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ISLAMIC LAW PERSPECTIVE ON THE POLITICS OF CRIMINAL LAW IMPLEMENTING ADDITIONAL CRIMINAL SANCTIONS REVOCATION OF POLITICAL RIGHTS FOR CORRUPTORS IN INDONESIA

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Abstract: *Islam is a perfect religion, all commands and prohibitions are strictly regulated in the Al-Quran and As-Sunnah, including strict prohibitions against acts of ghull (corruption) which Allah SWT hates so much and gets severe sanctions against the creators. In national law, the perpetrators of criminal acts of corruption are also subject to punishment, namely criminal sanctions for the revocation of political rights after the Constitutional Court decision Number: 4/PUUVII/2009, then it seems that the criminal law politics approach to eradicating corruption must be subject to maximum sanctions, seen in the Constitutional Court Decision Number 87/ PUU-XX/2022 in the judicial review of Article 240 paragraph (1) letter g of Law Number 7 of 2017 concerning General Elections which in fact has implications for the revocation of political rights for perpetrators of criminal acts of corruption who must wait a period of 5 (five) years from completing criminal penalties so that they can nominate themselves or be nominated in general elections and for perpetrators of corruption more than once, this has implications for permanently hampering their ability to run for and or be nominated in general elections. The method in this research is normative legal research, namely research conducted by researching literature (secondary data) or library law research. And this research is descriptive analysis in nature where research that is descriptive analysis is a research that describes, examines, explains and analyzes a legal regulation or judge's decision that has permanent legal force. Where in this study the rules of law, library materials, and judges' decisions become material for conducting research in order to obtain academic truth.*

Keywords: *Perspective, Islam, Legal Politics*

Introduction

Corruption crimes in Indonesia seem to have no recede, always showing a significant increase, especially in the procurement of government goods and services. The Corruption Eradication Commission in 2020 said that 70% of non-criminal corruption cases came from the Government Procurement of Goods and Services. Meanwhile, in 2021, based on research data from the Research Center for

the Expertise Agency for the Secretariat General of the DPR - RI as of September 2021, it shows that almost 90% of corruption is being handled by either the Corruption Eradication Commission (KPK), the Attorney General's Office, or the Police in the regions regarding the procurement of government goods and services (Suhayati, 2021). The increasing number of criminal acts of corruption related to the abuse of authority or position indicates that the mentality of officials in Indonesia has deteriorated. Legal events related to the modus operandi of corruption are growing, so that legal norms are left behind compared to legal events. The void or conflicting legal norms become the realm of the absolute authority of the Constitutional Court in creating a political law. The decision of the Constitutional Court not only has legal force since it was read (ius constitutum) but the decision of the Constitutional Court also provides a guide to legislators in determining the development of national law. The enthusiasm of Article 18 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning corruption after the Constitutional Court decision Number 4/PUU-VII/2009 dated March 24 2009 provides political direction in criminal law for the application of additional criminal sanctions in the form of revoking political rights for perpetrators of corruption who abuse their authority and position . If examined from the impact of corruption caused by officials, of course the impact is so bad from upstream to downstream of national development, therefore the theory of special criminal purposes for criminal acts of corruption, seems inappropriate if criminal law enforcement is used relative theory (objective theory) or combined theory, supposedly because it has resulted in damage to the state system, the application of the theory of the purpose of punishment must be aligned with the absolute theory (retaliation) adopted by Immanuel Kant, Hegel, Herbert and Stahl who conveyed this theory with the view that the basis of justice must be in the evil act itself, and they get punished for doing evil (Thamrun, 2016).

The perspective of Islamic criminal law also regulates acts of corruption called ghulul as Allah says in the Qur'an as follows:

وَلَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ وَتُدْلُواْ بِهَآ إِلَى ٱلْحُكَّامِ لِتَأْكُلُواْ فَرِيقًا مِّنْ أَمْوَٰلِ ٱلنَّاسِ بِٱلْإِثْمِ وَأَنتُمْ تَعْلَمُونَ ﴿١٨٨﴾

(QS. Al – Baqarah ayat 188)

Which means, And do not be part of you eat the property of another part of you in a false way and (do not) bring (the matter of) the treasure to the judge, so that you can eat part of the property of the other person with (the way of) sin , even though you know.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُون
(QS. Al-Anfal ayat 27).

Which means, O you who believe, do not betray Allah and the Messenger (Muhammad) and (also) do not betray the messages entrusted to you, while you know.

