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Pardon for Corruptors: An Examination of Repentance and Restitution in Islamic Criminal Law

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Abstract

This study aims to analyze the granting of clemency to perpetrators of corruption who return assets from the perspective of positive law and Islamic criminal law. This study examines the definition, elements, and mechanisms for handling corruption based on Law No. 31 of 1999 jo. Law No. 20 of 2001, Law No. 22 of 2002, and discusses the concept of jarimah ghulul in Islamic law, which emphasizes sincere repentance and restitution as prerequisites for divine forgiveness.

The method used in this study is legal-normative and literature review to compare national legal norms with the principles of maqashid syariah, with a focus on maintaining justice, deterrence, and prevention of criminal acts.

The novelty of this research lies in the fact that sincere repentance accompanied by restitution is an essential element for obtaining divine forgiveness, without neglecting the function of ta'zir punishment as a deterrent to prevent the repetition of the same act.

The results of the study indicate that although clemency in positive law can be seen as a humane step toward the rehabilitation of offenders, its application must be accompanied by the condition of full asset restitution and a thorough evaluation of the socio-economic impact. This study provides recommendations for reforming pardon policies and integrating Islamic legal principles into regulations governing the restitution of corrupt officials' assets, with the aim of supporting comprehensive, fair, and effective anti-corruption efforts.

These conclusions are expected to serve as a reference for policymakers and legal practitioners in formulating pardon mechanisms that not only prioritize humanitarian aspects but also uphold justice and prevent the recurrence of similar criminal acts.

Keywords: Pardon; Corruption; Asset Recovery; Repentance; Restitution.

Abstrak

Penelitian ini bertujuan untuk menganalisis pemberian grasi bagi pelaku korupsi yang mengembalikan aset dari perspektif hukum positif dan hukum pidana Islam. Studi ini mengkaji definisi, unsur-unsur, dan mekanisme penanganan korupsi berdasarkan UU No. 31 Tahun 1999 jo. UU No. 20 Tahun 2001, UU No. 22 Tahun 2002 serta membahas konsep jarimah ghulul dalam hukum Islam yang menekankan taubat nasuha dan restitusi sebagai prasyarat pengampunan ilahi.

Metode Penelitian yang digunakan dalam penelitian adalah yuridis-normatif dan studi

kepastakaan untuk membandingkan norma hukum nasional dengan prinsip maqashid syariah, dengan fokus pada upaya menjaga keadilan, efek jera, dan pencegahan tindak pidana.

Kebaruan penelitian ini taubat nasuha yang diwujudkan dengan disertai restitusi merupakan elemen penting untuk memperoleh pengampunan ilahi, tanpa mengesampingkan fungsi hukuman ta'zir sebagai pencegahan agar tidak mengulangi tindakan yang sama.

Hasil penelitian menunjukkan bahwa meskipun grasi dalam hukum positif dapat dilihat sebagai langkah humanis untuk rehabilitasi pelaku, penerapannya harus disertai dengan syarat pengembalian aset secara penuh dan evaluasi mendalam terhadap dampak sosial-ekonomi. Penelitian ini memberikan rekomendasi reformasi kebijakan grasi dan integrasi prinsip hukum Islam dalam regulasi pengembalian aset koruptor, guna mendukung pemberantasan korupsi yang komprehensif, berkeadilan, dan efektif.

Kesimpulan ini diharapkan dapat menjadi acuan bagi pembuat kebijakan dan praktisi hukum dalam merumuskan mekanisme pengampunan yang tidak hanya mengutamakan aspek kemanusiaan saja, tetapi juga menegakkan keadilan serta mencegah terulangnya tindak pidana serupa.

Kata Kunci : Grasi; Korupsi; Pengembalian Aset; Taubat; Restitusi.

