



Sadd al-dharī'ah and Capital Punishment for Corruption in Indonesia: Reconstructing the 'Certain Circumstances' Clause after the 2026 Penal Adjustment

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ABSTRACT

This article examines the legal limits of capital punishment for corruption in Indonesia after the 2023 Criminal Code took effect and Law No. 1 of 2026 adjusted the sentencing regime. It also asks under what conditions *sadd al-dharī'ah* can support that punishment. Using doctrinal legal research, the study interprets Indonesian legislation and judicial guidance alongside classical Islamic legal theory and selected secondary scholarship. It finds that capital punishment remains an exceptional and discretionary possibility, subject to a qualifying offense and statutory "certain circumstances," individualized sentencing criteria, and the ten-year probationary regime. *Sadd al-dharī'ah* does not independently justify the most severe sanction: its preventive rationale requires a credible connection between means and ends, consideration of foreseeable consequences, and comparison with less harmful alternatives. The article develops a six-stage preventive-proportionality test addressing legality, causal proximity, severity and probability of harm, individualized culpability, necessity, and procedural safeguards. This framework offers a structured way to assess whether an irreversible sentence can be justified in an eligible case; it does not claim to establish that capital punishment deters corruption.

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Introduction

Corruption is difficult to treat as a problem of financial loss alone. When public resources are diverted, the consequences depend on the institution, program, and scale involved: procurement may fail, emergency services may be delayed, and citizens may lose access to benefits for which public funds were allocated. International anti-corruption scholarship therefore treats corruption as an institutional problem involving incentives, accountability, and collective expectations rather than merely the moral defect of individual offenders (Olken & Pande, 2012; Persson et al., 2013). Human-rights scholarship has also explored the relationship between corrupt practices and failures in the enjoyment of protected rights, while warning against collapsing every corrupt act into an automatic human-rights violation (Juwita, 2023; Peters, 2018). This broader perspective matters for punishment: the seriousness of corruption may justify strong legal responses, but seriousness by itself does not establish that the harshest available sanction is necessary, effective, or proportionate.

Indonesia's current indicators illustrate the persistence of the governance problem without proving the effectiveness of any particular criminal sanction. The Corruption Eradication Commission's 2025 Integrity Assessment Survey reported a national integrity score of 72.32, still within its 'vulnerable' category, while the Commission's annual report recorded 116 investigations, 115 prosecutions, 78 executions of judgments, and 87 cases reaching final and binding status during 2025 (Korupsi, 2026). The Central Statistics Agency reported that the Anti-Corruption Behavior Index fell from 3.92 in 2023 to 3.85 in 2024 on a five-point scale (Statistik, 2024). Transparency International's 2025 Corruption Perceptions Index, released in 2026, assigns Indonesia a score of 34 out of 100 and a rank of 109 among 182 countries and territories (International, 2026). None of these measures tests the deterrent effect of capital punishment. Their relevance is narrower: they indicate that corruption remains an institutional and behavioral problem that cannot be inferred to respond to penalty severity alone.

The demand for capital punishment tends to intensify when corruption concerns disaster relief, social assistance, health expenditure, or other resources intended for populations under acute vulnerability. The moral intuition is understandable: exploitation of a crisis can magnify both material loss and human suffering. Yet criminal law must translate moral condemnation into legally defined elements and individualized responsibility. Article 2(2) of Law No. 31 of 1999, as amended by Law No. 20 of 2001, does not authorize death sentences for corruption in general. It provides that capital punishment may be imposed when the offense associated with Article 2(1) is committed under 'certain circumstances.' The statutory explanation ties those circumstances to specified categories, including funds allocated for states of danger, national natural disasters, widespread social unrest, economic and monetary crises, and repeat corruption offending. Earlier studies have accordingly questioned both the precision of this formula and attempts to expand it through public pressure or broad analogies (Aliyan & Gultom, 2023; Pardosi & Primawardani, 2022; Septiningsih, 2024).

