



Clemency, Asset Restitution, and Islamic Law: Rethinking Justice for Corruption Offences in Indonesia

Liantha Adam Nasution*¹, Fatimah Islamy Nasution², Siti Aminah³, Zulfahmi⁴

^{1,4} Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Indonesia

² Universitas Islam Negeri Sumatera Utara, Indonesia

³ Madrasah Aliyah Negeri 1 Mandailing Natal, Indonesia

*Email: lianthaadamnasution93@gmail.com

*Corresponding Author

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Abstract

The practice of granting clemency to corruption offenders who return misappropriated assets remains insufficiently examined within the framework of Islamic law, giving rise to an unresolved tension between humanitarian considerations and substantive justice. While existing studies have largely addressed clemency and asset recovery from the perspective of positive law, scholarly attention to their normative implications in Islamic law remains limited, particularly with regard to *ghulul* (the misappropriation of public wealth), the obligation of restitution (*rad al-mazālim*), and preventive sanctions (*ta'zir*). This article critically examines whether granting clemency to corrupt offenders who return assets can be justified under Islamic law, while also assessing its compatibility with Indonesia's positive legal system. This study employs a juridical-normative approach by analysing primary legal materials, including presidential regulations on clemency and statutory provisions on corruption eradication, alongside classical and contemporary Islamic legal sources. The findings indicate that although clemency in positive law may function as a humanitarian and rehabilitative instrument, its legitimacy must be contingent upon full asset restitution and a careful evaluation of its socio-economic impact. From an Islamic legal perspective, sincere repentance (*taubat nasuha*) accompanied by restitution constitutes an absolute moral and legal obligation; however, it does not negate the necessity of *ta'zir* sanctions as a deterrent mechanism to safeguard the public interest and prevent the recurrence of similar offences. This article underscores the need to reconceptualise justice in the adjudication of corruption cases through the integration of Islamic legal principles into clemency and asset restitution policies, with the aim of establishing a more comprehensive and substantively just framework for corruption eradication in Indonesia.

Keywords: Asset Restitution, Clemency, Corruption Offences, Islamic Law



Abstrak

Praktik pemberian grasi kepada pelaku tindak pidana korupsi yang mengembalikan aset hasil kejahatan masih belum banyak dikaji dalam kerangka hukum Islam, sehingga menimbulkan ketegangan yang belum terselesaikan antara pertimbangan kemanusiaan dan keadilan substantif. Sementara kajian-kajian sebelumnya lebih banyak menelaah grasi dan pengembalian aset dari perspektif hukum positif, perhatian terhadap implikasi normatifnya dalam hukum Islam masih sangat terbatas, khususnya yang berkaitan dengan tindak pidana *ghulul* (penyalahgunaan harta publik), kewajiban restitusi (*rad al-mazālim*), dan sanksi yang bersifat preventif (*ta'zir*). Artikel ini mengkaji secara kritis apakah pemberian grasi kepada pelaku korupsi yang mengembalikan aset dapat dibenarkan dalam perspektif hukum Islam, sekaligus menilai kesesuaiannya dengan sistem hukum positif di Indonesia. Penelitian ini menggunakan pendekatan yuridis-normatif dengan menganalisis bahan hukum primer, termasuk peraturan presiden tentang grasi dan peraturan perundang-undangan terkait pemberantasan tindak pidana korupsi, serta sumber-sumber hukum Islam klasik dan kontemporer. Hasil penelitian menunjukkan bahwa meskipun grasi dalam hukum positif dapat berfungsi sebagai instrumen kemanusiaan dan rehabilitatif, legitimasi penerapannya harus disertai dengan pengembalian aset secara penuh dan evaluasi yang cermat terhadap dampak sosial-ekonominya. Dari perspektif hukum Islam, taubat yang sungguh-sungguh (*taubat nasuha*) yang disertai dengan restitusi merupakan kewajiban moral dan hukum yang bersifat mutlak, namun tidak serta-merta meniadakan perlunya penerapan sanksi *ta'zir* sebagai mekanisme penjeratan untuk melindungi kepentingan publik dan mencegah pengulangan tindak pidana. Artikel ini menegaskan perlunya rekonseptualisasi keadilan dalam penanganan perkara korupsi melalui integrasi prinsip-prinsip hukum Islam ke dalam kebijakan grasi dan pengembalian aset, guna mewujudkan kerangka pemberantasan korupsi yang lebih komprehensif dan berlandaskan nilai keadilan substantif di Indonesia.

