



From RTBF to *Devoir de Mémoire*: The Imperative of *Amanah* and *Adālah* in Regulating Former Corruption Offenders' Candidacy

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Abstract: The Indonesian regulation permitting ex-corruption convicts to run for public office after a five-year waiting period creates a critical normative dilemma, particularly when intersecting with the EU-centric 'Right to Be Forgotten' (RTBF). This article explicitly aims to analyze and challenge the applicability of the RTBF framework to the candidacy of former corruption offenders by re-examining it through the lens of Islamic leadership ethics, specifically the principles of *amanah*, *adālah*, and *fiqh siyasah*. Using a normative-juridical approach, this study analyzes Indonesian electoral regulations and the RTBF doctrine, synthesized with classical and contemporary Islamic jurisprudence, with particular emphasis on *Maqāshid al-Sharī'ah* and the doctrine of *sadd al-dharā'ī*. The findings reveal two key points: First, the five-year waiting period fundamentally misapplies RTBF by equating public records of corruption with private data; this article proposes its antithesis, *devoir de mémoire* (the duty to remember), as the required public policy framework. Second, Islamic jurisprudence establishes *adālah* (moral integrity) as a binding legal qualification (*shart*) for public office, and corruption legally and perpetually nullifies this qualification. The study concludes that spiritual *taubah* (repentance) is distinct from public-legal qualification (*haqq al-ummah*) and does not automatically restore eligibility. Therefore, disqualifying former corrupt officials does not violate rights but represents a necessary implementation of *sadd al-dharā'ī* to safeguard public *amanah* and protect the public interest.

Keywords: Right to Be Forgotten; Islamic Leadership Ethics; *Devoir de Mémoire*; Political Corruption; 'Adālah

Abstrak: Peraturan Indonesia yang mengizinkan mantan narapidana korupsi untuk mencalonkan diri dalam jabatan publik setelah masa tunggu lima tahun menciptakan dilema normatif yang kritis, terutama ketika bersinggungan dengan 'Right to Be Forgotten' (RTBF) yang berpusat di Uni Eropa. Artikel ini secara khusus bertujuan untuk menganalisis dan menantang penerapan kerangka RTBF pada pencalonan mantan koruptor dengan meninjaunya melalui lensa etika kepemimpinan Islam, yaitu prinsip *amanah*, *adālah*, dan *fiqh siyasah*. Dengan menggunakan pendekatan normatif-yuridis, penelitian ini menganalisis peraturan pemilu Indonesia dan doktrin RTBF, disintesis dengan

yurisprudensi Islam klasik dan kontemporer, dengan fokus khusus pada *Maqashid al-Shari'ah* dan analisa *sadd al-dharā'i*. Temuan penelitian mengungkapkan dua poin utama: *Pertama*, masa tunggu lima tahun secara fundamental salah menerapkan RTBF dengan menyamakan catatan publik korupsi dengan data pribadi; artikel ini mengusulkan antitesisnya, *devoir de mémoire* (kewajiban untuk mengingat), sebagai kerangka kebijakan publik yang diperlukan. *Kedua*, yurisprudensi Islam menetapkan *adālah* (integritas moral) sebagai kualifikasi hukum yang mengikat (*sharʿ*) untuk jabatan publik, dan korupsi secara hukum dan permanen membatalkan kualifikasi ini. Studi ini menyimpulkan bahwa *taubah spiritual* berbeda dari kualifikasi hukum-publik (*haqq al-ummah*) dan tidak secara otomatis memulihkan kelayakan. Oleh karena itu, diskualifikasi mantan koruptor bukanlah pelanggaran hak melainkan implementasi yang diperlukan dari *sadd al-dharā'i* untuk menjaga amanah publik dan melindungi kepentingan umum.

Kata Kunci : Hak untuk Dilupakan; Etika Kepemimpinan Islam; *Devoir de Mémoire*; Korupsi Politik; *ʿAdālah*

Introduction

The tension between the “right to be forgotten” (RTBF) and the imperative of public integrity remains a critical ethical dilemma,¹ Particularly regarding public office qualifications.² Originated in Europe through the Google Spain ruling and GDPR,³ RTBF allows individuals to remove irrelevant past data.⁴ However, its application to public figures is highly contested, as the public interest in political transparency often outweighs individual privacy claims.⁵

In Indonesia, this challenge is acute amid a rise in corruption cases that erode public trust.⁶ The 2024 General Election highlighted a structural failure,⁷ Where 56 former corruption convicts were listed as legislative candidates,⁸ Demonstrating a low commitment to integrity among political stakeholders.⁹ The electoral success of high-profile ex-convicts, such as Nurdin Halid and Desy

¹ Lowry Pressly, “The Right to Be Forgotten and the Value of an Open Future,” <https://doi.org/10.1086/731431> 135, no. 1 (October 1, 2024): 65–87, <https://doi.org/10.1086/731431>.

² Avrupa Birliği et al., “The Right to Be Forgotten in the European Union Public Sector: Balancing Individual Privacy and Public Interest,” *Trabzon Üniversitesi Hukuk Fakültesi Dergisi* 3, no. 2 (September 25, 2025): 321–61, <https://dergipark.org.tr/tr/pub/truhfd/issue/94836/1757166>.

³ Robert Kirk Walker, “Note – The Right to Be Forgotten,” *Hastings Law Journal* 64, no. 1 (2012): 257, https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1200%5C&context=hastings%5C_law%5C_journal; Didier Bigo, Engin F Isin, and Evelyn Ruppert, “Data Politics. Worlds, Subjects, Rights,” *HAL (Le Centre Pour La Communication Scientifique Directe)*, 2019, <https://hal-sciencespo.archives-ouvertes.fr/hal-03385170>.

⁴ Dawen Zhang et al., “Right to Be Forgotten in the Era of Large Language Models: Implications, Challenges, and Solutions,” *AI and Ethics*, 2024, <https://doi.org/10.1007/s43681-024-00573-9>; Bigo, Isin, and Ruppert, “Data Politics. Worlds, Subjects, Rights.”

⁵ Muge Fazlioglu, “Forget Me Not: The Clash of the Right to Be Forgotten and Freedom of Expression on the Internet,” *International Data Privacy Law* 3, no. 3 (2013): 149–57, <https://doi.org/10.1093/idpl/ipt010>; Bigo, Isin, and Ruppert, “Data Politics. Worlds, Subjects, Rights.”

⁶ Darwin Botutihe, “Politik Hukum Pemenuhan Hak Dipilih Dalam Pemilihan Kepala Daerah Pasca Reformasi Di Indonesia (Studi Pencalonan Mantan Terpidana)” (Universitas Islam Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/51429>; Bo Rothstein and Eric M. Uslaner, “All for All: Equality, Corruption, and Social Trust,” *World Politics* 58, no. 1 (October 2005): 41–72, <https://doi.org/10.1353/WP.2006.0022>.

⁷ Eric M. Uslaner, “Trust and Corruption,” in *The New Institutional Economics of Corruption* (Routledge, 2004), 90–106, <https://doi.org/10.4324/9780203413920-9>.

⁸ This data was analyzed from mapping data on former convicts on the permanent candidate list and political parties supporting former corruption convicts as legislative candidates in the 2024 elections by Indonesia Corruption Watch.

⁹ Indonesia Corruption Watch, *Temuan ICW dalam Daftar Calon Tetap Calon Anggota Legislatif: 56 Mantan Terpidana Korupsi Mencalonkan Diri pada Pemilu 2024 Mendatang*, siaran pers, 6 November 2023, diakses 10 Desember 2025, <https://antikorupsi.org/id/temuan-icw-dalam-daftar-calon-tetap-calon-anggota-legislatif-56-mantan-terpidana-korupsi>; dan Nabilah Muhammad, *Ada 49 Caleg Mantan Napi Korupsi di Pemilu 2024, Ini Partai Asalnya*, Databoks, 7 November 2023, diakses 10 Desember 2025

Yusandi, reveals that criminal backgrounds do not necessarily preclude political support, indicating systemic flaws in the electoral system's integrity standards.¹⁰

The core conflict arises when RTBF is applied to obscure the integrity records of leadership candidates. Unlike ordinary citizens, public figures face attenuated privacy expectations, particularly regarding their past conduct and its potential impact on decision-making.¹¹ Consequently, defining the boundary between individual privacy rights and the public's right to know regarding a candidate's track record is essential.

