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Rethinking bribery offences in Indonesia's New Criminal Code: insights from Islamic law

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Abstract

This study critically evaluates the recodification of bribery offences in Law No. 1 of 2023 concerning the Criminal Code (the New Criminal Code) *vis-à-vis* Law No. 31 of 1999 *jo*. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (the Corruption Eradication Law) and core Islamic legal principles on *risywah*. Employing a normative-comparative method, textual analysis, and doctrinal review of *fiqh*, the research examines differences in offence elements, burdens and modes of proof, and penal objectives. The findings indicate that recodification streamlines the taxonomy of corruption offences but introduces an explicit requirement that losses to state finances or the national economy be verified—typically by state audit—which materially increases the technical evidentiary burden and may complicate prosecution despite severe penalties for serious conduct. Articles 605–606 preserve the active/passive distinction and broaden subjective proof by adopting a giver-perception criterion (in view of their authority), thereby extending the bases for establishing gratification. Comparative analysis shows normative consonance with Islamic law in protecting trust and justice, yet divergent instruments: positive law prioritizes criminal procedure and asset recovery, whereas Islamic law doctrine emphasizes categorical prohibition, moral restitution, and social sanctions. The study recommends strengthening forensic-audit capacity, clarifying subject definitions and evidentiary standards, and integrating

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restitution measures with values education to safeguard the effectiveness and legitimacy of anti-bribery enforcement in Indonesia.

Keywords: bribery; corruption prevention; Islamic law; New Criminal Code; *risywah*.

Introduction

Corruption remains a structural problem that undermines public governance, administrative effectiveness, and social justice.[1] Bribery—one of the most prevalent forms of corruption—is frequently disguised as gift-giving or as an expression of "gratitude," and may occur without the parties involved recognizing it as a corrupt practice.[2] This social normalization of bribery is deeply troubling and demands concerted legal and ethical responses from multiple stakeholders.[3]

In the context of national legal reform, Indonesia undertook a comprehensive codification of its criminal law through Law No. 1 of 2023 on the Criminal Code (the "New Criminal Code"), which replaces the Dutch colonial-era Penal Code that had governed the country since independence.[4] Normatively, the New Criminal Code reincorporates a range of corruption offences into the general codification framework, fundamentally restructuring the regulation and punishment of corruption and bribery.[5] This shift has generated significant scholarly and practical debate concerning substantive changes to the elements of the offences, the scope of legal subjects, and the severity of sanctions, with important implications for Indonesia's anti-corruption strategies.

More specifically, the New Criminal Code locates its bribery provisions in Articles 603–606. This reformulation displaces the normative framework previously provided by the Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Corruption Eradication Law) and alters both the constituent elements of the offences and the applicable sentencing ranges—including the legal characterization of bribe givers and bribe recipients, the treatment of gratuities,

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1 Héctor Flores Marquez et al., "Corruption and Extreme Wealth. Evidence at Country Level," *Cogent Social Sciences* 7, no. 1 (2021): 1910163, https://doi.org/10.1080/23311886.2021.1910163.

2 Rian Saputra et al., "Criminal Liability for Corruption of Bribery: Problems and Legal Reform," *Journal of Law and Legal Reform* 6, no. 4 (2025): 2089–2140, https://doi.org/10.15294/jllr.v6i4.22251.

3 Zico Junius Fernando et al., "Preventing Bribery in the Private Sector through Legal Reform Based on Pancasila," *Cogent Social Sciences* 8, no. 1 (2022): 2138906, https://doi.org/10.1080/23311886.2022.2138906.

4 Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, https://doi.org/10.1080/10383441.2023.2243772.

5 Dijan Widijowati, "The Crime of Corruption Codified in Law Number 1 of 2023," *Journal of Law and Sustainable Development* 11, no. 11 (2023): e1859, https://doi.org/10.55908/sdgs.v11i11.1859.

and conduct that constitutes abuse of authority.[6] These normative shifts require careful doctrinal and empirical analysis to determine whether they will weaken the regime's deterrent effect or, conversely, advance greater harmonization of the national criminal codification system in Indonesia.

In the perspective of Islamic law, bribery (*risywah*) is strictly prohibited and regarded as a major sin. *Risywah* denotes the giving or receiving of something to subvert the truth or to secure an unjust decision. Prophet Muhammad PBUH explicitly condemned bribe-givers, bribe-takers, and intermediaries.[7] This prohibition illustrates that, in both positive law and Islamic law, bribery is viewed as conduct that undermines justice, breaches trust, and elevates private interests above the truth.[8]

In line with this debate, a normative study by Muhamad Ghifari Fardhana Bahar et al. examined the incorporation of corruption offences into the New Criminal Code and found that Article 603 reduces the minimum penalty compared with Article 2 of the Corruption Eradication Law.[9] This finding raises concerns that the reform may diminish deterrence and conflict with Indonesia's stated commitment to eradicating corruption. The study therefore analyzes changes to the constituent elements of the offences and the consequences of punishment, and offers technical recommendations for law-enforcement interpretation to guard against any relaxation in enforcement.

Jagad Aditya Dewantara et al. argue that amendments to legal texts must be accompanied by corresponding reforms in prevention policy—including anti-corruption education and strengthened internal control systems—to ensure that statutory changes do not remain merely symbolic.[10] Muhammad Hasan Sebyar and Mualimin Mochammad Sahid report that anti-gratification initiatives at Islamic universities in Indonesia demonstrate how approaches grounded in Islamic values can cultivate an anti-corruption culture and

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[6] Sholahuddin Al-Fatih, Putri Shafarina Thahir, and Norhasliza binti Ghapa, "Codifying Anti-Corruption Law in Indonesia: A Legal Necessity for Harmonization," *Indonesian Journal of Criminal Law Studies* 10, no. 2 (2025): 379–416, https://doi.org/10.15294/ijcls.v10i2.22766; Wendy Assanti and Hendry Noor, "Debating Expert Authority in Corruption Cases: The Challenge of Interpreting State Financial Losses Under the 2023 Indonesian Criminal Code," *Padjadjaran Jurnal Ilmu Hukum* 12, no. 3 (2025): 331–51, https://doi.org/10.22304/2442-9325.1351.

[7] Abu Isma'il Muslim Al-Atsari, "Suap, Mengundang Laknat," Almanhaj, July 7, 2017, https://almanhaj.or.id/7004-suap-mengundang-laknat.html. Accessed on November 11, 2025.

[8] I Made Yunita, Anak Agung Putu Sugiantiningsih, and Mohammad Hidayaturrahman, "The Vote Buying among Madurese Muslim; Islamic Law Standpoint," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024): 444–69, https://doi.org/10.19105/al-lhkam.v19i2.13025.

[9] Muhamad Ghifari Fardhana Bahar, Sendy Pratama Firdaus, and Hanny Hilmia Fairuza, "Paradigm of Recodification of Corruption in Criminal Code Against Its Designation as Extraordinary Crime," *Arena Hukum* 17, no. 3 (2024): 694–713, https://doi.org/10.21776/ub.arenahukum2024.01703.10.

