

# Juridical Study of Corruption Crime in Indonesia: A Comparative Study

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**Citation:** Abdullah, 2022 Juridical Study of Corruption Crime in Indonesia: A Comparative Study. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS)*, 2 (1), 45-59.

**Academic Editor:** M. Yasir Said  
Received: 12 July 2022  
Revised: 02 August 2022  
Accepted: 16 August 2022  
Published: 19 August 2022

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**Abstract:** *Corruption is an act of deviation that is against the law and the principle of justice (al-'adalah). Corruption with all its negative impacts produces various distortions in the life of the nation and state. In Islamic law, Corruption (jarimah) Crime is prohibited in the Qur'an and al-hadith. Fingers of corruption fall into the category of ta'zir punishment where the type of punishment is determined by the government (ulil amri) through a court decision so that perpetrators of corruption can be sentenced to imprisonment, fines, cut-offs hands (had), or even death if the government so wishes. In the aspect of Indonesian criminal law, the eradication of corruption is regulated in Law No. 31 of 1999 jo. Law No. 20 of 2001. This provision can ensnare perpetrators of corruption in both the private and public sectors. To increase the effectiveness of law enforcement against corruption, the government established the institution of the Corruption Eradication Commission (KPK) and the Court of Corruption. In addition, to facilitate the process of proving corruption offenses, this provision applies a reverse burden of proof.*

**Keywords:** *Juridical Studies; Crime; Corruption; Comparative Studies*

## 1. INTRODUCTION

Corruption in Indonesia has become a culture, almost every aspect of corruption exists. In the context of government administration, corruption occurs at the central and regional levels. According to ST Quah, corruption in Indonesia has become a way of life (Quah, 2013, p. 12). Many are pessimistic that corruption can be eradicated in Indonesia. This happens because corruption in Indonesia has different characteristics from other countries. The method of eradicating corruption in Indonesia is the same as that applied in other countries, but Indonesia always fails, even though corruption statistics show that it continues to increase every year.

In almost all regions in Indonesia, both at the central, provincial, district, and city government levels, corruption practices occur with almost the same modus operandi. Romli Atmasasmita said that corruption in Indonesia has been a flu virus that has spread

throughout the government system since the 1960s (Atmasasmita, 2004: 41). In addition to the purpose of enriching themselves, their families, and their cronies, the most important goal of corrupt practices is that they want to perpetuate their power (Hatta, 2019: 13). Therefore, a political phenomenon of family dynasties developed where all sectors of government, both in the legislature and the executive, were controlled by a certain group or parties.

The rapid development of corruption in Indonesia is inseparable from the political system, government, financial system, recruitment system, and supervisory system which are still corrupt (Atmasasmita, 2022: 76). In addition, in the aspect of law enforcement, corruption is one of the most difficult crimes to prove (Hiariej, 2012: 34). The criminal proof system that places the burden of proof on the Public Prosecutor is considered no longer effective in ensnaring perpetrators of corruption in Indonesia, whose modus operandi is increasingly systematic and structured (Prasetyo, 2009: 472-520).

To overcome this difficulty of proof, the government has issued several laws such as Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes and Law No. 30 of 2002 concerning the Corruption Eradication Commission. In this provision, there are several changes are considered to be able to facilitate law enforcement in eradicating corruption and provide a deterrent effect to criminals. However, the number of corruption offenses in Indonesia is increasing every year. Therefore, there is a lot of encouragement from various elements of society so that the Indonesian government adopts several substances of Islamic criminal law regarding the regulation of criminal acts of corruption (gulul/risywah). This study will provide an overview regarding the regulation of criminal acts of corruption in Indonesian criminal law with Islamic criminal law.

## 2. METHODS

This research uses a normative or doctrinal method. According to Parise, doctrinal research is a systematic presentation or explanation regarding regulations, and certain laws, analysis of the relationship between legal rules, explaining various difficulties in implementing the law and predicting future legal developments (Hutchinson, 2012: 83-119). Parise also stated that doctrinal research is library research, documentation, or purely theoretical research where the data needed is sourced from libraries or other scientific databases (Maanen, 1979: 520-26). This research uses a legal approach and a comparative law approach. The legal approach is used to examine issues related to law or legislation (Yaqin, 2007: 10). While research that uses a comparative approach is a study of the relationship between the legal system in a country or comparing legislation between different legal systems that exist in the world (Cruz, 1999: 13). This study will analyze the juridical review of corruption, both based on Indonesian criminal law and Islamic criminal law.

