

Legal Analysis Of Explicit Costs On Corruption In Indonesia In The Islamic Law Prespective

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Abstrak: The community-state established by the Prophet has provided some background and initial models of instruments and institutions which have become important pillars of the existence of a state-society. So if in the perspective of modern state administration know the three institutions of State power or what is called the trias politica namely the power of the legislative, executive and judiciary bodies, it turns out that the Prophet Muhammad SAW had practiced these three forms of institution. The existence of a fair nature is a matter of politics, meaning that there is no necessity in political matters to adhere to the constitutional principle that the suspect is clean of all accusations until there is evidence to prove that he is guilty, that is the basis for the realization of justice in justice. Corruption is an extraordinary crime, has a systemic and broad impact and has been placed as a violation of the people's economic and social rights. Therefore, the imposition of criminal sanctions related to the compensation of the state is not only the financial loss of the state in the event of a criminal act of corruption but must pay attention to explicit costs as part of the social costs of corruption caused by corruption. The explicit costs consist of anticipation costs of corruption, costs due to and reactions to corruption. Not only is punishment as a deterrent effect or a state financial return solely that it views it from the law on the eradication of corruption by horse glasses, but it must be viewed from the aspect of the benefit of the Indonesian people as direct victims of corruption. So what must be achieved is "State Financial Recovery".

Keywords: *Legal Analysis, Explicit Costs, Corruption, Islamic*

INTRODUCTION

Islam since the early history of its emergence, with the Prophet Muhammad SAW as a central figure, as a religion then quickly gave birth to a civil society community (civil society) civilized state in Medina where in the historical chain of Islamic civilization is the most important phase of building the main principles and solid foundations for the establishment of a new civilization by providing ideological-normative foundations as well as various practical procedures as sources of exemplary generations.

Including the above, the community-state built by the Prophet SAW has provided some background and initial models of instruments and institutions which have become important pillars of the existence of a state-society. So if in the perspective of modern state administration know the three institutions of State power or what is called the trias politica namely the power of the legislative, executive and judiciary bodies, it turns out that the Prophet Muhammad SAW had practiced these three forms of institution. The existence of fairness is a matter of politics, meaning that there is no necessity in political matters to adhere to the constitutional principle that the suspect is clean of all accusations until there is

evidence to prove that he is guilty, that is the basis for the realization of justice in justice.¹ In the Qur'an albaqarah verse (188) it is explained about the prohibition of Allah SWT against corruption and bribery: (Meaning: and do not let you eat the treasure, another part of you in a false way and (do not) you carry (the affairs of) the treasure to the judge, so that you can eat some of the other person's possessions by (sinning), even though you know.)

Corruption is an extra-ordinary crime, because the impact is not only detrimental to the country's finances or economy but also impedes national development. The phenomenon of the widespread disclosure and conviction of perpetrators of criminal acts of corruption that occur today shows the tendency of irregularities that continue to increase, even though the seriousness in eradicating criminal acts has been carried out since 1960.² Corruption is an extraordinary crime, has a systemic and broad impact and has been placed as a violation of the people's economic and social rights.³ Corruption in Indonesia is systematic and widespread, so that not only does it harm the country's finances, but it also violates the social and economic rights of the community at large, the eradication of corruption must be carried out in extraordinary ways.⁴ At this time the existence of a corporation is felt to be increasingly important and strategic, in addition to being able to help turn the wheels of the economy, the corporation has also reached almost all spheres of life. In Indonesia, the corporation is engaged in various fields, for example education, social, construction services, transportation and communication.⁵

Regrettably, the political law of state finance today is experiencing a contemporary shift. The lack of transparency in the management of state finances, overlapping authority among supervisory institutions, and the uncertainty of law enforcers in taking actions that are detrimental to state finances is proof that the concept of state financial law constructed during this time is still far from legal certainty and usefulness of the law.⁶ It no longer needs to be stressed, corruption is the main problem of our nation. Of course there are still many problems of other nations, but corruption is the root of the problem. The country has become independent, but the effects of development have not yet been felt by the majority of citizens, due to rampant corruption.⁷

In the excerpt of Decision Number 86 / Pid.Sus.TPK / 2018 / PN-Mdn in Medan District Court:⁸

1. To declare Defendant SM Alias S not proven legally and convincingly guilty of committing the "Corruption" crime as referred to in the Primair Indictment;
2. acquitting Defendant M Alias S therefore from Primair's indictment;

¹ Farid Abdul Khliq, *Fikih Politik Islam*, (Jakarta: Amzah, 2005), h. 115-116.