Kata kunci: Restitusi Aset, Grasi, Tindak Pidana Korupsi, Hukum Islam

Introduction

Corruption is a rife problem that has a significant impact on various aspects of life in many developing countries today.¹ Corruptors are sometimes treated disproportionately to the losses their actions cause to the country, one example being the granting of clemency. The granting of clemency to corruptors who have returned assets is an interesting phenomenon in the positive legal system. In some cases, corruptors who have returned the proceeds of their crimes have received reduced sentences, or even been granted clemency by the head of state.² The argument often used is that asset recovery can recoup state losses, thus deserving the perpetrators of reduced sentences.³ However, the practice of granting clemency has sparked controversy, particularly regarding legal justice and the deterrent

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 et al., "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 et al., "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.

effect on corruptors. In Indonesia, the granting of clemency to corruptors has become a hotly debated issue, given that corruption is categorized as *an extraordinary crime* that can damage a country's social and economic order.⁴

From an Islamic criminal law perspective, corruption is known as *jarimah ghulul*, which is the act of misusing one's position for unlawful personal gain. Islam strongly emphasizes the necessity of returning ill-gotten wealth as a form of repentance.⁵ The principle of *mazalim* in Islamic jurisprudence states that stolen social rights must be returned before a person is considered to have validly repented.⁶ However, the question remains whether the return of assets can erase the consequences of worldly punishment, or whether punishment must still be enforced for the sake of justice and the prevention of similar crimes in the future.

Several relevant studies have addressed the legal aspects of granting clemency in corruption cases and the Islamic legal approach to *the crime of ghulul*. Research by Iqsandri and Utama⁷ examines the granting of clemency in positive law and finds that this practice often contradicts the principle of justice for society. Meanwhile, Zaruni and Isnaeni⁸ highlight Islamic law regarding corruption, defined as *ghulul*, and emphasize the importance of asset restitution as a primary condition for repentance. A study by Thamsir, Umar, and Adawiyah⁹ discusses *the maqashid sharia (objectives of sharia)* in enforcing Islamic criminal law and emphasizes that punishment must be enforced to achieve a deterrent effect. Another study by Zulkarnain, Hilalludin, and Suny discusses the relationship between legal forgiveness and social justice in Islam and highlights the limitations of granting leniency to perpetrators of corruption.¹⁰ Alfarisi's study specifically addresses the principle of *mazalim* in Islamic jurisprudence and states that asset restitution does not automatically eliminate worldly punishment.¹¹

Although several studies have addressed the aspects of clemency and *ghulul* crimes, no study has comprehensively compared the concept of clemency in positive law with the principles of repentance and restitution in Islamic law. Most previous studies have focused on the positive legal aspect or simply discussed asset restitution without considering the

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): 3014–3019.

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): 103–118, <https://doi.org/10.52431/minhaj.v1i2.306>.

⁷ Iqsandri and Utama, "Analisa Hukum Pemberian Grasi Terhadap Terpidana Kasus Korupsi Gubernur Riau Annas Maamun." 179.

⁸ Zaruni and Isnaeni, "Pemaknaan Ghulul Dalam Al-Qur'an Menurut Pandangan Tafsir Klasik Dan Modern." 22.

⁹ Moh. Thamsir et al., "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 et al., "Relevansi Pengampunan Korupsi Dalam Perspektif Islam Dengan Hukum Yang Berlaku," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (2024): 139–147, <https://doi.org/10.59246/aladalah.v2i4.957>.

¹¹ Alfarisi, "Urgensi Peran Peradilan Al-Mazalim Dalam Menyelesaikan Sengketa Administrasi." 103.

dimensions of punishment and forgiveness in Islamic law. Therefore, this study seeks to fill this gap by adding a comparative element between positive law and Islamic criminal law, as well as providing a more in-depth analysis of the relationship between the two in the context of clemency for corruptors who return assets.

