debate changed in the latter half of the 20th century when an international law on human rights was issued. By the signing of the universal declaration of human rights in 1948, about 60 countries have ratified international agreements to prohibit the implementation of the death penalty, but this matter is still debatable in the international world.¹⁷

According to a report by the Secretary-General of the United Nations on the death penalty in March 2000, 74 countries are abolitionists (opposing the death penalty), 38 countries are de facto abolitionists, and eleven countries are abolitionists for ordinary crimes. Therefore, a total of 123 countries fell into one of the three categories. However, according to a record of the Secretary-General of the UN, 71 countries are still retentionists (supporting the death penalty). The differences among these countries actually reflect the socio-culture in implementing the death penalty. This is actually also related to the legal policy of a country because the law of a country is basically inseparable from its political products. This way, there are differences between European and Southeast Asian countries, in which some countries in Southeast Asia still impose the death penalty considering the crimes committed that threaten the human lives, especially in Indonesia.

This study has some differences compared to some previous studies. This study focuses on the corruption of social assistance funds committed by the former Minister of Social Affairs, Julia Peter Batubara, by examining the relevance of the death penalty as contained in Law No. 31 of 1999 jo Law No. 20 of 2001 on Corruption Eradication. In addition, this study also uses the theory of *maqāṣid al-syarī'ah* as the basis to determine and analyze the dynamics of Islamic law in examining the death penalty in Indonesia, especially for corruption cases because corruption is an extraordinary crime that can harm many human lives. The fact that the corruption was committed during an economic crisis amidst the Covid-19 outbreak is a concrete reason that the death penalty should be imposed

¹⁷ William A. Schabas, "Islam and The Death Penalty," *Willism & Mary Bill of Rights Journal* 9, no. 2000–2001 (2000), p. 224.

on Julia Peter Batubara. Unfortunately, due to various political intervention, the existence of the death penalty in corruption cases is still questionable in Indonesia.

This was a legal empirical study which was conducted by library research. This article examines legal decisions using a descriptive analysis. The research approach was a normative and philosophical approach. The theory used in this research was *maqāshid al-syarī'ah*. The paradigm was used to determine the dynamics of Islamic law in examining the death penalty for corruptors. The case analyzed in this study was the Social Assistance corruption case which involved the former Minister of Social Affairs, Julia Peter Batubara, during the Covid-19 pandemic. Julia Peter Batubara received approximately IDR 17 billion as stated in Judge Decision No.29/Pid-Sus-TPK/2021/PN Jkt.Pst. The case was used as the research object because the corruption was committed at the time of the epidemic and national economic crisis. In addition, this study explains the extent to which the death penalty for corruptors as regulated in Law No. 31 of 1999 jo Law No. 20 of 2001 on Corruption Eradication can be enforced. The data were analyzed using a qualitative analysis Miles et al. namely data condensation, data display, and conclusion drawing.¹⁸

Corruption from the Perspective of Islamic Law

The term 'corruption' is derived from the Latin word '*corruptio*' which means corrupt, decay, bribery, corruption, decay, and deterioration.¹⁹ Etymologically, corruption can be defined as a deterioration due to acts such as bribery, cheating, forgery, damage, etc.²⁰ Corruption is a human act or behavior in social interactions that is deviant and harmful to society and the country.²¹ Corruption can ruin the order of society, so the legal conception is manifested in the formulation of law as a form of crime.²² Corruption in the Indonesia's legal policy is even considered a form of crime that requires specific approaches and is threatened with a quite severe punishment.

Corruption is deviance in social, cultural, communal, and national life. Corruption can also be defined as misappropriation or misuse of state money for

¹⁸ Matthew B. Miles, A. Michael Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook* (California: SAGE Publications, Inc., 2014), p. 31–33.

¹⁹ Ray Fisman and Mariam A. Golden, *Corruption: What Everyone Needs to Know* (New York: Oxford University Press, 2017), p. 3.