Given Indonesia's socio-religious context, this issue necessitates an analysis through Islamic law, which prioritizes justice (*'adālah*), accountability, and integrity.¹² Islamic leadership ethics regard governance as a form of divine accountability, mandating high moral standards and the avoidance of corruption.¹³ Specifically, the principles of *amanah*, *'adālah*, and *fiqh siyasah* provide a robust framework for assessing the eligibility of officials who have committed *khīyānah* (treachery) against the state.

While previous studies have examined RTBF from digital law perspectives and analyzed the candidacy of former corruptors through constitutional law or general *fiqh siyasah*,¹⁴ Some argue that bans violate human rights.¹⁵ However, a critical gap remains in synthesizing the RTBF doctrine with the specific, binding *sharṭ* (legal condition) of *'adālah* in classical Islamic jurisprudence. This study addresses this void by arguing that *'adālah* fundamentally supersedes the RTBF framework in political candidacy.

Guided by this dilemma, this study addresses three key questions: (1) How does RTBF conflict with transparency regarding former corruptors in Indonesia? (2) How do Islamic principles influence the assessment of *'adālah* as a binding qualification for public office? (3) How can a framework grounded in *sadd al-dharā'ī* uphold the *Devoir de Mémoire* principle?

¹⁰ Subekti, *Mantan Napi Korupsi Melenggang Menjadi Anggota Dewan: Nurdin Halid dan Desy Yusandi*, Tempo.co, 29 Maret 2024, diakses 10 Desember 2025, <https://www.tempo.co/politik/mantan-napi-korupsi-melenggang-menjadi-anggota-dewan-nurdin-halid-dan-desy-yusandi-72783>.

¹¹ John Devine, "The Political Privacy Dilemma: Private Lives and Public Office," *Journal of Applied Philosophy* 41, no. 3 (2023): 391–408, <https://doi.org/10.1111/japp.12683>.

¹² Md Abu and Md. Abu Issa Gazi, "Islamic Perspective of Leadership in Management; Foundation, Traits, and Principles," *International Journal of Management and Accounting*, 2020, 1–9, <https://doi.org/10.34104/ijma.020.0109>; E El Kaleh and Eugenie A Samier, "The Ethics of Islamic Leadership: A Cross-Cultural Approach for Public Administration," *Administrative Culture* 14, no. 2 (2013): 188–211, <https://pureportal.strath.ac.uk/en/publications/the-ethics-of-islamic-leadership-a-cross-cultural-approach-for-pu>; Mustapha Sidi Attahiru, "Justice And Islamic Work Ethics A Framework For Leaders Of Public And Private Organizations," *International Journal of Research -GRANTHAALAYAH* 9, no. 11 (2021): 214–26, <https://doi.org/10.29121/granthaalayah.v9.i11.2021.4397>; Salah ud Din, Sharifah Hayaati Syed Ismail, and Raja Hisyamudin Raja Sulong, "Combating Corruption Based on Al-Siyasah Al-Syar'iyah Perspective: A Literature Review," *International Journal of Ethics and Systems* (Emerald Publishing Limited, 2023), <https://doi.org/10.1108/ijoes-12-2022-0312>.

¹³ Abu and Gazi, "Islamic Perspective of Leadership in Management; Foundation, Traits, and Principles."; Hariyanto, Muhammad Mutawalli Mukhlis, and Daud Rismansa, "The Role and Authority of the Deputy Regional Head According to Islamic Principles Within the Framework of Regional Government Law," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 13, <https://doi.org/10.31958/juris.v24i1.12678>.

¹⁴ Istiqomah Fadlillah, "Participation of Former Corruption Prisoner in Elections in Islamic Perspective," *Jurnal Ilmiah Mahasiswa Raushan Fikr* 11, no. 1 (2022): 54–77, <https://doi.org/10.24090/jimrf.v11i1.6533>; Dodi Afriyanto, Febrian, and Iza Rumesten, "The Quasi-Judicial Authority of Bawaslu in the Perspective of Das Sollen and Fiqh Siyasah," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 25, no. 2 (2025): 462, <https://doi.org/10.19109/nurani.v25i2.30257>.

¹⁵ Husni Putri Utami, RR. Rina Antasari, and Eti Yusnita, "From Conviction to Candidacy: A Juridical and Siyasah Analysis of the Waiting Period for Former Corruptors under the Election Law," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsyiyah* 8, no. 2 (July 1, 2025): 473–81, <https://doi.org/10.58824/MEDIASAS.V8I2.360>.

Using a normative-juridical approach, this research aims to harmonize these dimensions. Academically, it proposes *devoir de mémoire* through the lens of *fiqh siyasah* as an antithesis to RTBF in the public sphere. Practically, the findings emphasize that disqualifying former corruption offenders is not a rights violation but a necessary implementation of *sadd al-dharā'i* to safeguard public *amanah* and strengthen trust in Indonesia's democracy.

Legal and Regulatory Review of Candidacy Criteria for Former Corruption Offenders in Indonesia

Political corruption and recidivism have become acute phenomena that undermine Indonesian democracy and erode fundamental public trust in governmental institutions.¹⁶ This pathology stems from an inconsistent regulatory framework,¹⁷ reflecting the state's ambivalence in treating corruption as an extraordinary crime.¹⁸

The juridical dynamics of candidacy reveal a sharp contestation of legal rationality. The legislature's initial moral intent for permanent disqualification¹⁹ It was diluted by the Constitutional Court's (MK) interpretation, which introduced a conditional rehabilitation model based on the passage of time and disclosure.²⁰ Subsequent legislative inconsistency prompted the KPU to enact stricter measures,²¹ Only to be annulled by the Supreme Court (MA) on rigid positivist grounds.²² This normative volatility was finally resolved by the MK's intervention, enforcing cumulative requirements,²³ as positive law.²⁴ Consequently, current norms under Law No. 7 of 2017 and MK Decision No. 87/PUU-XX/2022 establish a five-year waiting period, mandatory public disclosure, and non-recidivist status.

¹⁶ Rofi Wahanisa et al., "From Justice to Politics: The Constitutional Court's Role in Structured and Systematic Election Violations," *Lesrev* 9, no. 1 (May 2025), <https://doi.org/10.15294/lslr.v9i1.21103>.

¹⁷ Donal Fariz, "Pembatasan Hak Bagi Mantan Terpidana Korupsi Menjadi Calon Kepala Daerah," *JK* 17, no. 2 (August 2020): 309, <https://doi.org/10.31078/jk1724>.

¹⁸ Syamsul Hidayat et al., "Reformulation of Certain Circumstances Indicator as a Prerequisite for the Imposition of Death Penalty in Corruption Crime," *Jurnal IUS-KHK* 12, no. 1 (April 2024): 43–54, <https://doi.org/10.29303/ius.v12i1.1350>; Budi Utama et al., "Islamic Law Analysis of the Prosecutor's Authority in Asset Forfeiture from Corruption," *Al-Ahkam* 35, no. 2 (2025): 313, <https://doi.org/10.21580/ahkam.2025.35.2.26343>.

¹⁹ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 12 Tahun 2003 Tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, Dan Dewan Perwakilan Rakyat Daerah," Pub. L. No. 12 (2003); Pemerintah Pusat Indonesia, "Undang-Undang Republik Indonesia Nomor 10 Tahun 2008 Tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, Dan Dewan Perwakilan Rakyat Daerah," Pub. L. No. 10 (2008).

²⁰ Mahkamah Konstitusi Republik Indonesia, "Putusan Perkara Mahkamah Konstitusi Republik Indonesia Nomor 4/PUU-VII/2009 Tentang Inkonstitusional Bersyarat Pasal 'Tidak Pernah Dijatuhi Pidana' Terhadap Jabatan Publik Yang Dipilih," Pub. L. No. 4 (2009).