[10] Jagad Aditya Dewantara et al., "Anti-Corruption Education as an Effort to Form Students with Character Humanist and Law-Compliant," *Jurnal Civics: Media Kajian Kewarganegaraan* 18, no. 1 (2021): 70–81, https://doi.org/10.21831/jc.v18i1.38432.

enhance the ethical competitiveness of younger cohorts.[11] In an empirical study on the relationship between bureaucratic reform and corruption eradication, Dewi Asri Yustia and Firdaus Arifin show that bureaucratic improvements can strengthen public service delivery, raise public awareness, and support prevention efforts.[12] Contemporary *fiqh* scholarship research by Nurhaliza Oktaviani Z and Zubair outlines scholarly arguments and consensus concerning the prohibition of bribery, the scope of culpability for givers, recipients, and intermediaries, and the role of moral and social sanctions as normative benchmarks.[13]

Despite widespread criticism of the reduction in criminal penalties under Article 603 of the New Criminal Code, much of the existing literature remains formalistic, focusing primarily on penalty levels or confined to doctrinal legal commentary. Such studies often lack integration between substantive analyses of the New Criminal Code's elements and the principles of Islamic law on bribery, and they do not systematically assess the implications of the new norms for law-enforcement practices in areas such as prosecution, evidentiary standards, and sentencing from a comparative perspective.

The novelty of the present research lies in its structured, incisive normative-comparative approach, which juxtaposes the formulation of Articles 603–606 of the New Criminal Code with the provisions of the former Corruption Eradication Law and then evaluates these provisions against Islamic legal principles on bribery (*risywah*). This study goes beyond a mere comparison of elements and sanctions to assess the alignment of the reformed provisions with the traditional objectives of punishment—namely, retributive, preventive, and restitutive aims,[14] and formulates recommendations grounded in Islamic legal theory and public policy that may bridge modern criminal codification with Islamic ethical values in the Indonesian context.

This study is guided by several interrelated research questions. It examines the substantive differences between the definition of bribery in the New Criminal Code and the provisions previously contained in the Corruption Eradication Law. It further explores the implications of changes in the elements and criminal penalties for the effectiveness of law enforcement against bribery, including practices related to prosecution, evidentiary standards, and sentencing. The research also assesses the extent to which the provisions of the

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[11] Muhamad Hasan Sebyar and Mualimin Mochammad Sahid, "Contemporary Anti-Gratification Frameworks in State Islamic Religious Colleges: Strategic Pathways for Building a Competitive Civilization," *Nusantara: Journal of Law Studies* 3, no. 2 (2024): 81–115.

[12] Dewi Asri Yustia and Firdaus Arifin, "Bureaucratic Reform as an Effort to Prevent Corruption in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2166196, https://doi.org/10.1080/23311886.2023.2166196.

[13] Nurhaliza Oktaviani Z and Zubair Zubair, "Reconstructing the Qur'anic Concept of Corruption: Amin Al-Khulli's Semantic Approach to Ghulūl, Risywah, and Suht," *Jurnal Ushuluddin* 33, no. 2 (2025): 355–69, https://doi.org/10.24014/jush.v33i2.38138.

[14] Elena Maculan and Alicia Gil Gil, "The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts," *Oxford Journal of Legal Studies* 40, no. 1 (2020): 132–57, https://doi.org/10.1093/ojls/gqz033.

New Criminal Code align with or diverge from Islamic legal principles on bribery (*risywah*) in terms of substantive norms and the objectives of criminal punishment. Finally, it considers what normative and implementative recommendations—such as judicial interpretation, prosecution guidelines, or policy revisions—are necessary to ensure that the eradication of bribery remains attainable within the framework of the New Criminal Code.

Accordingly, the objectives of this study are fourfold. *First*, it aims to identify and analyze differences in the constituent elements of the offence and the sanctions imposed by the New Criminal Code compared with the provisions of the Corruption Eradication Law. *Second*, it seeks to assess the implications of these differences for enforcement strategies and the overall effectiveness of measures to prevent bribery. *Third*, it engages in a comparative analysis of Islamic legal values and rules on bribery with the New Criminal Code's provisions to evaluate their normative suitability in light of traditional objectives of punishment, and formulates policy recommendations and normative interpretations that strengthen the harmonization between modern criminal codification and efforts to eradicate corruption in Indonesia.

Methods

This study is a normative-legal inquiry that combines conceptual (doctrinal) and comparative approaches. The conceptual approach describes and clarifies key concepts—bribery, *risywah*, gratuities, public officials, constituent elements of offences, and the purposes of punishment—within the relevant criminal-law theoretical framework.[15] The comparative approach examines the formulation and function of norms in national positive law and Islamic law, with primary focus on Articles 603–606 of the New Criminal Code and the parallel provisions of the Corruption Eradication Law.[16] Methodologically, the study interrogates the functional compatibility among statutory formulation, the objectives of criminalization, and principles of corruption prevention, and assesses the implications of these relationships for enforcement practice at both judicial and prosecutorial levels.

The research draws on primary and secondary legal materials. Primary sources comprise statutory texts and official doctrine—principally Law No. 1 of 2023 (New Criminal Code) and Law No. 31 of 1999 jo. Law No. 20 of 2001 (Corruption Eradication Law)—together with implementing regulations and judicial decisions that interpret bribery elements. Secondary materials include peer-reviewed scholarship, criminal-law and criminology treatises, classical and contemporary *fiqh* literature on bribery, and expert commentary on normative values and *maqāsid al-sharī'ah* (objective of Islamic law). Data were collected through a literature review prioritizing official primary sources and a critical appraisal of secondary literature to complete the normative picture.

[15] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cet. 13 (Jakarta: Kencana, 2017), 195.
[16] Marzuki, 173.

Analysis employed qualitative normative-comparative methods: textual interpretation to capture statutory meaning, systematic interpretation to assess inter-norm relations, and comparative evaluation against Islamic legal sources to test alignment with criminal-law objectives. The study's validity is reinforced through source and method triangulation, and conclusions are derived by normative synthesis that links textual findings to practicable policy recommendations and interpretive guidance for law enforcement in Indonesia.[17]

Results and Discussion

Textual analysis and elements of bribery in the New Criminal Code

This analysis concentrates on Articles 603–606 of the New Criminal Code and on their relationship to the mapping provision in Article 622(4) of the same Code, which transfers references from the Corruption Eradication Law to corresponding articles in the new codification: Article 2 of the Corruption Eradication Law is mapped to Article 603; Article 3 is mapped to Article 604; Article 5 is mapped to Article 605; and Articles 11 and 13 are mapped to Article 606. Because this mapping effects a direct transfer of normative references, each element of the offence must be read and interpreted against the backdrop of that transfer to discern both continuity and substantive divergence between the two normative frameworks in Indonesia.

Article 603 of the New Criminal Code criminalizes "illicit enrichment" and is structured around four constituent elements:

1. the enrichment of oneself, another person, or a legal entity;
2. that the enrichment is carried out unlawfully;
3. that the enrichment results in loss to state finances or the national economy; and
4. that the conduct is punishable by life imprisonment or by imprisonment of 2–20 years and a fine in categories II–VI.[18]

The article's commentary specifies that losses to state finances are to be determined on the basis of an audit conducted by the state audit institution, so that the causal link between the enrichment and state loss is effectively contingent on the audit findings.

Two immediate interpretive issues arise. *First*, it is unclear whether the term "unlawfully" functions as a sufficient *mens rea* requirement, or whether prosecutions may proceed in cases of apparent enrichment absent direct evidence of intent; this raises questions about defendant culpability and

[17] Márcio Moutinho Abdalla et al., "Quality in Qualitative Organizational Research: Types of Triangulation as a Methodological Alternative," *Administração: Ensino e Pesquisa* 19, no. 1 (2018): 66–98, https://doi.org/10.13058/raep.2018.v19n1.578.