²⁰ B. Herry Priyono, *Korupsi: Melacak Arti, Menyimak Implikasi* (Jakarta: Gramedia Pustaka Utama, 2018), p. 22.

²¹ Elwi Danil, *Korupsi: Konsep, Tindak Pidana, Dan Pemberantasannya* (Jakarta: Rajawali Press, 2016), p. 1.

²² Jonathan D. Rosen and Hanna Samir Kassab, *Corruption, Institutions, and Fragile States* (Switzerland: Palgrave Macmillan, 2019), p. 23.

personal gain or benefit.²³ Corruption has a negative impact on community development, including the social, economic, political sector. Corruption is a social phenomenon that has a significant impact on individuals, institutions, countries, and global development.²⁴ A high number of corruption cases can exacerbate the condition of a nation. Corruption can cause moral crisis of officials, violations of the social and economic rights of the poor and vulnerable, failed democracy, subversion of the rule of law, development failure, and rejection of the poor.²⁵

Azra rated Indonesia to be one of the countries with a fairly high level of corruption in the world. Azra also explained that the corruption cases in Indonesia are inseparable from the acronym “KKN” (corruption, collusion, nepotism). The high number of corruption cases in Indonesia has become a culture that is deep-rooted. Although the government has made various eradication efforts, both the government and the community should at least try to reduce the massive corruption that benefits certain individuals or groups. It is important to comprehensively identify the corruption issues in Indonesia to gain in-depth understanding of the issue.²⁶

According to Philp²⁷ in Azra, *First*, corruption cases are always public office centered corruption where there is misappropriation by public officials when performing their formal public duties. The misappropriation aims to gain benefits for themselves or for certain people that are close to them such as family, relatives, and friends. This also includes collusion and nepotism based on kinship or personal relationships. *Second*, corruption is public interest-centered. This type of corruption is when power or authority holders commit certain actions or seek reward for any services they provide.²⁸

Third, corruption is market-centered. It can be seen through an economic and political approach, showing that individuals or groups commit corruption as an extra legal “institution” apparently to influence bureaucratic policies and measures. This is often committed by certain individuals and groups who are involved in decision-making or policy-making process before other parties know.

²³ Eric M. Uslaner, *Corruption, Inequality, and the Rule of Law* (New York: Cambridge University Press, 2008), p. 1–23.

²⁴ Barney Warf, *Global Corruption from a Geographic Perspective* (Switzerland: Springer, 2019), p. 11.

²⁵ Eric M. Uslaner, *The Historical Roots of Corruption: Mass Education, Economic Inequality, and State Capacity* (New York: Cambridge University Press, 2017), p. 24.

²⁶ Azyumardi Azra, “Korupsi Dalam Perspektif Good Governance,” *Jurnal Kriminologi Indonesia* 2, no. 1 (2002). p. 31.

²⁷ Mark Philp, “Defining Political Corruption,” *Political Studies* 45, no. 3 (August 1997), p. 436–62.

²⁸ Azra, “Korupsi Dalam Perspektif Good Governance,” *Jurnal Kriminologi Indonesia* 2, no. 1 (2002).

In this framework, corruption is defined as the abuse of power by government employees or officials to obtain additional revenue from the public. The position of the public seems to be a business opportunity to earn more income.²⁹

In Indonesia, corruption has a significant relation with the legality of the death penalty because the death penalty is the maximum punishment category for corruption. In the paradigm of Islamic law, corruption should actually be seen based on the relationship between *jināyah* and *siyāsah dustūriyyah*. In this case, the dynamics of sentencing in Islamic law is also developing and changing according to the needs of the society.³⁰ In Indonesia, corruption often disrupts the economic system of the country, weakening the country's finance. Corruption eradication efforts become difficult because corruption has become a new culture and history.³¹ A simple example can be observed from the habit of state officials to give gifts to each other. Giving gifts to each other is not massive corruption, but gifts can easily be used in bribery.