²¹ Komisi Pemilihan Umum Indonesia, "Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 20 Tahun 2018 Tentang Pencalonan Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Rakyat Daerah Provinsi, Dan Dewan Perwakilan Rakyat Daerah Kabupaten/Kota," Pub. L. No. 20 (2018).

²² Mahkamah Agung Republik Indonesia, "Putusan Mahkamah Agung Republik Indonesia Nomor 46 P/HUM/2018," Pub. L. No. 46 P/HUM/2018 (2018).

²³ Leonardo Siahaan, "Putusan Nomor 87/Puu-Xx/2022 Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa Mahkamah Konstitusi Republik Indonesia" (Bekasi, 2022), https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8784_1669787264.pdf.

²⁴ Komisi Pemilihan Umum Indonesia, "Peraturan Komisi Pemilihan Umum Nomor 10 Tahun 2023 Tentang Pencalonan Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Rakyat Daerah Provinsi, Dan Dewan Perwakilan Rakyat Daerah Kabupaten/Kota," Pub. L. No. 10 (2023).

While framed as a judicial middle ground, this compromise is substantially weak, placing the political rights of those who betrayed public trust on par with society's right to clean government.²⁵ The MK's *ratio decidendi* employs a "balancing of rights" logic, treating the right to be elected as a limited human right rather than a privilege contingent on integrity.²⁶ This reasoning is problematic for extraordinary crimes; it implicitly diminishes the normative gravity of corruption and neglects the necessary moral sanctions.²⁷

The "five-year pause" itself warrants scrutiny. The duration appears arbitrary and unsupported by robust criminological foundations for moral rehabilitation.²⁸ It erroneously presupposes that the mere passage of time functions as an instrument of moral redemption and a "cooling agent" for collective memory.²⁹ Thus, positive law fails to address radical ethical challenges, exposing its limitations in capturing the essence of public trust.³⁰

The systemic effects of this permissive framework are destructive. It undermines the deterrent effect of criminal sanctions,³¹ weakens political regeneration by encouraging parties to nominate popular figures despite corrupt histories,³² And contributes to the normalization of corruption.³³ By facilitating the return of corrupt actors, the legal system signals that betraying public trust is not a fatal offense. This inadequacy necessitates examining the issue through the alternative frameworks of the Right to Be Forgotten (RTBF) and Islamic leadership ethics.

RTBF: Between Concept, Paradox, and Practice

Rights and laws are inherently interrelated, regulating the protection of individual privacy and self-existence. In this context, the Right to Be Forgotten (RTBF) constitutes a pivotal human rights instrument, empowering individuals to control their personal data and prevent reputational harm arising from its misuse. Although not explicitly regulated in the 1945 Constitution,³⁴ RTBF aligns with the universal principle of human dignity. Its jurisprudential foundation was solidified by the European Court of Justice in *Google Spain SL v. AEPD* (2014), which affirmed the right to request the

²⁵ Véronique Zanetti, "Proportionality and Compromises," *J. Moral Philos.* 17, no. 1 (February 2020): 75–97, <https://doi.org/10.1163/17455243-20182843>.

²⁶ Jaime Cárdenas Gracia, "Noción, Justificación y Críticas Al Principio de Proporcionalidad," *Boletín Mexicano de Derecho Comparado* 47, no. 139 (January 2014): 65–100, [https://doi.org/10.1016/S0041-8633\(14\)70501-0](https://doi.org/10.1016/S0041-8633(14)70501-0).

²⁷ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *LJIH* 31, no. 1 (April 2023): 72–90, <https://doi.org/10.22219/ljih.v31i1.24247>; Bukhari Ali et al., "The Preemptive Approach of Ulama in Aceh to Eradicating Corruption," *El-Mashlahah* 14, no. 2 (2024): 361, <https://doi.org/10.23971/el-mashlahah.v14i2.8885>.

²⁸ Julia Berezhnova, "Networks, Resources, and Isomorphism: Corruption from Organizational Sociology Perspective," *Journal of Economic Sociology*, no. 5 (2023): 128–47, <https://doi.org/10.17323/1726-3247-2023-5-128-147>.

²⁹ Wang Gang, "Systematic Interpretation of the Statute of Limitations for Criminal Prosecution," in *Renmin Chinese Law Review*, ed. Jichun Shi (Edward Elgar Publishing, 2024), 234–63, <https://doi.org/10.4337/9781035343720.00013>.

³⁰ Zulfiqar Ali, "Conflict between Social Structure and Legal Framework: Political Corruption in {Pakistan}," *Commonwealth & Comparative Politics* 54, no. 1 (January 2016): 115–37, <https://doi.org/10.1080/14662043.2015.1124497>.

³¹ Fitri Wahyuni, Ishaq Ishaq, and Aris Irawan, "Criminal Sanctions for Corruption Crimes Based on Perspective Study of Renewal Law and the Relationship with Islamic Criminal Law," *Al-Risalah* 21, no. 2 (December 2021): 219–33, <https://doi.org/10.30631/alrisalah.v21i2.795>.

³² Chandan Kumar Jha, "Condoning Corruption: Who Votes for Corrupt Political Parties?," *Journal of Economic Behavior & Organization* 215 (November 2023): 74–88, <https://doi.org/10.1016/j.jebo.2023.08.026>.

³³ Peter Fleming et al., "How Corruption Is Tolerated in the Greek Public Sector: Toward a Second-Order Theory of Normalization," *Business & Society* 61, no. 1 (January 2022): 191–224, <https://doi.org/10.1177/0007650320954860>.

³⁴ A.H. Asari Taufiqurrohman et al., "The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia," *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 83, <https://doi.org/10.15408/ajis.v24i1.33155>.

deletion of irrelevant or excessive personal data, provided that no overriding public interest is at issue.³⁵ This ruling balances individual privacy against freedom of expression by allowing citizens to request de-indexing from search engines, subject to judicial review.³⁶

In Indonesia, this principle is reflected in Law No. 27 of 2022 on Personal Data Protection and Law No. 1 of 2024 (Revised ITE Law), which demonstrate a legal commitment to adapting privacy protections to the digital age.³⁷ However, a central paradox emerges in the tension between individual privacy and the freedom of public information. While RTBF serves to restore an individual's reputation, its overuse risks undermining information disclosure and public accountability. This dilemma is particularly acute for data on public officials or former offenders that possess significant social relevance.³⁸ In such contexts, RTBF is often criticized as a mechanism for "rewriting history" that obscures moral and legal responsibilities in the public sphere.³⁹

To mitigate these risks, RTBF implementation must be proportionate and governed by precise legal mechanisms, such as court rulings, to prevent abuse. This ensures consistency with the principles of fairness, transparency, and social accountability.⁴⁰ Technically, RTBF typically manifests as de-indexing rather than permanent deletion, which is often unfeasible. Consequently, strict judicial oversight is required to prevent the erasure of public records holding historical or legal significance.⁴¹

Recent amendments to the ITE Law have advanced data protection in Indonesia by shifting from a consent-based model to one that imposes obligations on service providers to remove harmful data.⁴² This strengthens the protection of victims' rights, encompassing non-interference in private life and control over personal information.⁴³ In summary, while RTBF is a vital mechanism for protecting digital privacy and dignity, its application must be carefully balanced against the imperative of public transparency to ensure fair and ethical information governance.

³⁵ Hwian Christianto, "Konsep Hak Untuk Dilupakan Sebagai Pemenuhan Hak Korban Revenge Porn Berdasarkan Pasal 26 Undang-Undang Informasi Dan Transaksi Elektronik," *Mimbar Hukum: Jurnal Berkala Fakultas Hukum Universitas Gadjah Mada* 32, no. 2 (2020): 175–92.

³⁶ Amr Osman, "The Right to Be Forgotten: An Islamic Perspective," *Hum Rights Rev* 24, no. 1 (March 2023): 53–73, <https://doi.org/10.1007/s12142-022-00672-2>.