² Mansyur Kartayasa, *Korupsi & Pembuktian Terbalik Dari Prespektif Kebijakan Legislasi dan Hak Asasi Manusia*, (Jakarta: Kencana, Cetakan ke-1, 2017), h. vii.

³ Romli Atmasasmita dan Kodrat Wibowo, *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia*, (Jakarta: Kencana, Cetakan ke-2, 2017), h. 203.

⁴ Budi Birahmat, Korupsi Dalam Prespektif Alquran, FOKUS : Jurnal Kajian Keislaman dan Kemasyarakatan Vol. 3, no. 1, 2018 P3M Sekolah Tinggi Agama Islam Negeri (STAIN) Curup-Bengkulu Available online: <http://journal.staincurup.ac.id/index.php/JF> p-ISSN 2548-334X. e-ISSN 2548-3358, h. 66.

⁵ Hariman Satria. (2018), Pembuktian Kesalahan Korporasi dalam Tindak Pidana Korupsi, Jurnal Anti Korupsi Integritas Volume 4 Nomor 2, Desember 2018 p-ISSN 2477-118Xe-ISSN 2615-7977, h. 53.

⁶ Beni Kurnia Illahi & Muhammad Ikhsan Alia, (2017), Pertanggungjawaban Pengelolaan Keuangan Negara Melalui Kerja Sama BPK dan KPK, Jurnal Anti Korupsi Volume 3 Nomor 2 - Desember 2017 p-ISSN : 2477-118X, h. 37-78.

⁷ Labib Muttaqin & Muhammad Edy Susanto. (2018), Mengkaji Serangan Balik Koruptor Terhadap KPK dan Strategi Menghadapinya, Jurnal Anti Korupsi Integritas Volume 4 Nomor 1 - Juni 2018 p-ISSN: 2477-118Xe-ISSN: 2615-7977, h. 101-144.

⁸ Putusan Pengadilan Negeri Medan Nomor 86/ Pid.Sus.TPK/ 2018/ PN-Mdn.

3. Stating Defendant SM alias S is proven legally and convincingly guilty of committing the crime of "Corruption" as referred to in the Subsidiary Indictment;
4. Dropping the criminal offense to Defendant SM aka S, therefore, with a 2 year prison sentence and a fine of Rp. 100,000,000 (one hundred rupiahs), with the provision that if the fine is not paid is replaced with a sentence of 4 years in prison (four months);
5. Punish Defendant of SM, aka S, to pay Substitute Amount of Rp.694,159,255 (six hundred ninety four million one hundred fifty nine thousand two hundred fifty five rupiah), with the provision that if not repaid within 1 (one) Months after the verdict obtained permanent legal force, his property was confiscated by the Prosecutor. If the assets of Defendant SM alias S are insufficient to cover the Replacement Money, then it is replaced with a prison sentence of 1 (one) year;

Whereas in the above ruling it clearly illustrates that the judge imposed sanctions on the suspect with a prison sentence, a fine if not paid then replaced with confinement, and a replacement with the provisions if not repaid within 1 (one) month after the decision obtained permanent legal force, the property the object was confiscated by the Prosecutor. If the assets of Defendant SM alias S are not sufficient to cover the Replacement Money, then it will be replaced with a prison sentence of 1 (one) year.

Seeing the decision above, the judge in issuing the verdict to the defendant only saw in a horse's eye glass the Law Number 31 of 1999 concerning Corruption Eradication and Law Number 20 of 2001 Concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crime . This sanction scheme applies almost to all decisions related to corruption. When quoting from Prof. Romli Atmasasmita's statement that criminal acts of corruption are extraordinary, systemic and broad impact and have been placed as violations of economic and social rights people.

METHOD

Research is a scientific activity related to analysis and construction which is carried out methodologically means according to a particular method or method. Systematic is based on a system which means there is no contradiction with a particular framework.⁹ In this study using a type of normative research. In Normative Research with secondary data as a source of data or information can be a source of primary law, secondary legal sources and tertiary legal sources. The implementation of normative research is broadly addressed to;

1. Research on legal principles, for example on positive written law or research on legal principles that live in society;
2. Research on legal systematics, carried out by examining the basic understanding and legal system in statutory regulations;
3. Research on synchronization that can be carried out either vertically synchronized based on the hierarchy of laws and regulations or horizontal synchronization of legislation or equivalent;
4. Legal history research is research that focuses on the development of law;
5. Research on legal comparisons that emphasizes and looks for differences from various legal systems.