The legal setting changed materially in 2026. Law No. 1 of 2023 on the Criminal Code entered into force on 2 January 2026 and was then adjusted by Law No. 1 of 2026. For corruption provisions, the adjustment mechanism replaces statutory references to former Article 2(1) of the Anti-Corruption Law with Article 603 of the Criminal Code. This matters because the capital aggravation in Article 2(2) cannot be read as if the underlying offense remained untouched by the codification process. At the same time, the general architecture of capital punishment has become more restrictive. Under the adjusted Article 100, a judge imposing a death sentence must place it under a ten-year probationary period; execution is barred during that period, and commendable conduct leads to commutation to life

imprisonment by Presidential Decree after consideration by the Supreme Court. Article 101 provides an additional statutory route to commutation when clemency has been rejected but execution has not occurred for ten years for reasons not attributable to escape. The analysis of capital punishment for corruption must therefore connect the special anti-corruption aggravation with this reconfigured general sentencing regime.

The academic literature has addressed important parts of this problem but often in separate conversations. Studies on Indonesian positive law examine the status of the death penalty, the ambiguity of ‘certain circumstances,’ constitutional and human-rights arguments, and the implications of criminal-law reform (Aliyan & Gultom, 2023; Pardosi & Primawardani, 2022; Tongat, 2024). Other research compares capital punishment with asset forfeiture, restorative approaches, or corruption-prevention instruments (Alam et al., 2022; Andini et al., 2023; Kusnadi, 2024; Nuryanto & Jaelani, 2024). Islamic-law studies have considered corruption through *maqāṣid al-sharī‘ah*, Islamic legal philosophy, and the permissibility or limits of severe sanctions (Al Munawar, 2025; Asa’ari et al., 2023). Ridwan, for example, argues for reconsidering capital punishment for bribery in law enforcement, illustrating a proposal to expand its scope. However, the literature reviewed here has not brought together the post-2026 substitution of the predicate offense, the revised probationary regime, the Supreme Court’s sentencing criteria, and *sadd al-dharī‘ah* in a single analysis of when an irreversible sanction could be justified. This article addresses that gap by using those legal constraints and the doctrine’s means–ends reasoning to develop a six-stage preventive-proportionality test (Ridwan et al., 2025).

That integration is necessary because *sadd al-dharī‘ah* is frequently invoked too quickly. In classical legal theory, the doctrine concerns means or pathways whose legal treatment follows from the ends to which they reliably lead. Al-Qarāfī’s discussion is particularly important because it does not reduce the doctrine to prohibition: a means may be closed or opened depending on the legal value of its end and the quality of the connection between them (Al-Qarāfī, 1998). Ibn Qayyim similarly treats means as legally dependent on the purposes to which they lead, while al-Shāṭibī insists that legal reasoning must account for the foreseeable consequences of action (al-Jawziyyah, 1991; Al-Shāṭibī, 1997). These premises make *sadd al-dharī‘ah* a disciplined inquiry into causation, probability, consequences, and alternatives not a general instruction to maximize punishment. Contemporary scholarship on *maṣlaḥah* likewise shows that purposive reasoning ranges from expansive to strongly constrained forms and therefore requires methodological controls (Opwis, 2005).

Maqāṣid al-sharī‘ah adds a second constraint. Al-Ghazālī’s familiar formulation of the essential interests includes protection of life and property, among other fundamentals (al-Ghazali, 1993). In corruption involving disaster or essential-service funds, protection of public wealth may be closely connected to the protection of life. But the state’s penal response also engages the protection of life because capital punishment is irreversible. Ibn ‘Āshūr’s account of the higher purposes of legislation reinforces the need to read justice, order, freedom, and protection of rights as a coherent normative pattern rather than selecting a single objective to predetermine a preferred sanction (Ibn ‘Āshūr, 2001). A *maqāṣid*-based argument is therefore incomplete if it identifies the harms of corruption but does not also examine the harms and institutional risks created by the chosen punishment.

