

Zero Verdict against Perpetrators of Corruption in Decision Number 49/Pid.Sus.TPK/2021/PN.Jkt: An Analysis of Islamic Criminal Law Perspectives

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Abstract: *This study examines the basis of legal considerations behind the imposition of a null verdict against Benny Tjokrosaputro in the case of corruption of PT. Jiwasraya Insurance and PT. Asabri, which resulted in state losses of Rp40 trillion. The main focus of this research is an analysis of Decision Number 49/Pid.Sus.TPK/2021/PN.Jkt from the perspective of Islamic criminal law (jinayah), especially related to the compatibility between the null verdict and the principle of justice in Islamic law. This study aims to reveal the extent to which the verdict reflects the incompatibility between Indonesia's positive legal system and the values of justice and deterrence emphasized in Islamic criminal law. The research method used is normative juridical with a literature study approach, case study, and legal comparison between Indonesian positive law and Islamic criminal law. The analysis was carried out qualitatively on relevant legal documents and literature. The results of the study show that the zero verdict in the verdict is based on the consideration of the accumulated criminal sentence that was previously handed down in other cases. However, from the perspective of Islamic criminal law, a zero verdict has the potential to ignore the principles of substantive justice, proportionality of punishment, and the public interest, given the widespread impact of corruption on society and the state. This study concludes that there is a missynchronization between the principles of punishment in positive law and Islamic criminal law in handling major corruption cases. Therefore, it is suggested that further studies are needed to build harmonization between the two legal systems in order to realize more substantial and effective justice in eradicating corruption.*

Keywords: *Zero Verdict; Corruption; Islamic Criminal Law; Jinayah; Court Decisions; Justice; Deterrent Effect.*

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INTRODUCTION

Corruption has become a serious and worrying legal problem in Indonesia, marked by the large number of state officials

involved and the economic losses caused.¹ Indonesia scored 37 points out of 100 on the 2024 Corruption Perception Index reported by Transparency International. The

¹ Lamijan and Muhammad Tohari, "Dampak Korupsi Terhadap Pembangunan Ekonomi Dan Pembangunan

Politik," *Jurnal Penelitian Hukum Indonesia-Jpehi* 3, no. 2 (2022): 40–60.

Corruption Index in Indonesia averaged 28.37 points from 1995 to 2024, reaching an all-time high of 40.00 points in 2019 and a low of 17.00 points in 1999.² This proves that corruption has been widespread in both the government and the private sector, and there is even a view that it can collapse the structure of government if eradicated. Although various eradication efforts have been carried out for more than six decades in various eras, corruption is still a major challenge that threatens justice and the welfare of the community.

Various government and community efforts to tackle corruption, including the establishment of special institutions, have not yielded the results expected.³ Corruption remains a never-ending global problem, especially in developing countries, and seems to have become a culture that is difficult to eliminate, even giving rise to despair. In fact, the history of corruption has existed since humans knew the concept of exchange rates, and the mode continues to evolve along with the development of civilization. In the midst of this condition, the study of Islamic criminal law in Indonesia itself has experienced ups and downs to become the focus of studies in Indonesia.

In the context of Islamic Criminal Law, corruption is classified as *Jarimah Ta'zir*, which is a crime whose sanction is not determined in a standard in the Qur'an and Hadith, but is left to the discretion of the judge (*ulil amri*). This flexibility is not to

mitigate punishments, but to ensure the most effective sanctions in achieving the common good (*maslahah 'ammah*) and eliminating all forms of harm (*dar'u al-mafsadah*). This mafsadah theory is the main analysis knife. Corruption is mafsadah kabirah (great damage) that damages the basic pillars of life (*Maqashid asy-Sharia*), such as the protection of property (*hifz al-mal*), morality (*hifz ad-din*), and even the soul (*hifz an-nafs*) of society.⁴

The legal basis for corruption is in Law No. 20 of 2001, amendments to Law No. 31 of 1999 related to the Eradication of Corruption. This law specifically regulates corruption crimes in two main paragraphs, namely Article 2 and Article 3, which regulate the standards for the assessment of corruption crimes.

Article 2 reads as follows: "Any person who unlawfully commits an act to enrich himself, others, or a corporation that may harm the state's finances or the country's economy, shall be subject to life imprisonment or imprisonment between 4 (four) years to 20 (twenty) years, as well as a minimum fine of Rp 200,000,000.00 (two hundred million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah)." Paragraph (2) adds that "in the event that the criminal act of corruption as intended in paragraph (1) is committed in certain circumstances, the death penalty can be imposed".⁵

Meanwhile, Article 3 regulates that every individual who, with the intention of

² "Indonesia - Indeks Korupsi," Trading Economics, accessed March 25, 2025, <https://id.tradingeconomics.com/indonesia/corruption-index>.

³ Gusti Kadek Sintia Dewi, "Mencegah Dan Memberantas Potensi Adanya Korupsi Melalui Pemberian Pendidikan Anti Korupsi Di Lembaga Pendidikan," *Jurnal Ilmu Hukum Sui Generis* 2, no. 4 (2022): 123–32.

⁴ Amanda Dea Pritasari, "Kontroversial Rendahnya Hukuman Koruptor Dilihat Dari Perspektif Maqashid Syariah," *Rio Law Journal* 5, no. 1 (2024): 81–90, <https://www.ojs.umb-bungo.ac.id/index.php/RIO/article/view/1293>.

