

Criminal Sanctions for Extortionists in the Perspective of Positive Law and Islamic Criminal Law: A Comparative Analysis

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Abstract

Illegal levies (extortion) are a form of corruption that harms the public and weakens trust in public institutions. This research aims to analyze criminal sanctions against extortionists in the perspective of positive law and Islamic criminal law and compare their approaches. The research method uses a qualitative approach through literature study of legal literature, regulatory documents, and interpretation of *fiqh* books. The results showed that in positive law, extortion is categorized as a criminal act of corruption with severe criminal penalties under the Corruption Eradication Law, such as a minimum prison sentence of 4 years to a maximum of 20 years, and additional penalties such as fines. Meanwhile, in Islamic criminal law, extortion is categorized as *jarimah ta'zir* with flexible sanctions adjusted by the judge, such as dismissal from office or return of extortion proceeds, which aims to maintain the public interest. The comparison shows that positive law focuses on deterrent effects and system protection, while Islamic law emphasizes moral justice and restoration of community rights. This research contributes to offering an integrative approach that combines the power of positive law and the values of Islamic law, in order to eradicate extortion effectively and fairly.

Keywords: Illegal Levies, Crime of Corruption, Positive Law, Islamic Criminal Law, Criminal Sanctions

Abstrak

Pungutan liar (*pungli*) merupakan bentuk tindak pidana korupsi yang merugikan masyarakat dan melemahkan kepercayaan terhadap institusi publik. Penelitian ini bertujuan untuk menganalisis sanksi pidana terhadap pelaku *pungli* dalam perspektif hukum positif dan hukum pidana Islam serta membandingkan pendekatan keduanya. Metode penelitian menggunakan pendekatan kualitatif melalui studi pustaka terhadap literatur hukum, dokumen peraturan, serta interpretasi kitab-kitab fikih. Hasil penelitian menunjukkan bahwa dalam hukum positif, *pungli* dikategorikan sebagai tindak pidana korupsi dengan ancaman pidana berat berdasarkan UU Pemberantasan Tindak Pidana Korupsi, seperti hukuman penjara minimal 4 tahun hingga maksimal 20 tahun, dan pidana tambahan seperti denda. Sementara itu, dalam hukum pidana Islam, *pungli* dikategorikan sebagai *jarimah ta'zir* dengan sanksi fleksibel yang disesuaikan oleh hakim, seperti pemecatan dari jabatan atau pengembalian harta hasil *pungli*, yang bertujuan menjaga kemaslahatan masyarakat. Perbandingan menunjukkan bahwa hukum positif menitikberatkan pada efek jera dan

perlindungan sistem, sedangkan hukum Islam lebih menekankan keadilan moral dan pemulihan hak masyarakat. Penelitian ini berkontribusi dalam menawarkan pendekatan integratif yang menggabungkan kekuatan hukum positif dan nilai-nilai hukum Islam, guna memberantas *pungli* secara efektif dan berkeadilan.

Kata Kunci: Pungutan Liar, Tindak Pidana Korupsi, Hukum Positif, Hukum Pidana Islam, Sanksi Pidana

INTRODUCTION

The development of technology and information in the era of globalization has had a significant impact on human life, including in the legal and criminal aspects.¹ This progress has not only given rise to new forms of crime but also updated the modus operandi of previously existing crimes, such as corruption.² One form of corruption that is commonly found in society is the practice of extortion, where individuals or groups illegally collect fees from the public under certain pretexts, which harm public services and tarnish the integrity of state institutions.³

The practice of extortion has become a common phenomenon in Indonesia, both in the transportation sector, population services, and other public sectors.⁴ In public services, extortion is often disguised as bribery or thank-you money, which occurs due to non-transparent service procedures and complicated bureaucracy.⁵ The practice of bribery usually occurs in government agencies providing services whose procedures are non-transparent and complicated, and there is no certainty in the length of time for completion. Instead of making improvements to the services provided, the practice of bribery ultimately becomes the standard for timely service.⁶ This phenomenon poses a major challenge in efforts to eradicate corruption because it involves perpetrators from various social levels, including government officials.⁷ This study looks at how criminal penalties are applied to extortion offenders in Indonesia, considering both positive law and Islamic

¹ Dagm Alemayehu Tegegn, "The Role of Science and Technology in Reconstructing Human Social History: Effect of Technology Change on Society," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), <https://doi.org/10.1080/23311886.2024.2356916>.

² Mohamed Hussein Mohamed, Abdinur Ali Mohamed, and Mohamed Mohamud Mohamed, "Assessing the Anti-Corruption Capability of Public E-Procurement Adoption: A Case Study in the Federal Government of Somalia," *Public Integrity*, May 13, 2024, 1–17, <https://doi.org/10.1080/10999922.2024.2344353>.

³ jaga.id, "Apa Bedanya Gratifikasi, Suap Dan *Pungli*? Ini Penjelasannya," Jaga: Jaringan Pencegahan Antikorupsi, 2024, <https://jaga.id/berita/9030b505-750a-4cd1-823c-5443a85e63b9/apa-bedanya-gratifikasi-suap-dan-pungli-ini-penjelasannya?vnk=b4739585>.