Islamic law in general and Islamic criminal law in particular strictly prohibit ghulul acts and Allah SWT curses such actions, even the Nahlatul Ulama (NU) has issued a fatwa for the death penalty for corruptors, the fatwa was issued after a lot of discussion in Commission A. (Bahtsul Masaid Ad – Diniyah Al-Waqiyah on the second day of holding the Ulama National Conference and NU Konbes in Cirebon, West Java (Ibda, 2022). The NU view above is also in line with Muhammadiyah's view based on the 2010 Tarjih Council National Conference in Malang, where Muhammadiyah provide guidance on eradicating criminal acts of corruption that have undermined the life of the nation from an Islamic perspective which is a governance fiqh decision that forms the theological basis for eradicating corruption (Aanardiarto, 2022).

Metodh

This research uses a normative legal approach or commonly known as doctrinal research, so there are several approaches taken in conducting this research, namely the statute approach that will be examined (Susanti and Efendi, 2014). In normative legal research, it is imperative to use a statutory approach, because what will be examined are various legal regulations which are the focus and central theme of a research (Efendi and Ibrahim, 2021). The statutory approach is an approach using legislation and regulations (Marzuki, 2021).

Result And Discussion

1. Construction of the Implementation of Additional Criminal Sanctions in the Form of Revocation of Political Rights for Corruption Actors.

After the Constitutional Court issued a decision Number 87/PUU-XX/2022 against the judicial review of Article 240 paragraph (1) letter g of Law Number 7 of 2017 concerning General Elections, it strengthens the legal view that perpetrators of criminal acts of corruption, whose tendencies are always increasing in Indonesia, must sanctions are applied that can limit the perpetrators from holding back public office. Viewed from the political side of the criminal law, the Constitutional Court's decision conveys the meaning that a person who has committed a criminal act of corruption in relation to the abuse of authority and position must first realize for 5 (five) years after serving his sentence that he can nominate himself in general elections and against perpetrators of criminal acts. corruption that has committed corruption more than once, it will no longer be able to run for election in the general election.

Broadly speaking, the decision Number 87/PUU-XX/2022 regarding the judicial review of Article 240 paragraph (1) letter g is genetically the same as Article 18 of Law Number 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, because they both revoke the political rights of corruptors.

Article 18 Law Number 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes is the basis for additional criminal penalties in the form of revocation of political rights for perpetrators of corruption, because of the nature and delict of corruption including special crimes (white coller crimes) in which the criminal approach and settlement are also carried out extra orderery crime which has special provisions. Article 18 of Law Number 31 of 1999 purely adopts or adopts the provisions stipulated in Article 35 of the Criminal Code and its implementation is inseparable from the provisions of Article 10 letter b of the Criminal Code Jo. Article 38 of the Criminal Code where the rules of these articles are interrelated with one another as the legality of revoking political rights for perpetrators of corruption in Indonesia.

The Corruption Crime Eradication Law does not explain the meaning of certain rights as stated in Article 18 paragraph (1) letter d. To fill the void in this understanding, it is necessary to pay attention to the provisions of Article 103 of the Criminal Code which reads: "The provisions in Chapters 7 I to Chapter VIII of this book also apply to acts which are punishable by other statutory provisions, unless by law the law is determined otherwise". Article 103 implies that all terms/understandings contained in Chapters I to Chapter VIII of the First Book of the Criminal Code regarding general rules can be used if they are not regulated otherwise in laws or regulations governing criminal law outside the Criminal Code. Because provisions regarding certain rights are contained in Chapter II of Book One of the Criminal Code, the meaning of certain rights in the Law on the Eradication of Criminal Acts of Corruption is returned to the meaning regulated in the Criminal Code.

Revocation of the right to vote and be elected in elections held based on general rules or better known as revocation of political rights. In the Dutch WvS it was stated that the election was held based on statutory orders, not like the Dutch East Indies WvS (National Criminal Code) which reads based on the rules general rules, therefore, active suffrage (right to vote) and passive suffrage (right to be elected) according to the National Criminal Code have a broader meaning than according to the Dutch WvS not only in general elections (due to statutory orders) , but also included, for example, in village head elections (because according to general rules). General rules contain a broader understanding than laws, active voting rights or passive voting rights do not matter whether they are determined in laws or regulations in other forms whose level is lower than laws (Chazawi, 2016).

Seeing its name, it is clear that this additional sentence is only to add to the principal sentence imposed. So, it cannot stand alone, except in certain matters such as confiscation of certain goods. This additional punishment is optional (Hamzah, 2008). This means that it can be imposed on perpetrators of corruption but are not mandatory or obligatory and but there are certain things where additional punishment is imperative, namely those contained in the provisions of Article 250 bis of the Criminal Code, Article 261 of the Criminal Code and Article 275 of the Criminal Code.

