

ANALYSIS OF JUDICIAL PROCESSES TOWARD THE CRIMINAL ACTIONS OF CORRUPTION IN DEFENDANT CONDITIONS IN ABSENTIA IN ISLAMIC LAW PRESPECTIVES

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Abstrack: *Islamic law in the legal system in Indonesia is one of the positive laws that apply in Indonesia. Islamic law is adhered to and obeyed by Muslims who are the largest population in Indonesia. In practice, Islamic law is one part of the applicable law in Indonesia, which has a very important and decisive role in regulating the life of the Indonesian nation. The state-society built by the Prophet SAW has provided some background and initial models of instruments and institutions that are important pillars of the existence of a state-society. So if from the perspective of modern constitutional science, there are three institutions of state power known as triaspolitica, namely the power of the legislative, executive and judiciary institutions, it turns out that Rasulullah SAW has practiced these three forms of institutions. Corruption is an extraordinary crime, has a systemic and widespread impact and has been placed as a violation of the economic and social rights of the people. It is not uncommon for perpetrators of criminal acts of corruption to run away during the trial process of corruption cases. If you look at it from the aspect of benefiting the Indonesian people as direct victims of the criminal act of corruption. Therefore, the trial process must continue even if the defendant runs away or is not present / in absentia.*

Keywords: *Analysis, Corruption Crime, Defendant In Absentia, Islamic Law*

Introduction

Islamic law in the legal system in Indonesia is one of the positive laws that apply in Indonesia. Islamic law is adhered to and obeyed by Muslims who are the largest population in Indonesia. In practice, Islamic law is one part of the applicable law in Indonesia, which has a very important and decisive role in regulating the life of the Indonesian nation. Islamic law is basically divided into two areas of law, including: 1) law that is ubudiyah includes laws on thaharah, worship, which concerns prayer, fasting, zakat and hajj. 2) Laws regarding social life, namely: marriage law, inheritance law, mu'amalah, grants, wills, al-sulthaniyah, criminal law (qishas law (jinayat), hudud law), jihad law, food and slaughter laws, law aqdiyah (court laws) and al khilafah law (a system of government regulated according to Islamic teachings (Tahir dan Handayani, 2018).

Islam since its early history, with the Prophet Muhamad SAW as a central figure, as a religion then quickly gave birth to a civilized civil society community in Medina where in the historical chain of Islamic civilization was the most important phase in the development of 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 a source of exemplary sources for subsequent generations.

Including the foregoing, the state-society built by the Prophet SAW has provided several backgrounds and initial models of instruments and institutions that are important pillars of the existence of a state-society. So if in the perspective of modern constitutional science, there are three institutions of state power known as *triaspolitica*, namely the power of the legislative, executive and judiciary institutions, it turns out that the Prophet Muhammad SAW has practiced these three forms of institutions. Having a fair nature is a matter of politics, meaning that there is no obligation in political cases to adhere to the constitutional principle that the suspect is free from all accusations until there is evidence proving that he is guilty, that is the basis for realizing justice in the judiciary (Abdul Khalik, 2005).

Al-Qur'an surat al baqarah ayat (188) explained about the prohibition from Allah SWT on acts related to corruption and bribery: (Meaning: and do not part of you consume the property of others among you in a false way and (do not) you bring (affairs) the property to the judge, so that you to consume part of the property of others with (the way of committing) sin, While you know.)

Corruption is an extra-ordinary crime, because its impact is not only detrimental to the country's finances or economy but also hinders national development. The phenomenon of rampant disclosure and conviction of perpetrators of criminal acts of corruption that has occurred today shows a trend of increasing irregularities, even though the seriousness of the eradication of criminal acts has been carried out since 1960 (Kartayasa, 2017). Corruption is an extraordinary crime, has a systemic and widespread impact and has been placed as a violation of the economic and social rights of the people (Atmasasmita dan Wibowo, 2017). Corruption in Indonesia occurs systematically and extensively, so that it is not only detrimental to the State's finances, but also violates the social and economic rights of the community at large, so the eradication of corruption must be carried out in an extraordinary way (Birahmat, 2018). In various fields, such as education, social affairs, construction services, transportation and communication. At this time the existence of corporations is considered to be increasingly important and strategic, apart from being able to help the economy turn around, corporations have also reached almost all areas of life. In Indonesia, corporations are engaged (Satria, 2018).

Regrettably, the politics of state finance law today has experienced a contemporary shift. The lack of transparency in the management of state finances, overlapping authorities between supervisory agencies, and the inexplicability of law enforcers in taking action against actions that harm state finances are evidence that the concept of state finance law constructed during this time is still far from legal certainty and useful (Kurnia Ilahi & Alia, 2017). It doesn't need to be emphasized anymore, corruption is the main problem of our nation. Of course there are many other national problems, but corruption is the root of the problem. This country has become independent, but the effects of development have not been felt by the majority of citizens, due to rampant corruption (Muttaqin & Susanto, 2018).