This article asks two related questions. First, what is the current legal structure and limit of capital punishment for corruption after the 2023 Criminal Code and the 2026 Penal Adjustment Act? Second, under what conditions, if any, can *sadd al-dharī‘ah* support that sanction without displacing legality, proportionality, protection of life, and the need to consider less harmful alternatives? The central argument is deliberately narrow: *sadd al-dharī‘ah* can at most provide a conditional preventive justification, and only after the legal

elements, causal relationship, magnitude and probability of harm, individualized culpability, necessity, and procedural safeguards have been established. To make that claim operational, the article develops a 'preventive-proportionality test.' The model is offered as a conceptual framework for legal reasoning, not as empirical proof that capital punishment deters corruption better than other sanctions.

Method

This study uses doctrinal legal research because its principal questions concern the interpretation, coherence, and normative implications of legal rules rather than measurement of offender behavior. Doctrinal research is understood here as a structured process of identifying authoritative sources, reconstructing their relationships, resolving apparent tensions, and developing a reasoned legal proposition (Hutchinson & Duncan, 2012). The primary Indonesian materials are the Constitution, Law No. 31 of 1999 as amended by Law No. 20 of 2001, Law No. 1 of 2023 on the Criminal Code, Law No. 1 of 2026 on Penal Adjustment, Supreme Court Regulation No. 1 of 2020, and Constitutional Court Decision No. 157/PUU-XXI/2023. Islamic-law primary materials are used conceptually, especially al-Ghazālī on essential interests, al-Qarāfī and Ibn Qayyim on the legal status of means, al-Shāṭibī on consequences (*ma'ālāt*), and Ibn 'Ashūr on the general purposes of legislation. Secondary scholarship was selected purposively for its relevance to the article's legal and conceptual questions: Indonesian corruption and capital-punishment law, *sadd al-dharī'ah* and *maqāṣid*, asset recovery, and deterrence. Peer-reviewed sources with verifiable DOIs were preferred where available. Analysis proceeded in three stages. First, grammatical and systematic interpretation was used to map the relationship between Article 2(2), Article 603, the 2026 reference-substitution rule, the Supreme Court sentencing guideline, and the ten-year probationary regime. Second, conceptual coding translated *sadd al-dharī'ah* into analytical variables: legitimate end, causal proximity, probability and magnitude of harm, foreseeable consequences, necessity, less harmful alternatives, and procedural reliability. Third, those variables were synthesized into a preventive-proportionality test and applied to the legal architecture. General deterrence research is used only to challenge unsupported assumptions about severity; because this study does not undertake causal empirical analysis, it does not claim to establish whether the death penalty increases or decreases corruption rates. The literature review is purposive rather than systematic, so the article's contribution is doctrinal and conceptual rather than meta-analytic.

Results and Discussion

1. The post-2026 legal architecture: a narrow and layered capital provision

The starting point is the scope of the special aggravation. Article 2(2) of the Anti-Corruption Law uses discretionary language: capital punishment 'may' be imposed when the relevant corruption offense is committed under 'certain circumstances.' That structure has two immediate implications. First, the provision is exceptional rather than a general sentencing rule for corruption. Second, proof that a case falls within the statutory circumstance does not mechanically require a death sentence; it opens a sentencing possibility that remains subject to other rules governing culpability, mitigation, and punishment. Reading the provision otherwise would convert a facultative aggravation into an automatic sanction and would weaken the individualized character of sentencing.

The phrase 'certain circumstances' is also narrower than the ordinary-language idea of a serious crisis. The explanatory text introduced through Law No. 20 of 2001 identifies particular situations: corruption involving funds allocated for responding to a state of

danger, a national natural disaster, widespread social unrest, an economic and monetary crisis, and repeat corruption offending. Legal certainty therefore requires close attention to the object of the offense. Corruption committed during a disaster is not necessarily corruption of funds allocated for disaster response. A large nominal loss is likewise not, by itself, one of the listed circumstances. This distinction is central in a capital case because expansive analogy operates against the accused where the consequence is irreversible. The concern raised in earlier literature about the open-ended use of 'certain circumstances' remains relevant even after the Constitutional Court rejected the 2023 challenge to the provision (Pardosi & Primawardani, 2022).