The implementation of this normative research is broadly aimed at researching the principles of law, for example on positive written law or research on legal methods that live in society. The data used in this study are secondary data, namely data obtained from official documents, books related to the object of research, research results in the form of reports and legislation. In this study, secondary data as a source / material of information can be in the

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI-Press, Jakarta 2014, hal. 42.

form of primary legal material namely Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption and Decision Number 86 / Pid.Sus.TPK / 2018 / PN-Mdn.

RESULT

No doubt, corruption is an extraordinary crime that threatens the joints of the life of the nation and nation, impedes development, high-cost economy and other adverse effects. Corruption, which has been considered to only occur in the public service sector and involve the state apparatus, in fact also occurs in the business world and involves actors from their elements (individuals and corporations). The Global Competitiveness Report 2017-2018 shows the fact that corruption is still a major factor in business problems in Indonesia and is hampering the pace of Indonesia's economic growth (World Economic Forum, 2017).¹⁰ Corrupt means rotten, bad; likes to accept bribes (using his power for his own interests and so on). Corruption is a bad deed (such as embezzlement of money, receiving bribes and so on).¹¹

The problem of corruption and its reaction has indeed been widely discussed and researched. In criminology itself, the problem of corruption has been discussed for a long time. Sutherland himself began by bringing up crimes committed by respectable people. Until now the problem of corruption remains one of the interesting discussions to study. Corruption as a crime also develops along with the development of human civilization so that efforts to find a solution will also be increasingly difficult. Research on corruption needs to be continuously developed in order to find an appropriate solution in overcoming this problem.¹² The term corruption comes from the Latin language that is *corruptio*. In English it is corruption or corrupt, in French it is called corruption and in Dutch it is called *corruptie*. Presumably from the Dutch language was born the word corruption in Indonesian.¹³ When discussing and discussing corruption, it will indeed find such a reality, because corruption concerns moral aspects, the nature and state of decay, positions in government agencies or apparatuses, abuse of power in office because of gifts, economic and political factors, and the placement of families or group into service under the authority of his position. So thus, it can literally be concluded that the term corruption actually has a very broad meaning.

1. Corruption is fraud or embezzlement (state or company money, etc.) for personal and other people's interests.
2. Corruption is rotten, damaged, likes to use goods or money entrusted to him, can be bribed (through his power for personal gain).¹⁴

Explicit costs of corruption are real costs that come out as anticipatory costs, reaction costs and costs resulting from a corruption crime, which can be calculated directly. Explicit costs in this calculation are limited to costs that come out of the APBN even though it is possible to have costs that come out of the APBN.

Implicit costs are costs that are not directly visible, such as economic costs (opportunity costs), damage costs (effects) that have an impact through the market, and damage costs

¹⁰ Dwi Siska Susanti, Nadia Sarah & Nurindah Hilimi. (2018), *Korporasi Indonesia Melawan Korupsi: Strategi Pencegahan*, Jurnal Anti Korupsi Integritas Volume 4 Nomor 2, Desember 2018, p-ISSN 2477-118X e-ISSN 2615-7977, h. 207-232.

¹¹ WJS Poerwadarminta, *Kamus Umum Bahasa Indonesia*, (Jakarta: PN Balai Pustaka, 1982), h. 524.

¹² Yoga Bayu Aji (2013), *Pemiskinan Koruptor Sebagai Hukuman Alternatif Dalam Penegakan Hukum Kasus Korupsi Di Indonesia*, Jurnal Kriminologi Indonesia Volume 9 Nomor 1, Desember 2013, Depok, Universitas Indonesia, h. 13.

¹³ Andi Hamzah, *Korupsi di Indonesia dan Pemecahannya*, (Jakarta: PT. Gramedia Pustaka Utama, 1991), h. 7.

¹⁴ Evi Hartanti, *Tindak Pidana Korupsi*, Edisi Kedua, (Semarang: Sinar Grafika, 2005), h. 8-9.

(effects) whose effects do not go through the market. Implicit costs are calculated at this time by taking the lowest estimate of an event or corrupt activity.