⁵ Rapikah Hasanah, "Penjatuhan Vonis Nihil Dalam Tindak Pidana Korupsi (Studi Kasus Putusan No. 49/Pid. Sus-Tpk/2021/Pn Jkt. Pst)" (Universitas Malikussaleh Lhoksema, 2024).

obtaining personal gain or benefits for others or companies, uses the authority, opportunity, or resources he has because of his position or position, in a manner that is capable of harming the state finances or the state economy, can be sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine at least Rp 50,000,000.00 (fifty million rupiahs) and at most Rp 1,000,000,000.00 (one billion rupiah)" seen in mega corruption cases that ensnared a zero verdict against Benny Tjokrosaputro, a businessman who became a central figure in the major financial scandals of PT Asuransi Jiwasraya (Persero) and PT Asuransi Sosial Angkatan Berarmed Republik Indonesia (ASABRI). In the Jiwasraya case (Decision Number 29/Pid.Sus-TPK/2020/PN.Jkt.Pst), the Corruption Crimes Court at the Central Jakarta District Court which examined and tried the defendant Benny Tjokrosaputro in the Corruption Crime case This decision tried the Defendant Benny Tjokrosaputro in the Corruption Crime case at PT Asuransi Jiwasraya (Persero) in the first instance court with the usual examination procedure. The defendant was detained at the State Detention Center (Rutan) from January 14, 2020 to February 2, 2020, and then extended by the Public Prosecutor until March 13, 2020. The defendant was accompanied by his Legal Advisory Team.

The trial process against Benny Tjokrosaputro began with the reading of the determination of the Chief Justice and the Panel of Judges, followed by an examination of the case file and relevant documents. During the trial, the Panel of Judges listened to the testimony of witnesses and the Defendant, and paid attention to the evidence of the letter and evidence

submitted. After the evidentiary stage is completed, the Public Prosecutor files a criminal charge by stating that the Defendant is legally and convincingly proven to have committed the crime of corruption jointly as stipulated in Article 2 Paragraph (1) jo. Article 18 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 jo. Article 55 Paragraph (1) 1 of the Criminal Code, as well as the crime of money laundering as stipulated in Article 3 of Law No. 8 of 2010. The prosecutor demanded that the defendant be sentenced to life imprisonment, a fine of Rp 5 billion in addition to 1 year of imprisonment, and pay compensation of Rp 6.078 trillion. If the compensation money is not paid within 1 month after the judgment has permanent legal force, then the Defendant's property will be confiscated and auctioned by the Prosecutor to cover the loss.

The Panel of Judges in its consideration stated that the elements of corruption and money laundering had been proven based on the facts of the trial. The defendant is considered to have a central and active role in a series of actions that are detrimental to the state's finances, especially in the case of PT Asuransi Jiwasraya. It is also proven that there is a large amount of state losses, which is aggravated by the nature of the Defendant's actions which are structured, massive, and show no remorse. The Panel of Judges did not find any factors that could mitigate the Defendant's sentence.

Berdasarkan pertimbangan tersebut, Majelis The judge ruled that Benny Tjokrosaputro was legally and convincingly proven to have committed corruption and money laundering crimes, and sentenced him to life imprisonment. In addition, a fine of Rp 5 billion was imposed, with the provision of a subsidy of 1 year

imprisonment if not paid, as well as an additional penalty in the form of an obligation to pay compensation of Rp 6.078 trillion. If the replacement money is not paid within 1 month after the judgment has permanent legal force, the defendant's property can be confiscated and auctioned to cover state losses.

Benny Tjokrosaputro has been sentenced to life in prison and ordered to pay billions of rupiah in restitution, the highest corporal criminal punishment in the Indonesian legal system. However, in the ASABRI case which was separate and caused much greater state losses, reaching Rp 22.7 trillion, the Central Jakarta Corruption Court (through Decision Number 49/PID. SUS. TPK/2021/PN. JKT) Corruption Crimes Court at the Central Jakarta District Court.

This verdict tried the defendant Benny Tjokrosaputro in a case of alleged corruption and money laundering related to the management of PT ASABRI's funds, which caused state losses of Rp 22.7 trillion. This case was heard at the Corruption Crimes Court at the Central Jakarta District Court.

The trial of Benny Tjokrosaputro began with the determination of the Panel of Judges, the reading of the indictment, as well as the examination of the execution, the Prosecutor's response, the testimony of witnesses, experts, and the defendant, as well as the review of evidence. Furthermore, the trial continued with the reading of the criminal charges by the Public Prosecutor. On October 26, 2022, the Public Prosecutor demanded that Benny Tjokrosaputro be legally and convincingly proven guilty of committing corruption crimes with joint

aggravation and money laundering crimes. For his actions, the prosecutor demanded the death penalty and imposed compensation of Rp 5.733 trillion. If it is not paid within one month after the judgment has permanent legal force, then the defendant's property will be confiscated and auctioned.

The Panel of Judges considered that the Defendant had been sentenced to life imprisonment in the Jiwasraya case which had permanent legal force, so that the additional penalty in the form of substitute confinement and the imposition of case costs was considered irrelevant. Based on these considerations, the Panel of Judges stated that the Defendant was proven guilty of committing corruption and money laundering, imposed a "nil" penalty on the Defendant, and required him to pay compensation of Rp 5.733 trillion to the state.⁶

In addition to state losses due to this case, legal action against PT Asuransi Jiwasraya (Persero) and PT ASABRI (Persero) has an impact on the performance of the company, workers and the community as well⁷ In the judge's consideration in the case of PT Asuransi Jiwasraya (Persero) against the defendant Benny Tjokrosaputro, he was found guilty of corruption and money laundering by being sentenced to life, as well as an additional penalty of paying compensation to the state of Rp 6 trillion. Meanwhile, in the case of the defendant at PT ASABRI (Persero), one of the judges' considerations was because the defendant had been sentenced to life in the corruption case of PT Asuransi Jiwasraya (Persero).

So the judge decided that the crime was null and void in the corruption case of PT ASABRI (Persero). Zero Crime refers to

⁶ Elvini Tiara Putri, "Pidana Nihil Dalam Perkara Tindak Pidana Korupsi Pada PT. Asabri (Persero) (Studi Kasus Putusan Nomor: 49/PID.SUS-

TPK/2021/PN JKT.PST)" (Universitas Pembangunan Nasional Veteran Jakarta, 2023).