³⁷ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi," Pub. L. No. 27 (2022); Siti Nurjanah et al., "Mitigating the Digital Age Impact: Collaborative Strategies of State and Religious Institutions for Family Harmony in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 713, <https://doi.org/10.22373/ujhk.v7i2.25754..>

³⁸ Nopit Ernasari, "Perlindungan Data Pribadi Dalam Penegakan Hukum Pidana Di Era Digital Ditinjau Dari Perspektif Implementasi Prinsip Right to Be Forgotten Di Indonesia," *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan* 15, no. 2 (November 4, 2024): 163–74, <https://doi.org/10.32493/JDMHKDMHK.V15I2.44591>.

³⁹ Evyta Rosiyanti Ramadhani, Ayudya Rizqi Rachmawati, and Roro Hera Kurnikova, "Integrating Islamic Values with the Right to Be Forgotten: A Legal Approach to Addressing Deepfake Pornography in Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (April 12, 2025): 112–31, <https://doi.org/10.18860/J-FSH.V17I1.28880>.

⁴⁰ Ni Kadek et al., "The Right to Be Forgotten: Regulation of Personal Data Deletion in Indonesia," *KRTHA BHAYANGKARA* 18, no. 3 (December 23, 2024): 541–58, <https://doi.org/10.31599/KRTHA.V18I3.3291>.

⁴¹ Angelo Maietta, "The Right to Be Forgotten," *Revista de Estudos Constitucionais, Hermenêutica e Teoria Do Direito (RECHTD)*, ISSN-e 2175-2168, Vol. 12, N.º 2, 2020 (Ejemplar Dedicado a: Maio/Agosto), Págs. 207-226 12, no. 2 (2020): 207–26, <https://doi.org/10.4013/rechtd.2020.122.03>.

⁴² Adhistry Sitaresmi et al., "Legal Frameworks for Cybersecurity and Data Protection in Cloud-Based Notarial Systems in Indonesia: An Intersectional Analysis of Positive Law and Islamic Legal Principles," *Al-Adalah* 22, no. 1 (2025): 29, <https://doi.org/10.24042/adalah.v22i1.26813>.

⁴³ Christianto, "Konsep Hak Untuk Dilupakan Sebagai Pemenuhan Hak Korban Revenge Porn Berdasarkan Pasal 26 Undang-Undang Informasi Dan Transaksi Elektronik."

Prevention of Public Official Candidacy Regulations for Corruptors within the RTBF Framework

This study argues that current regulations in Indonesia specifically the five-year waiting period constitute a fundamental misapplication of the Right to Be Forgotten (RTBF) doctrine.⁴⁴ Rather than facilitating rehabilitation, a correctly interpreted RTBF framework serves as a substantive legal justification for preventing former corruption offenders from returning to public office, functioning as an instrument of prevention rather than erasure.⁴⁵

The “five-year pause” implicitly adopts a simplistic interpretation of RTBF, granting individuals a “new chapter” once past data is deemed irrelevant. This is a fatal category error in public governance.⁴⁶ While the GDPR intends RTBF to shield personal data from corporate control,⁴⁷ Officials’ corruption records are not private data but essential public records of accountability.⁴⁸ Applying privacy norms to public accountability is, therefore, a conceptual fallacy.

Crucially, RTBF jurisprudence is not absolute; it is explicitly subordinated to overriding public interests and the right to information.⁴⁹ In elections, voters’ absolute right to access candidates’ integrity records outweighs any political actor’s claim to be forgotten for betraying public trust.⁵⁰ Accordingly, this article proposes a normative inversion of RTBF in the political domain: replacing the right to be forgotten with the *devoir de mémoire* (duty to remember).⁵¹ This framework imposes duties on the state and voters to ensure that crucial public data remains permanently accessible for electoral consideration.⁵² Aligning with Article 28J (2) of the 1945 Constitution. State-facilitated institutional memory is indispensable for protecting public order from systemic corruption.⁵³

Within this reconstructed framework, prohibiting former corruptors from public office is logical. Corruption records constitute public information whose relevance does not diminish over

⁴⁴ Ali Hadi Al Obeidi, Zeyad Jaffal, and Jamal Barafi, “Conditions for Exercising the ‘Right to Be Forgotten’ on Social Media under the 2021 UAE Data Protection Law,” *GPLR* 5, no. Issue 3 (August 2024): 109–18, <https://doi.org/10.54648/GPLR2024019>.

⁴⁵ Tigran D. Oganessian, “Правовые Основы, Пределы и Стандарты Применения Права Быть Забытым: Опыт Европейского Союза,” *Вестник Санкт-Петербургского Университета. Право* 14, no. 3 (September 28, 2023): 750–67, <https://doi.org/10.21638/spbu14.2023.312>.

⁴⁶ A M Klingenberg, “Catches to the Right to Be Forgotten, Looking from an Administrative Law Perspective to Data Processing by Public Authorities,” *International Review of Law, Computers & Technology* 30, no. 1–2 (January 2016): 67–75, <https://doi.org/10.1080/13600869.2015.1125161>.

⁴⁷ Eugenia Politou et al., “The General Data Protection Regulation,” in *Privacy and Data Protection Challenges in the Distributed Era*, vol. 26 (Cham: Springer International Publishing, 2022), 13–39, https://doi.org/10.1007/978-3-030-85443-0_3.

⁴⁸ Ashley Nicole Vavra, “The Right to Be Forgotten: An Archival Perspective,” *The American Archivist* 81, no. 1 (March 2018): 100–111, <https://doi.org/10.17723/0360-9081-81.1.100>.

⁴⁹ Eva Pander Maat et al., “The Right to Be Forgotten in the UK: A Case Note on the English and Welsh High Court Reasoning in NT1 & NT2 v. Google and the Post-Brexit Prospects in the GDPR Era,” *ERPL* 30, no. Issue 2 (May 2022): 263–90, [https://doi.org/10.54648/ERPL2022014.established by the Court of Justice of the European Union \(CJEU](https://doi.org/10.54648/ERPL2022014.established by the Court of Justice of the European Union (CJEU)

⁵⁰ Ángela Moreno Bobadilla, “El Derecho Al Olvido Digital: Una Brecha Entre Europa y Estados Unidos,” *RCom* 18, no. 1 (February 2019): 259–76, <https://doi.org/10.26441/RC18.1-2019-A13>; I Made Yunita, Anak Agung Putu Sugiantiningsih, and Mohammad Hidayatullah, “Vote Buying among Madurese Muslim: Islamic Law Standpoint,” *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 19, no. 2 (2024): 444, <https://doi.org/10.19105/al-Ihkam.v19i2.13025>.

⁵¹ Sébastien Ledoux, “‘Devoir de Mémoire’: The Post-Colonial Path of a Post-National Memory in France: A Study of the Development of the ‘Taubira Law,’” *National Identities* 15, no. 3 (September 2013): 239–56, <https://doi.org/10.1080/1460894.4.2013.779643>; R. Riady et al., “Reformulating the Reversal of the Burden of Proof in Corruption Cases: Integrating Positive Law and Islamic Legal Principles,” *Nurani: Jurnal Kajian Syari’ah dan Masyarakat* 25, no. 2 (2025): 514, <https://doi.org/10.19109/nurani.v25i2.30483>.

⁵² Kristie Byrum, “The European Right to Be Forgotten: A Challenge to the United States Constitution’s First Amendment and to Professional Public Relations Ethics,” *Public Relations Review* 43, no. 1 (March 2017): 102–11, <https://doi.org/10.1016/j.pubrev.2016.10.010>.

⁵³ Majelis Permusyawaratan Rakyat Sekretariat Jenderal, “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” n.d.

time;⁵⁴ thus, regulatory mechanisms must use this data as a permanent basis for disqualification.⁵⁵ This preventive approach is a direct application of the public-interest exceptions embedded within the RTBF framework itself.⁵⁶ Consequently, RTBF validates, rather than obstructs, the barring of corrupt officials to safeguard the public's right to information. To fully address the moral dimensions of this issue, the analysis must now turn to the concept of *amanah* in Islamic law.