[18] See Article 79 of the New Criminal Code. Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023.

appropriate charge drafting.[19] *Second*, the statute's reliance on audit outcomes shifts the burden of technical and causal proof toward the forensic-audit process, obliging prosecutors to demonstrate a clear nexus between audit findings and the defendant's conduct and mental state to satisfy the criminal standard of proof.[20] Both issues have significant implications for evidentiary strategy, prosecutorial practice, and the allocation of forensic resources under the New Criminal Code in Indonesia.

Article 604 criminalizes abuse of authority, requiring that the act be committed "with the intention of benefiting oneself, another person, or a corporation" by misusing authority, opportunity, or means attendant to one's position or status, and thereby causing loss to state finances or the national economy. The statutory penalty is equivalent to that prescribed in Article 603.[21] The offence hinges on a specific-intent requirement, an intent to obtain an improper benefit, which distinguishes criminal misuse from mere negligence or administrative error.[22]

Forensically, the specific-intent element may be easier to prove where there is evidence of motive or a transactional flow that yields profit (for example, payment trails, irregular contract awards, or transfers to related parties), yet establishing what amounts to "misuse" requires detailed standards of proof and careful contextual analysis.[23] Investigators and prosecutors will need documentary evidence, internal directives, contemporaneous communications, and financial records that demonstrate deviation from official functions, together with forensic accounting to link conduct to illicit benefit.[24] These evidentiary demands affect investigative resourcing, charge framing, and prosecutorial strategy under the New Criminal Code in Indonesia.

Article 605 distinguishes active (giver) and passive (recipient) forms of bribery. Paragraph (1)(a) criminalizes giving or promising something so that a civil servant or state official acts or fails to act contrary to their duties, while paragraph (1)(b) criminalizes giving something that is connected to conduct contrary to those duties. The giver faces imprisonment of 1–5 years and fines in categories III–V, while the recipient faces imprisonment of 1–6 years. Article 606

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

[20] Jawade Hafidz et al., "The Corruption Reduction with an Administrative Law Approach: Evidence from Australia," *Journal of Human Rights, Culture and Legal System* 4, no. 3 (2024): 822–41, https://doi.org/10.53955/jhcls.v4i3.396.

[21] Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."

[22] Tri Indriati, Nurfatiha Rizkiah, and Muh Nur Mazrur Mazhar, "Recodification of Corruption Crime Provisions in the National Criminal Code," *Integritas: Jurnal Antikorupsi* 10, no. 2 (2025): 239–48, https://doi.org/10.32697/integritas.v10i2.1152.

[23] Kharismadohan, "Mens Rea and State Loses on Corruption Cases: An Analysis of Corruption Court Judgment of Semarang."

[24] Jefferson Hakim, "Challenging The Investigator's Investigation Termination Authority Without Public Prosecutor's Approval," *Arena Hukum* 17, no. 1 (2024): 171–89, https://doi.org/10.21776/ub.arenahukum.2024.01701.10.

criminalizes the giving or receiving of gifts or promises made in consideration of the power or authority attached to a position: the giver faces a maximum term of 3 years' imprisonment and the recipient a maximum of 4 years.[25]

A comparison of the two provisions reveals divergent *mens rea* and proof patterns: Article 605 requires a causal nexus between the bribe and a breach of duty, whereas Article 606 focuses on the objective or subjective condition of "taking advantage of power," thereby capturing potentially corruptive gratuities even in the absence of evidence that a duty was breached. Both provisions leave interpretive space between lawful gifts and unlawful gratification. The central evidentiary challenge is demonstrating compensatory intent or a *quid pro quo*,[26] typically through transactional patterns, contemporaneous communications, documentary directives, or other circumstantial and direct evidence required to establish criminal liability under the New Criminal Code in Indonesia.[27]

A textual analysis of Articles 603–606 indicates a clear effort to integrate corruption offences into the general structure of the Criminal Code while introducing several substantive refinements: a requirement that "financial/economic loss" be verified, the formal separation of bribery into active (giver) and passive (recipient) categories, and distinct treatment of gifts tied to positional power. These editorial changes carry important consequences for enforcement, including greater reliance on audit evidence and causal proof for core offences, divergent burdens and modes of proof where some offences hinge on specific intent while others assess the giver's perception, and an urgent need to delineate the boundary between legitimate gifts and prohibited gratification to avoid arbitrary or inconsistent application under the New Criminal Code in Indonesia.[28]

Comparison of formulations and functions of norms in the New Criminal Code and the Corruption Eradication Law

Law No. 31 of 1999, as amended by Law No. 20 of 2001 (the Corruption Eradication Law), classifies core corruption offences to include causing state losses, bribery, gratification, conflicts of interest in procurement, extortion, fraud, and embezzlement in office. Normatively, provisions addressing bribery are dispersed across Article 5(1)(a)–(b), Article 6(1)–(2), Article 11, Article 12(a)–(d), and Article 13, producing a relatively detailed regulatory scheme that specifies the relevant subjects and objects, *mens rea* elements, and tailored sanctions for distinct forms of bribery. This statutory architecture, with its

[25] Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."

[26] Jed Lewinsohn, "Paid on Both Sides: Quid Pro Quo Exchange and the Doctrine of Consideration," *Yale Law Journal* 129, no. 3 (2020): 690–772, https://yalelawjournal.org/article/paid-on-both-sides.

[27] Saputra et al., "Criminal Liability for Corruption of Bribery: Problems and Legal Reform."

[28] Alva Supit, Billy Lau, and Patrick Cheng, "Tolerance to Gratification as a Proxy for Corruption: Comparison between Indonesia and Hong Kong," *Integritas: Jurnal Antikorupsi* 9, no. 2 (2023): 147–56, https://doi.org/10.32697/integritas.v9i2.914.

distributed placement of bribery norms, facilitates nuanced treatment of different corrupt acts but also requires careful interpretive coordination to ensure coherence and consistent enforcement in Indonesia.[29]

Studies of the Corruption Eradication Law identify several characteristic features of bribery offences. These include the concurrence of intent between giver and recipient; a *mens rea* requirement of willful or deliberate wrongdoing;[30] an object typically consisting of a gift or a promise; an open category of givers (any person) contrasted with a closed category of recipients limited to public officials (for example, civil servants, judges, or lawyers);[31] a causal or functional nexus between the gratification and the recipient's official position; the absence of any statutory reversal of the burden of proof;[32] and the proven effectiveness of sting operations (*operasi tangkap tangan*, OTT) as an enforcement technique.[33]

Articles 11 and 12 of the Corruption Eradication Law articulate the core evidentiary elements for proving bribery: (a) the identity of the recipient (public officials and certain selected professions, such as judges or lawyers); (b) receipt of a gift or a promise; (c) the recipient's knowledge or a "reasonable suspicion" that the gift or promise was given in light of the power or authority attached to the office; and (d) a causal nexus between the gift or promise and conduct that contravenes official duties. Article 11 prescribes relatively moderate sanctions (typically 1–5 years' imprisonment and/or a monetary fine), whereas Article 12 (in certain subsections) imposes substantially heavier penalties—4–20 years' imprisonment, and, in aggravated cases affecting judges, lawyers, or acts producing significant state losses, life imprisonment—reflecting the legislature's intent to penalize bribery more severely where it gravely undermines judicial integrity or public service delivery.[34]

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[29] Kharismadohan, "Mens Rea and State Loses on Corruption Cases: An Analysis of Corruption Court Judgment of Semarang"; Gunawan Tauda, Ni'matul Huda, and Andy Omara, "Theoretical Reconstruction of the 'Existence of the Indonesian Corruption Eradication Commission and Its Comparison to Other Anti-Corruption Agencies in Asia," *Padjajaran Jurnal Ilmu Hukum* 10, no. 2 (2023): 172–93, https://doi.org/10.22304/pjih.v10n2.a2.