### 3. RESULTS AND DISCUSSION

#### 3.1. Definition of Corruption

The word corruption comes from the Latin corruption or corrupts. Corruption comes from the original word *Corrumpere* which this word is known earlier or older in Latin. Based on these terms, it was revealed in many languages in the world such as English, the word corruption is called corruption or corrupt. In French, it is called corruption and in Dutch, it is called corruption. Then from the Dutch language, the word was passed down from generation to generation into Indonesian which was then referred to as corruption (Sudarto, 1981: 34).

The definition of corruption is rottenness, ugliness, depravity, dishonesty, bribery, immorality, deviation from chastity, or insulting or slanderous words or words (Poerwadarminta, 1981: 112). In the General Indonesian Dictionary, the definition of corruption is an act that is rotten, bad, depraved, can be bribed, or likes to be bribed (Hamzah, 1986: 17). In the Indonesian Encyclopedia, it is stated that corruption (from Latin which means bribery and corruptors mean damaging) is a symptom in which officials and state agencies abuse their authority with the occurrence of bribery, forgery, and other irregularities (Munnawir, 1984: 85).

The definition of corruption based on the doctrines and legal experts above is more or less absorbed into the corruption laws and regulations in Indonesia. This can be seen in the previous law as well as the current law. The formulation of the corruption offense in Law no. 3 of 1971 took the formulation of a corruption offense from Law no. 24 (Prp) of 1960 both the editors regarding their actions and their systematics. In this provision, the offenses are divided into three groups, namely: completed corruption offenses (*voltoold*) and trial offenses (*paging*), and consensus offenses (convenient).

More broadly, this understanding can be understood as consisting of someone's actions that are detrimental to state finances and which make government officials ineffective, efficient, clean, and authoritative. If this is understood, it can be seen that the purpose of the law on eradicating corruption is to prevent state financial losses. Achieving effective, efficient, clean, and authoritative government officials. All matters contained in Law no. 3 of 1971 are related to one of the two things above. The two things above are closely related. State finances cannot be separated from government officials because those who manage state finances are government officials.

After the above provisions no longer apply, the government issued Law No. 28 of 1999 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism. In these provisions, it is explained that (Alatas, 1990: 45):

- a. Corruption is a crime as referred to in the provisions of the laws and regulations governing corruption.
- b. Collusion is an agreement or cooperation that is against the law between state administrators or between state administrators and other parties that is detrimental to other people, society, and or the state.
- c. Nepotism is every act of a state administrator against the law that benefits the interests of his family and or group above the interests of the community, nation, and state.

Starting from the understanding of collusion and nepotism that has been stated above, it can only be classified as a criminal act of corruption if the acts carried out meet the elements of the article on corruption as regulated in the law, however, collusion and nepotism can be said to be an initial process of a series of acts that indicate corruption. The definition of corruption in Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes explains explicitly in its 13 articles. Based on these articles, corruption is formulated into 30 forms of corruption crimes. These articles explain in detail the actions that can be subject to imprisonment. The definition of corruption based on this provision is not much different from the definition of corruption based on Law no. 3 of 1971, but in this law, the subject of corruption offenses has been expanded to broaden the range of various modus operandi that is detrimental to state finances. Corruption in terms of Islamic law is called *gulul* or *khiyanah* (betrayal), which is different from ordinary theft (*sariqah*) (Arafa, 2018: 31-35). Stealing is a crime of taking other people's property by stealth, either from the view of the owner of the stolen property or another party according to the person who stole it, while the stolen property has been completely guarded (locked). While corruption is (*gulul*) or betraying other people's property even though it is not included in the category of stealing, is an act of betraying trust in other people's assets entrusted to him (Bustani, 1977: 23).