Integrity and Trustworthiness in Leadership: An Islamic Legal and Socio-Political Analysis of the Nomination Policy

Constitutional Court Decision Number 56/PUU-XVII/2019 marks a pivotal moment in the regulation of the candidacy of former corruption convicts. While rejecting a permanent ban based on constitutional rights, the Court introduced a conditional rehabilitation model: a five-year waiting period and mandatory public disclosure.⁵⁷ This policy seeks to balance individual political rights with the public interest in clean governance.⁵⁸ Normatively grounded in Law No. 7 of 2017 and Law No. 10 of 2016.⁵⁹ These regulations signal that the national legal system values moral integrity,⁶⁰ thereby theoretically aligning with Islamic principles of justice.

However, this “compromise” has created a regulatory gap enabling political recidivism. Empirical evidence from the 2024 General Election confirms the sociological ineffectiveness of the five-year pause. Indonesia Corruption Watch (ICW) identified 56 former corruption convicts on legislative ballots,⁶¹ With high-profile figures like Nurdin Halid and Desy Yusandi securing seats despite their criminal records.⁶² This systemic failure necessitates analysis using Steven Lukes's *Three-Dimensional View of Power* to understand how ethical accountability is subverted.⁶³

⁵⁴ Olexandr Prysyazhnyuk et al., “Re-evaluating the Views in Combating Corruption Criminal Offenses Under Martial Law,” *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 2 (2024): 285, <https://doi.org/10.18592/sjhp.v24i2.14876>.

⁵⁵ Constant Okello-Obura, “Effective Records and Information Management as a Catalyst for Fighting Corruption,” *Information Development* 29, no. 2 (May 2013): 114–22, <https://doi.org/10.1177/0266666912451847>.

⁵⁶ Ignacio N Cofone and Catalina Turriago Betancourt, “The Right to Be Forgotten in Peace Processes,” in *The Right to Be Forgotten*, ed. Ignacio N Cofone, 1st ed. (Abingdon, Oxon; New York, NY: Routledge, 2020.: Routledge, 2020), 76–101, <https://doi.org/10.4324/9781003017011-6>.

⁵⁷ Mahkamah Konstitusi Republik Indonesia, “Ikhtisar Putusan Perkara Nomor 2/PUU-XX/2022,” Pub. L. No. 2 (2022).

⁵⁸ Nova Agustina, Eza Tri Yandy, and Sayuti, “Kontestasi Politik Mantan Terpidana Korupsi Dalam Pemilihan Umum (Studi Putusan Mahkamah Agung Nomor 30 P/HUM/2018),” *Tanfidiy: Jurnal Hukum Tata Negara Dan Siyasa* 3, no. 1 (June 30, 2024): 45–63, <https://doi.org/10.47766/TANFIDZIY.V3I1.2777>; Iqbal Katrino and Yus Afrida, “People's Sovereignty in the System Presidential Threshold in the Perspective Siyāsah Al-Syar'iyah,” *El-Mashlahah* 11, no. 2 (2021): 187, <https://doi.org/10.23971/elma.v11i2.3259>.

⁵⁹ Mahkamah Konstitusi Republik Indonesia, “Ikhtisar Putusan Perkara Nomor: 56/PUU-XVII/2019 Tentang Syarat Menjadi Calon Kepala Daerah Bagi Mantan Koruptor,” Pub. L. No. 56 (2019).

⁶⁰ Muhammad Habibi Siregar et al., “Digital Fiqh and Ethical Governance: Negotiating Islamic Normativity and Online Narcissism in Contemporary Indonesia,” *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 181, <https://doi.org/10.31958/juris.v24i1.13218>.

⁶¹ Indonesia Corruption Watch, *Temuan ICW dalam Daftar Calon Tetap Calon Anggota Legislatif: 56 Mantan Terpidana Korupsi Mencalonkan Diri pada Pemilu 2024 Mendatang* | ICW, siaran pers, 6 November 2023, diakses 10 Desember 2025, <https://antikorupsi.org/id/temuan-icw-dalam-daftar-calon-tetap-calon-anggota-legislatif-56-mantan-terpidana-korupsi>.

⁶² Subekti, *Mantan Napi Korupsi Melenggang Menjadi Anggota Dewan: Nurdin Halid dan Desy Yusandi* | *tempo.co*, Tempo.co, 29 Maret 2024, diakses 10 Desember 2025, <https://www.tempo.co/politik/mantan-napi-korupsi-melenggang-menjadi-anggota-dewan-nurdin-halid-dan-desy-yusandi-72783>.

⁶³ Steven Lukes, *Power: A Radical View*, Second Edition (London: Palgrave Macmillan, 2005), 16–29; Arista Candra Irawati and Eugenia Brandao da Silva, “Beyond Formality in Indonesian Pretrial Law: KUHP Reform, Human Rights, and Islamic Law,” *Al-Ahkam* 35, no. 2 (2025): 261, <https://doi.org/10.21580/ahkam.2025.35.2.28399>.

First, *visible power* is evident in the KPU's formal permission for candidacy, prioritizing individual rights over collective rights (*ḥaqq al-ummah*).⁶⁴ Second, *hidden power* operates through political parties (e.g., Golkar) that normalize corruption by endorsing ex-convicts, effectively suppressing the integrity agenda.⁶⁵ Third, *invisible power* manifests in the public's eroded consciousness, in which voters accept the narrative of "spiritual repentance" as sufficient for public office, failing to recognize violations of *amanah* (public trust).

This sociological reality underscores the inadequacy of lenient formal rules. The ease with which political dynamics distort public consciousness necessitates the permanent application of *sadd al-dharā'ī* (preventing harm) and the non-negotiable requirement of *adālah*.⁶⁶ From an Islamic perspective, corruption constitutes *ghulūl* (betrayal of trust) and violates the *maqāṣid al-syarī'ah* specifically, *ḥifẓ al-māl* (protection of wealth) and social justice.⁶⁷ Contemporary scholarship affirms that ethical governance is defined by *amanah*; thus, corruptors forfeit their moral standing to lead.⁶⁸ Restrictions on their re-election align with *sadd al-dharā'ī*, closing pathways to further public harm.⁶⁹

In fact, Islam clearly affirms moral and spiritual principles that are mentioned in the Qur'an, Surah an-Nisā', verse 58, which commands the fulfillment of obligations and the upholding of justice:

"Indeed, Allah commands you to convey the trust to those entitled to receive it, and when you judge between people, judge with justice." (Q.S. an-Nisā' 4: 58).

Classical exegetes such as Imam Al-Qurthubi (d. 671 AH) and Imam Ath-Thabari (d. 310 AH) interpret "*amanat*" here as public trust (*wulāt al-umūr*), not merely as private deposits.⁷⁰ Imam Fakhruddin Ar-Razi (d. 606 AH) highlights that the command for *amanah* (internal integrity) precedes *hukm* (external justice), implying that personal integrity is a prerequisite for upholding public justice.⁷¹ Consequently, corruption automatically invalidates a leader's capacity for justice.⁷²

⁶⁴ Putri Rahmah Nur Hakim et al., "Contesting Sharia and Human Rights in the Digital Sphere: Media Representations of the Caning Controversy under the Qanun Jinayat in Aceh," *Journal of Islamic Law* 6, no. 2 (2025): 206, <https://doi.org/10.24260/jil.v6i2.3600>.

⁶⁵ Nabilah Muhammad, *Ada 49 Caleg Mantan Napi Korupsi di Pemilu 2024, Ini Partai Asalnya*, Databoks, 7 November 2023, diakses 10 Desember 2025, <https://databoks.katadata.co.id/politik/statistik/de07440ff5e15d6/ada-49-caleg-mantan-napi-korupsi-di-pemilu-2024-ini-partai-asalnya>; Hartati et al., "Legal Aspects of Political Party Internal Conflict Resolution: A Case Study in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. 1 (2025): 53, <https://doi.org/10.30631/alrisalah.v25i1.1842>.

⁶⁶ Sukataman et al., "Maqāṣid Al-Sharī'ah and the Prohibition of Incest in Indonesian Legislation: An Analysis of the Protection of Lineage and Public Morals," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025): 205, <https://doi.org/10.24090/mnh.v19i2.14989>.