⁴ Muhammad Hasan Sebyar, "Anti-Gratification Frameworks in State Islamic Religious College: Strategies for Building a Competitive Civilization," *NUSANTARA: Journal Of Law Studies* 3, no. 02 (2024): 8–31.

⁵ Samsul Huda et al., "Criminalization of Gratification as a Corruption Offense," *Jurnal Multidisiplin Madani (MUDIMA)* 2, no. 12 (2022): 4216–28, <https://doi.org/10.55927/mudima.v2i12.2052>.

⁶ jaga.id, "Sejarah Singkat Korupsi Di Indonesia," Jaga: Jaringan Pencegahan Antikorupsi, 2024, <https://jaga.id/berita/400d3ee4-76be-4fc9-9796-41546abb1eb6/sejarah-singkat-korupsi-di-indonesia?vnk=21d14f15>.

⁷ Samsuria, *Gratifikasi Tindak Pidana Korupsi Ataupun Penggelapan*, ed. Moh Ikbali, 1st Print (Purbalingga: Eureka Media Aksara, 2022).

criminal law, with the goal of offering a complete legal solution that aligns with justice values.

There has been extensive research on extortion and its criminal sanctions. Research by Huda et al. discusses extortion, which is a crime that must be reported immediately; anyone who receives gratification must immediately report to the Corruption Eradication Committee so that it can be handled immediately according to applicable laws and regulations.⁸ Wulandari examines the forms of extortion and highlights its law enforcement in Indonesia, especially against forms of extortion that occur due to abuse of authority by certain officials, as well as recommendations for prevention.⁹ Pramesti et al. look at how well the Corruption Eradication Law works in dealing with extortion cases, finding that the punishments given are not strong enough to stop the crime, which is why local rules are created to help prevent it.¹⁰

Another study by Ramadhan, Yusrizal, and Aksa looked at corruption under Islamic law and found that it is considered *ghulul*, *risywah*, *sariqah*, *ghashab*, *khianat*, and *al-maks*, all of which are clearly forbidden by sharia.¹¹ Thus, in the research of Rukmawana et al., extortion is a major sin categorized as *ghulul*, *risywah*, and *al-maksu*, which has strict criminal sanctions in Islam for the perpetrators.¹² In preventing extortion, the study by Zulfahmi and Sebyar provides a prevention framework within the scope of Islamic higher education through several actions, such as the establishment of the Center for Study and Implementation of Anti-Corruption Education (PKPA), curriculum development, training, and socialization to students and academics, and establishing cooperation with the KPK.¹³

Previous research has provided an understanding of extortion from various perspectives, but there has been no in-depth and specific study that compares criminal sanctions for extortion perpetrators between positive Indonesian law and Islamic criminal law. In addition, analysis of the effectiveness of the implementation of sanctions in the context of eradicating extortion in Indonesia is still minimal. This study is here to fill this gap by presenting an in-depth comparative study and offering a more universal approach based on justice values. This study provides a new perspective by integrating positive legal analysis in Indonesia and Islamic criminal law in the context of eradicating extortion. In addition, this study also provides practical recommendations related to legal reform and effective implementation of sanctions, which are expected to strengthen law

⁸ Huda et al., "Criminalization of Gratification as a Corruption Offense."

⁹ Vera Wahyu Wulandari, "Penegakan Hukum Terhadap Pungutan Liar Sebagai Bentuk Penyalah Gunaan Wewenang Melalui *Pungli*," *COURT REVIEW: Jurnal Penelitian Hukum* 3, no. 6 (2023): 28–32.

¹⁰ Ni Komang Laksmi Ari Widya Pramesti, Simon Nahak, and I Wayan Arthanaya, "Pemberantasan Pungutan Liar Sebagai Tindak Pidana Korupsi Pada Dinas Perhubungan Kabupaten Badung," *Jurnal Analogi Hukum* 3, no. 1 (March 16, 2021): 57–61, <https://doi.org/10.22225/ah.3.1.2021.57-61>.

¹¹ Hilal Arya Ramadhan, Yusrizal Y, and Fauzah Nur Aksa, "Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 4, no. 2 (April 2, 2021): 21–29, <https://doi.org/10.29103/jimfh.v4i2.4267>.

¹² Andi Nofita Rukmawana, Hamzah Hasan, and Hamsir Hamsir, "Pungutan Liar Dalam Perspektif Hukum Islam," *Siyasatuna: Jurnal Ilmiah Mahasiswa Siyasah Syar'iyah* 2, no. 3 (2021): 626–34.

¹³ Sebyar, "Anti-Gratification Frameworks in State Islamic Religious College: Strategies for Building a Competitive Civilization."

enforcement efforts in Indonesia while being relevant to Islamic values. This study is important to answer the needs of society for a more just, transparent, and integrated legal system.

