



## Application of Ta'zir Punishment for Perpetrators of Corruption in the Perspective of Islamic Criminal Law

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<i>Corruption; The Punishment of Ta'zir; Jinayah; Extraordinary Crime; Benefits</i>	Corruption is an extraordinary crime that causes great losses to state finances, damages social order, and erodes public trust. In Indonesia's positive law, corruption has been regulated in detail through various laws. However, a normative approach alone is not enough to provide a deterrent effect on the perpetrators. Therefore, Islamic law as a legal system rich in moral values and substantive justice offers an alternative approach through the concept of ta'zir punishment. This study aims to examine how the application of ta'zir punishment can be relevant and effective against corrupt perpetrators in the perspective of Islamic criminal law. The method used is normative legal research with a conceptual and historical approach. Data was obtained through literature studies on primary sources of Islamic law such as the Qur'an, hadith, and fiqh books, and also through analysis of positive legal regulations in Indonesia. The results of the study show that corruption in Islamic law can be categorized as jarimah ta'zir, so that the form and degree of punishment can be determined by the competent authorities. The punishment of ta'zir is flexible and can be in the form of imprisonment, fines, restitution of property, and social or administrative punishment. The principles of justice and benefit contained in ta'zir are considered to be able to provide a deterrent effect while encouraging moral reform of the perpetrators. This concept is relevant to be integrated into the national legal system in terms of values and ethics.

### I. INTRODUCTION

Corruption is a global phenomenon that has long been the main enemy in governance. In many countries, including Indonesia, corruption has caused enormous state losses, deepened social inequality, and harmed public justice (Nasution & Calvin, 2025). As a form of abuse of power for personal gain, corruption has damaged the system of government from within, weakened state institutions, and eroded people's trust in state administrators. Various efforts have been made to eradicate corruption, ranging from bureaucratic reform, the establishment of special institutions such as the Corruption Eradication Commission (KPK), to the application of severe criminal punishments. However, the facts show that corruption remains rampant and increasingly complex, even touching very strategic sectors such as education, health, and justice (Prince, 2024).

In the context of positive law in Indonesia, the crime of corruption has been specifically regulated in Law Number 31 of 1999 jo. Law Number 20 of 2001. This law classifies various forms of acts that fall under the category of corruption, such as abuse of office, gratuities, bribery, and embezzlement in office. Although regulations are available and law enforcement officials have carried out their duties, in fact the eradication of corruption does not necessarily reduce the crime rate significantly. This shows that a positive legal approach alone has not sufficiently touched the root of the problem (Hasan, 2020). Therefore, another integrative approach is needed, namely an approach that does not only rely on formal legal aspects, but also internalizes moral and spiritual values, as contained in Islamic criminal law.

Islamic law as a legal system derived from divine revelation offers a more comprehensive approach in responding to crime, including corruption. In fiqh literature, criminal acts (*jarīmah*) are classified into three main categories: hudud, which is a violation of Allah's rights with a predetermined punishment; qishas and diyat, which are violations of individual rights in the form of murder or persecution; and ta'zir, i.e. offenses that do not fall into the previous two categories and the punishment is determined by the government or judges. Because corruption is not explicitly regulated in the category of hudud or qishas, it can be included in the realm of ta'zir. This means that the state has the authority to determine the form, level, and type of punishment that is in accordance with the level of damage (*mafsadah*) caused by acts of corruption (Calvin & Azizah, 2024).

The concept of ta'zir in Islamic law is very important to study further, as it provides flexibility to state authorities in responding to growing crimes. Ta'zir allows the government to set punishments based on considerations of benefit, justice, and prevention (*zajr*) (Kasmarani, 2021). In this context, the application of ta'zir to corrupt perpetrators is not only a repressive act, but also a form of protection of public property and the enforcement of social justice values as required in *maqāṣid al-syārī'ah*. Property (*māl*) as one of the five basic principles of *maqāṣid* needs to be guarded from deprivation and abuse by unentitled, as affirmed in the Qur'an and Sunnah.