⁷ Putri.

the principle of "Nulla poena sine lege" (no crime without law) the judge in giving his decision is the end of the enforcement of justice and the utility of the law in line with Article 1 paragraph (3) of the 1945 Constitution that Indonesia as a state of law all aspects of society, nationality, and state must be based on the law.

A Zero Verdict is a legal decision given to a person who has been sentenced to a previous criminal sentence that reaches the maximum limit, but is required to undergo a retrial due to certain reasons. As a result, the punishment given this time is either zero or has reached the maximum limit.⁸

The legal basis for a null verdict is found in the provisions of Article 67 of the Criminal Code which states "that if a person is sentenced to death or life imprisonment, in addition to that, no other punishment shall be imposed except the revocation of certain rights, and the announcement of the judge's decision. And in article 12 Paragraph (4) of the Criminal Code it states "that imprisonment for a certain period of time may not exceed twenty (20) years".

This nil verdict, although formally justified based on positive legal principles such as *the principle ne bis in idem* (cannot be punished twice for the same act) and the limitation on the accumulation of corporal punishment (considering that the defendant has already been sentenced to life), still leaves a big question about substantive justice.⁹ Pragmatically, a zero verdict means that there is no additional prison term for perpetrators who have been sentenced to life, regardless of the number of crimes and losses that differ. This creates a perception

in the community that repeated corruption crimes or with very large losses may not have comparable corporal criminal consequences if the perpetrator has received the highest punishment before.

In the context of Islamic Criminal Law, corruption is classified as *Jarimah Ta'zir*, which is a crime whose sanction is not determined in a standard in the Qur'an and Hadith, but is left to the discretion of the judge (*ulil amri*). This flexibility is not to mitigate punishments, but rather to ensure the most effective sanctions in achieving the common good (*maslahah 'ammah*) and, most relevantly, eliminating all forms of harm (*dar'u al-mafsadah*). This mafsadah theory is the main analysis knife. Corruption is mafsadah kabirah (great damage) that damages the basic pillars of life (Maqashid asy-Sharia), such as the protection of property (*hifz al-mal*), morality (*hifz ad-din*), and even the soul (*hifz an-nafs*) of society.

From the perspective of Islamic Criminal Law, the recovery of *mafsadah* due to corruption is not only limited to corporate sanctions, but also includes the recovery of losses as a whole (especially through the return of property or *radd al-mazalim*) and the achievement of a comprehensive deterrent effect (*zajr*) for every proven criminal act. Although the penalty of compensatory money has been imposed in both cases, the sentence of zero corporal punishment in the ASABRI case, which is a *separate and larger mafsadah* than Jiwasraya, raises the question of whether *the principle of dar'u al-mafsadah* has been optimally fulfilled in all aspects of the penalty. Is the absence of an increase in

⁸ Hasanah, "Penjatuhan Vonis Nihil Dalam Tindak Pidana Korupsi (Studi Kasus Putusan No. 49/Pid. Sus-Tpk/2021/Pn Jkt. Pst)."

⁹ Fabilara Sabilia, "Tinjauan Yuridis Terhadap Asas Ne Bis in Idem Dalam Pembuatan Pemalsuan Surat Studi

Putusan Nomor. 24 PK/PID/2020," *Rechtsnormen Jurnal Komunikasi Dan Informasi Hukum* 2, no. 2 (2024): 50–59, <https://doi.org/https://doi.org/10.56211/rechtsnorme.n.v2i2.475>.

corporal punishment, even for new crimes with trillions of different losses, enough to overcome the damage caused and provide the maximum deterrent effect according to the Islamic lens? Therefore, this study aims to critically analyze Decision Number 49/PID. SUS. TPK/2021/PN. JKT. The main question is: How to analyze the decision Number 49/PID. SUS. TPK/2021/PN. JKT reflects the incompatibility of the value of justice in Islamic criminal law with the Indonesian criminal justice system And zero verdicts for corruption crimes according to Islamic criminal law, especially in the context of dealing with *mafsadah* caused by massive and repeated corruption crimes? This analysis is expected to provide academic contributions and practical recommendations for the formulation of criminal law policies that are fairer, comprehensive, and able to respond to the socio-religious dynamics in Indonesia

METHOD

This research uses a normative legal method with literature studies, namely studying books, laws and regulations, and scientific journals related to the topic.¹⁰ The approach consists of a legal approach, by examining regulations such as the Corruption Law, the Criminal Code, and the Judicial Power Law, as well as a comparative approach, namely comparing positive law with Islamic criminal law, especially the concept of Jarimah *Ta'zir*, *Maqashid asy-Sharia*, and *the Mafsada-Zajr* theory. The primary data is in the form of Court Decision Number 49/PID. SUS. TPK/2021/PN. JKT, while secondary data includes legal literature and official documents. Data analysis was carried out in

a descriptive-analytical manner to explain in detail and logically the null verdict in corruption cases according to the perspective of Islamic criminal law.¹¹

ANYLISIS AND DISCUSSION

Zero Verdict

A zero sentence can be said to be a criminal sentence for a person who has received a criminal sentence with the maximum limit but must be re-convicted, due to certain cases so that the criminal sentence given is zero or is already within the maximum limit. A null verdict can be seen in Article 67 of the Criminal Code which explains that if a person is sentenced to death or life imprisonment, in addition to that, no other punishment may be imposed except for the revocation of certain rights, and the announcement of the judge's decision. The application of a zero sentence is carried out on cumulative crimes with a certain time to limit so that a person is not convicted beyond the time limit of the sentence. It is explained that in the Criminal Code Article 12 paragraph (4), which is imprisonment for a certain period of time, it must not exceed 20 (twenty) years. 16 The specific time penalty referred to in the paragraph if referring to paragraph (1) of the same article, refers to the type of principal penalty in the form of imprisonment, where the prison sentence for a certain period itself has a period of time between a minimum of 1 (one) day and a maximum of 15 (fifteen) years consecutively.