RESEARCH METHOD

This study uses normative legal methods to analyze criminal sanctions for extortion perpetrators from the perspective of positive law in Indonesia and Islamic criminal law.¹⁴ The study uses different methods, including looking at laws like the Corruption Crime Law and the Criminal Code, exploring Islamic law concepts about extortion, and comparing the types, goals, and punishments in both legal systems. The research data comes from primary legal materials, including laws, regulations, and *fiqh* books. Meanwhile, secondary data is obtained from books, journals, and related previous research. The data analysis technique is carried out descriptively-qualitatively to explain the application of criminal sanctions and comparatively to assess their fairness and effectiveness.¹⁵ This approach is relevant to producing in-depth analysis and solutions based on fair and applicable legal norms.

RESULTS AND DISCUSSION

Definition of Criminal Acts According to Positive Law and Islamic Law

Criminal acts in the perspective of positive law are formed by combining two words, namely “act,” which means action or behavior, and “penal,” which means crime or violation. Traditionally, criminal acts are seen as misery or suffering imposed on the perpetrator of a criminal act for having committed an offense or crime.¹⁶ In the context of law, a criminal act is an act that violates applicable legal rules and is subject to sanctions.¹⁷ Moeljatno says a “*strafbaar feit*” is a criminal act that is illegal and punishable. Etymologically, “*strafbaar*” means “punishable,” while “*feit*” means “part of reality,” so literally “*strafbaar feit*” is part of reality that can be punished.¹⁸ The use of this term emphasizes that those who can be punished are humans as perpetrators of acts, not their actions in the abstract.

Criminal acts in Islamic law are known as *jarimah*, which means acts that are prohibited by sharia and are threatened with certain punishments, either *hudud*, *qishash*, or *ta'zir*.¹⁹ According to the jurists, the term *jinayah* is often used to refer to acts of *jarimah* related to violations of the soul or limbs, such as murder, assault, or other

¹⁴ Ahmad Rosidi, M Zainuddin, and Ismi Arifiana, “Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research),” *Journal Law and Government* 2, no. 1 (2024): 46–58.

¹⁵ 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>.

¹⁶ P. A. F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, 4th ed. (Bandung: Citra Aditya Bakti, 2011), 121.

¹⁷ Sudarto, *Hukum Dan Hukum Pidana*, Cet. 5 (Bandung: Alumni, 2007), 37.

¹⁸ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002), 54–55.

¹⁹ Ahmad Hanafi, *Asas-Asas Hukum Pidana Islam* (Jakarta: Bulan Bintang, 1993), 30.

violations.²⁰ *Jarimah* involves the prohibition of sharia, which aims to maintain the five *maqashid* sharia, or basic objectives of Islamic law: religion, soul, mind, descendants, and property.²¹ The punishment for *jarimah* is determined by Allah SWT and is strict for hudud but flexible for *ta'zir*, adjusted to the social context and the level of crime of the perpetrator.²²

The main difference between criminal acts in positive law and Islamic law lies in their philosophical basis. In positive law, criminal acts are formulated based on dynamic social needs and determined by legislation; Positive law divides criminal acts based on types of crimes.²³ While in Islamic law, criminal acts are based on divine revelation, which is fixed, although some provisions can be adapted through *ijtihad* to respond to the context of the times and classify criminal acts based on the type of punishment, namely *hudud*, *qishash-diyat*, and *ta'zir*.²⁴

Understanding Criminal Sanctions According to Positive Law and Islamic Law

Criminal sanctions in positive law have a broad meaning that is limited to criminal penalties and includes coercive measures to enforce the rule of law. In Dutch, the word “*sanctie*” means a coercive tool in the form of punishment for those who violate agreements or legal provisions. The Great Dictionary of the Indonesian Language defines sanctions as measures or penalties intended to guarantee adherence to the law.²⁵ Specifically, criminal sanctions in positive law aim to cause suffering to the perpetrator because of the violation of the law that has been committed, as well as being a statement of condemnation of the action.²⁶

Criminal sanctions in positive law aim to protect individual rights, the interests of society, and the state. In addition, criminal sanctions also aim to create a balance between protecting victims of crime and preventing abuse of power by law enforcement. Criminal sanctions not only punish the offender but also teach them the consequences of their actions.²⁷ The evidence confirms that criminal sanctions are an important part of maintaining social order and upholding justice.

In Islamic law, criminal sanctions are called *uqubah*, which linguistically means retribution with evil. Terminologically, *uqubah* is a punishment that is determined to

²⁰ Ismail Rumadan, *Pembaruan Jarimah Dalam Fiqih Jinayah*, ed. Rizqatus (Surabaya: CV. Nariz Bakti Mulia Publisher, 2021), 13–14.

²¹ Paryadi, “Maqashid Syariah: Definisi Dan Pendapat Para Ulama,” *Cross-Border* 4, no. 2 (2021): 201–16.

²² Muhammad Mawardi Djalaluddin et al., “The Implementation of Ta’zir Punishment as an Educational Reinforcement in Islamic Law,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 399–417, <https://doi.org/10.22373/sjhk.v7i1.15101>.