[30] Kharismadohan, "Mens Rea and State Loses on Corruption Cases: An Analysis of Corruption Court Judgment of Semarang."

[31] Muhammad Reza Baihaki, "Assessment of Elements of Abuse of Authority (Detournement De Pouvoir) Based on the Decision of the Constitutional Court," *Jurnal Konstitusi* 20, no. 1 (2023): 100–122, https://doi.org/10.31078/jk2016.

[32] Ahmad Hadi Prayitno et al., "Reversed Burden of Proof in the Procedural Law of Corruption Cases: A Normative Study of Justice and Legal Certainty in Positive and Islamic Law," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 1 (2025): 376–91, https://doi.org/10.29300/mzn.v12i1.8182.

[33] Hwian Christianto, "From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia," *Padjajaran Jurnal Ilmu Hukum* 7, no. 3 (2020): 421–42, https://doi.org/10.22304/pjih.v7n3.a7.

[34] Supit, Lau, and Cheng, "Tolerance to Gratification as a Proxy for Corruption: Comparison between Indonesia and Hong Kong"; Sebyar and Sahid, "Contemporary Anti-Gratification Frameworks in State Islamic Religious Colleges: Strategic Pathways for Building a Competitive Civilization."

The Corruption Eradication Law does not define the term "civil servant" within its text. Accordingly, practitioners commonly rely on Law No. 28 of 1999 concerning a State Administration Free from Corruption, Collusion, and Nepotism (the "KKN Law") for definitional guidance. Under that statute, the category of civil servants encompasses (inter alia) career civil-service employees, persons remunerated from state or regional budgets, and individuals employed by corporations that receive state support or make use of state facilities. The concept of "state administrators" is correspondingly broad and functional, covering high-ranking officeholders such as ministers, governors, judges, law-enforcement officials, leaders of state-owned or regionally owned enterprises, heads of higher-education institutions, and echelon-1 officials.[35] This expansive formulation ensures that the Corruption Eradication Law can reach a wide array of public actors who are vulnerable to corruption, collusion, and nepotism in Indonesia.[36]

Procedurally, the Corruption Eradication Law places the burden of proof squarely on the public prosecutor and contains no mechanism for reversing that burden. Consequently, prosecutors must prove that gifts or promises are causally related to the recipient's official position.[37] Empirical evidence indicates that sting operations (OTT) are an especially effective means for Corruption Eradication Commission (KPK) and other law-enforcement bodies to obtain direct evidence of bribery, and a substantial share of successfully prosecuted bribery cases derive from OTTs.[38]

The balance between protecting the rights of the accused and securing probative, admissible evidence is therefore central to the preventive function of the law. Clear substantive provisions must be matched by robust enforcement techniques—controlled operations, rigorous forensic investigation, strict chain-of-custody procedures, and careful evidentiary framing—to generate a genuine deterrent effect without compromising fair-trial guarantees.[39] Strengthening prosecutorial guidance on how to link gifts to official acts, clarifying the evidentiary weight of forensic audits, and investing in training and resources for forensic accounting and controlled operations will help preserve deterrence while upholding procedural fairness in Indonesia.[40]

Compared with the Corruption Eradication Law's detailed and dispersed architecture, Articles 603–606 of the New Criminal Code reconceptualize

[35] Suteki Suteki et al., "Community Engagement in Eradicating Corruption: Evaluating the Effectiveness and Reward Models for Whistleblowers As a Regional Strategy," *Indonesian Journal of Legal Community Engagement* 8, no. 1 (2025): 23–92, https://doi.org/10.15294/jphi.v8i1.20440.

[36] Yustia and Arifin, "Bureaucratic Reform as an Effort to Prevent Corruption in Indonesia."

[37] Hakim, "Challenging The Investigator's Investigation Termination Authority Without Public Prosecutor's Approval."

[38] Christianto, "From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia."

[39] Arief Patramijaya, "Criminal Legal Protection for Bona Fide Third Parties Over Assets in Corruption and Money Laundering Cases," *Sriwijaya Law Review* 8, no. 1 (2024): 171–82, https://doi.org/10.28946/slrev.Vol8.Iss1.2159.pp171-182.

[40] Widijowati, "The Crime of Corruption Codified in Law Number 1 of 2023."

bribery offences within the Code's general penal framework while preserving normative continuity through transitional mapping provisions.[41] A salient functional change is the shift in subject terminology from "civil servant" or "state administrator" to the consolidated term "official,"[42] as reflected in Law No. 1 of 2026 concerning Criminal Adjustment (the Criminal Adjustment Law) and the formulation of Article 154 (and relatedly Article 614) of the New Criminal Code.[43] This change systematises and potentially broadens the scope of persons captured by the bribery offences.

This transition has two principal consequences. *First*, terminological harmonization facilitates coherent reading and application of norms across the Criminal Code, reducing fragmentation in statutory language. *Second*, the broader, consolidated label creates potential uncertainty about who qualifies as an "official" in practice. Accordingly, implementing regulations and transitional guidance must provide precise definitional and interpretive rules to avoid gaps or inadvertent exclusions in enforcement. Clear cross-referencing to existing definitional sources and explicit treatment of categories (e.g., elected officials, remunerated appointees, state-owned-enterprise managers) will be essential to preserve legal certainty and enforcement effectiveness under the New Code in Indonesia.

Table 1. Bribery in the New Criminal Code and the Corruption Eradication Law

Aspect	New Criminal Code	Corruption Eradication Law
Subject scope	Centralised terminology: "official" (definition cross-referenced to Articles 154 and 614 of the Code); consolidates subject categories.	Specific formulation: "civil servant" or "state administrator"; relies on external definitional sources (KKN Law) for scope.
Core offence (ilicit enrichment)	Article 603: unlawful enrichment causing verified financial/economic loss (loss typically established by state audit); penalties: life imprisonment or 2–20 years and fines (categories II–VI).	Article 2: unlawful enrichment of oneself/others/corporations (focus on enrichment); penalty framework under the Corruption Eradication Law (varies by provision).
Abuse of function or authority	Article 604: abuse of authority committed "for the purpose of gaining advantage" (specific-intent requirement); penalty framework aligned with Article 603.	Article 3: abuse of function for the purpose of gaining advantage (similar substantive focus on intent).

[41] Fernando et al., "Preventing Bribery in the Private Sector through Legal Reform Based on Pancasila"; Widijowati, "The Crime of Corruption Codified in Law Number 1 of 2023."

[42] Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."

[43] Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2026 Tentang Penyesuaian Pidana," 2026.

Active or passive bribery and gratuities	Articles 605–606: distinguishes active (giver) and passive (recipient) bribery; Article 605: giver 1–5 years (fines cat. III–V), recipient 1–6 years; Article 606: giver up to 3 years, recipient up to 4 years; captures gifts tied to positional power.	Articles 5, 6, 11–13: distributed provisions regulating givers and recipients, variations of bribery, and gratuities; more granular treatment of subjects, mens rea, and aggravated cases.
Burden and mode of proof	Increased reliance on audited financial loss and causal proof for core offences; the "in view of power" formulation permits use of evidence showing the giver's perception/intent.	Burden remains with the prosecutor (no reversal); statutory elements include "knowledge"/"reasonable suspicion" to establish link to office.
Criminal penalties	Articles 603–604: life or 2–20 years; Article 605: 1–6 years (depending on role); Article 606: up to 3–4 years (giver/recipient distinctions); fines by category.	Article 12 (certain subsections): 4–20 years or life in aggravated cases; Article 11: typically 1–5 years; penalties calibrated to offence type and gravity.
Enforcement techniques	Requires integration of audited financial evidence, causal analysis linking enrichment/bribery to state loss, and proof of intent—increasing reliance on forensic accounting, audit reports, and expert causation testimony.	Emphasises operational techniques such as OTT and other sources of direct evidence; clear subject definitions and controlled operations support investigatory effectiveness for the KPK.