This provision limits the possibility of people who commit various criminal acts who are then tried either at the same time or tried separately with a total of more than 20 (twenty) years in prison. So the imposition

¹⁰ Mustafa, *Metodologi Penelitian Hukum* (Purbalingga: Eureka Media Aksara, 2024).

¹¹ Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Metodologi Riset Hukum* (Palur Wetan: Oase Pustaka, 2020).

of a zero sentence is given to the perpetrators of criminal acts who have received the maximum limit in the main crime. A sentence for a certain period of time may not exceed 20 (twenty) years as stated in Article 12 paragraph (4) of the Criminal Code, a life sentence is mentioned in Article 67 of the Criminal Code, which states that if the perpetrator of a criminal act has been sentenced to life imprisonment then an additional sentence should not be given.¹²

This nil verdict, although formally justified based on positive legal principles such as *the principle ne bis in idem* (cannot be punished twice for the same act) and the limitation on the accumulation of corporal punishment (considering that the defendant has already been sentenced to life), still leaves a big question about substantive justice. Pragmatically, a zero verdict means that there is no additional prison term for perpetrators who have been sentenced to life, regardless of the number of crimes and losses that differ. This creates a perception in society that repeated corruption crimes or with very large losses may not have comparable criminal consequences if the perpetrators have received the highest punishment before.¹³

From the perspective of Islamic criminal law, the application of a zero sentence in cases of corruption crimes, as happened in Decision Number 49/PID. SUS. TPK/2021/PN. JKT, is a practice that is not in line with the theological foundation (basis of belief), legal principles, and the purpose of Islamic law. Islamic law will view corruption as a betrayal of trust and great

damage that must be dealt with firmly through just, proportionate punishment, and provide a deterrent effect. Every criminal act of corruption, as a stand-alone act with significant negative impacts, demands appropriate accountability and sanctions, without exception based on the punishment that has been received in other cases. The application of zero verdicts in this context has the potential to ignore justice for victims, weaken efforts to prevent and eradicate corruption, and does not reflect Islam's seriousness in punishing perpetrators of crimes that damage the social order.¹⁴

Therefore, a zero verdict in corruption can be considered inconsistent with the principles of justice in Islam. Islam is also very strict in prohibiting acts of corruption because it can damage the order of society and the state. Islamic criminal law (*Jinayah*) is built on a strong foundation of belief, where justice (*'Is*) and prevention of damage (*mafsadah*) are the two main pillars.

The Qur'an and Sunnah explicitly and implicitly condemn all forms of betrayal, fraud, and the unlawful taking of the rights of others, which are the essence of the crime of corruption. Allah SWT warns in the Qur'an:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ
لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنتُمْ تَعْلَمُونَ ﴿١٨٨﴾

"And do not eat the wealth among you in an unrighteous way, and (do not) bribe the judges with it, so that you may eat some of the wealth of others with sin, even though you know it." (QS. Al-Baqarah [2]: 188).

¹² KMS Herman, Agus Sudrajat, and Verania Hedi Permata, "Implementasi Vonis Nihil Dalam Sistem Peradilan Indonesia," *Constitutum: Jurnal Ilmiah Hukum* 2, no. 1 (2023): 57–63, <https://doi.org/https://doi.org/10.37721/constitutum.v2i1.1335>.

¹³ Hasanah, "Penjatuhan Vonis Nihil Dalam Tindak Pidana Korupsi (Studi Kasus Putusan No. 49/Pid. Sus-Tpk/2021/Pn Jkt. Pst)."

¹⁴ Muhammad Nurul Irfan, *Korupsi Dalam Hukum Pidana Islam* (Jakarta: Amzah, 2014).

This verse, although it specifically mentions the prohibition of bribery, has broader implications for any form of unlawful acquisition of property through abuse of power or office. The crime of corruption, in its various manifestations, is clearly included in the category of acts that are prohibited and denounced in Islam.

From a philosophical point of view, Islamic criminal law aims to create a clean, just, and prosperous society, where the rights of every individual and society are protected. Corruption systemically undermines the social order, weakens state institutions, hinders equitable economic development, and erodes public trust. Therefore, the eradication of corruption is seen as an integral part of efforts to realize *maqashid asy-shari'ah* (the goals of Islamic sharia), especially in preserving religion (*hifz ad-din*), soul (*hifz an-nafs*), intellect (*hifz al-'aql*), heredity (*hifz an-nasl*), and property (*hifz al-mal*). Corruption directly threatens *hifz al-mal* (protection of property) belonging to the state and society, and indirectly damaging *other aspects of maqashid*.¹⁵

Meanwhile, in modern criminal law, there is a phenomenon of zero verdict in corruption cases, which is when a defendant is found guilty but not sentenced to an additional sentence because he has served a sentence in another case. This contradicts the principles of Islamic criminal law in several aspects.

1. Principles of Justice and Retribution
Islamic Criminal Law: Punishments for corruption include ta'zir, which

can include severe penalties such as imprisonment, confiscation of assets, or even the death penalty in cases that severely damage the social and economic order. Zero Verdict: No additional sanctions are imposed on the perpetrator even if proven guilty, which may contradict the principles of justice in Islam.

2. The Principle of Ibra' (Restoration of Rights)

Islamic Law: Focuses on the return of corrupted property (*istirja'*). Perpetrators are obliged to return the confiscated property. Zero Verdict: It does not always guarantee the recovery of state or community losses due to acts of corruption. Islamic criminal law emphasizes more on the principles of substantive justice, recovery of state losses, and a strong deterrent effect. On the other hand, a zero verdict in corruption cases in modern law can be considered contrary to this principle because it has the potential to not provide a punishment commensurate with the perpetrator's mistake.¹⁶

In the context of Islamic criminal law, especially related to zero sentences for corrupt perpetrators, some verses of the Qur'an can be a basis for understanding the contradictions that may arise. It is important to remember that the interpretation of these verses requires a deep understanding of the science of tafsir and ushul fiqh. The following is a holy verse of the Quran that explains the null verdict.¹⁷

1. Justice and Strictness of Punishment
QS. An-Nisa' (4:58):

¹⁵ Bambang Widjoyanto, *Koruptor Itu Kafir : Telaah Fiqih Korupsi Muhammadiyah Dan NU* (Bandung: Mizan Publikasi, 2010).