1. INTRODUCTION

Corruption is a widespread problem that is currently having a significant impact on various aspects of many developing countries.¹ Corruption perpetrators sometimes receive treatment that is disproportionate to the impact of their actions on the country, one example being the granting of clemency. The granting of clemency to perpetrators of corruption who have returned assets is an interesting phenomenon in positive law. In some cases, corruption perpetrators who have returned the proceeds of their crimes receive reduced sentences or even clemency from the head of state.² A common argument is that the return of assets can recover state losses, so that perpetrators deserve leniency in their punishment.³ However, the practice of granting clemency has sparked controversy, particularly with regard to legal justice and the deterrent effect on perpetrators of corruption. In Indonesia, granting clemency to corruptors has become a heated debate, given that corruption is categorized as an extraordinary crime that can damage the social and economic order of a country.⁴

Corruption in Islamic criminal law is known as *jarimah ghulul*, which is the abuse of

¹ Brandon Parsons, "Unpacking Corruption: The Role of Economic Freedom in Developing Countries," *Research in Economics* 79, no. 2 (2025): 101044, <https://doi.org/10.1016/j.rie.2025.101044>; Chien-Chiang Lee, Chih-Wei Wang, and Shan-Ju Ho, "Country Governance, Corruption, and the Likelihood of Firms' Innovation," *Economic Modelling* 92 (2020): 326–38, <https://doi.org/10.1016/j.econmod.2020.01.013>.

² Rai Iqsandri and Andrew Shandy Utama, "Analisa Hukum Pemberian Grasi Terhadap Terpidana Kasus Korupsi Gubernur Riau Annas Maamun," *Ensiklopedia Sosial Review* 3, no. 2 (2021): 179–86, <https://doi.org/10.33559/esr.v3i2.783>.

³ Darmadi Djufri, Derry Angling Kesuma, and Kinaria Afriani, "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi," *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda* 26, no. 2 (2020): 120–32.

⁴ Mohammad Al Faridzi and Gunawan Nachrawi, "Kualifikasi Kejahatan Luar Biasa Terhadap Tindak Pidana Korupsi (Putusan Mahkamah Agung Nomor 301 K/Pid.Sus/2021)," *Jurnal Kewarganegaraan* 6, no. 2 (2022): 3014–19.

power for personal gain through unlawful means. Islam strongly emphasizes the necessity of returning illicitly obtained wealth as a form of repentance.⁵ The principle of *mazalim* in Islamic jurisprudence states that the rights of the community that have been taken away must be restored before a person can be considered to have repented in a valid manner.⁶ However, the question remains whether the return of assets can erase the consequences of worldly punishment, and whether punishment must still be enforced for the sake of justice and the prevention of similar crimes in the future.

Several studies have discussed the legal aspects of granting clemency in corruption cases and the Islamic legal approach to *jarimah ghulul*. Research by Iqsandri and Utama examined the granting of clemency in positive law and found that this practice often contradicts the principle of justice for society.⁷ Meanwhile, Zaruni and Isnaeni highlighted Islamic law on corruption, which is interpreted as *ghulul*, and emphasized the importance of asset restitution as a key condition for repentance.⁸ A study by Thamsir, Umar, and Adawiyah discusses *maqashid syariah* in the enforcement of Islamic criminal law and emphasizes that punishment must be upheld to achieve a deterrent effect.⁹ Another study by Zulkarnain, Hilalludin, and Suny discusses the relationship between legal forgiveness and social justice in Islam, highlighting the limitations of granting leniency to perpetrators of corruption.¹⁰ The study by Alfarisi specifically discusses the principle of *mazalim* in Islamic jurisprudence and states that the return of assets does not necessarily eliminate worldly punishment.¹¹

Although several studies have discussed aspects of clemency and *jarimah ghulul*, there has been no comprehensive study comparing the concept of clemency in positive law with the principles of repentance and restitution in Islamic law. Most previous studies have focused more on aspects of positive law or merely discussed the return of assets without considering the dimensions of punishment and forgiveness in Islamic law. Therefore, this study offers a novel approach by critically examining whether the granting of pardon to corrupt officials who return assets can be justified under Islamic law.