One way that is done in an extraordinary way is that it can be seen from the examination of corruption cases without the defendant's presence (*in absentia*). This *in absentia* trial has been mandated in Article 38 paragraph (1) of Law Number 20 Year 2001 regarding amendments to Law Number 31 Year 1999, which states: "In the event that the defendant has been legally summoned, and is not present in court without valid reasons, then the case can be examined and decided without his presence". The basic idea of implementing the *in absentia* judiciary in Corruption Crime cases is to obtain legal certainty for evidence (state money) in cases of criminal acts of corruption where there is no fear of damage to evidence or loss and no longer known whereabouts. In addition, the *in absentia* decision is a valid means of saving state losses, so that the return of state financial losses can be realized without worrying about getting a lawsuit from other parties (Harianja, 2013). If you look at it from the aspect of benefiting the Indonesian people as direct

victims of the criminal act of corruption. So the trial process must continue even though the defendant is running away or without the presence of the defendant / in absentia, so that state money from corruption as evidence can return to the state through a proper legal process.

Literature Review – Heading 1 (TNR, 12, Bold, Align Left, Capitalize Each Word)

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Research Method

Research is a scientific activity related to analysis and construction carried out methodologically, meaning according to a certain method or way. Systematic is based on a system which means that there are no things contrary to a certain framework (Soekanto, 2014). In this study using a normative research type. In Normative Research with secondary data as a source of data or information, it can be a source of primary law, a source of secondary law and a source of tertiary law. The implementation of normative research is mainly aimed at;

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

The implementation of this normative research is broadly aimed at research on legal principles, for example against written positive law or research on legal principles that live in society. The data used in this research is secondary data, namely data obtained from official documents, books related to the object of research, research results in the form of reports and statutory regulations. In this study, secondary data as a source / information material can be in the form of primary legal materials, namely Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crime and the Book of Law Number 8 of 1981

Result and Discussion

1. Corruption InThe PerspectiveOf Islamic Law

Al-Qur'an surat albaqarah ayat (188) explained about the prohibition from Allah SWT on acts related to corruption and bribery: (Meaning: and do not part of you consume the property of others among you in a false way and (do not) you bring (affairs) the property to the judge, so that you to consume part of the property of others with (the way of committing) sin, While you know.)"(QS.2:188).

Because the verse was explained by Ibn Kathir in his commentary through the news from the passage of Ibn Abbas said that this verse is about a man who bears the debt, while the person who gives the debt does not have strong evidence (when wanting to collect the debt). So the man who had the debt denied his debt and complained about it to the judge, even though he knew that he was dealing with the right thing, and that he was in the wrong party. strictly forbids one to consume the property of others and to fight for something that

is false (Katsir, 1986). Therefore, Islam strictly forbids bringing property matters to the judge when the background is wrong.

In the Qur'anic Encyclopedia, asbabunnuzul tells of this verse that one day, two people clashed with each other and both claimed that they were the rightful owners of a land. However, both of them do not have witnesses and evidence to corroborate their claims. Because this process was quite tough, the judge ordered both parties to take an oath. They both swore. But one of them, the man named Imri`iQays, gave false oaths. Because of that, this verse then came down. This is also closely related to the habit of society at that time (maybe also today) which made the court as a rescue medium to defend those who were actually on the wrong side. This irony is due to the mushrooming of the judicial mafia. In court, people who are clever and have sufficient funds, it is possible to win a case even though they are in the wrong side. This is the outcome of the practice of bribing judges, lawyers and people involved in the judiciary (Suratno, 2003).

This verse uses the term *addalwu* (jama` of *dalyun*) - *al idla`*. Basically, the meaning of this word is to lower the bucket to get water. *Thaba` Tabai* added that the notion of lowering the bucket into a source whose purpose is to get water is the same as the practice of bribery which is carried out in secret. As it is known that when a bucket is put into the well, other people cannot see it. Automatically, other people also do not know that a bucket is trying to take water (benefit) from the well. This is the same as the state of bribery that is deliberately disguised from the public so that the purpose of the bribe remains off the record. When read in the context of corruption, it contains a very strict meaning prohibiting eating other people's property in a way that is not justified by religion (*al-bathil*). The meaning referred to in this verse is to bribe judges, *kadi*, and others who have the power to free the bribe from the demands of something.

2. Loss of explicit state costs due to corruption

It is undeniable that corruption is an extraordinary crime that threatens the elements of the life of the state and nation, hinders development, high-cost economies and other bad impacts. Corruption, which has been thought to only occur in the public service sector and involves state apparatus, is in fact also occurring in the business world and involves actors from their own elements (individuals and corporations). The Global Competitiveness Report 2017-2018 shows the fact that corruption is still a major factor in problems in doing business in Indonesia and hinders the rate of economic growth in Indonesia (World Economic Forum, 2017) (Susanti, dkk., 2018).

When discussing and discussing corruption, they will indeed find such facts, because corruption involves moral aspects, rotten nature and circumstances, positions in government agencies or apparatus, abuse of power in office due to giving, economic and political factors, and family or family placement. group into service under the power of his position. Thus, it can literally be concluded that the term corruption actually has a very broad meaning.