Thus, this study attempts to answer several main questions that are the formulation of the problem in this study, including how the concept of clemency for corruptors who return assets is in positive law and how Islamic law views *ghulul* crimes and the concept of restitution, and whether the granting of clemency for corruptors who return assets is in line with the principles of Islamic criminal law. Based on these questions, this study aims to analyze the granting of clemency for corruptors in the positive legal system and Islamic law, examine the concepts of repentance, *kaffarah*, and restitution in cases of *ghulul* crimes, and examine whether the granting of clemency is in line with the principles of *maqashid sharia* in eradicating corruption.

This research offers significant innovations, conceptually, normatively, and methodologically. Conceptually, this research introduces an in-depth comparative analysis between Indonesian positive law and Islamic criminal law in the context of granting clemency to corruptors who return assets. Normatively, this research examines the extent to which the principles of sincere repentance and restitution in Islamic law can be integrated into Indonesian legal policy regarding clemency. Methodologically, this research uses a juridical-normative approach with a more systematic comparative analysis of the legal norms applicable in both legal systems. This research will also provide policy recommendations that can improve the practice of granting clemency in Indonesia by adopting the values of justice from an Islamic legal perspective.

The urgency of this research lies in the need to compare the concept of clemency in positive law with the principles of repentance and restitution in Islam. 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 research 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 *ghulul crimes* in the context of modern law. *Second*, practically, the results of this study can be used as a consideration for policymakers in formulating clemency policies for corruption perpetrators, especially in ensuring a balance between justice, deterrence, and Islamic legal principles. If this research is not conducted, existing clemency policies will continue without considering the deeper principles of justice, both from the perspective of positive law and Islamic law. This could negatively impact public trust in the Indonesian justice system and potentially weaken the deterrent effect for perpetrators of corruption. Socially, the implementation of clemency policies that are not based on clear legal principles can undermine the values of social justice and exacerbate disparities in the eradication of corruption. Therefore, this research is not only academically relevant but also practically important for formulating fairer and more effective legal policies in addressing corruption issues. Furthermore, this research will provide a strong comparative perspective between positive law and Islamic law, as well as offering alternative solutions in criminal law policies related to corruption.

¹² Andi Arifai Rahadi and Adriana Mustafa, "Tinjauan Hukum Islam Pemberian Remisi Terhadap Narapidana Korupsi," *Siyasatuna: Jurnal Ilmiah Mahasiswa Siyasa Syar'iyah* 5, no. 3 (2024): 718-731.

This study uses a qualitative approach with a juridical-normative method,¹³ which aims to analyze the concept of clemency in positive law and compare it with the principles of Islamic law regarding *ghulul crime*, repentance, and restitution. This type of research is a doctrinal legal study, which focuses on the study of legal norms and relevant legal theories.¹⁴ Data sources in this study consist of primary and secondary data. Primary data includes laws and regulations related to clemency and the eradication of corruption in Indonesia, while secondary data are obtained from classical and contemporary fiqh books, as well as scientific journal articles discussing Islamic criminal law and positive law. Data collection techniques are carried out through library research, by reviewing various legal literature, court decisions, and other documents.¹⁵ The data analysis technique used is qualitative analysis with a comparative legal approach.¹⁶ This analysis will compare legal norms in the positive legal system with the principles of Islamic criminal law to assess the extent to which granting clemency to corruptors who return assets can be justified from an Islamic legal perspective.

The Concept of Corruption in Positive Law and Islamic Law

Corruption in Indonesian positive law is defined as the abuse of authority by officials or individuals holding power, to obtain personal or group benefits that violate the public interest. According to Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Corruption Law), corruption includes the act of receiving, giving, or requesting gratuities that directly or indirectly affect the implementation of the duties and functions of public officials. This definition is reinforced by the existence of articles that describe the elements of abuse of power, the benefits obtained, and losses incurred to state finances, thus providing a clear normative basis in handling criminal acts of corruption.¹⁷

The elements of a criminal act of corruption according to the Corruption Eradication Law include actions that deviate from granted authority, ill-gotten gains, and losses suffered by the state or other parties. Specifically, the articles in the law emphasize the importance of malicious intent (*mens rea*) and concrete actions that result in abuse of power.¹⁸ Furthermore, an asset recovery or restitution mechanism is regulated as an effort to recover state losses.

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 (Kencana Prenada Media Group, 2013). 45.

¹⁵ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Alfabeta, 2017). 63.

¹⁶ Benuf and Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." 20.