This study seeks to answer several key questions that form the research questions in this study, including: how is the concept of clemency for corruptors who return assets viewed in positive law, how does Islamic law view *jarimah ghulul* and the concept of restitution, and whether granting clemency to corruptors who return assets is in line with the principles of

⁵ Ahmad Zaruni and Ahmad Isnaeni, "Pemaknaan Ghulul Dalam Al-Qur'an Menurut Pandangan Tafsir Klasik Dan Modern," *UNISAN JURNAL* 2, no. 3 (2023): 22–35.

⁶ Mochammad Hilmi Alfarisi, "Urgensi Peran Peradilan Al-Mazalim Dalam Menyelesaikan Sengketa Administrasi," *Minhaj: Jurnal Ilmu Syariah* 1, no. 2 (2020): 103–18, <https://doi.org/10.52431/minhaj.v1i2.306>.

⁷ Iqsandri and Utama, "Analisa Hukum Pemberian Grasi Terhadap Terpidana Kasus Korupsi Gubernur Riau Annas Maamun."

⁸ Zaruni and Isnaeni, "Pemaknaan Ghulul Dalam Al-Qur'an Menurut Pandangan Tafsir Klasik Dan Modern."

⁹ Moh. Thamsir, Hasbi Umar, and Robi'atul Adawiyah, "Maqashid Al-Shariah Sebagai Landasan Humanis Dalam Reformasi Sistem Hukum Pidana," *Journal of Innovation Research and Knowledge* 4, no. 8 (2025): 5721–27.

¹⁰ Muhammad Farid Zulkarnain, Hilalludin Hilalludin, and Fida Said As Suny, "Relevansi Pengampunan Korupsi Dalam Perspektif Islam Dengan Hukum Yang Berlaku," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (2024): 139–47, <https://doi.org/10.59246/aladalah.v2i4.957>.

¹¹ Alfarisi, "Urgensi Peran Peradilan Al-Mazalim Dalam Menyelesaikan Sengketa Administrasi."

Islamic criminal law. Based on these questions, this study aims to analyze the granting of clemency to corrupt officials in the positive legal system and Islamic law, examine the concepts of repentance, *kaffarah*, and restitution in cases of *jarimah ghulul*, and assess whether the granting of clemency is consistent with the principles of maqashid syariah in the eradication of corruption.

The urgency of this study lies in the need to compare the concept of clemency in positive law with the principles of repentance and restitution in Islam. This is because, in the context of Islamic law, repentance is not only related to the return of assets, but also involves moral and social aspects.¹² This study has academic and practical significance in two main aspects. *First*, academically, this study contributes to the development of Islamic criminal law literature by deepening the analysis of *jarimah ghulul* in the context of modern law. Second, in practical terms, the results of this study can be used as material for consideration by policymakers in formulating clemency policies for perpetrators of corruption, especially in ensuring a balance between justice, deterrence, and Islamic legal principles. Thus, this study will provide a strong comparative perspective between positive law and Islamic law, as well as offer alternative solutions in criminal law policies related to corruption.

2. METHOD

This study uses a normative legal method, which is an approach that focuses on analyzing legal norms contained in legislation, doctrines, legal principles, and the opinions of legal experts.¹³ Normative legal research falls under the category of doctrinal legal research, which does not use empirical or qualitative approaches as is common in social sciences. Referring to Peter Mahmud Marzuki, the approaches used in this study include the statute approach, the conceptual approach, and the comparative approach.¹⁴ A legislative approach was used to analyze various positive legal provisions governing clemency and corruption eradication, such as Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 and Law No. 22 of 2002. A conceptual approach is used to examine ideas about pardon, repentance, and restitution in Islamic criminal law, particularly in the context of *jarimah ghulul*. Meanwhile, a comparative approach is applied to compare legal principles in the national legal system with Islamic legal principles to assess the relevance and fairness of granting pardon to corrupt officials who return assets. The data in this study were obtained through library research sourced from primary legal materials in the form of legislation, secondary legal materials in the form of classical and contemporary Islamic legal literature, scientific journals, and tertiary legal materials such as legal dictionaries.¹⁵ The data analysis technique used is normative-qualitative analysis, which involves interpreting the content of applicable legal

¹² Andi Arifai Rahadi and Adriana Mustafa, "Tinjauan Hukum Islam Pemberian Remisi Terhadap Narapidana Korupsi," *Siyasatuna: Jurnal Ilmiah Mahasiswa Syiah Syar'iyah* 5, no. 3 (2024): 718–31.