In a society that pays a great attention to the habit of gift giving, corruption is often found. This is increasingly important and urgent to highlight and determine the punishment for corruption from an Islamic perspective. According to M. Ulinnuha Khusnan, the punishment and law of corruption in Islam are not specifically regulated in the Qur'an. However, corruption can be analogized to crime (*jarimah*) of which the law has been regulated in the Qur'an.³² It is important to examine corruption in terms of the modus operandi and the impacts caused by the corruption.

In terms of the modus operandi, corruption is the crime of confiscation, embezzlement of state property, and bribery. Such crimes are mentioned in several verses. For example, verses that talk about confiscation can be found in the Qur'an surah Al-Kahf verse 79. This verse basically describes an arbitrary ruler over his people in a country. The confiscation of property committed by the ruler in this verse has similarities with corruption in the present time. One of the modus operandi of corruptors is to seize property without the permission of the owner. According to M. Ulinnuha Khusnan, in a classical fiqh (Islamic

²⁹ Azra, "Korupsi Dalam Perspektif Good Governance," *Jurnal Kriminologi Indonesia* 2, no. 1 (2002).

³⁰ Abdul Jalil Salam, *Polemik Hukuman Mati Di Indonesia: Perspektif Islam HAM Dan Demokratisasi Hukum* (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2010), 118.

³¹ Mansyur Semma, *Negara Dan Korupsi: Pemikiran Mochtar Lubis Atas Negara, Manusia Indonesia, Dan Perilaku Politik* (Jakarta: Yayasan Obor Indonesia, 2008), 195; Dedy Sumardi, Mansari Mansari, and Maulana Fickry Albaba, "Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022), p. 251.

³² M. Ulinnuha Khusnan, "Hukuman Mati Bagi Koruptor Dalam Perspektif Al-Quran," *Jurnal Al-Mizan* 4, no. 1 (2012), p. 172.

jurisprudence), this action is categorized as *ghasab*,³³ *ghulūl*,³⁴ *risywah*, and *hirābah* crimes.³⁵

Based on the above explanation, it can be understood that in terms of the *modus operandi*, corruption can be considered the same as *ghasab* (Surah al-Kahf: 79), *ghulūl* (Surah 'Alī 'Imrān: 161), and *risywah* crimes (Surah al-Baqarah: 188). Meanwhile, in terms of the impacts, corruption is similar to *hirābah* crimes (Surah al-Māidah: 33). However, specifically based on the tafsir above, corruption is similar to *ghulūl* (Surah 'Alī 'Imrān: 161), which means cheating or betrayal. In other words, corruption is an act that goes against the law that is very detrimental to the state and society in general. This is because corruption contains the elements of theft, extortion, bribery, coercion, robbery, and betrayal of the state. All these elements can be classified as crimes and the perpetrators should certainly be punished accordingly based on either Islamic law or the state law. Government officials who commit corruption have betrayed not only the nation and the country, but also their religion. According to Islamic teachings, a traitor can be sentenced to death.

Understanding the Death Penalty in the Indonesian Context from the Perspective of *Maqāṣid al-Syarī'ah*

Maqāṣid al-syarī'ah literally contains the term *maqāṣid* which is derived from Arabic *maqāṣid* of which the plural form is *maqāṣid*.³⁶ From the word, *maqāṣid* means objective, principle, intention, purpose, and goal.³⁷ *Maqāṣid* in Islamic law is the final goal or concept of applying Islamic law. Jasser Auda defines *maqāṣid* as a moral concept that serves as the basis of Islamic law, including the values of justice, human dignity, freedom of opinion, generosity, purity, and social cooperation. These values are always upheld in the enforcement of Islamic law.³⁸

In Islam, *al-maqāṣid* can have several definitions, such as *al-hadaf* (objectives), *al-gharad* (goals), *al-maṭlub* (interests), or *al-ghāyah* (final goal) of Islamic law. Meanwhile, the term *syariah* is a derivative of the term *syara'-yasyra'u-syir'an* or *syarī'atan*. A verb that has three syllables namely *syin*, *rā'*,

³³ Khusnan, "Hukuman Mati Bagi Koruptor Dalam Perspektif Al-Quran."