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

¹⁸ Alif Kharismadohan, "Mens Rea and State Loses on Corruption Cases: An Analysis of Corruption Court Judgment of Semarang," *Journal of Law and Legal Reform* 1, no. 1 (2020): 61–76, <https://doi.org/10.15294/jllr.v1i1.35407>;

This restorative approach serves not only as a law enforcement tool but also as a preventative measure to prevent the recurrence of similar crimes.¹⁹

The implementation of sanctions under national law includes criminal penalties in the form of imprisonment, fines, and mandatory asset restitution.²⁰ Case studies, such as corruption cases involving major infrastructure projects in Indonesia, demonstrate that perpetrators found guilty of abuse of office must face strict legal proceedings, including the confiscation and restitution of assets obtained through criminal activity.²¹ This restitution mechanism is integrated into the judicial system to ensure that state losses are minimized and as a form of restorative justice. The implementation of these sanctions aims not only to punish but also to provide a broader deterrent effect for perpetrators of corruption.²²

In the perspective of Islamic criminal law, corruption is known as *jarimah ghulul*, namely a major crime that has a serious impact on the welfare of society and the economic stability of the people. The concept of *ghulul* does not only refer to material losses, but also includes moral and social violations that damage the order of life.²³ Based on the verses of the Qur'an, especially 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 acts of corruption which can cause such damage are considered a major sin, where the perpetrator is required to perform *taubat nasuha*, namely repentance accompanied by the return of assets in full as a form of accountability. As stated by Alavi, Marpaung and Harahap,²⁶ Islamic jurisprudence emphasizes that restitution or return of assets is an integral part of the process of forgiveness of sins in Islam.

Case studies in the history of the application of punishment to perpetrators of *ghulul* show that the Islamic approach to punishment is not solely repressive but also restorative. For example, during the reign of Caliph Umar ibn Khattab, there was a practice where

¹⁹ Djufri et al., "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi." 120.

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): 4259-71.

²² Youfan Alyafedri and Ismail Koto, "Kebijakan Hukum Terhadap Problematika Pemberian Pemenuhan Hak Restitusi Korban Tindak Pidana Yang Diatur KUHAP Dan Diluar KUHAP," *UNES Law Review* 6, no. 4 (2024): 11643-53; Liantha Adam Nasution et al., "Pardon for Corruptors: An Examination of Repentance Criminal Law Restitution in Islamic," *Justisi* 11, no. 31 (2025): 719-31.

²³ Zaruni and Isnaeni, "Pemaknaan Ghulul Dalam Al-Qur'an Menurut Pandangan Tafsir Klasik Dan Modern." 22.

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/elnuwwah.v1i2.9792>.

²⁶ Ivan Najjar Alavi et al., "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>.

perpetrators who demonstrated good faith by returning confiscated assets were given the opportunity to legally repent and receive forgiveness, although worldly punishments were still imposed as an effort to maintain social justice.²⁷ This practice reflects the principle of genuine repentance, where the return of assets is an absolute requirement for receiving God's mercy, as well as an effort to restore social relations between the perpetrator and the community.

Granting of Clemency and Restitution in Indonesia: Between Positive Law and Islamic Law

In Indonesian law, clemency is defined as a form of forgiveness or commutation of sentence granted by the President as a manifestation of the exercise of executive judicial power. Clemency is a humanitarian policy based on the principle of justice, with the aim of providing a second chance for convicts to improve themselves.²⁸ According to the law, clemency is a pardon in the form of a change, commutation, reduction, or elimination of the execution of a sentence for a convict granted by the President.²⁹ The constitutional basis for granting clemency is regulated in the 1945 Constitution and Law Number 22 of 2002 concerning Clemency, so the application of clemency must go through strict administrative procedures and be based on considerations of humanity and the public interest.