¹⁶ Moh. Saifulloh Al Aziz Senali, *Senali, Khal. Utbahal. Jum'at; Tantangan Umat Islam Di Era Globalisasi* (Surabaya: Terbit Terang, 2007).

¹⁷ Anshori and Ahmad Yani, *Posisi Hukum Islam Dalam Nasional, Majalah Mimbar Hukum Pphim*, 2009.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا¹⁸

"Indeed, Allah has commanded you to convey the message to those who are entitled to receive it, and (instructed you) when you establish the law among men, that you should establish it justly. Indeed, Allah has given you the best instruction. Indeed, Allah is All-Hearing and All-Seeing."

QS. Al-Maidah (5:8):

وَإِذَا نَادَيْتُمْ إِلَى الصَّلَاةِ اتَّخَذُوا هُزُوعًا وَلَعِبًا ذَلِكَ بِأَنَّهُمْ يَ قَوْمٌ لَا يَعْقِلُونَ¹⁹

"O you who have believed, be those who truly uphold (the truth) for Allah's sake, be witnesses justly. And do not let your hatred of a people lead you to act unjustly. Be just, because (justice) is closer to piety. And fear Allah, for Allah is Aware of what you do."

This verse calls on Muslims to always be just, even to those who are hated. In the context of a null verdict, the judge must consider all aspects fairly, not only looking at the perpetrator, but also at the victim and the community.

1. The Purpose of Punishment in Islam

QS. An-Nur (24:2):

الرَّانِيَّةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةً جَلْدَةً وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْشَهِدَ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ²⁰

"An adulterous woman and an adulterous man, then smite each of them a hundred times, and do not have mercy on them in the religion of Allah, if you believe in Allah and the Last Day. And let their

punishment be witnessed by a group of believers."

Although this verse specifically discusses punishment for adulterers, the principles contained in it can be drawn to have a relationship in the context of a case of zero verdict against corruption from the perspective of Islamic Criminal Law Especially in the Determination of Fair and Commensurate Punishment Islamic Criminal Law strongly emphasizes the principle of justice ('adl) in every legal decision. Corruption, as an act of betrayal of trust and acts that are detrimental to the wider community, is seen as a great crime in Islam. Therefore, corrupt perpetrators should receive a fair punishment commensurate with the crimes they committed. A zero verdict, in the view of Islamic Criminal Law, has the potential to contradict this principle of justice because it does not provide appropriate legal consequences for adverse acts.

3. Corruption as a Destroyer of Society

QS. Al-Baqarah (2:205):

وَإِذَا تَوَلَّى سَعَىٰ فِي الْأَرْضِ لِيُفْسِدَ فِيهَا وَيُهْلِكَ الْحَرْثَ وَالنَّسْلَ وَاللَّهُ لَا يُحِبُّ الْفَاسَادَ²¹

"And when he is in power, he walks on the earth to do harm, and he destroys crops and livestock, and Allah does not delight in corruption."

This verse generally denounces destructive acts on earth. Corruption, as an act that harms many people and damages the system, can be categorized as a form of damage that is prohibited by Allah SWT.

¹⁸ Qs. An-Nisa' (4:58): *Menjelaskan Tentang Pentingnya Menjalankan Amanah Dan Berlaku Adil Dalam Memutuskan Perkara*

¹⁹ Qs. Al-Maidah (5:8): *Menjelaskan Tentang Perintah Untuk Berlaku Adil Dan Menegakkan Keadilan, Bahkan Terhadap Orang Yang Dibenci Atau Menjadi Musuh*

²⁰ Qs. An-Nur (24:2): *Mengajarkan Tentang Hukuman Bagi Pelaku Zina, Baik Laki-Laki Maupun Perempuan Yang Belum Menikah.*

²¹ Qs. Al-Baqarah (2:205): *Mengajarkan Tentang Larangan Keras Untuk Berbuat Kerusakan Di Bumi Dan Allah Tidak Menyukai Perbuatan Yang Merusak*

In the Indonesian criminal justice system, a sentence of zero corporal punishment (imprisonment) is concluded directly from the legal considerations of the Panel of Judges which are clearly stated in the decision. This is not a baseless decision, but rather a judge's interpretation of the applicable rules and legal principles. For the case of Decision Number 49/PID. SUS. TPK/2021/PN. JKT against Benny Tjokrosaputro, the conclusion of the non-criminal conviction is based on the following key points in the judge's consideration In the short trial process After the determination of the Panel of Judges, the reading of the indictment, listening to the Defendant's exclusion and the Public Prosecutor's response, examination of witnesses, experts, defendants, and review of evidence, the trial continued with the reading of criminal charges.

The Public Prosecutor's demand that the Panel of Judges decide to declare the Defendant Benny Tjokrosaputro legally and convincingly proven guilty of committing the "Crime of Corruption (with aggravation) jointly" (First Primary Indictment: Article 2 paragraph (1) jo. Article 18 of the Corruption Law jo. Article 55 paragraph (1) 1st of the Criminal Code) and the "Crime of Money Laundering" (Second Primary Indictment: Article 3 of the Anti-Corruption Law jo. Article 55 paragraph (1) 1st of the Criminal Code) Sentencing the Defendant to death. Charging the defendant to pay compensation of Rp 5,733,250,247,731.00. If it is not paid within 1 month after the judgment has permanent legal force, his

property will be confiscated and auctioned. The judge considered that the defendant Benny Tjokrosaputro had been sentenced to life imprisonment in the case of corruption of PT Asuransi Jiwasraya which had permanent legal force.