⁶⁷ Al-Ghazālī, *Al-Mustashfā Min 'Ilm Al-Uṣūl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 288; Muhammad Shohibul Itmam et al., "Legal Politics of Mining Spatial Planning in Sumenep District: Maqāṣid Syarī'ah Overview," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 25, no. 1 (2025): 1, <https://doi.org/10.18326/ijtihad.v25i1.1-27..>

⁶⁸ Ghafran, C. M., dan Yasmin, S., "Ethical Governance: Insight from the Islamic perspective and an empirical enquiry," *Journal of Business Ethics* 167, no. 3 (2020): 513–533, <https://doi.org/10.1007/s10551-019-04170-3>; Muhammad Ashsubli, "Perspektif Hukum Islam Terhadap Pencalonan Diri dan Kampanye untuk Jabatan Politik," *JURIS (Jurnal Ilmiah Syariah)* 15, no. 1 (2017): 11–20, <https://doi.org/10.31958/juris.v15i1.484>.

⁶⁹ Zet Tadung Allo et al., "Strengthening Dominus Litis Principle for Effective Corruption Case Management in Indonesia: Harmonizing Positive Law and Islamic Legal Principles," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (October 1, 2025): 529–50, <https://doi.org/10.29300/MZN.V12I2.8415>; Efa Rodiah Nur et al., "Reinforcing the Role of the Gakkumdu Center in Electoral Law Enforcement: A Contemporary Analysis from the Perspective of Fiqh Siyāsah Dusturiyah," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1281, <https://doi.org/10.32332/milrev.v4i2.11108>.

⁷⁰ Muḥammad ibn Aḥmad Al-Qurṭubī, *Al-Jāmi' Li-Aḥkām Al-Qur'ān*, ed. Aḥmad Al-Bardūnī, Ath-Thānīy (al-Qāhirah: Dār al-Kutub al-Miṣriyyah, 1964), 255–56; Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Jāmi' Al-Bayān 'an Ta'wīl Āy Al-Qur'ān*, ed. ibn 'Abd al-Muḥsin, al-Ūlā, vol. J. 8 (Turki: Dār Hajr , 2001), 490.

⁷¹ Fakhr al-Dīn al-Rāzī, *Mafāṭīḥ Al-Ghayb*, al-Thālīthah (Bayrūt: Dār Iḥyā' al-Turāth al-'Arabī, 1999), 108–9.

⁷² Al-Qurṭubī, *Al-Jāmi' Li-Aḥkām Al-Qur'ān*, 257.

Furthermore, Q.S. al-Anfāl:27 strictly prohibits *khīyānah* (betrayal). Muḥammad al-Ṭāhīr ibn ʿĀshūr (d. 1393 AH) explains that wealth and family are primary motives for such betrayal,⁷³ which he categorizes as a “hidden violation” of faith.⁷⁴ Crucially, betrayal by a knowledgeable leader is deemed far more heinous (*asyna*).⁷⁵

Prophetic traditions reinforce this,⁷⁶ with the Hadith stating, “Each of you is a leader and will be held accountable,” emphasizing universal accountability.⁷⁷ The Prophet’s condemnation of bribery further solidifies the rejection of corrupt officials.⁷⁸ Juristically, the four *fiqh* schools establish ‘*adalah* and *amanah* as fundamental leadership qualifications.⁷⁹ Al-Māwardī asserts that ‘*adālah* is a primary requirement;⁸⁰ Thus, a corruptor loses *murūʿah* (moral integrity) and eligibility for office. The Shafi’i and Hanafi schools even argue for the dismissal of *fasiq* leaders who cause *fitnah*.⁸¹

Ushul Fiqh principles further mandate disqualification. *Sadd al-dharāʿiʿ* requires blocking the recurrence of corruption to prevent the normalization of betrayal.⁸² Additionally, *al-maslahah al-mursalah* dictates that safeguarding governmental integrity takes precedence over individual political rights.⁸³ This preventive approach upholds *maṣlaḥah ʿāmmah* (public interest) and is reflected in the strict anti-corruption laws of nations like Pakistan, Malaysia, and Saudi Arabia.⁸⁴

Finally, while Islam accepts spiritual *taubah* (repentance),⁸⁵ This does not automatically restore public eligibility. Public office demands impeccable integrity, not just the completion of a prison

⁷³ Muḥammad al-Ṭāhīr Ibn ʿĀshūr, *At-Taḥrīr Wa at-Tanwīr*, vol. J. 4 (Tūnis: Ad-Dār at-Tūnisiyyah, 1984), 321–22.

⁷⁴ Wahbah az-Zuhaylī, *At-Taḥfīr Al-Munīr Fī Al-ʿAqīdah Wa Ash-Sharīʿah Wa Al-Manhaj*, al-ʿUlā (Bayrūt: Dār al-Fikr, 1991), 297–98.

⁷⁵ Ibn ʿĀshūr, *At-Taḥrīr Wa at-Tanwīr*, J. 4:323–24; Muhammad Fauzi, Mardian Idris Harahap, and Muhammad Roihan Nasution, “Pemimpin Yang Adil Dalam Al-Qurʿān (Studi Komparasi Ayat-Ayat Kepemimpinan Menurut Tafsīr Ibnu Kaṣīr Dan Tafsīr Sayyid Quṭṭub),” *Kamaya Jurnal Ilmu Agama* 7, no. 1 (2024): 125–37, <https://doi.org/10.37329/kamaya.v7i1.3152>.

⁷⁶ Ali Sodiqin and Anwar M. Radiamoda, “The Dynamics of Islamic Constitution: From the Khilāfah Period to the Nation-State,” *Journal of Islamic Law* 2, no. 2 (2021): 138, <https://doi.org/10.24260/jil.v2i2.241>.

⁷⁷ Nur Sofia Nabila Binti Alimin et al., “Trustworthiness: The Core of Leadership in Islam,” *SHS Web of Conferences* 56 (2018): 3002, <https://doi.org/10.1051/shsconf/20185603002>; Muḥammad bin Ismāʿīl Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, ed. Muṣṭafā Dīb Al-Bughā (Dimasyq: Dār Ibn Kathīr, 1993), 1996.

⁷⁸ Abdulkarim Abdallah et al., “A Review of Islamic Perspectives on Leadership,” *International Journal of Scientific Research and Management (IJSRM)*, 2019, <https://doi.org/10.18535/ijrm/v7i11.sh02>; Abu and Gazi, “Islamic Perspective of Leadership in Management; Foundation, Traits, and Principles”; Ahmad Asrin, “Anti-Corruption Education Urgence for State Islamic Religious Teachers,” *Budapest International Research and Critics Institute (BIRCI-Journal) Humanities and Social Sciences* 4, no. 1 (2021): 50–57, <https://doi.org/10.33258/birci.v4i1.1535>.

⁷⁹ Maryanto, Muh. Isna Nurdin Wibisana, and Bambang Sumardjoko, “Contemporary Islamic Legal Perspectives on Qualification Policy Politics in Indonesia,” *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1009, <https://doi.org/10.32332/milrev.v4i2.11305>.

⁸⁰ Abū al-Ḥasan ʿAlī Al-Māwardī, *Al-Ahkām as-Sulṭāniyyah* (Kairo: Dār al-Ḥadīth - al-Qāhīrah, 1996), 27; M. Rizal Qosim et al., “The Politicization of Religion and Law Enforcement in Indonesia’s Democratic Elections: An Islamic Legal Perspective,” *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025): 313, <https://doi.org/10.24090/mnh.v19i2.15244>.

⁸¹ Özgür Kavak, “Hal’, İstifa Ve İhtilal: İslam Devletlerinde İktidarın El Değiştirmesi Üzerine Bazı Tespitler,” *Divan Disiplinlerarası Çalışmalar Dergisi* 24, no. 47 (2019): 141–96, <https://doi.org/10.20519/divan.670042>.