Islam terms corruption in several etymologies according to the type or form of corruption committed, including:

- a. *Risywah* is part of a criminal act of corruption related to bribery to bribe someone who has power or authority so that its goals can be achieved a. or facilitate the purpose of the person who bribed him. One part of this form of corruption has damaged morale and the structure of justice in every line of people's lives. Because with a bribe, justice in the legal process cannot be achieved or can influence a judge's decision with a nominal amount of money that can shake the faith of a law enforcer.
- b. *Al-gulul* is the act of embezzling the state treasury or *baitul mal* in Islamic historical literature, it is called stealing the spoils of war or hiding some of it to be owned before delivering it to the place of distribution. The word "ghoul" in the hadith text is a fraud, but in other sources, it means that "ghoul" is embezzlement related to the state treasury or *baitul mal* (Abu Fida' Abdur Rafi', 2004: 2) Acts that fall into the category of *al-ghoul* stealing *Khaimah* (spoils of war), embezzling the state treasury, and embezzling *zakat*.
- c. *Al-maksu* is the act of collecting excise, that is, taking what is not due and giving it to what is not. This act is identified with illegal levies which usually occur when someone is about to take care of something which is then charged with a fee by the excise collector without the consent of the person who collects it. As previously mentioned, if the levy is not fulfilled by the victim, then the person's business will be complicated by the excise collector. This is then called *al-maksu*.

In *al-Nihayah's* dictionary, corruption is something that can deliver goals by all means, with important principles and goals achieved. This definition is taken from the word *rasya* which means "*rope dipper*" which is used to fetch water from a well. According to *Muhit's* dictionary, corruption is something that is given to someone to distort facts, namely to invalidate the right or justify what is false or something that is given to judges or others

in the hope that the briber will win the case by granting all his wishes and requests (Ahmad, 1998: 23). While the word *ar-rasyi* is a person who gives something (eg money or other objects) to a second party who is ready to help evil deeds (*bathil*). The word *raisy* is a mediator or intermediary between the giver and recipient, while *al-murtasyi* is the recipient of the money from corruption (Lubis, 1981: 39).

Corruption itself is categorized as *maliyah*, which has three elements; 1) the existence of *tasharruf*, namely legal actions in the form of taking, receiving, and giving; 2) there is an element of betrayal of the public mandate in the form of power; 3) the existence of losses borne by the wider community or the public. Therefore, corruption is more shown as a criminal act that is in principle contrary to religious morals and ethics, therefore no term expressly states the term corruption.

### ***3.2. Corruption in Islamic Law***

In the historical aspect, corruption has also been endemic for a long time and has become a disease that undermines economic, legal, social, and political life. In the history of Egypt, Babylon, Hebrews, India, China, and Rome until the Middle Ages, the priests blackmailed their people with the excuse of having to offer sacrifices to the gods. Generals in the days of the Roman empire exploited their colonies to enrich themselves and their groups. In the Middle Ages, many nobles were corrupt in the palaces of the Kings in Europe (Amundsen, 2000: 56).

In the history of Islam, acts of corruption have also been committed by the Quraish infidels to the Prophet Muhammad. According to Hisham that a Quraysh figure named Utbah bin Rabi`ah once suggested a large deliberation of Quraysh infidel figures. Utbah offered, what if I met Muhammad for cooperation, if he agreed we would give him whatever reward he wanted. Al-Qurasy figures agreed with this opinion and Utbah went straight to the Messenger of Allah.

Utbah said, O Muhammad my brother, of course, we already know our position and status in the Quraysh tribe, but the difference is that you carry a very strange mission and bring trouble. With this mission you separated the Quraysh community, you considered stupid people who did not follow your mission. Listen, O Muhammad, I have something to offer you. The Messenger of Allah asked, O Abu Walid, what is your offer? Utbah said, O my brother, if the mission of *da'wah* that you bring is for material gain, then we are ready to give you wealth. If you want a position then we will appoint you to be our leader. However, if you want a woman for you to marry then we will prepare the most beautiful women from this country (Bahri, 2015: 603-14).

After Utbah finished delivering his offer, the Messenger of Allah replied, "O Abu Walid, now listen carefully to my *da'wah*, then Rasulullah SAW reads the Qur'an Surah Fussilat verses 1-3. According to Imam Tabari and Ibn Kathir, when the Messenger of

Allah rejected all these offers, the Quraysh offered another offer, namely taking turns to pray. Today the Prophet was ordered to worship in ignorance, the next day the Quraysh worshiped Islam. However, this offer was also rejected with the revelation of the verse of the Qur'an surah al-Kafirun (Bahri, 2015: 603-14).