Furthermore, the application of ta'zir punishment also provides space for educational and social sanctions, such as revocation of public office, public announcement of perpetrators (shaming punishment), fines, and even the death penalty under certain conditions if corruption is considered to threaten the stability of the state. In classical Islamic history, the practice of ta'zir against betrayal and embezzlement of property was practiced by caliphs, such as Umar bin Khattab who sentenced strict punishment to officials who allegedly abused their positions (Adam, 2019b). Therefore, this research is very important to explore how the principles of ta'zir punishment in Islamic criminal law can be applied

in a relevant way in the context of combating corruption in Indonesia today.

This study aims to analyze the position of corruption in the classification of criminal acts according to Islamic law, trace the normative basics of the application of ta'zir punishment for corrupt perpetrators, and evaluate the possibility of applying these principles in the Indonesian legal system. With a normative and conceptual approach, as well as referring to classical and contemporary fiqh books, this paper is expected to contribute strong thinking to efforts to formulate penalties that are more oriented towards justice, morality, and social effectiveness.

## II. RESEARCH METHODS

This research uses normative legal research methods (Suyanto, 2023). The main focus is to examine the applicable legal rules and concepts, especially within the framework of Islamic criminal law, related to the application of ta'zir punishment to corrupt perpetrators. Normative research was chosen because the topic raised emphasizes more on understanding legal texts, both from classical Islamic legal sources such as the Qur'an, hadith, and fiqh books, as well as from the prevailing laws and regulations in Indonesia.

The types of approaches used in this study are conceptual approaches and legislative approaches. The conceptual approach is used to examine the thoughts and views of scholars on ta'zir, as well as the contemporary views that are developing in the Islamic world. Meanwhile, the legislative approach is used to compare how the legal system in Indonesia regulates the criminal act of corruption, and the extent to which the values in Islamic law can be relevant and contribute to the criminal system.

The source of data in this study comes from literature materials, which consist of three types of legal materials. First, primary legal materials such as the Qur'an, hadith, and fiqh books by scholars from various sects, such as the books *Bidayat al-Mujtahid*, *Al-Mughni*, and *Al-Umm*. Law Number 31 of 1999 is also used in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. Second, secondary legal materials in the form of books, scientific journal

articles, and other scientific works that discuss Islamic criminal law and corruption. Third, tertiary legal materials such as Islamic law dictionaries or sharia encyclopedias to support the understanding of terms.

Data collection is carried out through literature studies (library research). All relevant sources are collected, studied, and analyzed in depth. The data found were then analyzed by a descriptive-qualitative method, which is to explain the content of various references, then compare and conclude logically and systematically.

In addition, the maqashid al-sharia approach is also used to see how the objectives of Islamic law, especially in the aspects of safeguarding property (hifzh al-mal) and preventing damage (mafsadah), can be used to strengthen the basis for sanctioning corrupt perpetrators in the context of Islamic law

### III. RESULTS AND DISCUSSION

Based on a literature review and normative analysis of the sources of Islamic law and regulations that apply in Indonesia, this study finds that the crime of corruption in the perspective of Islamic law can be categorized as jarimah ta'zir, which is a type of crime whose sanctions are not explicitly determined in the Qur'an and Sunnah, but are very detrimental to society and contrary to sharia principles such as amanah, justice, and the prohibition of eating property nullly (Azzahidi, 2025).

Research also shows that the concept of ta'zir is very relevant to be applied in the context of criminalizing corrupt perpetrators, because it is flexible, adaptive, and can be adjusted to social conditions. The types of ta'zir punishments that can be applied include imprisonment, fines, restitution of property, revocation of office rights, and social punishment in the form of announcing the identity of the perpetrator to the public. In some extreme cases, the death penalty may also be considered by scholars as part of ta'zir if the crime brings great damage (mafsadah) to the state and society (Rohmah, 2023).