The 2026 adjustment adds a cross-reference problem. Article 622 of the Criminal Code, as adjusted by Law No. 1 of 2026, provides that where corruption provisions in other legislation refer to article 2 (1) of the Anti-Corruption Law, the reference is replaced by article 603 of the Criminal Code. The practical effect is that article 2 (2) must now be read against the Article 603 predicate offense through this statutory substitution. This is more precise than saying simply that 'the old article 2 remains' or that 'the Anti-Corruption Law has disappeared.' The special aggravating clause and the new codified predicate offense form a layered structure. Courts and prosecutors must identify both layers expressly so that the defendant and reviewing courts can see the legal route by which capital eligibility is asserted.

A further layer is Supreme Court Regulation No. 1 of 2020. The Supreme Court's official legal-documentation system continues to list the regulation as in force, although its terminology was drafted before the 2026 codification and refers to Articles 2 and 3 of the Anti-Corruption Law. Its capital-sentencing provision is important because it does not treat 'certain circumstances' as sufficient on its own. Article 17 connects capital eligibility with cumulative high classifications of culpability, impact, and gain and then requires individualized consideration of aggravating and mitigating circumstances. This architecture reinforces a principle that is easy to lose in public debate: offense gravity and offender culpability are related but not identical. The amount of state loss, official position, or media salience cannot substitute for proof of the defendant's role, benefit, consequences, and mitigating factors.

The final layer is the general death-penalty regime after Law No. 1 of 2026. The adjusted Article 100 requires a ten-year probationary period for a death sentence, beginning after the judgment becomes final. During that period execution is prohibited. If the prisoner demonstrates commendable conduct, the death sentence is changed to life imprisonment by Presidential Decree after consideration by the Supreme Court. Article 101 separately provides that where clemency has been rejected but execution has not occurred for ten years for reasons not caused by escape, the death sentence is changed by operation of law to life imprisonment. These provisions do not make capital punishment harmless or reversible after execution; they do, however, institutionalize delay, review, and the possibility of non-execution as part of the sentence itself. For a *sadd al-dhari'ah* analysis, that shift is significant because it acknowledges the legal system's interest in preventing an irreversible consequence while preserving the formal availability of the sanction.

Constitutional Court Decision No. 157/PUU-XXI/2023 should be located carefully within this structure. On 31 January 2024 the Court rejected the petition challenging, among other matters, the capital provision in the Anti-Corruption Law. The decision therefore leaves the statutory provision legally operative within the constitutional order. It does not establish that the death penalty is empirically superior as a corruption deterrent, nor does it eliminate the sentencing court's obligation to justify necessity and proportionality in an individual case. Constitutional validity, empirical effectiveness, and case-specific

proportionality are analytically different questions. Treating the first as proof of the other two would be a category error.

Table 1 summarizes the resulting architecture. Its central point is that capital punishment is reached only after several legal filters. The sequence matters: if the predicate offense or statutory circumstance is not established, the inquiry should end before discretionary theories of Islamic legal policy are invoked.

Table 1. Legal filters governing capital punishment for corruption after the 2026 adjustment

<i>Layer</i>	<i>Authority</i>	<i>Function</i>	<i>Key implication</i>
Predicate offense	Criminal Code, Art. 603; 2026 reference substitution	Defines the corruption offense to which the surviving aggravating cross-reference attaches.	Capital eligibility cannot be generalized to every corruption offense.
Special circumstance	Anti-Corruption Law, Art. 2(2) and explanation	Limits the aggravation to statutorily specified "certain circumstances."	The circumstance and the relevant fund or recidivism status must be proved, not inferred from publicity or loss alone.
Sentencing matrix	Supreme Court Regulation No. 1/2020	Requires cumulative high culpability, impact, and gain, followed by individualized aggravating/mitigating assessment.	Severity depends on the defendant's role and consequences, not only the offense label.
Probationary regime	Criminal Code Arts. 99–101 as adjusted by Law No. 1/2026	Places death sentences under ten-year probation and provides commutation mechanisms.	Irreversibility is delayed and legally conditioned; execution is not immediate.
Constitutional review	Constitutional Court Decision No. 157/PUU-XXI/2023	Rejected the challenge to the provision.	Constitutional validity does not establish empirical deterrence or automatic proportionality.