Operationally, clemency under positive law includes sentence reductions, conditional pardons, or the complete or partial remission of a sentence.³⁰ The clemency procedure requires a thorough evaluation of the convict's behavior, the impact of the crime, and restitution efforts, such as the return of assets obtained through corruption.³¹ Case studies of the application of clemency, such as those in several corruption cases in the government sector, show that while clemency can accelerate the social rehabilitation of perpetrators, its application often draws criticism for weakening the deterrent effect and creating a perception of injustice in the public eye.³²

From an Islamic criminal law perspective, the concepts of repentance and restitution play a crucial role in the process of forgiveness. Genuine repentance is defined as a sincere change of heart, where the perpetrator stops committing the crime, regrets their actions, and strives to repair the damage done by returning the stolen property.³³ The return of assets, or restitution, in Islam is a crucial requirement for repentance to be fully accepted by Allah

²⁷ Ahmad Syarbaini, "Terminologi Korupsi Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiqat : Jurnal Ilmiah Pemikiran Hukum Islam* 18, no. 1 (2024): 1–15, <https://doi.org/10.61393/tahqiqat.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," preprint, 2002.

³⁰ Santoso, "Persoalan Grasi Menjadi Perdebatan Pada Saat Munculnya Penolakan Grasi Terhadap Enam Orang Terpidana Mati Yang Tertuang Idul Fitri Dan Hari Natal . Pada Hakikatnya Tindakan Demikian Lebih Merupakan Gunsbetoon Atau Kemurahan Hati Yang Diberikan Oleh Kepala," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 1 (2020): 176–201.

³¹ Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif." 621.

³² Iqsandri and Utama, "Analisa Hukum Pemberian Grasi Terhadap Terpidana Kasus Korupsi Gubernur Riau Annas Maamun." 179.

³³ Faira Aisyah et al., "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>.

SWT. This indicates that the process of repentance is not merely spiritual but must also be realized through concrete actions to restore the rights of the victim. Islam emphasizes that repentance accompanied by restitution is a path to divine forgiveness, although it does not necessarily free the perpetrator from worldly legal consequences.³⁴ In the context of *ghulul crimes*, restitution is considered a fundamental form of social responsibility, requiring the perpetrator to return the property of the state or community that has been harmed. This process carries 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 a form of additional punishment, in order to maintain a balance between forgiveness and a deterrent effect.³⁵

A comparison of clemency in positive law, repentance, and restitution in Islamic law reveals fundamental differences in their normative basis and the purpose of their application. Clemency in positive law is an administrative decision, both political and legal, granted as a form of compassion and as an effort to improve the justice system through social rehabilitation.³⁶ Pardons are granted for humanitarian reasons and to provide a second chance for convicts who have returned confiscated assets. However, in Islamic law, genuine repentance accompanied by restitution through *Radd al- Ḥuqūq* (restoration of rights) is an internal and spiritual process that requires comprehensive behavioral change.³⁷ Returning assets in this context is not merely a physical return, but also a form of moral and material accountability to society and the state. Restitution in Islamic law is part of a legitimate repentance process, in which the perpetrator not only regrets his actions but also returns the confiscated rights as concrete evidence of repentance.

Although both systems aim to improve social conditions and provide second chances, their legal basis is different, where positive law is based on legislative norms and jurisprudence, while Islamic law is rooted in divine principles that are normative and moral. *Radd al- Ḥuqūq*, in this context, emphasizes that the return of ill-gotten wealth is a moral and legal obligation, as a form of restoring the damaged relationship between the perpetrator and society. Therefore, the return of wealth is not merely a step to fulfill a worldly legal obligation, but also a prerequisite for divine forgiveness.

The application of pardons and restitution in these two legal systems presents unique challenges in the context of eradicating corruption. On the one hand, pardons, as a positive legal policy instrument, can be viewed as an effort to integrate humanitarian aspects into law enforcement, particularly if the perpetrator of corruption has demonstrated good faith through the return of assets. However, the application of pardons without a thorough evaluation of the social and economic impacts can undermine public trust in the justice system. From an Islamic perspective, while sincere repentance through restitution offers a path for perpetrators to obtain divine forgiveness, this principle should not override the

³⁴ Zulkarnain et al., "Relevansi Pengampunan Korupsi Dalam Perspektif Islam Dengan Hukum Yang Berlaku." 139.

³⁵ Syarbaini, "Terminologi Korupsi Menurut Perspektif Hukum Pidana Islam." 15.

³⁶ Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif." 621.

³⁷ Aisyah et al., "Taubat Sebagai Penggugur Had Terhadap Pelaku Tindak Pidana Pencurian (Jarimah Sirqah) Perspektif Imam Al Nawawi." 78.

function of worldly punishment, which acts as a deterrent to prevent similar crimes in the future.