⁸² Fadlillah, “Participation of Former Corruption Prisoner in Elections in Islamic Perspective,” 2022.Provincial DPRD and Regency or City DPRD. One of the points in the PKPU regulates the prohibition of former corruption convicts from registering as legislative candidates. This is a matter of debate in various circles. However, if we examine the *fiqh siyasa* regarding the rules of ex-convicts of corruption, it is very contrary to the requirements of ahl halli wal-aqdi, whether it is a matter of fair conditions or also with an attitude of wisdom, and is contrary to the function or authority of ahl halli wal-aqdi. Therefore, the revocation of the right to vote and be elected (participation in the General Election

⁸³ Widya Rahmat and Luci Afiani Oktavia, “Urgensi Administrasi Publik dalam Islam : Tinjauan Masalah Mursalah,” *Jurnal Hadratul Madaniyah* 11, no. 1 (2024): 62–68, <https://doi.org/10.33084/jhm.v11i1.7578>.

⁸⁴ Amanatus Sholihah, “Retraction of the Corruptor’s Political Right in Islamic Criminal Law Perspective,” *Walisongo Repository (Walisongo State Islamic University)* (Walisongo State Islamic University, 2018); *Constitution of the Islamic Republic of Pakistan*, 1973 (as amended up to 31 May 2018), Islamabad: National Assembly of Pakistan; “Federal Constitution of Malaysia,” WIPO Lex / Government of Malaysia, revised version, Kuala Lumpur: Government Printer; dan “Saudi Anti-Corruption Law Mandates Dismissal for Convicted Government Employees,” *Global Legal Insights*, August 12, 2024.

⁸⁵ Yūsuf Al-Qaradāwī, *Fiqh Al-Dawlah Fī Al-Islām* (Kairo: Maktabah Wahbah, 1997), 115–16.

sentence.⁸⁶ Given the systemic impact of corruption, the Constitutional Court's "five-year pause" is insufficient to guarantee the restoration of public trust.⁸⁷ Islam prioritizes the protection of the *ummah*'s collective rights over individual interests,⁸⁸ Making permanent disqualification a necessary measure to realize accountable governance.

From Privacy Rights to Memory Obligations: Reconstructing RTBF within Islamic Leadership Ethics

Contemporary legal discourse on the "Right to Be Forgotten" (RTBF), rooted in the protection of individual data privacy, faces a fundamental jurisprudential dilemma when confronted with the public interest embedded in the track records of state officials. This article argues that, in the context of qualifications for public leadership, the RTBF must be normatively reconfigured into its antithesis: the *devoir de mémoire*, or "collective obligation to remember." This paradigm shift maintains that a record of corruption is not merely personal data whose relevance may lapse over time, but an essential public record. Far from constituting mere political rhetoric, the *devoir de mémoire* rests on a robust ethical-jurisprudential foundation within Islamic law, which inherently prioritizes safeguarding *amanah* (public trust) over claims to individual reputation when that reputation has failed to uphold such trust.⁸⁹

The synthesis between *devoir de mémoire* and Islamic ethics centers on the concept of *amanah* as the highest socio-theological contract in leadership (QS. An-Nisa': 58). Corruption which in fiqh terminology is often identified as *ghulūl* (embezzlement of public funds) or *khīyānah* (betrayal) (QS. Al-Anfal: 27) is a total nullification of the *amanah* contract. It is precisely here that the relevance of *devoir de mémoire* becomes evident. Islam, methodologically, has long institutionalized this "obligation to remember" within one of its most rigorous disciplines: *'Ilm al-Jarḥ wa at-Ta'dīl* (the science of criticism and validation of hadith transmitters). Within this discipline, the moral flaws of a transmitter (*jarḥ*), such as lying (*kidzb*), are permanently recorded and cannot be "forgotten" by subsequent generations. The aim is not to punish individuals, but to protect the integrity of religious transmission (*dīn*). By way of *qiyās* (analogical reasoning), if a proven record of integrity is indispensable for preserving the trustworthiness of *dīn*, it is equally essential for protecting the trust of *siyāsah* (political trust and state management).⁹⁰

⁸⁶ Prianto Budi Saptono, Ismail Khozen, and Ferry Jie, "Obedience to Uli'l-Amr and Tax Compliance: Islamic Scholarly Perceptions," *Journal of Islamic Thought and Civilization* 13, no. 1 (2023), <https://doi.org/10.32350/jitc.131.08>. all aspects of human life including politics and leadership are governed by the Holy Qur'an. One of the well-known verses is QS. An-Nisa [4]: 59 which instructs the Muslims to obey uli'l-amr. The literature, however, shows that the scope of obedience is not absolute. Resultantly, the current research aims to understand the tax compliance in the context of obedience to authority. It provides a contemporary viewpoint from the Islamic boarding school (pesantren)

⁸⁷ Istितabah, which is a period of proving one's honesty and sincerity in repentance before a person is deemed worthy of returning to public office.

⁸⁸ Al-Ghazālī, *Al-Mustashfā Min 'Ilm Al-Uṣūl*, 288.

⁸⁹ Mohammed Veqar Ashraf-Khan and Mohammad Shahadat Hossain, "Governance: Exploring the Islamic Approach and Its Relevance for the Modern Context," *International Journal of Islamic Khazanah* 11, no. 1 (2021): 29–40, <https://doi.org/10.15575/ijik.v11i1.10433>; Mohammed Hashim Ali Sajid, "Islamic Perspectives on Good Governance: A Comprehensive Analysis," *International Journal of Applied Research* 10, no. 10 (2024): 100–104, <https://doi.org/10.22271/allresearch.2024.v10.i10b.12077>.

⁹⁰ Mohammad Hashim Kamali, *Maqāṣid Al-Sharī'ah, Ijtihad and Civilisational Renewal* (Washington: The International Institute of Islamic Thought, 2012); Rido Hermawan et al., "Navigating Indonesia's State Ideology: The Siyāsah Shar'īyyah Framework," *Ahkam: Jurnal Ilmu Syariah* 25, no. 2 (2025): 359, <https://doi.org/10.15408/ajis.v25i2.48776>.

Beyond ethical considerations, Islamic political jurisprudence (*al-Fiqh al-Siyāsī*) establishes *sal-'adālah* (moral integrity) as a fundamental *sharṭ* (legal requirement) for *wilāyah* (public authority).⁹¹ Al-Mawardi (d. 450 AH), in his magnum opus *Al-Aḥkām al-Sulṭāniyyah*, identifies *al-'adālah* as the foremost condition for both the *imam* (supreme leader) and *qāḍī* (judge).⁹² Corrupt practices such as *risywah* (bribery) or *ghulūl* (embezzlement of public funds) are categorically regarded as acts of *fiṣq* (wickedness) that invalidate the perpetrator's *'adālah*. Thus, *devoir de mémoire* in this context concerns not merely the remembrance of “ethical failures” but the preservation of a record of legal disqualification. The state and society consequently bear a jurisprudential obligation to remember and uphold this status of disqualification to maintain the governmental legitimacy (*syar'iiyyah*).

Operationally, *devoir de mémoire* functions as a preventive instrument to uphold *Maqāṣid al-Syarī'ah*. Corruption simultaneously attacks several pillars of *maqāṣid*.⁹³ It constitutes a direct assault on *ḥifẓ al-māl* (the protection of property), particularly public property. Its impact, however, is far-reaching: it erodes *ḥifẓ al-dīn* (protection of religion) by weakening public trust in institutions entrusted with the enforcement of justice, and it undermines *ḥifẓ al-nasl* (protection of the nation) by normalizing a culture of corruption.⁹⁴ As a consequence, “remembering” the track record of those convicted of corruption directly implements the principle of *sadd al-dharā'ī'* (closing the path to corruption). Conversely, permitting individuals with a record of *ghulūl* to regain authority over public assets is a clear form of *fath al-dharā'ī'* (opening the door to corruption).

The most common counterargument is the concept of *taubah* (repentance). Jurisprudential analysis, however, requires a clear distinction between two domains: (1) The theological-spiritual domain (*ḥaqq Allāh*), and (2) The public-legal domain (*ḥaqq al-ummah* or *ḥaqq al-'ibād*). *Taubah* functions as a mechanism of spiritual restoration about *ḥaqq Allāh* (Allah's rights); it is personal in nature, and its validity whether accepted or rejected is a divine prerogative.⁹⁵ By contrast, public leadership falls squarely within the domain of *ḥaqq al-ummah* (the collective rights of the people/public). Corruption, therefore, is not merely a personal sin, but a public crime (*jarīmah ta'zīr*) that inflicts tangible harm upon *al-thiqah al-'āmmah* (public trust).