Source: processed by the author from various sources.

The table above synthesizes the substantive and functional divergences between the New Criminal Code and the Corruption Eradication Law in their treatment of bribery. The most salient differences concern the framing of loss—where the New Criminal Code foregrounds verified financial/economic loss (typically established by audit)—the consolidation of subject terminology into the single category "official," and the resulting technical consequences for evidence: the New Criminal Code increases reliance on audit reports and causation analysis, whereas the Corruption Eradication Law places greater evidentiary weight on transactional proof and controlled operations (OTT). Although nominal penalty ranges appear broadly comparable, these normative and procedural reconfigurations are likely to reshape prosecutorial strategy, evidentiary priorities, and charge-drafting in court. These shifts carry practical implications for preserving deterrence and ensuring consistent enforcement. Implementing regulations and prosecutorial guidance should clarify the definition of "official," specify the evidentiary standards and probative weight

to be accorded to audit findings, and set out protocols for linking audit results to criminal culpability.[44]

The analysis confirms that the Corruption Eradication Law provides a detailed, practice-tested regulatory architecture, dispersed provisions that define subjects, mens rea, and tailored sanctions, and reinforces enforcement through operational techniques such as OTT. By contrast, the New Criminal Code seeks to subsume corruption offences within a single, coherent penal framework, introducing terminological harmonization and certain substantive refinements while simplifying the normative placement of bribery offences. These changes yield the benefit of greater doctrinal coherence but also reframe evidentiary emphases (notably by foregrounding verified financial/economic loss and audit evidence) and alter the modes by which prosecutors must establish culpability.[45] Complementary measures—strengthening forensic-accounting capacity, issuing prosecution and investigation protocols for linking audits to *mens rea*, and enhancing training for controlled operations and evidentiary framing—are necessary to preserve deterrence and consistent enforcement under the new codified framework in Indonesia.

Legal implications for law enforcement practices

Changes in the New Criminal Code's wording reorient law-enforcement duties and priorities from investigation through trial. Police and specialised investigators will continue to gather preliminary and transactional evidence, but the Code's emphasis on losses verified by audits requires closer operational coordination with the state audit body, Supreme Audit Agency (BPK), and, for high-profile or systemic cases, with the anti-corruption agency, Corruption Eradication Commission (KPK).[46] The prosecuting authority, Attorney General's Office, should adopt internal standards for when audit findings suffice to establish causation of state loss and ensure the availability of forensic-financial experts as technical witnesses.[47] Trial judges, including those at the highest

[44] Hafidz et al., "The Corruption Reduction with an Administrative Law Approach: Evidence from Australia"; Oksidelfa Yanto Yanto et al., "The Light Judgment Decision in the Case of Corruption: The Implications for the Sense of Public Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2020): 1–16, https://doi.org/10.29303/ius.v8i1.694.

[45] Muhamad Abas, Danang Irwanto, and Sartika Dewi, "The Role of the Karawang District Prosecutor's Office in Preventive Efforts to Combating Corruption in Karawang Regency," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 3076–92, https://doi.org/10.31941/pj.v24i2.6223.

[46] Tauda, Huda, and Omara, "Theoretical Reconstruction of the 'Existence of the Indonesian Corruption Eradication Commission and Its Comparison to Other Anti-Corruption Agencies in Asia"; Bahar, Firdaus, and Fairuza, "Paradigm of Recodification of Corruption in Criminal Code Against Its Designation as Extraordinary Crime."

[47] Silpia Rosalina, Ellydar Chaidir, and Erdianto, "Prosecutor's Authority in Investigating Corruption Crimes Law Number 1 of 2023 Comes Into Force," *Law and Humanities Quarterly Reviews* 3, no. 1 (2024): 141–48, https://doi.org/10.31014/aior.1996.03.01.110.

level, Supreme Court, will require guidance for weighing audit reports against traditional transactional evidence.[48]

The standard and modes of proof have accordingly shifted. Beyond circumstantial OTT results and transactional records (accounts, waybills, contracts), Article 603 elevates audit evidence as a central probative element for core offences; investigators and prosecutors must therefore combine conventional investigative techniques with forensic auditing, benefit-chain analysis, and specialised financial-intelligence work.[49] Proving mens rea under Articles 604–605 still depends on demonstrating motive and a nexus between the gift and the contested act, through benefit flows, contemporaneous communications, and reliable witnesses.[50] Whereas Article 606's "in view of power" formulation admits evidentiary reliance on the giver's perception, adding a contextual, subjective dimension for judicial assessment.[51]

These evidentiary and technical demands underscore the need for international cooperation and institutional adaptation. Cross-border cases will require robust mutual legal assistance, financial-intelligence sharing, and capacity building—targeted training in forensic auditing, forensic accounting, and data analytics from international partners.[52] Domestic reforms should include joint guidelines for investigators, auditors, and prosecutors, formalised protocols for linking audit findings to culpability, and sustained upskilling of law-enforcement personnel so that codification yields stronger, appeal-resilient convictions rather than weakened enforcement.[53]

Normative comparison with Islamic law

In Islamic legal tradition, bribery (*risywah*) is unequivocally condemned as a grave moral and religious transgression because it betrays trust, subverts justice, and violates the rights of others. Core authoritative materials—notably the Qur'an and the prophetic hadith corpus—contain sustained censure of acquiring wealth by illegitimate means and of officials who accept bribes. For example, verses that mention the behavior of judges who accept bribes and verses that prohibit taking wealth unjustly are the main normative references.

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48 Patramijaya, "Criminal Legal Protection for Bona Fide Third Parties Over Assets in Corruption and Money Laundering Cases."

49 Widijowati, "The Crime of Corruption Codified in Law Number 1 of 2023"; Indriati, Rizkiah, and Mazhar, "Recodification of Corruption Crime Provisions in the National Criminal Code."

50 Assanti and Noor, "Debating Expert Authority in Corruption Cases: The Challenge of Interpreting State Financial Losses Under the 2023 Indonesian Criminal Code"; Lewinsohn, "Paid on Both Sides: Quid Pro Quo Exchange and the Doctrine of Consideration."

51 Bahar, Firdaus, and Fairuza, "Paradigm of Recodification of Corruption in Criminal Code Against Its Designation as Extraordinary Crime."

52 Muhammad Yudha Prawira and Fatra Alamsyah, "The Implementation of Mutual Legal Assistance between Indonesia and Switzerland Regarding Asset Recovery," *Indonesian Comparative Law Review* 5, no. 2 (2023): 58–74, https://doi.org/10.18196/iclr.v5i2.17435.

53 Santiago Basabe-Serrano, "The Judges' Academic Background as Determinant of the Quality of Judicial Decisions in Latin American Supreme Courts," *Justice System Journal* 40, no. 2 (2019): 110–25, https://doi.org/10.1080/0098261X.2019.1613201.