Then, the practice of corruption has also been found since a relatively early period, at least several Hadith books mention, among others, Sunnan at-Tirmidzi, Sunnan Abi Daud, Musnad Abi Ya'la, al-Mu'jam al-Kabir, Tafsir at-Tabari, Asbab an-Nuzul from al-Wahidi and Musntad Imam Ahmad. As is well known, the Islamic community at the time of the Prophet SAW, especially during the Medina period, had become a well-organized society, it was even stated that Medina itself was a city-state equipped with a constitution, which was called the Medina Constitution. The city of Medina already has a power structure and the existence of public wealth to manage and regarding the interests of the implementation of that power.

The issue of corruption arose in the Medina period. a history mentioned corruption events in the Battle of Badr in 2 H (Bahri, 2015: 603-14). In this incident, it was explained that a piece of red velvet from the spoils of war that had been obtained from the polytheists had been lost. But some narrations explain that what was lost was a sword. Reports of the disappearance of red velvet in the Battle of Badr are found in several sources such as in Sunnan at-Tirmidzi, Sunnan Abi Daud, Musnad Abi Ya'la, al-Mu'jam al-Kabir, Tafsir at-Tabari, and Asbab an-Nuzul from al-Wahidi.

In Sunan al-Tirmidzi explains that has conveyed to us Qutaibah: has conveyed to us Abdul Wahid Ibn Ziyad from Khusaif (it is reported that he said): Miqsan has conveyed to us saying: Ibn Abbas said: This verse is *'wa ma kana li nabiyyin an yagulla'* descends on the case of red velvet which was lost during the Battle of Badr. Some people say: Perhaps the Messenger of Allah. take it, then Allah Tabaraka wa Ta'ala sent down *'wa ma kana li nabiyyin an yagulla'* until the end of the verse (HR. Tirmidzi).

The meaning of the verse *'wa ma kana li nabiyyin an yagulla'* is that no prophet will commit gulul (corruption). The incident of the disappearance of red velvet as mentioned in the source above is stated as the cause of the revelation of the word of Allah SWT which reads: "A prophet can't betray in the matter of spoils of war. Whoever betrays in the matter of the spoils of war, then on the Day of Resurrection he will come with what he betrayed, then each person will be recompensed for what he did with (retribution) in kind, while they are not persecuted (Al-Qur`an Surah Ali Imran, verse 161)."

The firm rejection of this verse which states that the Prophet could not have betrayed and it was impossible for the Prophet SAW to commit acts of corruption came

directly from God. This affirmation shows that the act is a sin while the Messenger of Allah is the noblest person, has a trustworthy, fair character, and always keeps himself from inappropriate things, so a great person can't do very bad and shameful actions.

Imam Ar-Razi, after he explained this verse in his commentary, he said: "Indeed, this act of treason is unlawful for anyone." The specialization of rejection of the person of Rasulullah has a benefit, namely, if the person who does this act is noble, then treason is something very bad for him. *"Then Allah threatens anyone who commits this crime with an appropriate retribution: 'then each person will be recompensed for what he did with (retribution) in kind'". In another hadith, the Messenger of Allah (SAW) said, "O people, whoever performs a task for us and hides from us an item as small as a needle or more, then what he hides is a fraud (corruption) which will be brought on the Day of Resurrection." (HR. Muslim and Ahmad).*

Another corruption case occurred during the Khaibar War. Khaibar is a Jewish village conquered by the Prophet Muhammad. In the year 6 H. here we find a real form of corruption, although the number is small. There are two cases of corruption in Khaibar which are reported in several books of hadith. First, the incident of the death of a man who did corruption (gulul) in Khaibar during the conquest of the area, and second, the case of the death of a slave named Mid'am who also committed corruption and the shoelace corruption case.