Through historical studies, it was found that the application of ta'zir punishment to forms of embezzlement and abuse of power has been carried out since the time of the Prophet PBUH

and Khulafaur Rashidin, with the aim of maintaining social stability and purity of power. An example is the action of Umar bin Khattab who confiscated the wealth of an unseemly official and returned it to the baitul mall.

The study also found that although positive laws in Indonesia already regulate sanctions for corruptors, the integration of Islamic justice principles, as contained in ta'zir, can strengthen the law enforcement system. Moral, preventive, and educational values in ta'zir provide a broader dimension in shaping the deterrent effect and rebuilding the perpetrator in a better direction.

#### A. The Position of Corruption in Islamic Law

In Islamic law, the term "corruption" is not explicitly mentioned in the Qur'an or hadith, because the term is a product of the modern legal system. However, behavior that is synonymous with corruption has long been known and discussed in classical fiqh literature. Corruption in the form of abuse of office, embezzlement, and unlawful taking of property is clearly contrary to the basic principles of Islamic sharia, which emphasize honesty (shidq), trust, justice (al-'adalah), and the prohibition of taking the rights of others without a justifiable reason under the sharia (Syarbaini, 2023).

Some terms in classical fiqh that can be equated with corruption include ghulul (embezzlement of state or public property), rishwah (bribery), and khiyanah (betrayal of trust). In this context, the corrupt actor is a person who has been given certain authority and responsibility, but then abuses it for personal gain by means of the public interest (Primary, 2024). This is contrary to the moral message of Islam which makes honesty and responsibility the main basis for exercising office or power. The Qur'an in QS. Al-Baqarah verse 188 affirms the strict prohibition of eating the property of others unlawfully:

*"And do not let some of you eat the wealth of others among you in an unrighteous way, and (do not) take it to the judge, so that you may eat some of the wealth of others by sin, even though you know." (QS. Al-Baqarah: 188)*

In addition, in a hadith narrated by Bukhari and Muslim, the Prophet PBUH said:

*"Whoever we appoint to be a servant for a work, and he hides one or more needles from his work, he has betrayed."*

This hadith shows that abusing office, no matter how small, is classified as treason that deserves sanctions. Even Caliph Umar bin Khattab once cracked down on officials suspected of illegally obtaining wealth, even though they did not directly violate written rules.

Fiqh scholars, such as Imam Al-Mawardi in Al-Ahkam Al-Sulthaniyyah, explain that rulers or imams have an obligation to protect public property and take action against anyone who misuses it. In fact, such actions not only damage the structure of government, but also give birth to poverty and injustice in society. Therefore, according to the perspective of Islamic law, corruption is not only a criminal act, but also a great sin and a form of social tyranny.

In the Islamic legal system, acts of corruption are included in the category of criminal acts that are subject to the punishment of ta'zir. This is because these acts are not included in hudud (fixed punishment) or qishas-diyat, but are classified as acts that damage the social order and abuse the public trust. The punishment of ta'zir in this case can be in the form of administrative, social, and severe sanctions that are determined according to the level of damage (mafsadah) caused. This means that the state or the authority to set proportionate punishments while still referring to the values of justice, the public interest, and the prevention of crime.

## B. The Concept of Ta'zir in Islamic Criminal Law and Its Characteristics

In the Islamic criminal law system, ta'zir is a form of criminal sanction given to acts that do not have specific criminal law provisions in the Qur'an and Sunnah, such as hudud or qishas. Ta'zir literally means "to reprimand" or "to teach", while in terms of terms, scholars define it as a punishment set by a ruler or judge for an act of offense that is not explicitly regulated in hudud or qishas, in order to maintain the benefit and prevent damage in society (Fadilla & Santoso, 2021).

The punishment of ta'zir is basically flexible. There is no absolute limit on the type, form, or level, except that the punishment must not exceed the limits of reasonableness or violate the principles of justice in Islamic law. This flexibility provides room for the state or legitimate authority to adjust the form of punishment based on the time, place, perpetrator, and level of danger of his or her actions (Adam, 2019a). Therefore, ta'zir is considered an important tool in the Islamic legal system to respond to crimes that continue to grow, including corruption.