As quoted from the following verses of the Qur'an, Surah (QS) al-Ma'idah, al-Baqarah, and al-Nisa:[54]

> "*They (the Jews) love to listen to lies and consume unlawful food...*" (QS. al-Ma'idah [5]: 42).
>
> "*And do not consume one another's wealth unjustly, nor bring it before the judges with the intention of consuming some of the wealth of others through sin, while you know.*" (QS. al-Baqarah [2]: 188).
>
> "*O you who believe, do not consume one another's wealth unjustly, except in a manner that is mutually agreed upon among you. Do not kill yourselves. Indeed, Allah is Most Merciful to you.*" (QS. al-Nisa [4]: 29).

In addition to the verses that prohibit taking property unjustly, a number of hadiths narrated in major collections, including *Musnad Ahmad Ibn Hanbal*, *Sunan Ibn Majah*, *Sunan Abu Dawud*, and *Jami' al-Tirmidzi*, contain threats of damnation against the giver, the recipient, and (in other texts) the intermediary. As in the following quotations from hadith narrations (HR):

> "*...from Abdullah bin 'Amr, he said: The Messenger of Allah, peace and blessings be upon him, said: 'May Allah curse the giver of bribes and the receiver of bribes.'*" (HR. Ahmad, no. 6984; and Ibn Majah, no. 2313).
>
> "*...from Abdullah bin 'Amr, he said: 'The Messenger of Allah, peace and blessings be upon him, cursed the giver of bribes and the receiver of bribes.'*" (HR. Ahmad, no. 6532, 6778, 6830; Abu Dawud, no. 3582; Tirmidzi, no. 1337 ; and Ibn Hibban, no. 5077).
>
> "*...from Tsauban, he said: 'The Messenger of Allah, peace and blessings be upon him, cursed the giver of bribes, the receiver of bribes, and the intermediary, that is, the person who connects the two.'*" (HR. Ahmad, no. 22452; and Ibn Abi Syaibah, no. 21965).

These hadiths reinforce the moral and theological status of bribery or risywah as a sin that must be dealt with, rather than merely an administrative violation.[55]

Classical *mufassir* (exegetes) and scholars formulated conceptual definitions of bribery to clarify its scope. In classical exegesis, as explained in *Ibn Katsir's Tafsir* on QS al-Baqarah verse 188, it is narrated by Ali Ibn Abi Talhah from Ibn Abbas that the verse refers to someone who has property without witnesses. He then denied the property and sued for it before the authorities, even though he was aware that the property was not his right and that his actions constituted a sin because he was consuming something that was forbidden. A similar interpretation was also narrated from Mujahid, Sa'id Ibn

[54] Z and Zubair, "Reconstructing the Qur'anic Concept of Corruption: Amin Al-Khulli's Semantic Approach to Ghulūl, Risywah, and Suht."

[55] Yunita, Putu Sugiantiningsih, and Hidayaturrahman, "The Vote Buying among Madurese Muslim; Islamic Law Standpoint"; Al-Atsari, "Suap, Mengundang Laknat."

Jubair, Ikrimah, Hasan al-Bashri, Qatadah, al-Suddi, Muqtil Ibn Hayyan, and Abdur Rahman Ibn Zaid bin Aslam. They emphasized:[56]

> *"Do not dispute while you know that you are in a state of injustice."* (Translated).

Linguistic scholars and classical historians emphasize that the labels "gift" or "alms" do not change the essence if the motive and consequence of the gift is to obstruct the truth or uphold falsehood. Thus, the definition of *fiqh* emphasizes the intention of the giver and the moral and legal consequences (false or right). For example, the explanation of the term *risywah* by al-Fayyumi and Ibn al Atsir:[57]

> *"Al-Fayyumi Rahimahullah (RA) said: 'Risywah (bribe) is something given by a person to a judge or others, so that the judge will rule in their favor, or so that the judge will direct the law according to the wishes of the giver of the risywah'."* (Translated).
>
> *"Ibn al-Atsir, may Allah have mercy on him, said: 'Risywah (bribery) is something that connects to a need through persuasion.'"* (Translated).

In the development of contemporary Islamic law, studies on the legal and ethical aspects of corruption in general confirm several practical implications, including:[58]

1. the scope of the subject is not limited to judges or formal civil servants, but extends to anyone who holds public trust or a position that can affect the rights of others;
2. the obligation of restitution for unlawfully obtained property becomes a normative requirement;
3. sanctions are not only worldly punishments (*ta'zīr*) but also moral-social sanctions, including ridicule or dishonor and the obligation of repentance and restitution of rights.

These views are reflected in contemporary fatwas and writings that emphasize the need for cultural prevention, education, and moral suasion in addition to penal punishment. Contemporary studies also emphasize that there is no justification for simply changing the label of a gift or expression of gratitude if the reality of the intention and consequence is bribery.[59]

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[56] Abdullah bin Muhammad bin Abdurahman bin Ishaq Al-Sheikh, *Tafsir Ibnu Katsir Jilid 1*, ed. M. Yusuf Harun et al., trans. M. Abdul Ghoffar, Cet. 5 (Bogor: Pustaka Imam asy-Syafi'i, 2005), 362.

[57] Al-Atsari, "Suap, Mengundang Laknat."

[58] Yunita, Putu Sugiantiningsih, and Hidayaturrahman, "The Vote Buying among Madurese Muslim; Islamic Law Standpoint"; Liantha Adam Nasution et al., "Pardon for Corruptors: An Examination of Repentance and Restitution in Islamic Criminal Law," *JUSTISI* 11, no. 3 (2025): 719–31, https://doi.org/10.33506/js.v11i3.4365.

[59] Zulfahmi Zulfahmi et al., "Criminal Sanctions for Extortionists in the Perspective of Positive Law and Islamic Criminal Law: A Comparative Analysis," *Al-Rasikh: Jurnal Hukum Islam* 14, no. 1 (2025): 1–16, https://doi.org/10.38073/rasikh.v14i1.1978.

Comparing the objectives of the New Criminal Code and the Corruption Eradication Law with the Islamic legal framework reveals a substantial normative convergence. Within Islamic jurisprudence, the protection of justice (*hifz al-'adl*), the safeguarding of trust (*hifz al-amanah*), and the protection of property (*hifz al-māl*) constitute core objectives of the *maqāsid al-sharī'ah*. These principles underscore the preservation of public integrity and the protection of collective welfare.[60] Both positive law and Islamic doctrine therefore converge on the normative end of safeguarding public integrity. Yet they deploy different instruments: modern criminal statutes prioritize procedural mechanisms, evidentiary standards, and material restitution through asset-recovery, while Islamic law emphasizes categorical prohibition, moral restitution, repentance, and communal sanctioning as means of rehabilitation and deterrence.[61] Accordingly, the New Criminal Code meets some Islamic parameters for prevention and punishment but is less explicit about mechanisms for moral and social restitution and the theological obligation of repentance that Islamic tradition regards as normatively central.

Evaluated against concrete Islamic legal parameters—scope of subjects, restitution of rights, and moral-social sanctions—positive law exhibits both strengths and weaknesses. Its strengths include formulations that permit prosecution of both giver and receiver, the imposition of severe penalties in grave cases, and procedural mechanisms enabling law enforcement to gather proof. Its weaknesses are twofold: *first*, reliance on technical evidence (audits, transaction records) can render some corrupt practices difficult to prove in the absence of direct proof; *second*, positive law insufficiently foregrounds non-criminal, community-based forms of restitution and moral sanction that, in Islamic law, function as vital instruments of social prevention.[62] From an Islamic law perspective, therefore, restoration of rights together with moral and educational efforts should complement criminal sanctions.