The first case is reported in several Hadiths among which is Ahmad Ibn Hanbal's version as follows: Yahya Ibn Sa'id has conveyed to us from Yahya Ibn Sa'id Ibn Hayyan, from Muhammad Ibn Yahya, from Abi 'Amrah, from Zaid Ibn Khalid al- Juhani said that a friend of the Prophet died at the time of the conquest of Khaibar, so the friends reported it to the Prophet SAW. Then he said: *"Pray for that friend of yours", then the look on the faces of the people changed because of those words. And the Prophet said: "Your friend that has done wrong in the War"*. So we checked his belongings, and we found Jewish beads whose price did not reach two dirhams (HR. Ahmad).

Corruption in Khaibar is coat corruption and shoelace corruption. The corruption of the mantle was done by Mi'dam, a slave who followed the Prophet's journey. to Wadi al-Qura sometime after the conquest of Khaibar. He was hit by a mysterious arrow shot in Wadi al-Qura when he was about to take down the belongings of the Prophet from his camel and died. The friends who saw the incident said 'may he enter heaven.' But the Prophet SAW. contradicted and explained that he had corrupted the mantle at the time of the conquest of Khaibar and that the corrupted mantle would burn him in hell later. The corruption of the shoelaces at the time of the conquest of Khaibar was done by one of the people who accompanied the trip to Wadi al-Qura. More clearly, there is no

information about his identity. When hearing the statement of the Messenger of Allah, peace be upon him. regarding the mantle that was corrupted by Mi'dam could be the cause of his going to hell, the man hastily gave the shoe laces that he corrupted at the time of the conquest of Khaibar to the Messenger of God.

The text of the hadith in Sahih Bukhari is as follows:

*Ismail conveyed to us, he said Malik conveyed to me, from Saur Ibn Zaid ad-Dili, from Abi al-Ghais the former slave of Ibn Muti', from Abu Hurairah (that he said): We went out with the Prophet SAW. at the time of the conquest of Khaibar, we did not get the spoils of war in the form of gold and roles, what we got were immovable things, clothes and goods and a man from Bani ad-Dubaib named Rifa'ah Ibn Zaid presented the Prophet SAW. a boy named Mi'dam. Prophet SAW. set off towards Wadi al-Qura, until when he reached Wadi al-Qura at the time Mi'dam brought down the belongings of the Messenger of God. suddenly a mysterious arrow (about Mi'dam) caused him to die. Then the people (who saw) said: May he enter heaven. So the Prophet SAW. said: "No! By God in whose hand I am, verily the mantle that he took at the time of the conquest of Khaibar from the undivided spoils of war will ignite the fire of hell that will burn him." When the people heard the Prophet's statement, a man came to the Prophet SAW. bring a shoelace or two shoelaces (doubt from rawi). Prophet SAW. then said: even a single string will be hellfire or two strings will be hellfire (if not returned). (HR. Bukhari).*

In the hadith above, it is explained that there is a small amount of corruption, but the experts in Hadith insist that the above Hadith emphasizes the gravity of the sin of corruption. Corruption in this Hadith can be categorized as autogenic corruption, which is corruption that is done alone through the embezzlement of public wealth managed by the state. In this case, the corruptors embezzled the spoils of war (ghanimah) and did not report it to the Prophet SAW.

This hadith emphatically states that gifts received by officials from the community are seen as a form of corruption and cannot be accepted. What is meant by a gift here according to hadith lecturers and jurisprudence scholars is a gift received by an official or official (employee) who should be suspected of being an official or related to his position. An-Nawawi (d. 676 AH/ 1277 AD) stated explaining that the reason he was forbidden to accept gifts (gifts), that is his connection with his position was based on a hadith from Tsa'ban he said that the Messenger of God SAW. curse the perpetrators, receivers, and intermediaries of risywah, that is, the person who is the link between the two (HR. Ahmad).

### ***3.3. Criminal Acts of Corruption in Indonesian Criminal Law***

In the legal aspect of Indonesia, at the beginning of independence, many laws and regulations were made by the government to eradicate corruption, even in certain circumstances these regulations were made and implemented by the military as law enforcers (Hartani, 2005: 17). For example, Military Authority Regulation No. PRT/PM/06/1957 is issued by the military authorities of the army and is valid in the area of the army's control. Furthermore, the Military Ruler Regulation No. PRT/PM/08/1957 contains the establishment of a body authorized to represent the state to sue people accused of various forms of civil corruption (other corrupt acts) through the High Court. The agency in question is the Property Owner (PHB).