2. *Sadd al-dharī'ah* is a means-ends doctrine, not a presumption in favor of harsher punishment

Once the legal threshold is correctly mapped, the Islamic legal analysis can begin. *Sadd al-dharī'ah* literally concerns blocking a means or pathway because of the end to which it leads. The doctrine is therefore relational: its force depends on what the means is, what end is anticipated, and how strong the connection is between them. Al-Qarāfī is useful precisely because he pairs *sadd* (closing) with *fath* (opening). A pathway to a prohibited or seriously harmful end may be blocked, while a pathway to a required or beneficial end may be opened (Al-Qarāfī, 1998). The doctrine thus asks for discrimination among instruments. It cannot be reduced to a one-directional demand for prohibition, let alone a presumption that the most severe penalty is the most faithful form of prevention.

Ibn Qayyim's account of means similarly places legal value in the relation between a means and its end (al-Jawziyyah, 1991). In the context of punishment, this matters because a sentence is not the corrupt act whose route is being blocked. It is a state response after wrongdoing has occurred. The preventive argument is therefore indirect: the threatened or imposed sanction is expected to alter future behavior by the defendant or others, reduce expected gains, incapacitate an offender, or express a norm that strengthens compliance. Each mechanism is plausible in the abstract, but *sadd al-dharī'ah* does not prove that any

particular mechanism works in practice. The empirical premise must be supplied by evidence external to the doctrine.

This distinction is especially important for deterrence. General criminological and economic reviews find more consistent evidence for the deterrent role of certainty—particularly the probability of apprehension than for increases in sanction severity (Nagin, 2013). Likewise conclude that evidence for crime responding to the severity of criminal sanctions is substantially weaker than evidence relating to policing and detection (Chalfin & McCrary, 2017). These studies are not corruption-specific and should not be transplanted mechanically into Indonesian anti-corruption law. Their value here is methodological: they make it unreasonable to assume, without additional evidence, that moving from life imprisonment to death necessarily produces a larger preventive effect. A doctrinal argument that depends on such an empirical premise must identify it as an assumption rather than disguise it as a conclusion of Islamic jurisprudence.

The same caution appears within the Indonesian debate. (Fariduddin & Tetono, 2022), using a utilitarian perspective, question whether the benefits associated with capital punishment for corruption justify its costs. Their study does not resolve the causal question either, but it exposes the need to compare instruments rather than treat severity as self-validating. By contrast, proposals to expand capital eligibility to additional forms of corruption, such as bribery involving law enforcement, show how quickly the exceptional provision can become a platform for legislative escalation (Ridwan, 2025). *Sadd al-dhari'ah* offers no shortcut between these positions. Its proper function is to ask whether the selected means is sufficiently connected to preventing the identified harm and whether another means can achieve the lawful purpose with lower collateral cost.

Maqāṣid strengthens that constraint. Corruption of emergency funds can endanger both *ḥifẓ al-māl* and, where essential services are impaired, *ḥifẓ al-naḥs*. Asa'ari et al. emphasize the multi-dimensional harm that corruption can produce within a *maqāṣid* framework (Asa'ari et al., 2023), while Al Munawar stresses justice, accountability, and institutional order in assessing sanctions (Al Munawar, 2025). Yet the protection of public property cannot be treated as a trump over life. Al-Ghazālī's enumeration of essential interests places life and property within the same architecture of protection rather than a hierarchy that automatically sacrifices one to the other (al-Ghazali, 1993). Ibn 'Āshūr's wider conception of legislative purposes similarly resists single-value reasoning (Ibn 'Āshūr, 2001). A serious *maqāṣid* analysis therefore examines the corruption harm, the likely preventive benefits of the sanction, the risk of wrongful or unequal application, and the availability of alternatives in one frame.