On the basis of this consideration, the Panel of Judges is of the view that the provisions of the substitute prison sentence (substitute money if not paid can be replaced by imprisonment) and the imposition of case costs can no longer be imposed on the Defendant because the sentence of life imprisonment has become the maximum corporal punishment considering the law on corruption, the law on money laundering, article 193 of the Criminal Code, and other related regulations. The Panel of Judges Adjudicated: Declaring that the defendant Benny Tjokrosaputro was legally and convincingly proven guilty of committing the crime of "participating in the criminal act of corruption" (in the first indictment of Primair) and the crime of "money laundering" (in the second indictment of primair). Imposing a criminal sentence on the Defendant with a "Niil" penalty. Imposing an additional penalty on the Defendant to pay compensation to the State in the amount of Rp 5,733,250,247,731.00²²

In addition to state losses due to this case, legal action against PT Asuransi Jiwasraya (Persero) and PT ASABRI (Persero) has an impact on the performance of the company, workers and the community as well²³In the judge's consideration in the case of PT Asuransi Jiwasraya (Persero) against the defendant Benny Tjokrosaputro,

²² Muhammad Dimas and Emmilia Rusdiana, "Analisis Putusan Pidana Nihil Dalam Tindak Pidana Korupsi Terhadap Dampak Kerugian Negara Dalam Perspektif Teori Relatif Pemidanaan (Studi Putusan No. 49/Pid.Sus-TPK/2021/PN Jkt.Pst).," *Indonesian Journal Of Contemporary Law* 1, no. 5 (2025).

²³ Putri, "Pidana Nihil Dalam Perkara Tindak Pidana Korupsi Pada PT. Asabri (Persero) (Studi Kasus Putusan Nomor: 49/PID.SUS-TPK/2021/PN JKT.PST)."

he was found guilty of corruption and money laundering by being sentenced to life, as well as an additional penalty of paying compensation to the state of Rp 6 trillion. Meanwhile, in the case of the defendant at PT ASABRI (Persero), one of the judges' considerations was because the defendant had been sentenced to life in the corruption case of PT Asuransi Jiwasraya (Persero).

So the judge decided that the crime was null and void in the corruption case of PT ASABRI (Persero). Zero Crime refers to the principle of "Nulla poena sine lege" (no crime without law) the judge in giving his decision is the end of the enforcement of justice and the utility of the law in line with Article 1 paragraph (3) of the 1945 Constitution that Indonesia as a country of law all aspects of society, nationality, and state must be based on the law. A Zero Verdict is a legal decision given to a person who has been sentenced to a previous criminal sentence that reaches the maximum limit, but is required to undergo a retrial due to certain reasons. As a result, the punishment given this time is either zero or has reached the maximum limit.

In Islamic Criminal Law, the crime of corruption is universally categorized as **Jarimah Ta'zir**. This classification is significant because the sanctions for this crime **are not rigidly stipulated** in the Qur'an or Hadith, but are left to the discretion of the **judge (ulil amri)**. This flexibility is not to alleviate it, but to ensure that sanctions can **adapt to the complexity of crimes** such as corruption and provide an optimal deterrent effect for the public benefit (*masalah 'ammah*).

explained that *ta'zir* is a type of crime that is not determined by the nash (Qur'an

and Sunnah), but is left to the discretion of the judge (*ulil amri*) to achieve *zajr* (deterrent effect) and *islah* (repair), as well as eliminate *mafsada* (damage). *Zajr Khas* (Individual Deterrent Effect): From the perspective of a typical *zajr*, a zero sentence for corporal punishment may no longer be considered to have a direct deterrent effect for perpetrators who have been sentenced to life. The perpetrator will not physically feel the additional suffering of prison. However, Awdah emphasized that *ta'zir* must be effective to make the perpetrators of kapok. If a zero sentence of corporal punishment means that there is no longer a new physical criminal "burden", then this needs to be questioned in the context of the typical *zajr* for the new crime.

Although it does not directly address the accumulation of lifelong crimes, the principle in *jiyah* jurisprudence is that each *jarimah* (criminal act) that is separate and gives rise to a different *mafsada* must be responded to. In some cases, a single punishment may include several *related fingers*, but for *fingers* that stand alone and cause great harm, the principle is that there is clear liability. Relevance to Zero Verdict: A zero sentence of corporal punishment can be debated whether it is in line with the spirit of accountability for every *mafsada* caused. Although the life penalty is already very severe, a new and separate crime of corruption (even if committed by the same person) causes new losses. Islamic Criminal Law will probably emphasize more that any major *mafsada* requires a clear response, either in the form of corporal punishment (if it is still likely to have a deterrent effect) or an emphasis on recovering losses.²⁴

²⁴ Abdul Qadir Awdah, *Menjelaskan Konsep Dasar Ta'zir Dan Tujuan Pemidanaannya*, n.d.

Mafsadah *theory*, offers a more comprehensive approach. He sees not only physical punishment, but all sanctions (including property sanctions, honorary sanctions, and office sanctions) that can be imposed cumulatively and proportionate for each different and proven *mafsadah*. This aims to ensure that all losses (especially financial) caused by corruption are effectively addressed, and the deterrent effect reaches the optimal level according to the weight of *the mafsadah* that occurs.