Then, the Military Ruler Regulation No. PRT/PM/011/1957 is a regulation that forms the legal basis of the authority possessed by Property Owners (PHB) to confiscate property that is considered the result of other acts of corruption, pending a decision from the High Court. Next up is the Army Chief of Staff Central War Authority Regulation No. PRT/Peperpu/031/1958 and its implementing regulations, Regulation of the Central War Authority of the Army Chief of Staff No. PRT/Ze.1/1/7/1958. Law No. 24/Prp//1960 concerning the Investigation, Prosecution, and Examination of Criminal Acts of Corruption is an amendment to the Government Regulation in Law No. 24 Prp of 1960 dated 9 June 1960 as stated in Law No. 1 of 1961 (Wijoyo, 1983: 19).

The birth of Law No. 24 Prp of 1960 began with the promulgation of government regulations in place of Law No. 24 Prp of 1960 dated June 9, 1960, concerning the Investigation, Prosecution, and Examination of Criminal Acts of Corruption which then according to Law No. 1 of 1961, since January 1, 1961, has become a law, called Law no. 24 Prp 1960. This law is commonly referred to as the Anti-Corruption Law, which has undergone refinement from the previous regulations.

The formulation of criminal acts of corruption in Law No. 24 Prp of 1960 is as follows:

- a. The act of a person who intentionally or because of enriches himself or causes financial loss or loss to the state or regional economy or harms the finances of an entity that receives assistance from state or regional finance or other legal entities using capital or concessions from society.
- b. The act of a person who by or because of committing a crime or violation enriches himself or another person or body and which is carried out by abusing his position or position.
- c. The crimes are listed in Articles 17 to 21 of this regulation and in Articles 209, 210, 415, 416, 417, 418, 419, 420, 423, and 425 of the Criminal Code.

Efforts to eradicate corruption by using Law no. 24 Prp 1960 seem less successful, based on the reality in the field found things that are not appropriate, among others:

- a. The existence of an act that is detrimental to the state's finances or economy that according to the sense of justice of the community must be prosecuted and punished, cannot be punished because there is no formulation of a criminal act of corruption based on the crime or violation committed.
- b. Perpetrators of criminal acts of corruption are only directed at civil servants, but in fact, people who are not civil servants who receive assignments or assistance from a state agency can commit disgraceful acts such as those carried out by civil servants.
- c. Provisions need to be made to facilitate evidence and speed up the applicable procedural law process without neglecting the human rights of the suspect or defendant.

Furthermore, Law no. 3 of 1971 (LNRI 1971-19; TNLRI 2958) concerning the Eradication of Criminal Acts of Corruption. With the various considerations above, the above improvements were made to Law no. 24 Prp of 1960 so it was revoked and replaced by Law no. 3 of 1971. Law no. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption is almost the same as Law no. 24 Prp In 1960, there were only slight changes, for example, the term offense element which was originally "committing a crime or violation" enriching oneself or another person or an entity, was changed to "against the law" enriching oneself and so on. In addition, there are several articles of the Criminal Code which were withdrawn into Law no. 3 of 1971 as a criminal act of corruption.

In this Law there are amendments to the improvement of Law no. Prp 1960, among others, as follows:

- a. The formulation of a criminal act of corruption does not require that a crime or violation be committed but requires a means of violating the law in committing a criminal act that enriches oneself or another person or an entity (Article 1 paragraph 1 sub an of Law No. 1971).
- b. Regarding the prosecution of ABRI members who are involved in corruption crimes together with civilians which can be submitted jointly to either the general court or the military court (Article 25 of Law No. 31 of 1971).
- c. The threat of an aggravated sentence can be imposed with life imprisonment or imprisonment for a maximum of 20 (twenty) years and or a maximum fine of Rp. 30,000,000. (thirty million rupiah) (Article 28 of Law No. 31 of 1971).