Reassessing Clemency and Restitution in Corruption Cases: Positive Law and Islamic Law

Clemency in positive law and repentance accompanied by restitution in Islamic law essentially pursue similar objectives, namely providing offenders with an opportunity for moral rehabilitation while ensuring the recovery of losses incurred. Nevertheless, fundamental differences exist in their normative foundations and implementation mechanisms, which substantially affect the rationale underlying the criminalisation of corruption. In Islamic law, the forgiveness of sins lies exclusively within the prerogative of God and is realised through sincere repentance (*tawbah*), whereby restitution or the full return of misappropriated assets constitutes an indispensable condition for divine acceptance.³⁸

In contrast, clemency in positive law is an executive authority that is administrative and political in nature. It aims to grant convicted individuals a second chance, for instance through sentence reduction or leniency, including in corruption cases where offenders return unlawfully acquired assets. Clemency is generally granted based on humanitarian considerations and administrative assessments of broader social interests.³⁹ However, when such clemency is applied without a comprehensive evaluation of the social and economic harm caused by corruption, it risks weakening the deterrent effect of criminal sanctions and undermining public trust in the justice system. Therefore, it is essential to assess whether clemency aligns with the objectives of criminalising corruption, which should encompass not only rehabilitation but also effective prevention and accountability.

From the perspective of Islamic law, forgiveness of sins is realised through *tawbah naşūḥah* (sincere repentance). Genuine repentance is not limited to verbal expressions of remorse but requires profound moral transformation and the restitution of unlawfully acquired property as a prerequisite for divine acceptance. This process demands both moral and material accountability, with restitution serving as a means of restoring rights violated against society and the state. Accordingly, restitution in Islamic law is an integral component of sincere repentance and represents a mandatory obligation that must be fulfilled by the offender as part of social responsibility and spiritual reconciliation.⁴⁰

A comparison between restitution in positive law and the return of property in Islamic law reveals significant conceptual distinctions. In positive law, restitution functions primarily as a legal mechanism to restore state or public losses resulting from corruption and is governed by statutory provisions. By contrast, in Islamic law restitution extends beyond material recovery; it is a moral and religious requirement that conditions the acceptance of repentance, obligating the offender to return usurped rights (*radī al-mazālim*) as evidence of

³⁸ Aisyah et al., "Taubat Sebagai Penggugur Had Terhadap Pelaku Tindak Pidana Pencurian (Jarimah Sirqah) Perspektif Imam Al Nawawi." 78.

³⁹ Fauzi, "Politik Hukum Pemberian Grasi, Amnesti Dan Abolisi Sebagai Konsekuensi Logis Hak Prerogatif." 621.

⁴⁰ Handoko, "Kebijakan Hukum Pidana Dalam Penagakan Hukum Penjatuhan Sanksi Restitusi Bagi Korban Tindak Pidana" (Universitas Islam Sultan Agung Semarang, 2024). P. 27.

genuine remorse. Consequently, restitution in Islamic law carries a deeper ethical dimension, demanding a comprehensive change in conduct and attitude.⁴¹

Moreover, Islamic law recognises the imposition of additional sanctions in the form of *ta'zīr* punishment as a means of enforcing discipline and safeguarding public order. Unlike the predominantly administrative approach in national legal systems, *ta'zīr* sanctions function to uphold social justice by imposing penalties proportionate to the gravity and societal impact of the offence. These sanctions aim not only to reform the offender but also to provide a strong deterrent against future misconduct.

Within the framework of *maqāṣid al-sharī'ah*, which emphasises the protection of wealth (*ḥifẓ al-māl*) and the realisation of social justice, the granting of clemency has generated significant debate. In principle, clemency may be justified insofar as it does not compromise public interest, for example by requiring full, transparent, and verifiable asset restitution. However, where clemency is implemented without adequate evaluation of its socio-economic consequences, it risks eroding deterrence and diminishing public confidence in the legal system. By contrast, the Islamic emphasis on repentance underscores that divine forgiveness is contingent upon the full restoration of violated rights, thereby imposing substantial moral pressure on offenders to assume responsibility.