Al-Shāṭibī's doctrine of considering outcomes (*i'tibār al-ma'āl*) provides the bridge between the two. If law must consider foreseeable consequences, the analysis cannot stop at the intended message of a death sentence. It must also examine foreseeable institutional effects: whether the sanction changes incentives to cooperate with investigators, whether it diverts attention from asset recovery and prevention, whether error can be corrected, and whether discretionary application creates inconsistent treatment (al-Shatibi, 1997). These are not reasons that automatically defeat capital punishment. They are reasons that the burden of justification should rise with the irreversibility of the measure. (Opwis, 2005) study of *maṣlaḥah* in modern Islamic legal theory is instructive in this respect: purposive reasoning has historically operated through competing models of breadth and constraint, so invoking public interest without specifying limiting criteria leaves the argument underdetermined.

This reading also changes where *sadd al-dhari'ah* directs attention in anti-corruption policy. The doctrine is most straightforward when applied ex ante to pathways that make corruption easier: opaque procurement, conflicts of interest, weak beneficial-ownership

disclosure, non-verifiable asset declarations, fragmented financial data, and poor protection for reporting persons. Nuryanto & Jaelani how how public-official wealth reporting can be analyzed through *maqāṣid* (Nuryanto & Jaelani, 2024), while Alam emphasize asset seizure as a future-oriented sanctioning strategy in Islamic criminal-law analysis (Alam et al., 2022). These mechanisms act closer to the causal pathway of corruption than an irreversible punishment imposed after conviction. This does not make criminal punishment irrelevant. It means that a credible preventive theory should order instruments by their connection to the harm rather than by symbolic severity.

3. From penal severity to preventive proportionality

The distinction between blocking pathways to corruption and justifying punishment calls for a structured assessment of the state's chosen response. A useful reconstruction is to treat *sadd al-dharī'ah* as a preventive-proportionality inquiry. 'Preventive' refers to the means-ends logic of closing a route to serious *mafsadah*. 'Proportionality' refers to the requirement that the state's chosen means not exceed what is justified by the purpose, causal relationship, available alternatives, and procedural reliability. The label does not import a foreign constitutional test wholesale into Islamic law. It names an analytical synthesis already implicit in the interaction among *sadd al-dharī'ah*, *ma'ālāt*, and the protection of multiple *maqāṣid*.

The first component is legality. Islamic legal policy cannot repair a failure of positive-law elements in a modern state criminal case. If the prosecution cannot establish that the case falls within Article 603 as connected to Article 2(2), or cannot prove the relevant 'certain circumstance,' the capital inquiry ends. This sequencing prevents an abstract claim about public welfare from expanding a penal statute beyond its terms. It also preserves a distinction between *de lege lata* and *de lege ferenda*. For example, Ridwan proposal concerning bribery in law enforcement is a legislative argument; it does not make such bribery capital-eligible under the present Article 2(2) structure (Ridwan, 2025). The distinction is essential to legality.

The second component is causal proximity. The court must identify the concrete public harm and the defendant's contribution to it. In a disaster-fund case, this requires more than showing that funds were lost during a crisis. The prosecution should connect diversion to the allocation and to consequences for the relevant program or service. Causation need not be reduced to a single counterfactual chain, but it should be sufficiently specific to prevent the category 'extraordinary harm' from becoming a rhetorical label. (Peters, 2018) and (Juwita, 2023), from different points in the corruption-and-rights debate, both illustrate the need for doctrinal precision when moving from corruption to broader social or rights consequences. The same discipline is required when those consequences are used to justify punishment.

The third component combines probability and magnitude. *Sadd al-dharī'ah* is strongest where the route to a serious prohibited outcome is not remote or speculative. In punishment, this requires two inquiries that are often conflated. One concerns the past offense: how severe and foreseeable were its public consequences? The other concerns the future preventive claim: how plausible is it that the chosen sanction will reduce comparable harm? The first may be established through case evidence. The second is more difficult and often requires empirical literature. General deterrence research warns against assuming a monotonic relationship between harsher sanctions and lower offending (Chalfin & McCrary, 2017; Nagin, 2013). Accordingly, the greater the gap between the available evidence and the claimed preventive benefit, the weaker the *sadd al-dharī'ah* justification becomes.