The New Order government also launched an Orderly Operation (Opstib) which continued with Presidential Instruction No. 9/1977 on the formation of an Orderly Operations Team (Arifianto, 2001: 1-23). The team is intended to increase the authority of

the government apparatus and eradicate fraudulent practices in all forms. At the end of the New Order era, the government and the DPR issued Law Number 11 of 1980 concerning the Crime of Bribery. Under the law, both the giver and the recipient of a bribe can be charged with a crime. In addition, the new order government also issued regulations on Civil Servant Discipline as stated in Government Regulation no. 30 of 1980.

During the reform era (Kurniawan, 2022: 34-40), the People's Consultative Assembly (MPR) issued MPR Decree No. XI/MPR/1998 concerning a government that is clean and free from corruption, collusion, and nepotism (KKN). Then, President Habibie issued Law No. 28 of 1999 concerning the administration of a clean and free state from KKN and the establishment of various new commissions or bodies such as the KPKPN and KPPU. still in use, namely Law no. 31 of 1999 (LNRI 1999-40, TNLRI 387) concerning the Eradication of Criminal Acts of Corruption, later amended by Law no. 20 of 2001 (LNRI 2001-134; TNLRI 4150) concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.

Then the government of Abdurrahman Wahid issued Presidential Decree No. 127 of 1999, the government formed the Commission for the Examination of State Organizers' Wealth (KPKPN) and also strengthened the issuance of a Presidential Decree dated October 13, 1999, concerning the examination that had been determined. In addition, the government formed the National Ombudsman Commission following the formation of the Joint Team for the Eradication of Corruption Crimes (TGPTPK). However, during the Megawati Soekarnoputri Administration, the Joint Team for the Eradication of Corruption Crimes had to be disbanded due to the Supreme Court's decision on judicial review rights. Then the Megawati government formed the Corruption Eradication Commission (KPK). The KPK is one of the new state institutions formed with the spirit of legal reform in the enforcement of criminal acts of corruption, which was established through Law Number 30 of 2002 concerning the Corruption Eradication Commission (Sudarmanto, 2009:1-14).

KPK can be categorized as a special agency (ad hoc) authorized to handle certain corruption cases as required by Articles 11 and 12 of Law Number 30 of 2002, namely:

- a. Involving law enforcement officers, administrators, and other people who are related to criminal acts of corruption committed by law enforcement officers or state administrators.
- b. Gets attention that is troubling the community.
- c. Concerning the State's loss of at least one billion.

The crime of corruption which has been the scourge of Indonesia's destruction requires extraordinary handling, thus requiring a special institution such as the KPK. With the birth of the KPK through Law Number 30 of 2002, Government Regulation Number

19 of 2000 concerning the Joint Team for the Eradication of Criminal Acts of Corruption is no longer valid. This is because the KPK has the authority to coordinate and supervise the handling of corruption cases handled by related institutions, both the Police and the Prosecutor's Office.

Then on December 9, 2004, President Susilo Bambang Yudhoyono set it as National Anti-Corruption Day and at the same time issued Presidential Instruction No. 5 of 2004 concerning the Acceleration of Corruption Eradication. This Presidential Instruction consists of 10 General Instructions and 11 Special Instructions addressed to several government agencies. The General Instruction was addressed to nearly 500 Government Agencies both at the central and regional levels. While the Special Instructions are addressed to the Coordinating Minister for the Economy, Minister of Finance, Bappenas, Menpan, Minister of Law and Human Rights, Ministry of SOEs, Minister of National Education, Menkofindo, Attorney General, National Police Chief, Governor, Regent and Mayor. Then in 2005, President Susilo Bambang Yudhoyono formed the Corruption Eradication Coordination Team (Tintas Tipikor) through Presidential Decree No. 11 of 2005. The Corruption Team consisting of the Police, the Attorney General's Office, and the Financial and Development Supervisory Agency (BPKP) were mandated to coordinate between institutions with the implementation of their respective duties and authorities (Widiatmaja, 2019: 77-80).

Times Corruption is not very effective in handling corruption cases. The existence of the Corruption Eradication Team, which is the coordinator between institutions dealing with corruption cases, should be supported by a quality superstructure and infrastructure. According to the author, the formation of the team is redundant (in vain) and will only spend part of the state budget to finance all the team's needs, because the provisions of Presidential Decree No. 11 of 2005 which forms the basis for the formation of the Corruption Eradication Committee, has adopted the authority for investigation, investigation, and prosecution, which should only be owned by the Police, the Prosecutor's Office and the KPK.