¹³ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cet. 8 (Jakarta: Kencana Prenada Media Group, 2013).

¹⁵ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: Alfabeta, 2017).

norms and comparing them with Islamic legal principles in a systematic and critical manner.¹⁶

3. DISCUSSION

3.1. The Concept of Corruption in Positive Law and Islamic Criminal Law

Corruption in Indonesian positive law is defined as the abuse of authority by officials or individuals in positions of power to obtain personal or group gains that violate the public interest. According to Law No. 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption, corruption includes acts of receiving, giving, or requesting gratuities that directly or indirectly influence the performance of public officials' duties and functions. This definition is reinforced by provisions that outline the elements of abuse of power, the benefits obtained, and the losses incurred to state finances, thereby providing a clear normative foundation for the handling of corruption crimes.¹⁷

The elements of corruption according to the Anti-Corruption Law include acts that deviate from the authority granted, unlawful gains, and losses suffered by the state or other parties. In detail, the articles in the law emphasize the importance of malicious intent (*mens rea*) and concrete actions that result in abuse of power.¹⁸ In addition, asset recovery or restitution mechanisms are also regulated as a means of recovering state losses. This restorative approach not only serves as a law enforcement tool, but also as a preventive measure to prevent the recurrence of similar crimes.¹⁹

The implementation of sanctions in national law includes criminal penalties in the form of imprisonment, fines, and asset recovery.²⁰ Case studies such as corruption cases in large infrastructure projects in Indonesia show that perpetrators proven to have abused their positions must face strict legal proceedings, including efforts to seize and return assets obtained through crime.²¹ This restitution mechanism is integrated into the judicial system to ensure that losses to the state are minimized and as a form of restorative justice. The application of sanctions is intended not only to punish, but also to provide a broader deterrent effect for perpetrators of corruption.²²

¹⁶ Benuf and Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer."

¹⁷ Republik Indonesia, "Undang-Undang Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 2001.

¹⁸ Republik Indonesia.

¹⁹ Djufri, Kesuma, and Afriani, "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi."

²⁰ Cholfia Aldamia and Refi Meidiantama, "Pengembalian Aset Pelaku Tindak Pidana Korupsi Dalam Hukum Internasional Dan Implementasinya Pada Hukum Nasional Indonesia," *Muhammadiyah Law Review* 6, no. 1 (2022): 54–68, <https://doi.org/10.24127/lr.v6i1.1847>.

²¹ Susi Amalia, "Analisis Dampak Korupsi Pada Masyarakat (Studi Kasus Korupsi Pembangunan Shelter Tsunami Di Kecamatan Labuan Kabupaten Pandeglang)," *Epistemik: Indonesian Journal of Social and Political Science* 3, no. 1 (2022): 54–76, <https://doi.org/10.57266/epistemik.v3i1.77>; Dicky Hermawan et al., "Analisis Dampak Korupsi Dalam Pembangunan Infrastruktur Di Negara Berkembang," *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 4259–4271.

²² Youfan Alyafedri and Ismail Koto, "Kebijakan Hukum Terhadap Problematika Pemberian Pemenuhan Hak Restitusi Korban Tindak Pidana Yang Diatur KUHP Dan Diluar KUHP," *UNES Law Review* 6, no. 4 (2024): 11643–53.