The fourth component is individualized culpability and benefit. Supreme Court Regulation No. 1 of 2020 is valuable here because it forces a multidimensional assessment of the defendant rather than a single-variable focus on state loss. A dominant role, sophisticated planning, large personal gain, failure to return proceeds, and severe impact may strengthen the case for the highest sanction range. Conversely, a lesser role, effective cooperation, meaningful restoration, or uncertainty regarding causal impact may reduce it. (Andini et al., 2023) caution that corruption has dispersed victims and complex institutional consequences, which makes individualized criminal responsibility especially important. Punishment should not become a vehicle for converting diffuse public anger into undifferentiated liability.

The fifth component is necessity through comparison with less harmful alternatives. The relevant comparison is not between punishment and impunity. It is between the death penalty and a package of other severe measures: life imprisonment, asset confiscation, replacement payments, disqualification from public office, corporate sanctions where applicable, financial investigation, and institutional prevention. Emphasizes the justice implications of comparing death punishment and asset forfeiture (Kusnadi, 2024); similarly foreground the role of confiscating corrupt assets within Islamic criminal-law discourse (Alam et al., 2022). If these measures can substantially incapacitate the offender, remove illicit gains, restore public resources, and support prevention, a proponent of capital punishment must explain what additional lawful protective function death uniquely supplies. Without that comparison, ‘necessity’ is asserted rather than demonstrated.

The sixth component is procedural reliability and reversibility. Capital punishment differs from imprisonment because a mistaken execution cannot be corrected. That fact raises the value of appellate review, effective defense, evidentiary rigor, equal treatment among co-defendants, clemency, and post-conviction mechanisms. The ten-year probationary regime introduced and adjusted by the 2026 legislation is therefore normatively relevant: it creates a statutory interval in which execution cannot occur and in which conduct can trigger commutation. Yet delay alone cannot guarantee the absence of wrongful conviction or discriminatory enforcement. Preventive proportionality requires the procedure itself to reduce those risks as far as practicable before the state invokes an irreversible sanction.

Taken together, the six components distinguish legal eligibility from justification in an individual case. Although Indonesian law retains a narrow route to a death sentence for corruption, a court must still explain why that irreversible sanction is necessary after considering the harm, the defendant’s responsibility, available alternatives, and procedural risks.

4. A six-stage preventive-proportionality test and its institutional implications

Table 2 operationalizes the proposed test. It is not an alternative source of criminal liability and does not replace statutory elements. Its function is to structure the reasoning that should occur after ordinary legal eligibility is established and before an irreversible sanction is treated as necessary. A negative answer at an early stage should narrow or terminate the capital inquiry rather than be compensated by rhetorical emphasis at a later stage.

Table 2. Preventive-proportionality test for capital sentencing in corruption cases

<i>Stage</i>	<i>Question</i>	<i>Minimum showing</i>	<i>Consequence if unmet</i>
1. Legality	Does the case fall within Article 603 as linked to Article 2(2), and is a listed “certain circumstance” proved?	Precise predicate offense, qualifying circumstance, and statutory connection.	Capital punishment is legally unavailable.

Stage	Question	Minimum showing	Consequence if unmet
2. Causal proximity	How directly did the defendant's conduct contribute to the extraordinary public harm?	Dominant or material role; concrete effect on funds, services, or vulnerable beneficiaries.	The exceptional aggravation lacks a sufficiently specific harm rationale.
3. Severity and probability	Are both the harm and the claimed preventive pathway sufficiently grave and non-speculative?	Case-based evidence of impact; no assumption that severity automatically deters.	The <i>Sadd al-dhari'ah</i> rationale weakens.
4. Individualized culpability	Are culpability, impact, and gain cumulatively high after mitigation is assessed?	Reasoned application of the Supreme Court sentencing matrix.	Use a non-capital sentencing range.
5. Necessity	Why are less harmful measures insufficient?	Comparison with life imprisonment, asset recovery, disqualification, restitution, and preventive controls.	Capital punishment is not shown to be necessary.
6. Procedural safeguards	Can the legal process materially reduce error, unequal treatment, and irreversible harm?	Effective defense and review, reasoned judgment, clemency, and the ten-year probationary safeguards.	Execution lacks a defensible preventive-proportional basis.