The scholars of the various schools agree on the legitimacy of ta'zir, although they differ on the extent to which the punishment of ta'zir should be imposed. Imam Malik and Imam Shafi'i, for example, allow punishment that is quite severe as a form of ta'zir, as long as it does not violate the principle of justice and does not resemble hudud. Meanwhile, some Hanafi scholars even allow the death penalty in ta'zir for serious cases that threaten state security or the public interest (Syarbaini, 2019).

In the context of corruption crimes, the characteristics of ta'zir are very relevant because corruption is an act that contains great damage to the social, economic, and public trust systems. Corruption is not only a violation of the law, but also a betrayal of trust and a violation of Islamic moral ethics. Therefore, the punishment of ta'zir can be designed to provide a deterrent effect, prevent repetition, and restore a sense of justice in society that has been damaged by corrupt acts (Rohmah, 2023).

Some forms of ta'zir punishment that have been known in Islamic history include: imprisonment, light whipping, exile, fines, revocation of political rights or positions, and social punishment in the form of announcing the perpetrator to the public (publication of the name). These penalties can be adjusted and combined by the ruler based on public needs and benefits.

In practice, ta'zir can also be synergized with the principles of maqāṣid al-syarī'ah, which are the goals of Islamic law. In this case, the imposition of sanctions on corrupt perpetrators through ta'zir aims to protect property (hifzh al-māl), protect the social spirit of the community from

damage (hifzh al-nafs), and maintain public order. This concept is a strong reason that corruption, even though it is not included in hudud, still deserves severe sanctions because the damage it causes to the country's social and financial system is immense (Al-Ghifarry et al., 2021). Ta'zir is not just an optional form of punishment, but an important instrument in maintaining order and stability in Islamic society. Its use in the context of contemporary crimes such as corruption shows that Islamic law is not static, but is able to respond to the challenges of the times in a fair and proportionate manner.

### C. Types of Ta'zir Punishment for Corrupt Perpetrators

The punishment of ta'zir in Islamic criminal law has various forms and is left entirely to the discretion of the judge or ruler, as long as it does not conflict with the principles of justice and the purpose of the sharia. This is the main difference between ta'zir and hudud, where hudud has been clearly defined in the nash (Qur'an and Hadith), while ta'zir is open and dynamic. Therefore, the application of ta'zir is well suited to deal with complex contemporary crimes, such as corruption, which were not textually known in classical times but have become systemic crimes in the modern era.

In the context of corruption, the types of ta'zir punishment that can be applied normatively and applicatively include the following (Syarbaini, 2023):

#### 1. Prison Sentence (Al-Sijn)

Imprisonment is the most common form of ta'zir punishment applied in various countries, including countries that partially implement the Islamic legal system. In the context of corruption, prison sentences not only serve as a form of retribution, but also to keep the perpetrators away from power and opportunities to commit similar crimes. Imam Ibn Taymiyah even mentioned that prison is a form of ta'dib (education) as well as prevention.

#### 2. Penalty of Fine (Al-Gharamah)

In some cases, scholars allow the provision of sanctions in the form of fines or return of property as a form of ta'zir. For corruption cases, fines can

be imposed as an obligation to return money to the corrupt state, and can even be increased by a certain amount as a form of social compensation. This is also in accordance with the principle of reparative justice in sharia.

#### 3. Dismissal from Office and Revocation of Public Rights

Corruption is a crime that is almost always related to public office. Therefore, one of the relevant forms of ta'zir punishment is the revocation of the perpetrator's political rights or positional rights, either temporarily or permanently. This action is in line with the rules of fiqh sadd al-dzari'ah (closing the gap of evil) so that the perpetrator does not repeat his mistakes or opens up new opportunities for corruption.