Revocation of political rights is part of the rights that can be revoked based on a judge's decision. If it is associated between the types of rights that can be

revoked in Article 35 paragraph (1) of the Criminal Code with the qualification limits for political rights in the 1945 Constitution, then the types of rights that fall within the scope of political rights consist of 3 (three) rights, namely the right to hold office in general or certain positions, the right to enter the Armed Forces, as well as the right to vote and be elected in elections held based on general rules. However, in practice, revocation of political rights is focused on revoking the right to hold office in general or certain positions and the right to vote and be elected in elections.

Regarding the timeframe and limits for revocation of rights as discussed above, it has been regulated in Article 38 of the criminal Criminal Code which reads.

(1) If a penalty for revocation of rights is imposed, the judge shall determine the terms as follows:

1. If sentenced to death or living in prison, do it for life;
2. If sentenced to temporary imprisonment or confinement, for at least two years and up to five years longer than the main sentence;
3. If a fine is imposed, for at least two years and a maximum of five years;

(2) The punishment comes into force on the day the judge's decision can be carried out (KUHP. 32,32a)

The length of time for the revocation of certain rights to life imprisonment is for life. For imprisonment or temporary confinement, the term of revocation is at least two years and a maximum of five years longer than the principal sentence. In terms of fines, the duration of the revocation of rights is at least two years and a maximum of five years. Revocation of rights begins to be implemented or takes effect on the day the judge's decision can be carried out (Article 38 of the Criminal Code). The privilege of revoking these rights is that they apply without execution.

Based on Article 38 of the Criminal Code and added to several views by legal experts, only a defendant or convict of life imprisonment can be subject to revocation of political rights for life as well, if only limited to imprisonment, imprisonment, fines, revocation of political rights imposed as an additional punishment of the principal sentence is only a maximum of five years and a minimum of two years, this becomes a benchmark for legality in measuring the time of imposition of an additional sentence in the form of revocation of political rights against perpetrators of corruption.

In connection with these matters the decision of the Constitutional Court of the Republic of Indonesia Number: 4/PUU-VII/2009 on the judicial review of Article 12 letter g of Law Number 10 of 2008 concerning Elections for the DPR, DPD and DPRD, (2) Article 50 paragraph 1 letter g Law Number 10 of 2008 concerning Elections for the DPR, DPD and DPRD, (3) Article 58 letter f No.12 of 2008 concerning Regional Government with the following rulings:

- - Declare that the Petitioner's request has been partially granted;
- - Stating Article 12 letter g and Article 50 paragraph (1) letter g of Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and

Regional People's Representative Council (State Gazette of the Republic of Indonesia of 2008 Number 51, Supplement State Gazette of the Republic of Indonesia Number 4836) and Article 58 letter f of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government (State Gazette of the Republic of Indonesia of 2008 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4844) is conditionally unconstitutional contrary to the 1945 Constitution of the Republic of Indonesia;

- - Stating Article 12 letter g and Article 50 paragraph (1) letter g of Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (State Gazette of the Republic of Indonesia of 2008 Number 51, Supplement State Gazette of the Republic of Indonesia Number 4836) and Article 58 letter f of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government (State Gazette of the Republic of Indonesia of 2008 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4844) does not have binding legal force as long as it does not meet the following requirements: (i) does not apply to elected public positions (elected officials); (ii) is valid for a limited period of only 5 (five) years after the convict has finished serving his sentence; (iii) an exception is made for former convicts who openly and honestly state to the public that they are ex-convicts; (iv) not as a repeat offender;
- - Declare to reject the Petitioner's application for other than and the rest;
- - Ordered the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate.

2. Perspective of Islamic Criminal Law Against Additional Criminal Sanctions in the Form of Revocation of Political Rights for Corruption Actors in Indonesia.

The Fatwa of the Indonesian Ulema Council (MUI) in 2000 stipulated the prohibition of corruption in the Fatwa decision of the VI National Council of Indonesian Ulemas Number: 4/MUNAS VI/MUI/2000 concerning riswah (bribery), ghull (corruption) and gifts to officials (Corruption , 2007). With the issuance of the Fatwa of the VI National Conference of the Indonesian Ulema Council Number: 4/MUNAS VI/MUI/2000 concerning riswah (bribery), ghull (corruption) and gifts to officials indicates the unrest of Muslim clerics who are members of the MUI about the rise of corruption crimes officials in this country.