For legislators, the model points toward consolidation rather than expansion by analogy. The post-2026 relationship among Article 2(2), Article 603, Article 622, and the older explanatory text is legally intelligible, but it is not reader-friendly. A future amendment could restate the aggravating provision in a single consolidated clause, clarify whether the list of 'certain circumstances' is exhaustive, and align the terminology of Supreme Court sentencing guidance with the Criminal Code. Such clarification would improve legality independently of the policy debate over retention or abolition.

For prosecutors, the model implies that a capital request should contain a dedicated means–ends justification rather than rely on the phrase 'extraordinary crime.' That justification should identify the statutory circumstance, trace the defendant's role and gain, document concrete effects on the protected program or public service, address restitution and cooperation, compare non-capital sanctions, and explain why the requested punishment is expected to serve a legitimate preventive function. This approach would also make appellate review more meaningful because the reasons for seeking death would be explicit rather than embedded in general condemnation of corruption.

For judges, the practical implication is a duty of reasoned differentiation. Article 17 of Supreme Court Regulation No. 1 of 2020 already pushes sentencing toward multidimensional assessment. Preventive proportionality adds a further question: even when the formal matrix is satisfied, why is the irreversible sanction necessary rather than merely available? The answer cannot be that corruption is socially destructive in the abstract; that proposition is too general to distinguish the capital case from other serious corruption cases. The judgment should instead show why the specific offense, offender, alternatives, and procedural context cross an exceptional threshold. The statutory word 'may' leaves space and therefore responsibility for this evaluation.

The model also places asset recovery and institutional prevention back at the center of anti-corruption reasoning. (Nuryanto & Jaelani, 2024) frame wealth reporting as compatible with *maqāṣid* because it protects public wealth through accountability, while (Alam et al., 2022) argue for a stronger role for asset seizure. These measures have a direct relationship to the economic incentives and institutional opportunities that enable corruption. Their effectiveness is not guaranteed, but they illustrate why *sadd al-dhari'ah* should begin with causal pathways rather than end with punishment. A criminal justice system can condemn serious corruption, incapacitate offenders, recover assets, and redesign vulnerable

institutions simultaneously; the choice is not between maximal punishment and weak prevention.

Finally, the model clarifies the limits of doctrinal scholarship. Neither the classical jurists nor a contemporary legal interpretation can empirically demonstrate that a death sentence deters corruption. The general evidence summarized by (Nagin, 2013) and (Chalfin & McCrary, 2017) gives reason to distinguish certainty from severity, but it does not answer the Indonesia-specific corruption question. A future empirical study could examine prosecutorial charging patterns, judicial sentencing, perceptions among public officials, asset-recovery outcomes, and the institutional effects of the 2026 probationary regime. Such research would test premises that this doctrinal article can only identify. The value of the present framework is therefore modest but concrete: it makes those premises visible and prevents *sadd al-dhari'ah* from being used as a substitute for them.

Conclusion

Capital punishment for corruption in Indonesia remains an exceptional and discretionary possibility after the 2026 penal adjustment. Its application depends on the qualifying offense, the statutory "certain circumstances," individualized sentencing criteria, and the probationary death-penalty regime. *Sadd al-dhari'ah*, read alongside *maqāṣid* and consideration of legal consequences, does not independently justify the harshest sanction; it requires scrutiny of the preventive claim and the harms the sanction may cause. This article's principal contribution is a six-stage preventive-proportionality framework covering legality, causal proximity, severity and probability of harm, individualized culpability, necessity, and procedural safeguards. The framework structures the justification of an irreversible sentence in an eligible case. It neither creates a new ground for criminal liability nor establishes that capital punishment deters corruption. Empirical research is needed to assess the effects of Indonesia's post-2026 sentencing regime.

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