#### 4. Social Punishment (Fadhihah 'Ammah)

In Islamic history, there has been a practice of social punishment such as the public announcement of the identity of the perpetrator. The goal is not just to embarrass, but to provide a deterrent effect to the perpetrators and a stern warning to the general public. In the case of corruption, this social punishment can be carried out through the mass media with the consideration of benefits.

#### 5. Death Penalty in Serious Corruption Cases

Some scholars, such as those in the Hanbali school and some Hanafi scholars, allow the death penalty as a form of ta'zir in cases that are considered very severe and endanger the stability of the state. If corruption is carried out systemically, involves many parties, harms the state in large numbers, and results in a severe social crisis, then the death penalty can be considered while still following the principles of sharia justice. However, this is very limited and must go through in-depth consideration of benefits.

From the various forms of ta'zir punishment above, it is clear that Islamic law provides a wide enough space to apply sanctions in a fair, measurable, and contextual manner to corrupt perpetrators. The ultimate goal is not only to punish, but also to maintain public morals, uphold public trust, and protect state assets as part of the sharia maqashid.

#### D. The Practice of the Application of Ta'zir in Islamic History to Embezzlement of Property

Although the term "corruption" is not explicitly known in classical Islam, the practice of abuse of power, embezzlement of property, and betrayal of trust has been faced by the leaders of the ummah since the time of the prophethood and the Khulafaur Rashid. In many cases, the form of punishment imposed is ta'zir, which is determined based on the policy of the leader or qadhi in order to protect the benefit of the ummah and prevent the recurrence of similar acts (Fadilla & Santoso, 2021).

One famous example is the strict action taken by Caliph Umar bin Khattab against officials suspected of obtaining wealth unfairly. In some histories, Umar once asked all governors or officials he appointed to submit their wealth reports after taking office. If there is an unreasonable and unexplainable increase in wealth, then Umar will confiscate the excess wealth and return it to the baitul mal (state treasury). This step is not only aimed at preventing corruption, but also as a form of strengthening accountability and power control.

Another example is the story of Iyas bin Mu'awiyah, a famous qadhi from the tabi'in period, who sentenced ta'zir to an official who abused his power by controlling public property for personal gain. The punishment is not only in the form of restitution of property, but also revocation of office rights and prohibition on holding public trust for a certain time. This shows that leaders and judges in Islamic history had a high sensitivity to betrayal of public trust. Even in the case of ghulul (embezzlement of spoils of war), the Prophet PBUH once gave harsh sanctions (Siroj, 2017). In a hadith narrated by Bukhari and Muslim, it is narrated that the Prophet PBUH said:

*"Whoever betrays the spoils of war, then on the Day of Resurrection he will come with what he has betrayed."*

The sanctions show that Islam takes forms of embezzlement of property seriously, especially when it concerns the public interest. Although the context is different from modern corruption, in

principle, the act of ghulul contains elements of abuse of trust which have the same essence.

During the period of the Abbasid caliphate, the practice of ta'zir against economic crimes also grew. Judges are given the authority to impose penalties on traders who falsify scales, manipulate prices, or harm consumers. Some of them were sentenced to fines, light whipping, and public announcement of their names as a form of social deterrent effect (PRASSETYO, n.d.).

From some of these historical practices, it can be understood that although corruption as a modern term is not yet known, the substance of such crimes has received serious attention in the classical Islamic legal system, and the legal solution used is ta'zir. This approach remains relevant to be applied in the current context by adapting the form of punishment to the severity and social impact of corruption crimes.

#### E. The Relevance and Challenges of the Application of the Ta'zir Principle in the Indonesian Legal System

Conceptually, the principle of ta'zir in Islamic criminal law has a very high relevance to the modern criminal system, especially in the context of handling corruption crimes in Indonesia. Ta'zir gives flexibility to the state in determining the form and severity of punishment according to the level of violation and its impact on society. This is very much in line with the characteristics of corruption crimes that are complex, detrimental to the public interest, and often involve a wide network of power (Adam, 2019b).