²³ Dion Valerian, “Kriteria Kriminalisasi: Analisis Pemikiran Moeljatno, Sudarto, Theo De Roos, Dan Iris Haenen,” *Veritas et Justitia* 8, no. 2 (2022): 415–43, <https://doi.org/10.25123/vej.v8i2.4923>.

²⁴ Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (New York: Cambridge University Press, 2005), 30–31.

²⁵ S. Wojo Wasito, *Kamus Umum Belanda-Indoneisa* (Jakarta: Ictiar Baru Van Hoeve, 1990), 560.

²⁶ Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, 137.

²⁷ Syarif Saddam Rivanie et al., “Perkembangan Teori-Teori Tujuan Pemidanaan,” *Halu Oleo Law Review* 6, no. 2 (September 28, 2022): 176–88, <https://doi.org/10.33561/holrev.v6i2.4>.

maintain the public interest due to violations of sharia provisions.²⁸ According to Abdul Qadir Audah, criminal sanctions in Islamic law aim to ensure the honor of sharia commands and create individual and societal welfare.²⁹ So, Islamic law's criminal sanctions are not just punishment; they also prevent crime and develop morals.

Criminal sanctions in Islamic law are classified into three main categories. First, *Jarimah Hudud*, namely crimes whose punishment has been determined with certainty by sharia and is the right of God, such as adultery and theft.³⁰ Second, *Jarimah Qishash* refers to crimes whose punishment is in the form of retribution that is equivalent to the violation, such as murder or assault, but can be removed through forgiveness from the victim.³¹ Third, *Jarimah Ta'zir*, or crimes whose punishment is not determined with certainty by sharia, is left to the judge's discretion based on the perpetrator's condition and the crime's severity.³²

In general, criminal sanctions in Islamic law not only aim to provide a deterrent effect but also contain educational and preventive values. Islamic law allows judges to adjust *ta'zir* sentences to the crime's severity and the perpetrator's situation.³³ This approach shows how Islamic law not only emphasizes retributive justice but also restorative justice, with the aim of creating a more harmonious society.

Overview of Extortion (*Pungli*) in Indonesia

Pungli, an acronym for extortion, is the illegal act of taking or withdrawing something without permission from the authorities.³⁴ This term is often used to describe the practice of bribery, such as cigarette money, shoe polish money, or coffee money, which is common in government agencies with non-transparent, slow, and complicated services.³⁵ This practice arises because of the poor service system, so bribery is used as a way to speed up the service completion process.³⁶ The poor quality of public services is often exploited by certain individuals, both brokers who work with insiders and internal employees themselves, to ask for compensation in the form of additional money from the

²⁸ Makhrus Munajat, *Hukum Pidana Islam Di Indonesia* (Yogyakarta: Sukses Offset, 2008), 20.

²⁹ Abdul Qadir Audah, *At Tasyri' Al Jina'i Al Islami* (Beirut: Dar Al-Kitab Al Araby, 2009).

³⁰ Muhammad Zubair Abbasi, "Sexualization of Shari'a: Application of Islamic Criminal (Udud) Laws in Pakistan," *Islamic Law and Society* 29, no. 3 (2021): 319–42, <https://doi.org/10.1163/15685195-bja10016>.

³¹ Muhammad Tahmid Nur, "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in The Law of Qisās," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (October 2021): 335–65, <https://doi.org/10.14421/ajish.v55i2.1011>.

³² Djalaluddin et al., "The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law."

³³ Sufriadi Ishak, "Teori-Teori Penghukuman Dalam Hukum Islam (Perbandingan Dengan Hukum Pidana Umum)," *Ameena Journal* 1, no. 1 (2023): 89–100.

³⁴ Huda et al., "Criminalization of Gratification as a Corruption Offense"; Wulandari, "Penegakan Hukum Terhadap Pungutan Liar Sebagai Bentuk Penyalahgunaan Wewenang Melalui *Pungli*"; Pramesti, Nahak, and Arthanaya, "Pemberantasan Pungutan Liar Sebagai Tindak Pidana Korupsi Pada Dinas Perhubungan Kabupaten Badung."

³⁵ Muhammad Hasyem and Ferizaldi Ferizaldi, "Fenomena *Pungli* Dan Patologi Birokrasi," *Jurnal Sosiologi USK (Media Pemikiran & Aplikasi)* 14, no. 2 (December 30, 2020): 147–62, <https://doi.org/10.24815/jsu.v14i2.19521>.

³⁶ M. Rendra Salipu, "Penegakan Hukum Terhadap Pungutan Liar Sebagai Bentuk Penyalahgunaan Wewenang Melalui Saber *Pungli*," *Jurnal Hukum Progresif* 11, no. 1 (April 30, 2023): 13–22, <https://doi.org/10.14710/jhp.11.1.13-22>.

public.³⁷ In many cases, the public tends to accept this condition to avoid bureaucratic complications.³⁸ Unfortunately, this actually creates a culture that tolerates bribery as a way to get fast service, even though the action is illegal.