Al-Ghazālī's theory of *maqāṣid al-sharī'ah*, which prioritises the protection of *ḥifẓ al-māl* (property) and social justice, provides a relevant normative framework for evaluating clemency in positive law and restitution in Islamic law. Al-Ghazālī articulated that the primary objective of the Shari'ah is to safeguard human welfare through the protection of five essential values: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). In cases of corruption that cause extensive harm to public finances, the protection of property becomes particularly critical.

From the perspective of *maqāṣid al-sharī'ah*, the return of assets by corrupt offenders should be viewed as an essential component of restoring social equilibrium and upholding justice. Clemency granted without due consideration of socio-economic harm risks contravening the principles of social justice embedded within *maqāṣid al-sharī'ah*. Failure to ensure transparent asset recovery and adequate social impact assessment may undermine the objective of protecting property and maintaining public welfare.

In Islamic law, genuine repentance accompanied by restitution places heightened moral responsibility on offenders to account for their actions. This process integrates spiritual and social dimensions, requiring offenders not only to seek forgiveness from God but also to restore rights unlawfully taken as proof of sincere repentance. Such an approach reflects the application of Al-Ghazālī's *maqāṣid al-sharī'ah*, which demands accountability for harm inflicted upon society and the state. Asset recovery thus serves not only to compensate material losses but also to preserve public wealth and prevent further harm.

Furthermore, alternative sanctions in Islamic law, particularly *ta'zīr* punishment, offer a more comprehensive framework for balancing forgiveness and deterrence while maintaining social justice. In line with Al-Ghazālī's view that social justice constitutes a central objective of the Shari'ah, *ta'zīr* sanctions function to discipline offenders, deter future

⁴¹ Alyafedri and Koto, "Kebijakan Hukum Terhadap Problematika Pemberian Pemenuhan Hak Restitusi Korban Tindak Pidana Yang Diatur KUHAP Dan Diluar KUHAP." 53.

crimes, and protect societal interests. Accordingly, the application of *ta'zīr* punishment in corruption cases seeks to reconcile divine forgiveness with legal accountability.⁴²

Therefore, the application of clemency in positive law should be recalibrated in light of *maqāṣid al-sharī'ah* principles to ensure the protection of *ḥifz al-māl* and the realisation of social justice. These principles may serve as a normative reference for reforming national anti-corruption policies, ensuring that the granting of clemency does not conflict with the fundamental objectives of criminalising corruption, namely deterrence, accountability, and the restoration of social justice.

Conclusion

Clemency in positive law and the concepts of repentance (*tawbah*) and restitution in Islamic law share a rehabilitative objective, namely providing offenders with an opportunity to reform while addressing the harm caused by criminal conduct. However, this study demonstrates that substantial differences exist in their normative foundations, implementation mechanisms, and punitive objectives, particularly in cases of corruption involving the misappropriation of public assets (*ghulūl*). In Islamic law, divine forgiveness is exclusively the prerogative of God (Allah) and can only be attained through sincere repentance (*tawbah naṣūḥah*), which requires not only moral remorse and behavioural change but also the full restitution of unlawfully acquired assets as an absolute condition for its acceptance. In this context, the restoration of public rights constitutes an indispensable form of moral and material accountability.

In contrast, within the framework of positive law, clemency operates as an executive prerogative grounded primarily in humanitarian and rehabilitative considerations. Asset restitution functions as a legal mechanism to recover state losses and may serve as a mitigating factor in granting leniency. Nevertheless, this study finds that the application of clemency without a rigorous evaluation of its socio-economic impact risks weakening the deterrent effect of anti-corruption laws and eroding public trust in the justice system. Given the extraordinary nature of corruption offences, clemency policies that rely solely on administrative discretion and asset recovery are insufficient to address the broader harms caused by corruption.

Viewed through the framework of *maqāṣid al-sharī'ah*, particularly the principle of *ḥifz al-māl* (protection of property), the legitimacy of clemency must be assessed in relation to its contribution to social justice and the safeguarding of public wealth. Accordingly, this study recommends the integration of Islamic legal principles – sincere repentance, full restitution, and preventive sanctions (*ta'zīr*) – into Indonesia's clemency policy. Such integration would strengthen moral accountability, preserve the deterrent function of criminal punishment, and contribute to a more comprehensive, just, and effective framework for corruption eradication.

⁴² Syarbaini, "Terminologi Korupsi Menurut Perspektif Hukum Pidana Islam." 15.

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