In Islamic criminal law, corruption is known as *jarimah ghulul*, a serious crime that has a serious impact on the welfare of society and economic stability. The concept of *ghulul* refers not only to material losses, but also includes moral and social violations that destroy the order of life.²³ Based on the arguments of the Qur'an, particularly in QS. Al-Ma'idah [5]: 42, *sariqoh* in QS. Al-Ma'idah [5]: 38 and *hirabah*, QS. Al-Ma'idah [5]: 33-34,²⁴ and in one of the Hadith narrated by Imam Bukhari in HR. Bukhari No. 3196,²⁵ corrupt acts that cause such damage are considered a grave sin, requiring the perpetrator to perform *taubat nasuha*, or repentance accompanied by full restitution as a form of accountability. As stated by Alavi, Marpaung and Harahap,²⁶ Islamic jurisprudence emphasizes that restitution or the return of assets is an integral part of the process of forgiveness in Islam.

Case studies in the history of punishment for perpetrators of *ghulul* show that the approach to punishment in Islam is not merely repressive, but also restorative. For example, during the caliphate of Umar bin Khattab, there was a practice where offenders who demonstrated good intentions by returning seized assets were given the opportunity to repent sincerely and receive forgiveness, although worldly punishment was still imposed as a means of maintaining social justice.²⁷ This practice reflects the principle of sincere repentance, in which the return of property is an absolute requirement for receiving Allah's mercy, as well as an effort to restore social relations between the perpetrator and the community.

3.2. Granting of Clemency and Restitution in Positive Law and Islam

In Indonesian positive law, clemency is defined as a form of pardon or reduction of punishment granted by the President as an exercise of executive judicial power. Clemency is a humane policy based on the principle of justice, with the aim of giving convicted persons a second chance to reform themselves.²⁸ According to the law, clemency is a pardon in the form of a change, reduction, or elimination of the execution of a sentence imposed on a convicted person, granted by the President.²⁹ The constitutional basis for granting clemency is regulated in the 1945 Constitution and Law No. 22 of 2002 on Clemency, so that the application of clemency must go through strict administrative procedures and be based on humanitarian considerations and the public interest.

²³ Zaruni and Isnaeni, "Pemaknaan Ghulul Dalam Al-Qur'an Menurut Pandangan Tafsir Klasik Dan Modern."

²⁴ Dudung Abdul Karim, "Pidana Korupsi Dalam Tafsir Al-Jami' Al-Ahkam Al-Qur'an Karya Al-Qurthubi," *Al-Tadabbur: Jurnal Ilmu Al-Qur'an Dan Tafsir* 8, no. 02 (2023): 343–58.

²⁵ Moh Hilmi Badrut Tamam and Andris Nurita, "Korupsi Dalam Perspektif Hadis Imam Bukhari," *El Nubuwwah: Jurnal Studi Hadis* 1, no. 2 (2023): 206–33, <https://doi.org/10.19105/elnubuwwah.v1i2.9792>.

²⁶ Ivan Najjar Alavi, Watni Marpaung, and Arifuddin Muda Harahap, "Reconstruction of Confiscation of Corruption Convicts' Assets in Restitution of State Financial Losses Islamic Law Analysis," *JURNAL AKTA* 12, no. 1 (2025): 72–84, <https://doi.org/10.30659/akta.v12i1.43729>.

²⁷ Ahmad Syarbaini, "Terminologi Korupsi Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiq: Jurnal Ilmiah Pemikiran Hukum Islam* 18, no. 1 (2024): 1–15, <https://doi.org/10.61393/tahqiq.v18i1.205>.

²⁸ Suyogi Imam Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif," *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 621–36.

²⁹ Republik Indonesia, "Undang-Undang Nomor 22 Tahun 2002 Tentang Grasi," 2002.