In the Indonesian legal system, the regulation of corruption is quite complete normatively through Law Number 31 of 1999 jo. Law Number 20 of 2001. However, in practice, law enforcement against corruption is still faced with various obstacles, including weak deterrent effects, inconsistencies in sentencing, and the existence of legal loopholes that are often exploited by perpetrators. In this context, the principles of ta'zir can enrich the national legal approach with the values of substantive justice and Islamic morality.

The principle of ta'zir also encourages an approach that is not only repressive, but also

educational and preventive. In many scholars' views, the purpose of ta'zir is not only to punish, but also to correct the perpetrator (islah al-mujrim) and maintain social stability. Therefore, the punishment of ta'zir can include a combination of imprisonment, restitution of state losses, public announcements, and even moral or spiritual formation. This kind of approach can give a new color to Indonesia's penal system which has tended to be trapped in conventional forms of punishment. However, the application of the principle of ta'zir in the Indonesian legal system certainly cannot be done directly or textually. There are a number of challenges that need to be considered, including:

### 1. Differences in Legal Systems

Indonesia adheres to a positive legal system that is codified and secular. Meanwhile, Islamic law, especially ta'zir, is normative-theological and flexible. Therefore, the integration of the principle of ta'zir needs to be through a value harmonization approach, not the formalization of nash.

### 2. Multisectarian Interpretation

Ta'zir in Islamic law does not have a standard limit. This gives a wide range of interpretations, but can also give rise to differences of opinion in its application. In the context of a legal country like Indonesia, there needs to be a clear legal standard to avoid legal uncertainty.

### 3. Political and Social Constraints

The application of heavy or social sanctions against corrupt perpetrators is sometimes met with political power and resistance from elite groups. In such a situation, the approach of moral and substantive justice ala ta'zir will be difficult to uphold without a strong commitment from all elements of the state.

Nevertheless, the spirit and principles contained in ta'zir can be adopted in Indonesia's criminal policy through strengthening the morality of law enforcement, restoring public trust, and criminalization that considers aspects of public welfare. By paying attention to these challenges and potentials, the application of ta'zir values does not mean replacing the existing legal system, but enriching the normative basis in combating corruption. Islam as a religion that

upholds justice provides a strong moral foundation that corrupt perpetrators must be given appropriate punishment, not only to provide a deterrent effect, but also to maintain the trust of the people and the honor of state institutions.

## IV. CONCLUSION AND SUGGESTIONS

### A. Conclusion

Corruption, although not terminologically known in classical Islamic literature, is essentially a despicable act that violates the basic principles of sharia, such as trust, honesty, and justice. Corrupt behavior can be categorized as jarimah that falls into the realm of ta'zir, because it is destructive to the public interest and is not included in hudud or qishas. Islamic criminal law through the concept of ta'zir provides space for state authorities to determine punishments that are flexible and contextual in accordance with the level of damage (mafsadah) caused.

The types of ta'zir punishments that are relevant to be applied to corrupt perpetrators are very diverse, ranging from prison sentences, fines, revocation of office, to social punishment and in certain conditions can reach the death penalty. The history of Islam has also recorded various applications of ta'zir by caliphs and judges against officials who abuse public trust and property, showing that Islam has had the moral and legal tools to tackle corruption for a long time.

In the Indonesian context, the principles of ta'zir can be an inspiration in enriching the existing criminal law system, especially in terms of answering the weaknesses of the sanction system which tends to be rigid or do not provide a deterrent effect. Although the literal application of ta'zir law may be difficult due to Indonesia's secular and codifying legal system, the values of justice, benefit, and prevention contained in ta'zir can be conceptually integrated into national criminal policy.

### B. Suggestion

The application of the ta'zir principle can be a relevant alternative sanction for corrupt perpetrators in Indonesia by prioritizing aspects of justice and deterrence. Sharia values need to be integrated in criminal policy, accompanied by

moral guidance for public officials. Social and educational approaches can also be applied to prevent the recurrence of similar crimes.

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