Therefore, Decision Number 49/PID. SUS. TPK/2021/PN. JKT is an important case study to encourage harmonization and improvement of the criminal law system in Indonesia, in order to be better able to realize substantive justice, provide a comprehensive deterrent effect, and completely overcome any *mafsadah* caused by extraordinary crimes such as corruption, in line with the principles of Islamic sharia.²⁵

Corruption is seen as **a great damage** (*mafsadah kabirah*) because it violates the basic principles of Islam, namely **betrayal of trust** (*betrayal of trust*), null and void taking of property (*akl mal bil batil*), and damaging the social and economic order of society. For TNI members, corruption is even a double betrayal of the state, the people, and the integrity of defense institutions. Therefore, the *ta'zir* sanctions applied must reflect the high level of this *mafsadah*, and must be able to prevent further adverse effects

The *sanctions of ta'zir* in Islamic Criminal Law for corruption are very diverse, not limited to extreme corporal punishment. It includes:

- 1) Tiered Body Sanctions: This can be a prison sentence of a certain duration (short, medium, or long up to decades), the purpose of which is to limit the freedom of the perpetrator and provide a personal deterrent effect.
- 2) Comprehensive Property Sanctions: The most relevant for corruption are the confiscation of property obtained from the proceeds of crime (as a form of *radd al-mazalim*, i.e. the return of wronged rights), as well as fines (*gharamah*) whose amount can be adjusted to double the state losses incurred. Islam places great emphasis on the protection of property (*hifz al-mal*), and corruption is a direct threat to this pillar.
- 3) Sanctions of Honor and Position: Includes dismissal or removal from public office (*azl*), public announcement (*tasyhir*) to cause embarrassment and become a lesson for the community, or even exile (*nafyu*) if necessary.

These principles are the foundation for the evaluation of the null verdict in Decision Number 49/PID. SUS. TPK/2021/PN. The JKT, although legally positive because the defendant had been sentenced to life imprisonment in a previous case, showed some essential inconsistencies with the values of justice in Islamic Criminal Law:

1. Failure to Achieve a Comprehensive Deterrent Effect (*Zajr/Rad'un*)

Positive Law View (in this context): Positive law, with the principle of *ne bis in idem* and the rule of criminal accumulation, tends to assume that once the highest (life)

²⁵ Akbar Sharif and Ridzwa Ahmad, "Konsep Maslahat Dan Mafsadah Menurut Imam Al-Ghazali," *Jurnal Peradaban Islam* 13, no. 2 (2017): 353–68.

corporal punishment is imposed, corporal punishment for other crimes that are later proven is no longer necessary. This is to avoid personal over-judgment.

Islamic Criminal Law View: Islam emphasizes a strong and comprehensive deterrent effect (*zajr/rad'un*). This means that each different criminal act, especially those that cause large and separate *mafsadah* (damage), must have commensurate consequences to ensure a comprehensive deterrent effect for the perpetrator and a stern warning to the community. A zero sentence, even though the perpetrator has already been imprisoned for life, fails to provide a specific and direct additional deterrent effect for *the second* massive corruption crime. This ruling risks sending a message that "once the most severe sentences are sent, subsequent crimes will not add a significant criminal burden," which could undermine anti-corruption efforts.

2. Lack of Optimization of State Asset Protection (*Hifz al-Mal*)

Positive Legal View (in this context): The focus is often on criminalizing the perpetrator, and the issue of asset return can be a separate process or presumed to have been covered in a previous judgment, even if the loss comes from a different case.

View of Islamic Criminal Law: One of the pillars of *Maqashid as-Sharia* is the protection of property (*hifz al-mal*). Corruption is a crime against public property. Therefore, *the ta'zir* sanction strongly emphasizes the maximum confiscation of wealth obtained from every crime of corruption (as a form of *radd al-mazalim*), as well as significant fines (*gharamah*). The verdict is nil, if it is not

accompanied by a new and more stringent asset forfeiture sentence, or a new state loss recovery order for a second separate case (such as the trillion rupiah loss in Decision 49/PID. SUS. TPK/2021/PN. JKT), is considered not optimal in realizing the protection of *hifz al-mal*. Islamic Criminal Law will require any stolen property to be returned, and *the ta'zir* sanction allows for the imposition of property penalties regardless of existing body penalties.

The confiscation and confiscation of assets proceeds of crime, while often considered an additional crime, is actually more than just transferring assets from criminals to state coffers. This action also increases the possibility of realizing justice and welfare for the entire community.

Justice ('Is) is a fundamental and universal principle in Islam that is repeated many times in the Qur'an. Allah SWT commands His people to always be fair in all things, even to those who are hated. In the context of criminal law, justice demands proportionality between the mistakes committed and the punishments imposed. Every evil deed must be rewarded appropriately (*jaza'*) in order to realize substantive justice.²⁶

4) Diskrepansi dengan Prinsip Keadilan Substantif ('Adalah) dan Persamaan di Hadapan Hukum

Although a zero verdict may be considered procedurally or formally fair in a positive legal system (to avoid the double jeopardy of corporal crime), from the perspective of substantive justice ('Is) in Islam, this can give rise to a perception of profound injustice. The public sees that perpetrators who commit two massive and separate crimes of corruption, with losses of

²⁶ Qs. An-Nahl (16): 90. Lihat Juga, Ibn Katsir, *Tafsir Al-Qur'an Al-'Azhim*, Jilid Iv (Beirut: Dar Al-Kutub

Al-'Ilmiyyah, 1999), Hlm. 550, *Mengenai Perintah Keadilan*.

trillions of rupiah in each case, are only "punished" once for life, without any substantial additional sanctions (especially property crimes) for the second crime. This can erode public confidence that all people are equal before the law and that every crime will be met with a just retribution. Islamic law requires that decisions must be fair, transparent, and accountable to the public, in line with the principle of strong hisbah (public oversight).

Decision Number 49/PID. SUS. TPK/2021/PN. JKT, which is related to the corruption case at PT. Asabri, gave rise to various analyses and debates, especially regarding the incompatibility between the values of justice in Islamic criminal law and the criminal justice system in Indonesia. does not have a deterrent effect and is not effective enough to emphasize the crime rate because the mechanism is only emphasized on punishing the perpetrator by placing the perpetrator in prison.