Operationally, clemency in positive law includes reduction of sentences, conditional pardons, and full or partial remission of sentences. The procedure for granting clemency requires a comprehensive evaluation of the convicted person's behavior, the impact of the crime, and restitution efforts such as the return of assets obtained through corruption.³⁰ Case studies related to the application of clemency, as seen in several corruption cases in the government sector, show that although clemency can accelerate the social rehabilitation of perpetrators, its application is often criticized for weakening deterrence and creating perceptions of injustice in the eyes of the public.³¹

In Islamic criminal law, the concepts of repentance and restitution play a crucial role in the process of forgiveness. *Taubat nasuha* is defined as a sincere change of heart, whereby the perpetrator of a crime stops committing wrongdoing, regrets their actions, and strives to repair the damage that has been done by returning the property that was taken.³² The return of assets or restitution in Islam is an important condition for repentance to be fully accepted by Allah SWT. This indicates that the process of repentance is not merely spiritual but must also be manifested in concrete actions to restore the rights of the victims. Islam emphasizes that repentance accompanied by restitution is the path to achieving divine forgiveness, although it does not automatically exempt the perpetrator from worldly legal consequences.³³ In the context of *jarimah ghulul*, restitution is considered a fundamental form of social responsibility, whereby the perpetrator is obliged to return state or community property that has been damaged. This process embodies high moral values, where justice is upheld through the restoration of lost rights and the enforcement of social discipline. However, the implementation of restitution in Islamic law also leaves room for the application of *ta'zir* sanctions as an additional form of punishment, to maintain a balance between forgiveness and deterrence.³⁴

A comparison between clemency in positive law, repentance and restitution in Islamic law reveals fundamental differences in the normative basis and objectives of their application. Clemency in positive law is a political and legal administrative decision, granted as a form of compassion and as an effort to improve the judicial system through social rehabilitation.³⁵ Conversely, in Islamic law, sincere repentance with restitution is an internal and spiritual process that requires a complete change in behavior, with the return of assets as tangible proof of repentance.³⁶ Although both systems aim to improve social conditions

³⁰ Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif."

³¹ Iqsandri and Utama, "Analisa Hukum Pemberian Grasi Terhadap Terpidana Kasus Korupsi Gubernur Riau Annas Maamun."

³² Faira Aisyah, Nurdin Nurdin, and Tri Amanatun Nadliroh, "Taubat Sebagai Penggugur Had Terhadap Pelaku Tindak Pidana Pencurian (Jarimah Sirqah) Perspektif Imam Al Nawawi," *JATISWARA* 37, no. 1 (2022): 78–92, <https://doi.org/10.29303/jtsw.v37i1.367>.

³³ Zulkarnain, Hilalludin, and Suny, "Relevansi Pengampunan Korupsi Dalam Perspektif Islam Dengan Hukum Yang Berlaku."

³⁴ Syarbaini, "Terminologi Korupsi Menurut Perspektif Hukum Pidana Islam."

³⁵ Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif."

³⁶ Aisyah, Nurdin, and Nadliroh, "Taubat Sebagai Penggugur Had Terhadap Pelaku Tindak Pidana Pencurian (Jarimah Sirqah) Perspektif Imam Al Nawawi."

and provide second chances, their legal bases differ, with positive law being based on legislative norms and jurisprudence, while Islamic law is rooted in divine principles that are normative and moral in nature.

The application of clemency and restitution in both legal systems presents its own challenges in the context of corruption eradication. On the one hand, clemency as an instrument of positive legal policy can be seen as an effort to integrate humanitarian aspects into law enforcement, especially if the perpetrator of corruption has shown good faith through the return of assets. However, the application of pardon without a thorough evaluation of its social and economic impacts can erode public trust in the judicial system. From an Islamic perspective, while sincere repentance (*taubat nasuha*) coupled with restitution offers a path for offenders to obtain divine forgiveness, this principle must not undermine the role of worldly punishment as a deterrent to prevent similar criminal acts in the future.