³⁴ Ibnu Kasir, *Tafsir Al-Qur'an Al-Azim* (Kairo: Darul-Manar, 1999), p. 78.

³⁵ Khusnan, "Hukuman Mati Bagi Koruptor Dalam Perspektif Al-Quran." Khusnan, "Hukuman Mati Bagi Koruptor Dalam Perspektif Al-Quran." Khusnan, "Hukuman Mati Bagi Koruptor Dalam Perspektif Al-Quran."

³⁶ Mohammad Al-Tahir, *Ibn 'Asyur, Treatise on Maqasid Asy-Syari'ah* (London-Washington: The International Institute of Islamic Thought (IIIT), 2006), p. 2.

³⁷ Jasser Auda, *Maqasid Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. I (London: IIIT, 2007), p. 28.

³⁸ Jasser Auda, *Maqasid Al-Shari'ah a Beginner's Guide* (London-Washington: The International Institute of Islamic Thought (IIIT), 2008), p. 1-2.

and *'ain*, of which the basic meaning is “source or spring.” However, *syarī'ah* can literally be interpreted as a path to a spring to be followed and walked by believers to obtain guidance to live the life in this world and to gain safety and peace in the hereafter. In general, *syarī'ah* shows the commands, prohibitions, guidelines, and principles from God to regulate human behavior in the world.

This sacred guideline can encourage people to abandon lust, greed, and tendency to commit bad things; the *syarī'ah* understanding guides people to goodness and truth.³⁹ In terminology, the meaning of *maqāṣid al-syarī'ah* develops rapidly, from a simple meaning to a holistic meaning. Among classical Islamic scholars, *maqāṣid al-syarī'ah* has various contextual definitions.⁴⁰ Before al-Syāṭibī constructed the definition of *maqāṣid al-syarī'ah*, this term had been defined linguistically. Some classical Islamic scholars such as Al-Bannani defined it as “legal wisdom”, Al-Asnawi defined it as “legal purposes”, al-Samarqandi defined it as “legal meanings”, while Al-Ghazali, Al-Amidi, and Ibn al-Hajib defined it as “attaining benefits and rejecting *mafsadāt*.”

Regarding corruption in Indonesia, the enforcement of the death penalty for corruptors is still debatable. Elsa R. M. Toule mentioned there are two opposing groups that debate the death penalty, including the abolitionists who reject the idea and the retentionists who support the imposition of the death penalty.⁴¹ The abolitionists refer to the secularistic western understanding of human rights. They believe that the death penalty degrades human dignity and it is contrary to human rights in general.⁴²

Indonesia has, in fact, had regulations on human rights as explained in Law Number 39 of 1999 on Human Rights. According to the Law, “human rights are a set of rights inherent to all human beings as beings of the Almighty God and these rights are His grace that should be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity.” In general, the Law contains six human rights that must be protected and respected, including personal rights, economic rights, political rights, social and cultural rights, the right to equal treatment before the law and government, and the right to judicial protection and trial.

However, the death penalty for corruptors cannot be disputed with human rights if a person has committed a serious crime. A person who commits a serious

³⁹ Mohammad Hasim Kamali, *Shari'ah Law: An Introduction* (England: Oneworld Publications, 2008), p. 19–20.

⁴⁰ Zaprul Khan Zaprul Khan, *Rekonstruksi Paradigma Maqashid Asy-Syari'ah: Kajian Kritis Dan Komprehensif* (Yogyakarta: IRCiSoD, 2020), p. 62.

⁴¹ Toule, “Eksistensi Ancaman Pidana Mati Dalam Undang-Undang Tindak Pidana Korupsi.”