The implications of this bifurcation are fundamental. One of the conditions for the validity of repentance for crimes involving others' human rights is the restitution of the wrongs committed.⁹⁶ In cases of systemic corruption, full restitution is nearly impossible. The harm incurred extends beyond the misappropriation of assets to include lost opportunities (opportunity cost), the degradation of public services, and the erosion of invaluable collective trust. Since the full restitution of *al-thiqah al-'āmmah* (public trust) cannot be assured, an individual's spiritual repentance does not automatically

⁹¹ Waskito Wibowo et al., “Min al-Hall ilā al-Qawmiyyah: Fiqh as-Siyāsah li al-Qam'i al-Jadali Tijāh al-Jamā'āt al-Islāmiyyah bi Indūniyā,” *al-Ihkām: Jurnal Hukum dan Pranata Sosial* 20, no. 1 (2025): 284, <https://doi.org/10.19105/al-lhkam.v20i1.8557>.

⁹² Al-Māwardī, *Al-Aḥkām as-Sulṭāniyyah*, 17.

⁹³ Agung Nugroho Reformis Santono, Luqman Hakim, and Anfasa Naufal Reza Irsali, “Can Islamic Law Mitigate Corruption?,” *Peradaban Journal of Religion and Society* 4, no. 2 (2025): 97–121, <https://doi.org/10.59001/pjrs.v4i2.314>.

⁹⁴ Ahmad Al-Raysuni and Nancy Roberts, *Imam Al Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought, 2005), <https://doi.org/10.2307/j.ctvkjb1w9>; Zahrul Mubarrak et al., “The Urgency of the Islamic Law and Contemporary Societal Challenges: The Flexibility of al-Maslahah in Determining the Hierarchy of Maqāṣid al-Sharī'ah,” *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (2025): 344, <https://doi.org/10.22373/pxydd884>.

⁹⁵ Gabriel Said Reynolds and Amir Moghadam, “Repentance in the Quran, Hadith, and Ibn Qudāma's Kitāb Al-Tawwābīn,” *Journal of the American Oriental Society* 141, no. 2 (2021), <https://doi.org/10.7817/jameroriesoci.141.2.0381>. along with God's merciful forgiveness of the repentant sinner. In his *K. al-Tawwābīn*, the Hanbali scholar Ibn Qudāma al-Maqdisī (d. 620/1223

⁹⁶ Abū Ḥāmid Al-Ghazālī, *Iḥyā' 'Ulūm Ad-Dīn* (Bayrūt: Dār al-Ma'rifah, n.d.), 267.

reinstate their legal and public qualifications.⁹⁷ The public as the ultimate holder of the political mandate retains the full right to apply the *devoir de mémoire* as a precautionary filter (*iḥtiyāt*) in matters of public leadership.

Consequently, regulations that restrict former corruptors do not constitute double jeopardy or double punishment. Criminal penalties such as imprisonment and fines serve as sanctions for crimes already committed. Meanwhile, disqualification from public office functions to enforce *sharṭ al-wilāyah* (the qualifications for leadership) and to prevent future misconduct through the principle of *sadd al-dharā'i'*.⁹⁸ Such disqualification is a purely preventive and administrative measure designed to protect *maṣlahah 'āmmah* (public interest),⁹⁹ grounded in objective evidence that negates the requirement of *'adālah*. The hadith affirms that leaders function as “shields” (*junnah*) while simultaneously issuing a stern warning to leaders who deceive their people, underscoring that standards of integrity in leadership are non-negotiable.¹⁰⁰

The shift from the individual's “right to be forgotten” to the collective “obligation to remember” is an ethical-jurisprudential imperative within Islamic law. By preserving the collective memory of betrayal (*khīyānah*), Sharia acknowledges the possibility of individual repentance yet refuses to compromise public *maṣlahah* based on unverifiable spiritual claims. The qualification of *'adālah* (moral integrity), as articulated by al-Mawardi and other *fuqaha*, thus serves as the first line of defense in public governance. Regulations that disqualify former corrupt officials from holding public office are therefore not discriminatory; rather, they represent a legitimate and necessary operationalization of the principles of *amanah*, *'adālah*, and *sadd al-dharā'i'* to realize clean, accountable, and trustworthy governance.

Conclusion

This study concludes that the regulation permitting former corruption offenders to run for public office after a five-year hiatus represents a fundamental misapplication of the Right to Be Forgotten (RTBF), prioritizing individual rehabilitation over public accountability. By re-examining the issue through *Fiqh Siyāsah* and *Maqāṣid al-Sharī'ah*, this research proposes the *devoir de mémoire* (duty to remember) as a necessary counter-framework to safeguard the integrity of governance. The

⁹⁷ Istiqomah Fadlillah, “Participation of Former Corruption Prisoner in Elections in Islamic Perspective,” *Jurnal Ilmiah Mahasiswa Raushan Fikr* 11, no. 1 (November 2022): 54–77, <https://doi.org/10.24090/jimrf.v11i1.6533>. Provincial DPRD and Regency or City DPRD. One of the points in the PKPU regulates the prohibition of former corruption convicts from registering as legislative candidates. This is a matter of debate in various circles. However, if we examine the *fiqh siyasa* regarding the rules of ex-convicts of corruption, it is very contrary to the requirements of *ahl halli wal-aqdi*, whether it is a matter of fair conditions or also with an attitude of wisdom, and is contrary to the function or authority of *ahl halli wal-aqdi*. Therefore, the revocation of the right to vote and be elected (participation in the General Election

⁹⁸ Putu Eva Ditayani Antari, “The Interpretation of Misconduct Act as a Reason to Dismiss President: An Ethical Approach,” *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (2021): 14, <https://doi.org/10.18860/j-fsh.v13i1.12122>; Teguh Ifandi and Idaul Hasanah, “Maslahat (Benefits) in Fiqh Awlāwiyāt: A Comparison between Yūsuf al-Qarādhawī's View and Abdus Salam Alī al-Karbulī's,” *Al-'Adalah* 21, no. 1 (2024): 1, <https://doi.org/10.24042/adalah.v21i1.213>.

⁹⁹ Muhammad Taufiq et al., “Tengka, Identity Politics, and the Fiqh of Civilization: The Authority of Madura's Kiai in the Post-Truth Era,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 1 (2024): 139, <https://doi.org/10.18326/ijtihad.v24i1.139-165>; Suparno, Rusli, and Ia Hidarya, “A New Restorative Justice Paradigm in the Sociology of Islamic Law in Indonesia: Nahdlatul Ulama and Muhammadiyah's Responses to Corruption Cases,” *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 2 (2024): 480, <https://doi.org/10.18592/sjhp.v24i2.16221>.

¹⁰⁰ Abdulkarim Abdallah A N D Fadil Çitaku A N D Marianne Waldrop A N D Don Zillioux A N D Lumturie Pretenti Çitaku A N D Yawar Hayat Khan, “A Review of Islamic Perspectives on Leadership,” *International Journal of Scientific Research and Management (IJSRM)*, November 2019, <https://doi.org/10.18535/ijssrm/v7i11.sh02>.

findings confirm that corruption serves as a fundamental nullification of ‘*adālah* (moral integrity) a binding *shart* (condition) for leadership where spiritual *taubah* (repentance) remains distinct from the restoration of *ḥaqq al-ummah* (public rights). Consequently, the disqualification of former corrupt officials does not constitute a violation of human rights but represents a coherent implementation of *sadd al-dharā’i’* to protect *amanah* (public trust). While advocating stricter disqualification measures, this study recommends that future research empirically examine the sociological impact of “convict status disclosure” on voter behavior and explore comparative models of political rehabilitation in other Muslim jurisdictions to harmonize democratic rights with Islamic ethical standards further.

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