Even when the quality of service has improved, the public still feels obliged to give bribery money as a form of gratitude to government employees. This instance shows how the culture of bribery can be deeply ingrained, even though it does not always result in direct losses to state finances.³⁹ The long-term impact of this practice is very significant, such as damaging the integrity and morality of government employees. Government agency employees actually have an obligation to provide excellent service to the public without asking for additional compensation.⁴⁰ However, the practice of extortion actually creates a standard of service that depends on bribes, which violates the principle of justice. This has an impact on injustice towards other people who have the right to receive equal public services without having to pay additional money.⁴¹

The practice of extortion not only tarnishes the integrity of public service providers but also damages public trust in the government, especially in Indonesia.⁴² Efforts to eradicate extortion must involve improving the service system, strict supervision, and educating the public as a whole so that they are not involved in illegal extortion practices.⁴³ Thus, a public service environment will be created that is honest, fair, transparent, and free from all forms of illegal extortion practices.

Criminal Sanctions for Extortionists in the Perspective of Indonesian Positive Law

Extortion or illegal levies are a form of abuse of authority that is often associated with corruption. In Indonesian criminal law, extortion is defined by Article 12 letter e of Law Number 31 of 1999, which was updated by Law Number 20 of 2001 (Corruption Eradication Law).⁴⁴ This article expressly states that the act of asking, receiving, or forcing someone to give something by using the position or power held by law enforcement officers or State Civil Apparatus (ASN) is included in the category of

³⁷ Kanti Pertiwi and Susan Ainsworth, “‘Democracy Is the Cure?’: Evolving Constructions of Corruption in Indonesia 1994–2014,” *Journal of Business Ethics* 173, no. 3 (October 25, 2021): 507–23, <https://doi.org/10.1007/s10551-020-04560-y>.

³⁸ Hasyem and Ferizaldi, “Fenomena *Pungli* Dan Patologi Birokrasi.”

³⁹ Nandha Risky Putra and Rosa Linda, “Corruption in Indonesia: A Challenge for Social Changes,” *Integritas : Jurnal Antikorupsi* 8, no. 1 (June 25, 2022): 13–24, <https://doi.org/10.32697/integritas.v8i1.898>.

⁴⁰ 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>.

⁴¹ Hariman Satria Satria, “Kebijakan Kriminal Pencegahan Korupsi Pelayanan Publik,” *Integritas : Jurnal Antikorupsi* 6, no. 2 (2021): 169–86.

⁴² Amalia, “Analisis Dampak Korupsi Pada Masyarakat (Studi Kasus Korupsi Pembangunan Shelter Tsunami Di Kecamatan Labuan Kabupaten Pandeglang).”

⁴³ A. Asdiansyah Rajasa, Muhammad Akmal Ibrahim, and Badu Ahmad, “Collaborative Strategy in Corruption Prevention and Enforcement in Indonesia,” *KnE Social Sciences* 8, no. 17 (October 2023): 801–20, <https://doi.org/10.18502/kss.v8i17.14179>.

⁴⁴ Pramesti, Nahak, and Arthanaya, “Pemberantasan Pungutan Liar Sebagai Tindak Pidana Korupsi Pada Dinas Perhubungan Kabupaten Badung.”

criminal acts of corruption.⁴⁵ The sanctions include a minimum imprisonment of four years and a maximum of twenty years, along with fines ranging from IDR 200 million to IDR 1 billion.⁴⁶ This provision shows that criminal law on corruption in Indonesia has strong instruments to ensnare perpetrators of extortion carried out by ASN or public officials.

Perpetrators of extortion can often also be charged with Article 423 and Article 368 of the Criminal Code (KUHP). Article 423 of the Criminal Code regulates the abuse of authority by public officials to force someone to give or do something for the benefit of a particular person or group. The criminal threat given is a maximum of six years in prison.⁴⁷ Meanwhile, Article 368 of the Criminal Code regulates the crime of extortion involving violence or threats of violence with a maximum criminal threat of nine years. This provision is often used in cases where elements of violence or threats of violence are found.⁴⁸ The Corruption Eradication Law's articles become more relevant without violence, as they cover a wider range of secret gratification.

One of the issues that has emerged in law enforcement against perpetrators of extortion is the effectiveness of administrative sanctions regulated in Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. ASNs who commit extortion are only administratively dismissed but can appeal.⁴⁹ This process often prolongs the enforcement of sanctions and reduces the deterrent effect for the perpetrators. ASNs who are proven to have committed extortion are not always dismissed directly, making it possible for them to repeat their actions. This is a weakness of the regulation that should have a more significant deterrent effect, such as immediate dismissal without an administrative appeal process if proven to have committed extortion.

In addition to the administrative aspect, legal regulations also highlight the objective and subjective dimensions of extortion. Objectively, extortion is carried out by law enforcement officers or ASN by abusing their power to ask, receive, or force someone to give something.⁵⁰ Subjectively, this action is carried out with the intention of benefiting themselves or others unlawfully. This dimension is crucial for proving cases in court, particularly those involving gratification. The Corruption Eradication Law does not

⁴⁵ Satria, "Kebijakan Kriminal Pencegahan Korupsi Pelayanan Publik."