Table 2. Comparison of positive law and Islamic law on bribery

Criteria	Positive Law	Islamic Law
Normative source	Positive codification: provisions in the New Criminal Code (Arts. 603–606) and relevant provisions of the Corruption	Textual authorities (Qur'an and hadith), juristic reasoning (*ijtihād*), the classical *fiqh* corpus, and contemporary

[60] Warisman Warisman, "Violent Extortion and Criminal Prosecution: Comparative Insights from Positive Law and Islamic Criminal Law," *SHISHYA: Studies and Perspectives on Law and JusticeH* 1, no. 2 (2025): 103–11, https://doi.org/10.63306/6wkn4x81.

[61] Prayitno et al., "Reversed Burden of Proof in the Procedural Law of Corruption Cases: A Normative Study of Justice and Legal Certainty in Positive and Islamic Law"; Nasution et al., "Pardon for Corruptors: An Examination of Repentance and Restitution in Islamic Criminal Law."

[62] Bahar, Firdaus, and Fairuza, "Paradigm of Recodification of Corruption in Criminal Code Against Its Designation as Extraordinary Crime"; Widijowati, "The Crime of Corruption Codified in Law Number 1 of 2023"; Assanti and Noor, "Debating Expert Authority in Corruption Cases: The Challenge of Interpreting State Financial Losses Under the 2023 Indonesian Criminal Code."

	Eradication Law (Arts. 2, 3, 5, 6, 11–13). Supporting regulations, case law, and jurisprudence further specify elements and evidentiary standards.	fatwas and scholarly opinions as normative foundations.
Regulatory objective	Crime prevention and enforcement: protect public finances and the national economy, preserve the integrity of public office, and secure material restitution through criminal sanctions and asset recovery.	Safeguard justice (*hifz al-'adl*), trustworthiness (*hifz al-amanah*), property (*hifz al-māl*), and public morality; prevention through strict prohibition, spiritual and material restitution, and moral-social sanctions.
Scope and subjects	Focus on "officials": the New Criminal Code uses a consolidated term ("official") covering civil servants, state administrators, and other public officers; the Corruption Eradication Law identifies "civil servants or state administrators" with more detailed definitional references.	Broad coverage of anyone entrusted with public responsibility or functions affecting others' rights—judges, officials, intermediaries—with emphasis on role/function and attendant moral responsibility.
Elements of the offence and *mens rea*	Emphasizes objective elements (acts of unlawful enrichment, abuse of authority) alongside subjective elements (purpose/intent as in Arts. 604–605); Art. 603 often links liability to demonstrable loss to state finances (e.g., audit findings).	Intention (*niyyah*) is central: offering or accepting something to subvert truth, secure an unjust decision, or obtain office improperly constitutes the core of *risywah* (bribery). Moral culpability, not only material loss, is decisive.
Object (what is prohibited)	Gifts, promises, or acts that amount to abuse of authority, unlawful enrichment, or conduct causing loss to state finances or the national economy.	Anything given or promised to pervert justice, secure an undue advantage, win an unjust decision, or obtain position or power improperly—even if disguised as a gift.
Sanctions and remedies	Criminal penalties (imprisonment and fines) with ranges that vary by offence; asset-recovery and state restitution mechanisms may apply.	Religious-moral sanctions (condemnation), *ta'zīr* (discretionary punishments by authorities), obligation to repent, moral rehabilitation, and restitution/return of rights; emphasis on moral and educational measures.
Evidence and enforcement instruments	Documentary and transactional evidence, forensic audits, sting operations, and other investigative techniques;	Proof centers on intention and moral consequences: confession, credible witness testimony, and indicia of

	prosecutors must prove *quid pro quo*, often coordinating with auditors and enforcement agencies.	corrupt intent are important; community pressure and religious authority act as preventive and sanctioning mechanisms.
Normative strength	Systematic and procedural, compatible with due-process principles; offers a formal prosecution framework and clearly defined criminal penalties.	Strong moral-ethical authority; provides social legitimacy and preventive pressure that can reinforce or exceed the deterrent effect of positive law.
Weaknesses and challenges	Reliance on technical evidence (audits, transaction traces) can complicate proof where direct evidence is absent; potential definitional gaps about covered subjects; requires institutional and procedural harmonization.	Less prescriptive about formal worldly sanctions within secular state systems; implementation depends on the legitimacy of local religious authorities and may suffer from interpretive heterogeneity.
Alignment with *maqāsid al-sharī'ah* (objectives of Islamic law)	Advances protection of property and public order, but is comparatively less explicit on mechanisms for moral restitution, repentance, and value-based education.	Highly aligned: emphasizes trustworthiness, justice, property protection, moral reform, and community-based prevention alongside punitive measures.

Source: processed by the author from various sources.

In a Muslim-majority rule-of-law state, points of convergence and normative tension must be managed. Convergence around the ethical aims of anti-corruption and the preservation of public trust creates a basis for harmonizing values. Tension arises where positive (statutory) law is secular and primarily procedural, while Islamic law requires the enforcement of social and moral norms that extend beyond formal criminal sanctions. A pragmatic, proportionate response is to incorporate those elements of Islamic law that are compatible with positive law into legal practice.[63]

[63] Hafidz et al., "The Corruption Reduction with an Administrative Law Approach: Evidence from Australia."

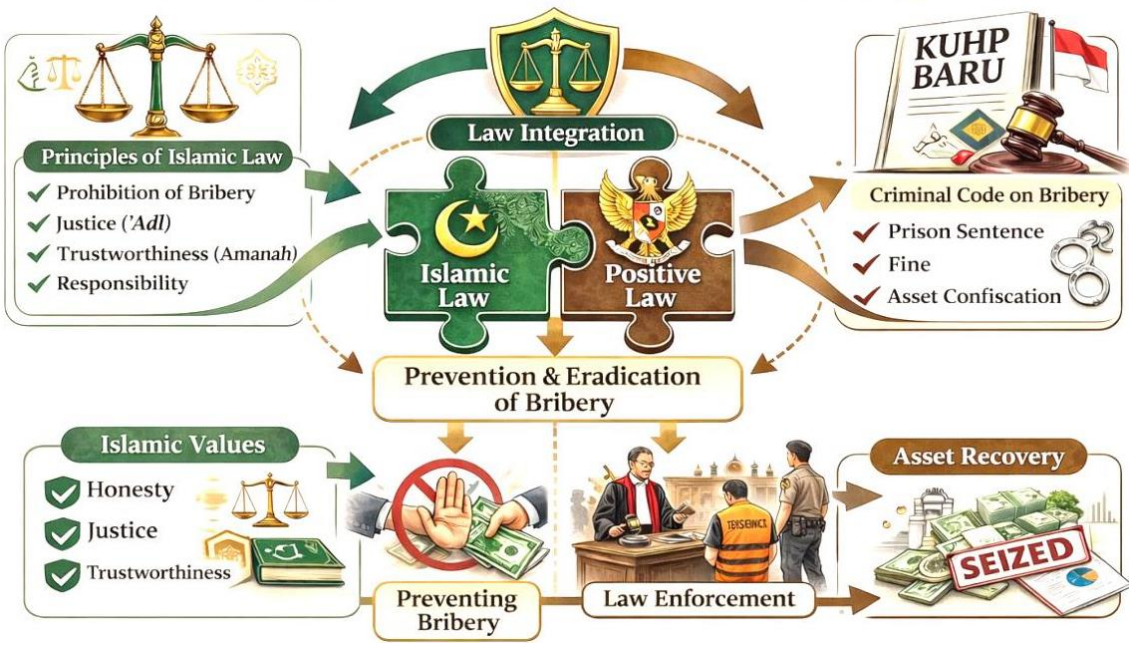

Figure 1. Integration of Islamic law into positive law on bribery

Adopting an integrative approach, the reform strengthens provisions on restitution and asset recovery, enhances transparency and administrative remedies, implements values-education programs in the public sector, and enables effective administrative sanctions and remedies for reputational harm.[64] Crucially, these measures preserve due process and non-discrimination within a constitutional framework.[65] Thus, the New Criminal Code and the Corruption Eradication Law can realize the substantive aims of Islamic law on bribery (*risywah*) while upholding human-rights standards and legal certainty in contemporary criminal law.