3.3. Comparative Analysis of the Granting of Clemency in Positive Law and Islamic Criminal Law

Pardon in positive law and repentance with restitution in Islamic law essentially have the same objective, which is to give the perpetrator a second chance to reform and restore the losses incurred. However, the fundamental difference lies in the basis for granting and the mechanism for implementing them. Pardon is an administrative and political executive power,³⁷ meanwhile, in Islamic law, forgiveness of sins is the prerogative of Allah SWT, which is manifested through sincere repentance, where restitution or return of assets is an absolute requirement for repentance to be accepted by God.³⁸

A comparison between restitution in positive law and the return of property in Islam reveals fundamental conceptual differences. In positive law, restitution is seen as a measure to recover losses incurred by the state or society as a result of corruption, and is regulated in detail through legislation.³⁹ Conversely, in the Islamic perspective, the return of property is an integral part of the process of sincere repentance, which demands moral and material accountability for sins committed. In addition, Islamic law often imposes additional sanctions in the form of *tak'zir* punishment as an effort to enforce discipline against corruptors.⁴⁰ which is not always in line with the normative approach in the national legal system.

In the context of the principle of *maqashid syariah*, which emphasizes the protection of *hifzh al-mal* (protection of property) and social justice, the granting of clemency is controversial. Theoretically, pardon may be considered appropriate if its implementation does not sacrifice the interests of society, for example, by requiring the full and transparent return of assets. However, if pardon is granted without a thorough evaluation of its socio-

³⁷ Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif."

³⁸ Aisyah, Nurdin, and Nadliroh, "Taubat Sebagai Penggugur Had Terhadap Pelaku Tindak Pidana Pencurian (Jarimah Sirqah) Perspektif Imam Al Nawawi."

³⁹ Alyafedri and Koto, "Kebijakan Hukum Terhadap Problematika Pemberian Pemenuhan Hak Restitusi Korban Tindak Pidana Yang Diatur KUHP Dan Diluar KUHP."

⁴⁰ Syarbaini, "Terminologi Korupsi Menurut Perspektif Hukum Pidana Islam."

economic impacts, this risks reducing the deterrent effect and eroding public trust in the legal system.⁴¹ On the other hand, the Islamic approach through *taubat nasuha* emphasizes that divine forgiveness can only be obtained if the perpetrator truly restores the rights that have been taken away, thereby placing a high moral pressure on the perpetrator to take responsibility.⁴²

In the context of corruption crimes, the practice of granting clemency in Indonesia has sparked controversy. One case that has frequently drawn public attention is the clemency granted by President Joko Widodo to Annas Maamun, the former Governor of Riau, who was convicted of bribery related to forest land conversion in 2015. Annas Maamun was sentenced to seven years in prison but received a pardon in 2019, which reduced his sentence by one year on the grounds of advanced age and poor health. Although the pardon is legally valid, many believe this decision could weaken the deterrent effect and erode public trust in the government's commitment to combating corruption in Indonesia.⁴³

An analysis of the Annas Maamun case shows that granting clemency in the context of positive law can give rise to a dilemma between humanitarian considerations and substantive justice. On the one hand, advanced age and health conditions can be accepted as humanitarian grounds. However, on the other hand, the lack of clear information regarding the return of assets or the restoration of state losses raises serious questions about the moral and material requirements of the pardon itself. In the logic of Islamic criminal law, this is problematic because there is no restitution, which is an integral part of the repentance process. Therefore, in the *maqashid syariah* approach, this policy does not fulfill the principles of protection of property (*hifzh al-mal*) and social justice, which are the foundations for handling corruption crimes.

In the perspective of Islamic criminal law, the concepts of repentance and restitution play a crucial role in the process of forgiveness. *Taubat nasuha* is defined as a sincere change of heart, whereby the perpetrator of a crime stops committing wrongdoing, regrets his actions, and strives to repair the damage that has been done by returning the property that was taken. The return of assets or restitution in Islam is an essential condition for repentance to be fully accepted by Allah SWT. This indicates that the process of repentance is not merely spiritual but must also be manifested in concrete actions to restore the rights of the victims. Islam emphasizes that repentance accompanied by restitution is the path to achieving divine forgiveness, although it does not automatically exempt the perpetrator from worldly legal consequences. In the context of *jarimah ghulul*, restitution is considered a fundamental form of social responsibility, where the perpetrator is obligated to return state or community

⁴¹ Asih Puspo Sari, "Pemberian Grasi Dan Maaf Dalam Bingkai Kajian Teoritik Tindak Pidana Pembunuhan (Studi Komparatif Hukum Positif Dan Hukum Islam)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 5, no. 1 (2020): 73–90, <https://doi.org/10.22515/alahkam.v5i1.2474>.