The absence of an additional principal criminal for the Asabri case, which caused a fantastic loss of Rp 22.78 trillion, can be perceived as a substantive injustice. As if, one life sentence has "covered" or "negated" the corporal criminal consequences for the second major crime. In fact, from the point of view of Islamic morality and justice, the two crimes are separate entities and both require firm accountability. This comparison highlights the potential disharmony between the strict formal rules of positive law (Article 67 of the Criminal Code) and the broader demands for substantive justice in Islam.

Islamic criminal law emphasizes more on retributive justice, which is a commensurate retribution for the perpetrators of crimes. Meanwhile, Indonesia's criminal justice system tends to adopt a restorative justice approach, which

focuses on recovering losses for victims and perpetrators. In this context, the decision No. 49/PID. SUS. TPK/2021/PN. JKT may not be considered to fully reflect the principle of retributive justice in Islamic criminal law if the decision emphasizes more on the recovery of state losses than on giving appropriate punishment to the perpetrators.

Here the perpetrator of the Defendant Benny Tjokrosaputro has been legally and convincingly proven guilty of committing "Corruption (with aggravation) jointly and the Crime of Money Laundering" as regulated and criminally threatened in the First Primary Indictment Article 2 paragraph (1) jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption jo. Article 55 paragraph (1) 1 of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes jo Article 55 paragraph (1) 1 of the Criminal Code.

Sentenced the defendant Benny Tjokrosaputro to the death penalty. Charging the defendant to pay compensation of Rp5,733,250,247,731.00 (five trillion seven hundred and thirty-three billion two hundred and fifty million two hundred and forty seven thousand seven hundred and thirty-one Rupiah) with the provision that in the event that the defendant does not pay the compensation no later than 1 (one) month after the Court's decision obtains permanent legal force, his property can be confiscated

by the Prosecutor and auctioned to cover the replacement money.²⁷

However, in general, it can be said that there are some differences between the values of justice in Islamic criminal law and the Indonesian criminal justice system. Some of these differences include:²⁸

- 1) **Legal Source:** Islamic criminal law is sourced from the Quran and As-Sunnah, while Indonesia's criminal justice system is sourced from applicable laws and regulations.
- 2) **Principle of Justice:** Islamic criminal law emphasizes comprehensive justice, including justice in this world and the hereafter, while the Indonesian criminal justice system emphasizes more on worldly justice.
- 3) **Types of Punishment:** Islamic criminal law recognizes hudud (punishment that has been determined by Allah) and *ta'zir* (punishment not determined by Allah), while the Indonesian criminal justice system recognizes the main punishment and additional punishment.
- 4) **Proof:** Islamic criminal law has stricter proofs compared to the Indonesian criminal justice system.

Despite the differences, Indonesia's criminal justice system still recognizes the existence of customary law and religious law, including Islamic criminal law, as a source of law that can be applied in the settlement of certain criminal cases. However, there are verses in the Qur'an that generally discuss justice, law, and justice, which can be the basis for the development of a fair justice system in accordance with Islamic values. These verses emphasize the importance of justice in all aspects of life,

including in law and justice. Justice must be upheld regardless of social, religious, or racial status.

QS. An-Nahl (16:90):

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ
عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ
تَذَكَّرُونَ ﴿٩٠﴾

Indeed, Allah commands (you) to be just and to do good, to give to the relatives, and Allah forbids evil deeds, iniquity and enmity. He teaches you so that you can learn."

CONCLUSION

Basically, this study concludes that there is a significant difference between the perspective of Islamic criminal law in dealing with corruption crimes and the reality of court decisions in Indonesia, which is specifically illustrated through the null verdict in Decision Number 49/PID. SUS. TPK/2021/PN. JKT. An in-depth analysis of the principles of Islamic criminal law reveals that the concept of justice in this system has a comprehensive view, encompassing individual responsibility, the restoration of the rights of victims and communities, and the prevention of the recurrence of criminal acts. In the context of corruption, which in Islamic views is categorized as a major crime with devastating consequences for the social and economic order, the ideal punishment is one that is effective, proportionate, and provides a deterrent effect for perpetrators and other potential perpetrators.

Through this analysis, it can be concluded that massive corruption crimes such as the ASABRI case cause multidimensional *mafsada kabirah* (great damage), beyond just trillions of rupiah in financial losses. This damage also includes

²⁷ Hasanah, "Penjatuhan Vonis Nihil Dalam Tindak Pidana Korupsi (Studi Kasus Putusan No. 49/Pid. Sus-Tpk/2021/Pn Jkt. Pst)."

²⁸ Purwanto, Yedi, and Ridwan Fauzy, "Analisis Terhadap Hukum Islam Dan Hukum Positif Dalam Pemberantasan Korupsi Di Indonesia," *Jurnal Pendidikan Agama Islam* 15, no. 2 (2017): 27–40.

moral, social, and even threatening the basic pillars of life (*Maqashid as-Sharia*) such as the protection of property (*hifz al-mal*) and religion (*hifz ad-din*). In Islamic Criminal Law, every *mafsada* arising from a crime must be dealt with optimally for the achievement of the goals of sharia. The zero corporal punishment verdict for the ASABRI case, which is a separate and significant *mafsada*, has serious implications for the achievement of a comprehensive deterrent effect (*zajr*). This has the potential to send a signal that once a person receives the maximum corporal punishment, subsequent crimes will not add to the physical suffering in prison, which can weaken the power of the law (*zajr 'am*) in the eyes of the public

Therefore, a null verdict has the potential to ignore the fundamental dimensions of retributive and restorative justice in Islamic criminal law. Analysis of Decision Number 49/PID. SUS. TPK/2021/PN. JKT shows the potential incompatibility between the values of Islamic justice and the Indonesian criminal system in dealing with corruption, especially in terms of criminal accountability, prevention, and justice for victims and the wider community. This study highlights the potential inconsistency between the spirit of corruption eradication and decisions that do not provide significant criminal sanctions.

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