⁴⁶ Republik Indonesia, "Undang-Undang Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 2001.

⁴⁷ Bari Saputra et al., "Penegakan Hukum Pidana Terhadap Pungutan Liar Bagi Pedagang Di Pasar Tradisional Bambu Kuning Kota Bandar Lampung," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 15 (2023): 682–93.

⁴⁸ Fitasiani Fitasiani Laia, "Application of Extortion and Threat Criminal Cases According to Law No. 1 of 2023: Penerapan Perkara Tindak Pidana Pemerasan Dan Pengancaman Menurut UU No. 1 Tahun 2023," *UPMI Proceeding Series* 1, no. 01 (2023): 601–7.

⁴⁹ Nasrin and Zulfikar Putra, "Tinjauan Yuridis Peraturan Pemerintah Nomor 53 Tahun 2010 Tentang Disiplin Pegawai Negeri Sipil Dalam Proses Penerapan Hukuman Disiplin Dilingkup Pemerintah Kota Baubau," *Jurnal Interpretasi Hukum* 4, no. 1 (2023): 108–15.

⁵⁰ Salipu, "Penegakan Hukum Terhadap Pungutan Liar Sebagai Bentuk Penyalahgunaan Wewenang Melalui Saber Pungli."

require gratuities to involve state funds. Gratification includes money from third parties or other people, making it easier to prove in court.⁵¹

Extortion from a broader perspective is not only a criminal act that violates the law but also a moral issue that damages the integrity of the public service system.⁵² This practice creates a culture of systemic corruption among ASN and the community.⁵³ Therefore, comprehensive steps are needed to eradicate extortion— not only through criminal law enforcement but also through improving the public service system, bureaucratic reform, and educating the public about the dangers of extortion.⁵⁴ Strong law enforcement, using rules from the Corruption Eradication Law and the Criminal Code, should go hand in hand with actions that prevent extortion from happening.⁵⁵ In this case, it's also vital to protect whistleblowers legally.⁵⁶ These steps aim to reduce extortion and create a government and public service free of corruption.

Criminal Sanctions for Extortionists in the Perspective of Islamic Criminal Law

Extortion in Islamic law is seen as a form of corruption that not only harms individuals but also society as a whole. Extortion is often categorized as one of the major sins because it is related to the abuse of authority given by Allah SWT to someone.⁵⁷ In the context of Islam, extortion is not only assessed from the aspect of injustice to others but also involves a spiritual dimension, where the perpetrator is considered to have violated the mandate and acted against the orders of Allah SWT.⁵⁸ Imam Adz Dzahabi, in his book *Al-Kabair*, emphasized that extortion is included in major sins comparable to street robbery.⁵⁹ This underlines that extortion is a serious crime in the view of Islam. The evidence of the Qur'an provides a strong foundation for the strict prohibition of extortion and other oppressive behavior. As stated in QS. Ash-Shuraa verse 42:

⁵¹ Tim Penyusun KPK, *Laporan Tahunan KPK 2023* (Jakarta: Komisi Pemberantasan Korupsi, 2023).

⁵² Rodrigo de Oliveira Leite, Rodrigo Dias, and Layla Mendes, "Morality and Perception of Corruption," *Latin American Business Review* 22, no. 2 (April 3, 2021): 163–88, <https://doi.org/10.1080/10978526.2020.1777558>; Eka Sakti Koeswanto, Riswandi Riswandi, and Ahmad Redi, "Implications of Public Trust Due to Weak Law Enforcement Morality," *Edunity : Kajian Ilmu Sosial Dan Pendidikan* 2, no. 1 (January 15, 2023): 78–86, <https://doi.org/10.57096/edunity.v1i105.39>.

⁵³ Hasyem and Ferizaldi, "Fenomena *Pungli* Dan Patologi Birokrasi."

⁵⁴ Ina Heliany et al., "The Role of Corruption Education in Combating Corruption Crimes in the Future," *Jurnal Pembaharuan Hukum* 10, no. 2 (September 2023): 256–70, <https://doi.org/10.26532/jph.v10i2.32344>; Sebyar, "Anti-Gratification Frameworks in State Islamic Religious College: Strategies for Building a Competitive Civilization."

⁵⁵ Mohamed, Mohamed, and Mohamed, "Assessing the Anti-Corruption Capability of Public E-Procurement Adoption: A Case Study in the Federal Government of Somalia."

⁵⁶ Riko Aji Pratama and Muhamad Hasan Sebyar, "Perlindungan Hukum Terhadap Whistleblower Dalam Perkara Tindak Pidana Korupsi Oleh Pemerintah Kota Pangkalpinang," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 4 (2024): 137–54, <https://doi.org/10.62383/aliansi.v1i4.291>.

⁵⁷ Ramadhan, Y, and Aksa, "Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam."