- a. Corruption is fraud or embezzlement (state or company money and so on) for personal and other people's interests.
- b. Corruption is rotten, damaged, likes to use goods or money entrusted to him, can be bribed (through his power for personal gain) (Hartanti, 2005).

The explicit costs of corruption are the real costs that come out as anticipated costs, reaction costs and costs resulting from a corruption crime, which can be calculated directly. The explicit cost in this calculation is limited to the costs that come out of the APBN, although it is possible that there are costs outside the APBN.

Implicit costs are costs that are not directly visible, such as economic costs (opportunity cost), cost of damage (effect) which impacts through the market, and cost of damage (effect) whose impact does not pass through the market. Implicit costs are calculated at this time by taking the lowest estimate of a corruption incident or activity.

The cost of anticipating corruption basically consists of:

- 1) The costs 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 calculating the social costs of corruption, only the calculation of point c was successfully carried out. Activities and budget items for point a have not been specifically recorded at the government ministry / agency, so the calculation cannot be carried out. Meanwhile in point b, the bureaucratic reform process that is spread across ministries / agencies and local governments makes the calculation of this cost so complex that it cannot be included in the calculation. Thus, the definition of the cost of anticipating corruption in this paper is the amount of budget spent on prevention activities of corruption, reflected in the budget for prevention activities at the KPK.

Corruption reaction costs are all the resources needed by law enforcement officials to process

- a) Person who commits corruption, from the investigation, investigation, prosecution, court and correctional stages or until he has served a physical or financial sentence.

Corruption reaction costs consist of:

- b) The cost of the case handling process starts from complaints, investigations and investigations. (Police, Attorney General's Office, KPK, PPATK, BPKP etc.);
- c) Court fees (clerks, prosecutors, judges, etc.);
- d) Foreign and domestic asset seizure process costs; and
- e) Costs of detention and correctional facilities, fees for collecting fines, etc. In calculating social costs, the budget for prosecution is meant by the budget for prosecution at the KPK.

Costs due to corruption (Explicit) are the value of money that is corrupted, whether enjoyed alone or together with others, which translates to state financial losses. The data used is the result of calculating state financial losses that have been calculated by the BPK or BPKP, which is authorized to calculate state losses.

Basically, an economic analysis of the law generally postulates that every normal person, up to a certain point, will definitely make a profit-loss calculation for the actions he / she has committed, including in committing a crime (Marbun & Laracaka, 2019).

3. In Absentia Trial in Handling Corruption Crime

One way that is done in an extraordinary way is that it can be seen from the examination of corruption cases without the defendant's presence (in absentia). This in absentia trial has been mandated in Article 38 paragraph (1) of Law Number 20 Year 2001 regarding amendments to Law Number 31 Year 1999, which states: "In the event that the defendant has been legally summoned, and is not present in court without valid reasons , then the case can be examined and decided without his presence ". The basic idea of implementing the in absentia judiciary in Corruption Crime cases is to obtain legal certainty for evidence (state money) in cases of criminal acts of corruption where there is no fear of damage to evidence or loss and no longer known whereabouts In addition, the in absentia decision is a valid means of saving state losses, so that the return of state financial losses can be realized without worrying about getting a lawsuit from other parties.

The judiciary in absentia is considered to be effective in an effort to return the assets of the proceeds of corruption that have been looted by the perpetrators of corruption due to the following reasons:

- a. The settlement of the case is faster and the prosecutor as the government's representative can pursue the assets of the country in question if:
 - 1) Assets / assets suspected to be assets obtained from the crime can be legally confiscated and returned to the state.
 - 2) During the investigation process the perpetrator's assets have been properly inventoried and have been legally confiscated, so that after the court's decision is made, he can be immediately executed.
- b. Judicial decisions in absentia are a valid means of saving state losses, if the implementation procedure is in accordance with statutory regulations, so that the recovery of state financial losses can be realized without worrying about getting a lawsuit from other parties.
- c. Accelerate the judicial process because the procedures do not drag on so that in a criminal case it will reduce the delinquency of the case and provide legal certainty.
- d. As long as the assets of the defendant have clear ownership status, making it easier to confiscate. If the ownership is not clear, it will cause problems during the confiscation process.
- e. Theoretically it can make efforts to save the country's wealth effective, but in its application there are still obstacles, especially in the execution of replacement money as an effort to save state losses.

Conclusion

Corruption is an extra-ordinary crime, because its impact is not only detrimental to the country's finances or economy but also hinders national development. So the trial process in the absence of the defendant (in absentia) who has been legally summoned is an extraordinary method used for extraordinary crimes. The implementation of the In Absentia trial in the Corruption Crime case did not violate the rights of the defendant, this was because the defendant was given the opportunity to participate in every stage of the investigation process, the investigation process up to the trial process, but the defendant did not take advantage of his rights provided by the Criminal Procedure Code. . If you look at the perspective of Islamic law from the aspect of the benefit of the Indonesian people as direct victims of the criminal act of corruption. So the trial process must continue even though the defendant is running away or without the presence of the defendant / in absentia, so that state money from corruption as evidence can return to the state through a proper legal process.

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