The cost of anticipating corruption basically consists of:

1. The cost of socializing corruption as a latent danger;
2. Bureaucratic reform to reduce the desire for corruption; and
3. Various activities in the context of preventing corruption issued by the KPK.

In the calculation of the social costs of corruption carried out, only the calculation of point c was successfully carried out. Activities and budget items for point a have not been specifically recorded with government ministries / agencies, so calculations cannot be made. While point b, the process of bureaucratic reform that is spread across all ministries / institutions and local governments causes the calculation of these costs so complex that they cannot be included in the calculation. Thus, the definition of anticipating corruption costs in this paper is the amount of the budget spent on activities to prevent corruption, reflected in the budget for prevention activities in the KPK.

The cost of a corruption reaction is all the resources required by law enforcement officials to process a person who commits corruption, starting with the investigation, investigation, prosecution, court and correctional stages or until he has finished serving both physical and financial punishment. Corruption reaction costs consist of:

1. Costs for handling cases from complaints, investigations and investigations. (Police, Attorney General's Office, KPK, PPATK, BPKP etc.);
2. Judicial costs (registrar, prosecutor, judge, etc.);
3. Costs for the process of seizing assets outside and within the country; and
4. Costs of detention houses and correctional institutions, fees for collecting fines, etc. In calculating this social cost, the budget for the activities of action referred to is the budget for enforcement in the KPK.

Cost due to corruption (Explicit) is the value of money that is corrupted, whether it is enjoyed alone or together with others, which translates into state financial losses. The data used is the result of the calculation of state financial losses that have been calculated by BPK or BPKP who are given the authority to calculate state losses. Basically, an economic analysis of the law in general postulates that every normal person, up to a certain point, will definitely make a profit and loss calculation for the actions he does, including in committing crimes.¹⁵

Ash-Syaitibi formulates 5 (five) al-maqashid as-syariahs / Islamic legal purposes, namely:

- a. Preserving religion;
- b. Preserving the soul;
- c. Maintain common sense;
- d. Preserving property; and
- e. Nurturing posterity.

The five goals of Islamic law above are then agreed upon by other Islamic law scholars. The five purposes of Islamic law in the library are called al maqasid al-khamsah or al maqasid al-shari'ah (read: al-maqasidis shari'ah (Islamic legal purposes), the purpose of Islamic law can be seen in the following terms: in terms of Islamic law, its gods and apostles, and human beings who are the perpetrators and enforcers of Islamic law.¹⁶

¹⁵ Andreas Nathaniel Marbun & Revi Laracaka . (2019) Analisa Ekonomi terhadap Hukum dalam Pidanaan Partai Politik melalui Pertanggungjawaban Korporasi dalam Perkara Tipikor, Jurnal Antikorupsi INTEGRITAS,5(1),127-167e-ISSN/p-ISSN:2615-7977/2477. h. 127-167.

¹⁶ Palmawati Tahir dan Dini Handayani, *Hukum Islam*, (Jakarta Timur: Sinar Grafika, 2018), h. 25.

From the explanation of the criminal act of corruption is an extraordinary crime (extraordinary crime), systemic and broad impact and has been placed as a violation of the economic and social rights of the people. Therefore, the imposition of criminal sanctions related to the compensation of the state is not only the financial loss of the state in the event of a criminal act of corruption but must pay attention to explicit costs as part of the social costs of corruption caused by corruption. The explicit costs consist of anticipation costs of corruption, costs due to and reactions to corruption. Not only is punishment as a deterrent effect or a state financial return solely that it views it from the law on the eradication of corruption by horse glasses, but it must be viewed from the aspect of the benefit of the Indonesian people as direct victims of corruption. So what must be achieved is "State Financial Recovery".

CONCLUSION

That explicit costs are part of the social costs of corruption that must be charged to the perpetrators of criminal acts of corruption. Explicit costs are divided into 3 forms, namely: anticipation costs, costs due to and reactions to corruption. In the legal arrangements in Indonesia, only costs due to corruption crimes are charged to perpetrators of corruption regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, but for anticipatory and reaction costs against corruption there is no detailed regulation. Therefore departing from the aspect of benefit derived from Asy-Syaitibi's theory of al-maqashid as-syariaht, then the concept of money replacement in sanctions to eradicate corruption must be oriented to "STATE FINANCIAL RECOVERY". So that the perpetrators of criminal acts of corruption are not only charged to the costs resulting from the crime but also are charged to the costs of anticipation and reaction to corruption crimes.

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