⁵⁸ Muhammad Alwi HS, "Analisis Hadits Tentang Sanksi Atas Pelaku Tindakan Pungutan Liar Serta Keterkaitannya Dengan Tindak Pidana Korupsi," *Holistic Al-Hadis* 6, no. 1 (June 29, 2020): 26, <https://doi.org/10.32678/holistic.v6i1.1077>; jaga.id, "Apa Bedanya Gratifikasi, Suap Dan *Pungli*? Ini Penjelasannya."

⁵⁹ Rukmawana, Hasan, and Hamsir, "Pungutan Liar Dalam Perspektif Hukum Islam."

إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ

Meaning: “Blame is only on those who wrong people and transgress in the land unjustly. It is they who will suffer a painful punishment.” (QS. Ash-Shuraa: 42).⁶⁰

This verse stresses that extortion is a form of injustice. In this context, people who carry out extortion, whether collectors, recorders, or those involved in the process, are all considered guilty and are included as devourers of illicit wealth. This action causes widespread social, economic, and moral damage, so Islam places strict sanctions to stop it.

From the perspective of Islamic law, extortion carried out by officials or officers in public institutions is categorized as a form of bribery (*risywah*).⁶¹ In the hadith of the Prophet Muhammad SAW, Islam strongly curses the giver and receiver of bribes, as well as the party that acts as an intermediary between the two.⁶² The hadith emphasizes that extortion is not only an act that violates state law but also constitutes a serious violation of sharia principles. Extortion is a form of betrayal of the mandate of office entrusted to someone.⁶³ When an official uses his position to take personal advantage, then he has violated the rights of the community that should be protected.⁶⁴

In the application of Islamic criminal law, extortionists can be given *ta'zir* punishment,⁶⁵ which is a punishment that is left to the discretion of the judge or ruler based on the level of crime committed.⁶⁶ One form of *ta'zir* that is often applied is *al-'azl* (impeachment), where officials who are proven to have committed extortion are dismissed from their positions.⁶⁷ This punishment aims to protect the public interest and provide a deterrent effect on the perpetrators and others.⁶⁸ In addition, *ta'zir* can also be in the form of financial sanctions, detention, or other punishments that are deemed appropriate to uphold justice. In Islam, extortionists are punished in this life and the next. As stated in QS. Ali-'Imran verse 161:

⁶⁰ Qur'an Kemenag, “Al-Qur'an Surat Asy-Syura,” Qur'an Kemenag, 2022, <https://quran.kemenag.go.id/quran/per-ayat/surah/42?from=42&to=53>.

⁶¹ Rukmawana, Hasan, and Hamsir, “Pungutan Liar Dalam Perspektif Hukum Islam”; Ramadhan, Y, and Aksa, “Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam.”

⁶² HS, “Analisis Hadits Tentang Sanksi Atas Pelaku Tindakan Pungutan Liar Serta Keterkaitannya Dengan Tindak Pidana Korupsi.”

⁶³ jaga.id, “Apa Bedanya Gratifikasi, Suap Dan *Pungli*? Ini Penjelasannya.”

⁶⁴ Salipu, “Penegakan Hukum Terhadap Pungutan Liar Sebagai Bentuk Penyalahgunaan Wewenang Melalui Saber *Pungli*.”

⁶⁵ Rukmawana, Hasan, and Hamsir, “Pungutan Liar Dalam Perspektif Hukum Islam”; HS, “Analisis Hadits Tentang Sanksi Atas Pelaku Tindakan Pungutan Liar Serta Keterkaitannya Dengan Tindak Pidana Korupsi”; Ramadhan, Y, and Aksa, “Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam.”

⁶⁶ Djalaluddin et al., “The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law.”

⁶⁷ Mulia Sari, Zuhlul Pasha Karim, and Muhammad Siddiq Armia, “Analisis Siyāsah Qadhā'iyyah Terhadap Pemberhentian Presiden Melalui Mahkamah Konstitusi,” *JAPHTN-HAN* 2, no. 1 (January 31, 2023): 37–62, <https://doi.org/10.55292/japhtnhan.v2i1.56>.

⁶⁸ Djalaluddin et al., “The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law.”

وَمَا كَانَ لِنَبِيٍّ أَنْ يَغْلُظَ وَمَنْ يَغْلُظْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَمَةِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

Artinya: "It is not appropriate for a prophet to illegally withhold spoils of war. And whoever does so, it will be held against them on the Day of Judgment. Then every soul will be paid in full for what it has done, and none will be wronged." (QS. Ali-'Imran: 161).⁶⁹

This verse shows that someone who consumes illicit wealth, including the proceeds of extortion, will be held fully accountable in the afterlife. This is a stern warning to every individual who is entrusted to carry out their duties honestly and fairly.⁷⁰ Thus, Islamic law provides a comprehensive approach in dealing with extortion cases. This approach not only focuses on prevention through global punishment, but also fosters spiritual awareness, enabling every individual to comprehend the long-term consequences of corrupt behavior.⁷¹ This approach aims to create a society that is free from extortion and corruption practices, as well as upholding the principle of justice that is at the core of Islamic law.