Evaluating the effectiveness of prevention and the purposes of punishment

This study's functional assessment draws on classical theories of punishment—retribution, deterrence (*utilitarian*), restitution, and rehabilitation—as a framework for evaluating how statutory norms operate in practice.[66] Operational indicators include the burden of proof; whether the norms create significant technical obstacles for prosecutors,[67] the proportionality of criminal

[64] 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, https://doi.org/10.5281/zenodo.4756114.

[65] Ahmed Gad Makhlouf, "The Doctrinal Development of Contemporary Islamic Law: Fiqh Academies as an Institutional Framework," *Oxford Journal of Law and Religion* 10, no. 3 (2022): 464–86, https://doi.org/10.1093/ojlr/rwac005.

[66] Brenda de Oliveira Morsch, "Retribution vs. Restoration: Tendencies of the Criminal Justice System" (Master's Theses, Dominican University of California, 2019), 13–19, https://doi.org/10.33015/dominican.edu/2019.HUM.04.

[67] Prayitno et al., "Reversed Burden of Proof in the Procedural Law of Corruption Cases: A Normative Study of Justice and Legal Certainty in Positive and Islamic Law."

sanctions,[68] the presence of complementary administrative penalties, and the coherence of prevention policies (for example, internal controls, ethics education, and asset-recovery mechanisms).[69] This framework enables analysis that goes beyond statutory text to assess how norms actually function during investigation, prosecution, and the enforcement of loss-recovery measures.

The New Criminal Code's provisions—particularly Articles 603 and 604, which impose severe penalties for core offenses—normatively advance the aims of retribution and deterrence by providing substantial sanctions for grand corruption.[70] However, the clause that conditions liability on verification of "financial or economic loss to the state" through audit findings introduces a highly technical evidentiary requirement. This dependency complicates the task of proving causation and may therefore undermine the practical effectiveness of prosecution despite the stringent statutory penalties. Similar concerns were identified by Muhamad Ghifari Fardhana Bahar et al., who found that adding an audit requirement to Article 603 can narrow the scope of prosecutable conduct and weaken the deterrent effect when forensic-audit capacity is inadequate.[71]

From a restorative and rehabilitative standpoint, criminal law provides mechanisms for recovery (fines, confiscation, and asset recovery) but the effectiveness of these measures depends primarily on institutional coordination and enforcement procedures rather than on penalty severity alone.[72] Effective primary and secondary prevention requires comprehensive non-criminal measures to complement criminal enforcement, including robust administrative sanctions, strengthened internal controls, and integrity-building programs.[73] Policy research by Jagad Aditya Dewantara et al. finds that amending statutory text without reforming prevention policies—such as anti-corruption education, procurement-system improvements, and internal controls—tends to produce symbolic deterrence rather than substantive change.[74]

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[68] Marie Manikis, "The Principle of Proportionality in Sentencing: A Dynamic Evolution and Multiplication of Conceptions," *Osgoode Hall Law Journal* 59, no. 3 (2022): 587–628, https://doi.org/10.60082/2817-5069.3812.

[69] Prawira and Alamsyah, "The Implementation of Mutual Legal Assistance between Indonesia and Switzerland Regarding Asset Recovery"; Sebyar and Sahid, "Contemporary Anti-Gratification Frameworks in State Islamic Religious Colleges: Strategic Pathways for Building a Competitive Civilization."

[70] Widijowati, "The Crime of Corruption Codified in Law Number 1 of 2023."

[71] Bahar, Firdaus, and Fairuza, "Paradigm of Recodification of Corruption in Criminal Code Against Its Designation as Extraordinary Crime."

[72] Fendi Nugroho, Hartiwiningsih Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, "Rethinking Subsidiary in Corruption Cases: Indonesian Experiences," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 686–713, https://doi.org/10.53955/jhcls.v5i2.714.

[73] Hafidz et al., "The Corruption Reduction with an Administrative Law Approach: Evidence from Australia."

[74] Dewantara et al., "Anti-Corruption Education as an Effort to Form Students with Character Humanist and Law-Compliant."

The functional conclusion is that the New Criminal Code exhibits normative strength in codification and the imposition of severe penalties—features aligned with retributive aims. However, it reveals structural weaknesses in evidentiary procedures and a lack of formal emphasis on moral rehabilitation and comprehensive restitution mechanisms. Practically, effective prevention and recovery require enhanced forensic-audit capacity, harmonized procedures among investigators, auditors, and prosecutors, strengthened administrative instruments, and the integration of value-based prevention policies to ensure punitive objectives are realized in enforcement, not merely on paper.

Conclusion

This study demonstrates a tension between the enforcement logic of the New Criminal Code and the Corruption Eradication Law and the normative imperatives of Islamic law. The New Criminal Code and the Corruption Eradication Law foreground procedural mechanisms—transactional records, forensic-audit findings, and quantitative criminal sanctions—as the principal tools for achieving retributive and deterrent objectives. By contrast, normative texts in the Qur'an and the hadith treat the prohibition of bribery (*risywah*) as absolute, prioritizing intent, moral and material restitution, repentance, and socio-moral sanctions such as communal condemnation. Consequently, although the New Criminal Code and the Eradication Corruption Law create a quantitatively robust criminal framework, their capacity to produce moral prevention and ethical restoration—central aims in Islamic law—is comparatively limited, particularly when technical evidentiary requirements from audits and causation pose practical obstacles to prosecuting bribery.

Two interrelated implications follow. *First*, evaluations of the effectiveness of positive norms must consider not only the severity of criminal penalties but also institutional capacity to prove wrongdoing and to recover losses. *Second*, achieving normative conformity with Islamic legal principles requires attention to restitutive and moral-educational dimensions that current criminal practice under positive law has not fully accommodated. The findings therefore point to an analytical need to integrate technical and procedural reforms, refined statutory definitions, enhanced forensic-audit capacity, and improved asset-recovery mechanisms with non-criminal measures that reinforce social-moral prevention, such as rights restoration, collective repentance, and integrity education.

To bridge the normative and functional gap between modern criminal codification and the demands of Islamic normative law, comprehensive integrative measures are needed. These include strengthening forensic-audit capacity and interagency coordination, clarifying the subject and constituent elements of bribery through technical regulation to reduce interpretive loopholes, and establishing an operational restitution mechanism that combines criminal asset recovery with civil remedies for recovery of public losses. Finally, the criminal justice system should be complemented by effective administrative

sanctions and integrity-rehabilitation programs, while value-based prevention policies—integrity education, constructive engagement of religious communities, and greater bureaucratic transparency—must be developed so that moral legitimacy and procedural effectiveness advance together.

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Author Contributions

Conceptualization was carried out by A.; methodology was developed by A.; validation was conducted by S. and A.H.N.; supervision was provided by A.; the original draft was prepared by A. and S.; and the review and editing of the manuscript were completed by all authors. All authors have reviewed and approved the final published version of the manuscript.

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