⁴² Sumardi et al., “Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy,” p. 244.

crime should receive a severe punishment. Article 18 explains that a person who has been proven to have committed a crime shall be processed legally in accordance with the decision of the panel of judges. However, there is ambiguity in several articles, such as article 33 paragraph 2 which states “Everyone is entitled to the right to not be subjected to enforced disappearance.”

On the other hand, Article 36 paragraph 1 explains that the right to welfare can be measured by the absence of any actions that are against the law committed by a person in the community. This implies that if a person commits a crime, especially a serious crime such as corruption which causes many people to suffer, the provision concerning the protection of human rights can be abolished immediately. In the context of the social-assistance corruption, Julia Peter Batubara has deliberately violated the law and exacerbated losses and poverty due to the corruption of the social assistance during the Covid-19 pandemic. Law enforcement officials should impose severe punishment for such actions.⁴³

Regarding the impact of the social assistance corruption committed by Julia Peter Batubara, it disadvantaged approximately 1,529,379 people (the number was counted based on the family registers in Jakarta Metropolitan Area including Jakarta, Bogor, Depok, Tangerang, and Bekasi. The data were obtained by calculating the number of family members as listed in the family registers who received the social assistance in Jakarta Metropolitan Area.⁴⁴ In details, there were approximately 1,007,379 Family Registers who received the social assistance in the province of DKI Jakarta, 77,000 in Bogor, 158,000 in Tangerang, 137,000 in Depok, and 150,000 in Bekasi.⁴⁵

Most importantly, what Julia Peter Batubara had undermined the purpose of the law as contained in *maqāṣid al-syarī'ah*. This way, M. Ulinnuha Khusnan categorized the corruption committed by Julia Peter Batubara as *ghasab* (Surah al-Kahf:79)⁴⁶, *ghulūl* (Surah ‘Alī ‘Imrān: 161), and *risywah* (Surah al-Baqarah: 188).⁴⁷ In terms of the impact, this corruption had similar impacts to *hirābah* (Surah al-Māidah: 33), that is, actions committed by a group of people to cause

⁴³ Amrullah Bustamam, “Death Penalty for Corruptors in Non-Natural Disaster Fund in The Presidential Decree No. 12 of 2020 [Pidana Mati Bagi Koruptor Dana Bencana Non Alam: Studi Terhadap Konsekuensi Keputusan Presiden Nomor 12 Tahun 2020],” *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 9, no. 2 (2020), p. 260–80.

⁴⁴ Corona.jakarta.go.id, “Layanan Darurat Covid-19,” 2020.

⁴⁵ Bekasikota.go.id, “Pemkot Bekasi Salurkan Bantuan Sembako Kepada 150 Ribu Rumah Tangga Secara Bertahap,” 2020.

⁴⁶ *Ghasab* is to use or exploit the properties of others without permission or without the knowing of the owners, including seizing the properties of others dishonestly (*ẓālim*).

⁴⁷ *Risywah* literally means something that can achieve a goal in whatever means possible. This definition is taken from the word ‘*rasya*’ which means bucket that is used in a well. Meanwhile, *al-rāsyī* is someone who gives something to the second party to support/help his/her bad intention/action.

chaos, bloodshed, confiscation of people's property, disgrace, and public safety disruption. The *jināyah* jurisprudence actually provides clear and unequivocal explanation that the implementation of the death penalty for corruption is an appropriate legal measure to lower the number of corruption cases because corruption brings serious impacts, i.e., exacerbating misery and poverty of the Indonesian people.⁴⁸

Thus, the idea of the implementation of the death penalty for corruption crimes is relevant and in line with *maqāṣid al-syarī'ah*. *Maqāṣid al-Syarī'ah* actually aims to maintain religion (*hifz al-dīn*), save the soul (*hifz al-nafs*), save the mind (*hifz al-'aql*), menyelamatkan hasave the assets (*hifz al-māl*), save the descendants (*hifz al-nasl*) of mankind.⁴⁹ The corruption committed by Julia Peter Batubara caused widespread negative impacts on many people in Indonesia. The rights of the poor were taken away and corrupted for the benefit of the individual. Zaprul Khan reconstructed of the paradigm of *maqāṣid al-syarī'ah*:

“There is no justification in Islamic provisions to play on the souls of others and the souls of their own. Allah Swt. has absolute power over the lives of others; no one has the right to take it away from oneself except Allah. When people take over the power of Allah by taking away the lives of others, they certainly have done what is not appropriate to do before Allah in addition to taking away one's life. Therefore, Allah threatens those who commit intentional murder, with severe punishment of being sent to Hell and considered to have killed everyone. Not only intentional murder, those who commit unintentional murder are also threatened with expiation (kaffara). Similarly with other actions that are not deadly, but endanger the existence of other people's lives, Allah SWT also commands *qiṣāṣ*. That is why, in Islamic law, persecution is also categorized as actions that should be given *qiṣāṣ*, i.e., retaliation in kin.”⁵⁰

The basic principles in Islamic law are basically for the interests of mankind, to uphold the values of humanity. The purpose of Islamic law is not necessarily for God, but for the benefits of mankind. Therefore, it is important to

⁴⁸ Edi Yuhermansyah and Zaziratul Fariza, “Pidana Mati Dalam Undang-Undang Tindak Pidana Korupsi: Kajian Teori Zawajir Dan Jawabir,” *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 6, no. 1 (2017), p. 161–63.

⁴⁹ Riza Mulia, “Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 409, <https://doi.org/10.22373/sjhc.v4i2.7052>; Asrul Hamid and Dedisyah Putra, “The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021), p. 1037–40.

⁵⁰ Zaprul Khan, *Rekontruksi Paradigma Maqashid Asy-Syari'ah: Kajian Kritis Dan Komprehensif*.

consider various humanitarian values in formulating Islamic law for human welfare.⁵¹ This shows that human welfare is an important goal of the existence of Islamic law. Respecting human dignity and creating happiness in this world and in the hereafter are basically the understanding Islamic law contextually.

Based on the above policies and principles, the death penalty for corruptors is not contrary to *maqāṣid al-syarī'ah* when it has fulfilled the predetermined elements. According to the author, the death penalty as the maximum punishment also has a strong legal basis in the Criminal Code of Corruption which is actually not contrary to human rights. This is because corruption has negative impacts that harm many human lives, something that is against the provisions of *maqāṣid al-syarī'ah*. It is important to clarify that the implementation of the death penalty for corruptors by the law enforcement officials can certainly minimize the number of corruption as well as create fear and deterrent effect on dishonest state officials.

Conclusion

The findings of this study showed that the concept of the death penalty in *jināyah* jurisprudence is explained more specifically in terms of the form of punishment. In this case, according to some Islamic scholars, corruption is considered as an act that is comparable to *ghasab*, *ghulūl*, *risywah*, and *hirābah*. The purpose of Islamic law is actually contained in *maqāṣid al-syarī'ah*. In terms of the death penalty in the perspective of *maqāṣid al-syarī'ah*, it can be concluded that corruption is a crime against humanity that causes misery and poverty for the Indonesian people. Corruption is a crime that harms many human lives, so the death penalty does not violate human rights because the corruption that is consciously and deliberately committed and planned has confirmed that the person (state official) who commits corruption only cares for his/her own interests. The fact that the act is done deliberately should be used as a consideration by the judge to impose the death penalty to corruptors. Unfortunately, many corruption cases in Indonesia involved many high-rank politicians who have power, making it difficult for law enforcement officials to give the death penalty to corruptors. The legal policy that can be controlled by the oligarchs has caused ambiguity in determining the punishment for corruptors, making it difficult to create a deterrent effect for officials in Indonesia.

⁵¹ Idris et al. Nassery, *The Objectives of Islamic Law: The Promis and Challenges of the Maqasid Al-Shari'a* (New York: Lexington Books, 2018), p. 7.

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