Comparison of Criminal Sanctions for Extortion in Positive Law and Islamic Criminal Law

Criminal sanctions against extortion in Indonesian positive law and Islamic criminal law have different approaches in enforcing justice, although both aim to prevent and overcome this crime. In Indonesian positive law, the crime of extortion is generally regulated through Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption, especially Article 12 letter e, which regulates the punishment for officials who accept gifts or promises on the grounds of the power they have. The criminal sanctions imposed include a prison term ranging from a minimum of 4 years to a maximum of 20 years and fines ranging from a minimum of IDR 200 million to a maximum of IDR 1 billion.⁷² This approach is firm with the aim of providing a deterrent effect on the perpetrators and showing partiality to the victims.

Islamic criminal law views extortion as a *ta'zir* crime,⁷³ namely one for which sanctions are not specifically determined in the Qur'an and Hadith, so that the form of punishment is left to the discretion of the judge or ruler. Sanctions that are often applied

⁶⁹ Qur'an Kemenag, "Al-Qur'an Surat Ali Imran," Qur'an Kemenag, 2022, <https://quran.kemenag.go.id/quran/per-ayat/surah/3?from=161&to=200>.

⁷⁰ Nur Chanifah, Abu Samsudin, and Ibnu Hajar Ansori, "Quranic Leadership: The Effort to Realize the Integrity of Leaders in Preventing Corruption," *International Journal of Educational Management and Innovation* 5, no. 1 (January 20, 2024): 24–38, <https://doi.org/10.12928/ijemi.v5i1.9173>.

⁷¹ Maswandi et al., "The Role of Islamic Law and Tradition in the Prevention of Corruption by Political Experts in Indonesia," *International Journal of Criminal Justice Science* 17, no. 2 (2022): 114–27.

⁷² Putra and Linda, "Corruption in Indonesia: A Challenge for Social Changes"; Satria, "Kebijakan Kriminal Pencegahan Korupsi Pelayanan Publik"; Dwi Atmoko and Amalia Syauket, "Penegakan Hukum Terhadap Tindak Pidana Korupsi Ditinjau Dari Perspektif Dampak Serta Upaya Pemberantasan," *Binamulia Hukum* 11, no. 2 (March 10, 2023): 177–91, <https://doi.org/10.37893/jbh.v11i2.301>.

⁷³ Rukmawana, Hasan, and Hamsir, "Pungutan Liar Dalam Perspektif Hukum Islam"; HS, "Analisis Hadits Tentang Sanksi Atas Pelaku Tindakan Pungutan Liar Serta Keterkaitannya Dengan Tindak Pidana Korupsi"; Ramadhan, Y, and Aksa, "Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam."

in extortion cases involve *al-'azl* or impeachment, the return of illegally taken property, and other punishments aimed at protecting the public interest.⁷⁴ Depending on the crime's severity and impact, *ta'zir* sanctions can be physical punishment, fines, *gharamah*, or social punishment.⁷⁵ This approach places more emphasis on restoring social and spiritual balance and preventing the repetition of crimes while still considering justice.

The main difference between the two legal systems lies in the orientation and purpose of the sanctions. Positive law focuses on the deterrent effect and recovery of state losses within a normative and uniform framework. Meanwhile, Islamic criminal law has flexibility in determining the type and level of punishment, taking into account the public interest and the rehabilitation of the perpetrator. However, both have in common the principle that extortion is an act that damages justice and must be eradicated. If used together, these two methods can create a legal system that is more effective in eradicating extortion by providing justice that is not only worldly but also has value in the afterlife.

CONCLUSION

Extortion is a form of corruption that not only violates positive law but is also prohibited in Islamic criminal law. In Indonesian positive law, extortion is categorized as a criminal act of corruption that is subject to severe sanctions in the form of imprisonment and fines, with the aim of providing a deterrent effect and protecting the interests of the community. Meanwhile, Islamic criminal law considers extortion as a *ta'zir* crime whose punishment is flexible, such as dismissal from office, return of assets, or other punishments determined based on the public interest. These two legal systems have different approaches, but both prioritize justice and prevent the recurrence of crimes. A comprehensive approach to extortion needs to be taken by considering both formal legal aspects and moral and spiritual values. Efforts to eradicate extortion not only require strict law enforcement but also public education about its negative impacts. The government and related institutions need to increase transparency and accountability in public services to reduce the chances of extortion occurring. Islamic criminal law's focus on balancing worldly punishment and afterlife accountability can inspire law enforcement's moral and ethical aspects. The combination of these two legal systems, supported by synergy between law enforcers, religious figures, and the community, is expected to create a more effective and sustainable extortion prevention and handling system.

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⁷⁴ HS, "Analisis Hadits Tentang Sanksi Atas Pelaku Tindakan Pungutan Liar Serta Keterkaitannya Dengan Tindak Pidana Korupsi."

⁷⁵ Djalaluddin et al., "The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law."

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