⁴² Aisyah, Nurdin, and Nadliroh, "Taubat Sebagai Penggugur Had Terhadap Pelaku Tindak Pidana Pencurian (Jarimah Sirqah) Perspektif Imam Al Nawawi."

⁴³ Suhaina, "Pemberian Grasi Bagi Pelaku Tindak Pidana Korupsi Berdasarkan Undang-Undang Nomor 5 Tahun 2010 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2002 Tentang Gras" (UIN Fatmawati Sukarno Bengkulu, 2023).

property that has been wrongfully taken. This process carries high moral value, where justice is upheld through the restoration of lost rights and the enforcement of social discipline. However, the implementation of restitution in Islamic law also leaves room for the application of *ta'zir* sanctions as an additional punishment, to maintain a balance between forgiveness and deterrence.

A comparative analysis of the granting of clemency in positive law and the application of repentance and restitution in Islamic law reveals similarities in the rehabilitative objectives for offenders, but fundamental differences in the normative foundations and implementation. Clemency, as an administrative policy, focuses more on humanitarian and political aspects, while Islamic law prioritizes divine justice through the process of repentance accompanied by restitution. Alternative punishments in Islam, such as the application of *ta'zir* sanctions, offer a more comprehensive approach to balancing forgiveness and deterrence. Thus, the application of clemency must be adjusted to the principles of *maqashid syariah* so as not to neglect the protection of *hifzh al-mal* and social justice, and can be used as a reference in national legal policy reform to eradicate corruption.

Based on this analysis, it is recommended that the policy on granting clemency be reformed by establishing strict standards regarding the evaluation of restitution and evidence of sincere repentance. This reform includes the establishment of transparent procedures in the clemency process, in which an in-depth evaluation of the socio-economic impact and certainty of asset recovery must be a key prerequisite before clemency is granted. This step is expected to prevent the application of symbolic or purely political clemency, which has the potential to weaken efforts to eradicate corruption and reduce public trust in the judicial system.

The integration of Islamic legal principles into regulations on asset recovery for corruptors in Indonesia is highly recommended to add a moral and restorative justice dimension. This integration can be achieved through the formulation of regulations that refer to the values of sincere repentance and restitution as enshrined in Islamic legal literature, so that asset recovery mechanisms do not only focus on material aspects, but also touch on social justice and ethics. This approach enables synergy between the national legal system and moral principles in Islam, which in turn can strengthen the effectiveness of anti-corruption policies through more comprehensive and just mechanisms.

4. CONCLUSION

The application of clemency for perpetrators of corruption who return assets is acceptable in Islam on the condition that the return of assets is part of sincere repentance. In the context of *jarimah ghulul*, Islam emphasizes that divine forgiveness can only be achieved if the perpetrator not only stops the wrongdoing but also returns the rights that have been taken away as a form of material and moral responsibility. Thus, clemency granted by worldly authorities must be accompanied by tangible evidence of restitution and behavioral reform, so as not to disregard the principles of justice and deterrence. The application of this principle aligns with Islamic teachings, which view repentance as a comprehensive process—

both spiritual and practical—that restores social balance and upholds the rights of victims. Islamic law balances justice and forgiveness in cases of jarimah ghulul through the application of the concept of sincere repentance, which integrates elements of restitution. On the one hand, Islamic law requires that perpetrators who have caused material and moral harm must restore the rights of the victims as a form of accountability, thereby upholding justice for the victims. On the other hand, Islam provides room for divine forgiveness if the perpetrator demonstrates good intentions, namely through sincere repentance and the full return of assets. Thus, the mechanism of forgiveness in Islam is not merely retributive but also restorative, aiming to restore social and moral relationships among individuals, thereby serving as a deterrent while also encouraging rehabilitation.

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