Based on the historical series of Indonesian legislation on the prevention and eradication of corruption, it can be concluded that the current instruments are:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP);
- c. MPR RI Decree No. XI/MPR/1998 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism;
- d. Law Number 28 of 1999 concerning State Administrators that are Clean and Free from Collusion, Corruption, and Nepotism;
- e. Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption;

- f. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption;
- g. Law Number 28 of 1999 concerning the Commission for the Examination of State Organizers' Wealth (KPKPN);
- h. Law Number 19 of 2019 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

The current fight against corruption is no longer feasible using ordinary (conventional) legal instruments, but seriously, by categorizing corruption as a crime against humanity, which is also handled using instruments, technical, and procedural regulations for human rights violations (Ifrani, 2017: 319-36). That way, corruption is no longer a domestic problem of a country but is everyone's business without being limited by state and nation barriers. Therefore, nations in the world have the right to participate in fighting and are aware of it as a crime that must be fought together. This is what makes corruption such a latent danger that is difficult to eradicate (Hart, 2001: 65-88). The existence of laws and a culture of shame that once became the character of our nation is still not able to provide shock therapy for people who commit crimes of corruption in this country. It can be said that corruption has become a source of disaster or crime (the roots of all evils) which is relatively more dangerous than terrorism.

In Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption regulates the severity of punishments for perpetrators of corruption by applying imprisonment, fines, and even the death penalty (Cees, 1998: 20). In addition, the government is trying to confiscate the proceeds of corruption crimes through asset recovery by implementing the Law on Prevention and Eradication of the Crime of Money Laundering (Cees, 1998: 20).

In addition, there are interesting things in determining the types of punishment in Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. For example in the form of language editorial. Each type of punishment in these provisions no longer uses the word "*maximum*", but what is used in every decision on the provision of punishment for perpetrators of criminal acts of corruption is "*minimum or the shortest*". One example is in Article Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption stipulates that the punishment is minimum imprisonment of 1 (one) year and a maximum of 5 (five) and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiahs) civil servant or state administrator who receives a gift or promise even though it is known or reasonably suspected that the gift or promise was given because of the power or authority related to his position, which in the mind of the person giving it the gift or promise is related to his position.

The mention of the word "*minimum or the shortest*" in the punishment for corruption is very important because if the mention of the maximum sentence is for example 5 years in prison, the judge has a gap or opportunity to impose a sentence on the perpetrator the lowest punishment for corruption is 1 year or 2 years in prison. However, with the mention of a minimum sentence or a minimum sentence of 5 years in prison, the judge cannot impose a sentence below 5 years in prison, because the sentence is the lowest or the shortest.

#### 4. CONCLUSIONS

It can be conclude from the study:

Corruption is not an ordinary theft crime (*sariqah*) whose impact is personal-individual, but it is a form of grand theft with a mass-communal impact so it is contrary to the principle of *maqashid al-syari`ah*. In the aspect of Islamic criminal law, corruption can be carried out in the form of *gulul* and bribery. The finger of corruption is included in the class of *ta'zir*. The level of punishment for *ta'zir* is determined by the government (*ulil amri*) through a court decision. Therefore, punishments for perpetrators of corruption in several Islamic countries or countries that apply Islamic law vary according to the state of the country so some apply prison sentences, death sentences, and fines.

In the aspect of Indonesian criminal law, corruption offenses are regulated in Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. These provisions regulate the severity of punishments for perpetrators of corruption by applying prison sentences, fines, and even the death penalty. In addition, the government is trying to confiscate the proceeds of corruption crimes through asset recovery by implementing the Law on Prevention and Eradication of the Crime of Money Laundering.

In terms of law enforcement, the government has specifically established the Corruption Eradication Commission (KPK) and the Corruption Court. The establishment of the two law enforcement agencies aims to eradicate corruption optimally. In addition, the law above applies a reverse proof system in which the defendant must prove that his assets do not originate from the crime of corruption. This evidentiary system aims to facilitate law enforcement in the process of proving corruption in Indonesia.

**Funding:** "This research received no external funding".

**Conflicts of Interest:** The authors declare no conflict of interests.

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