Juridically, the Fatwa of the VI National Conference of the Indonesian Ulema Council Number: 4/MUNAS VI/MUI/2000 concerning riswah (bribery), ghull (corruption) and gifts to officials cannot be applied with legal sanctions in this country, because it was adopted from sources of Islamic law. (Al-Quran and As-Sunnah), but this should be appreciated, because this is the concern of the Ulama about the condition of this nation which is getting more and more difficult to control

acts of corruption, collusion and nepotism. In Islamic law, it provides conditions for the imposition of a crime against an offense or crime as follows:

a. Pillars of syar'i (laws), namely the existence of texts that prohibit an act by punishable punishment against it.

b. The pillars of maddi, namely the existence of actions that form a finger, whether the action is real or not.

c. The pillars of adab, namely the existence of a maker (mukallaf person), namely a person who can be held accountable for the finger that has been carried out.

The three points above are formal requirements for the application of Islamic criminal law to the offender, including corruption crimes. Furthermore, in the fiqh literature, there are at least six terms related to corruption crimes, namely:

a. Ghulul (embezzlement);
b. Riswah (bribery);
c. Ghashab (usurpation);
d. Ikhtilas (speeding up);
e. Sirqah (theft) and;
f. Hirabah (robbery).

Speaking of legal certainty, the legal system in Islam has recognized the principle of legality, in which a rule is formed so that sanctions can be imposed on the offender or the perpetrator of the crime, in Islamic law it is called the pillars of syar'i (laws) where there are texts which prohibit an act by threatened with punishment against him, thus the perfection of the sources of Islamic law has adopted the principle of legality. Islamic law also first recognizes the theory of accountability for those who make or break the law, namely in Islamic law it is known as the pillars of adab where there are makers (mukallaf) namely people who can be held accountable for the finger that has been carried out, based on this Islamic law regulates the inability to be punished. the law of a person for not being able to account for his actions as the subject of Islamic law.

Discussing the criminal act of corruption in the view of Islamic teachings is highly commendable especially corruption crimes committed by means of abuse of authority or position, moreover the position is a mandate from the people, Allah SWT cursed this act with very severe punishment as Allah says in the Qur'an as following:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُون

(Surat Al-Anfal ayat 27). Which means: O you who believe, do not betray Allah and the Messenger (Muhammad) and (also) do not betray the messages entrusted to you, while you know.

Whereas Muhammad SAW said in Al-Hadith Abu Hurairah narrated that Rasulullah SAW really hates acts or crimes of corruption related to the trust that has been given to someone which reads which means "If the trust is wasted then wait for the moment of its destruction, asked how it was wasted ? If the case is not left to the experts, then wait for the moment of destruction.

That from the word of Allah SWT in QS. Al-Anfal verse 27 and the words of Muhammad SAW narrated by Abu Hurairah provide an illustration of how Islamic law severely condemns the act of corruption, especially those related to the abuse of mandated authority that has been given and entrusted by the people to someone.

There are 7 (seven) principles of Islamic numeracy in the state. One of them is the rule of law, which stipulates that the law must be commander in chief in every orientation of the nation and state, this principle gives authority to judges to impose a sentence if there is a rule of law governing it, so that unjust acts do not occur. So based on this, if examined from the enforcement of Islamic law, someone who commits ghulul (corruption, stealing, taking what is not right) by abusing the authority or position that has been entrusted to him, Islamic law provides witnesses by beating, torturing and burning the proceeds of someone's corruption crime. the. As the Prophet Muhammad SAW ordered that people who commit ghulul be tortured and their wealth burned (Hartono, 2016). This opinion is based on the hadith narrated by Abu Daud from Umar r.a The Prophet Muhammad SAW said "If you meet someone who commits ghulul, then burn his wealth and beat him".

Based on the explanation above, if a comparison is made of the imposition of additional criminal witnesses against someone who commits a criminal act of corruption (ghulul) by abusing the authority and position entrusted to him, the imposition of sanctions in Islamic law is much heavier than the imposition of criminal sanctions in the national legal system.

Conclussion

The politics of criminal law on corruption in Indonesia, from the point of view of imposition of punishment, is leading to additional punishment being applied to perpetrators who have abused their authority and position. Revocation of political rights is one of the additional sanctions that is often applied to corrupt authorities. The decision of the Constitutional Court Number 87/PUU-XX/2022 in the judicial review of Article 240 paragraph (1) letter g of Law Number 7 of 2017 concerning General Elections indicates the political direction of criminal law on corruption so that someone who has committed corruption must wait for 5 (five) years in order to be able to run for office and for perpetrators who commit corruption several times, they will be systematically prevented from running for election in the general election. Islamic law strongly condemns the treatment of corruption, especially towards the insecurity of the mandate holders given by the community, and is subject to severe punishment as stated in several words of Allah SWT in the Al-Quran. In state traffic, Islamic law regulates in such a perfect way, if the rules have been made and the violator is able to be held responsible, then these sanctions can be imposed.

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