

CRIMINAL SANCTIONS FOR CORRUPTION CRIMES BASED ON PERSPECTIVE STUDY OF RENEWAL LAW AND THE RELATIONSHIP WITH ISLAMIC CRIMINAL LAW

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Abstract: The crime of corruption is an extra ordinary crime that damages the joints of the economy in a country. Therefore, the crime must be given a sanction that creates a deterrent effect so that the act can be minimized. However, in reality the sanctions against corruption crimes that have been drafted at this time in Indonesia need to be reformulated through the reform of criminal law in Indonesia. This study examines the granting of criminal sanctions for perpetrators of corruption according to Islamic Criminal Law in relation to Criminal Law Reform. The research method used is normative legal research, with data sources in the form of secondary data and primary, secondary and tertiary legal materials. The analysis is in the form of descriptive qualitative. The criminal sanctions for perpetrators of corruption in Indonesia as stipulated in the corruption crime law are only in the form of imprisonment and fines. Thus, there is a need for reform of criminal law, specifically criminal law for corruption. These legal reform efforts sometimes originate from living laws besides Islamic law, including customary law as law that was applicable in Indonesian society before the entry of the Dutch criminal law. Therefore, the renewal of criminal sanctions for perpetrators of corruption crimes is currently a matter that needs to be reformulated considering the current sanctions have not provided a deterrent effect for perpetrators of corruption by reforming the law and incorporating Islamic values into the formulation of these sanctions, especially the values of justice in Islamic criminal law.

Keywords: Sanctions, Islamic, Corruption, Justice.

Abstrak: Kejahatan korupsi merupakan sebuah kejahatan yang ekstra ordinary crime yang merusak sendi-sendi ekonomi di suatu negara. Oleh karenanya kejahatan tersebut harus diberi sanksi yang menimbulkan efek jera sehingga perbuatan tersebut dapat diminimalisir. Namun dalam kenyataannya sanksi terhadap kejahatan korupsi yang telah disusun saat ini di Indonesia perlu di rumuskan kembali melalui kajian pembaharuan hukum pidana di Indonesia. Penelitian ini mengkaji tentang Pemberian Sanksi Pidana Bagi Pelaku Kejahatan Korupsi dari Perspektif Hukum Pidana Islam Kaitannya Dengan Pembaharuan Hukum Pidana. Metode penelitian yang digunakan penelitian hukum normatif, dengan sumber data berupa data sekunder dan bahan hukum primer dan sekunder. Analisisnya berupa kualitatif deskriptif. Pemberian Sanksi pidana bagi pelaku kejahatan korupsi yang terdapat di Indonesia pada umumnya hanyalah berupa pidana penjara dan denda termasuk ancaman pidana mati yang ternyata belum memberikan efek jera. Dengan demikian perlu adanya pembaharuan hukum pidana khusus hukum pidana korupsi. Usaha-usaha pembaharuan hukum tersebut juga harus bersumber dari hukum yang hidup yaitu hukum adat dan hukum islam sebagai hukum yang berlaku di dalam masyarakat Indonesia sebelum masuknya hukum Belanda. Dengan demikian, pembaharuan sanksi pidana bagi pelaku korupsi saat ini menjadi hal yang wajib dirumuskan kembali mengingat sanksi tersebut saat ini belum dianggap efektif dalam mencegah dan memberantas pelaku korupsi kendatipun sudah ada sanksi pidana mati. Salah satu upaya tersebut dapat dilakukan melalui pembaharuan hukum dan menuangkan nilai keadilan dalam hukum pidana Islam kedalam penyusunan sanksi bagi pelaku korupsi yang mengacu pada prinsip keadilan.

Kata Kunci: Pidana, Islam, Korupsi, Keadilan

Introduction

The endeavors in corruption eradication have long been carried out in various ways, one of the sanctions has been aggravated. However, corruption news is still often appeared in the media. Even red-handed corruption crimes, with the term arrest operation (OTT). As news issued that the Minister of Social Affairs (Mensos) Juliari Batubara was arrested in the act of committing corruption related to social assistance in handling Covid-19.¹ Previously, the Minister of

Marine Affairs and Fisheries (KKP)² was also caught red-handed. In addition, there are also cases of bribery committed by the former Minister of Youth and Sports related to the distribution of Kemenpora financing to KONI in the 2018 Fiscal Year. A number of corruption cases that have occurred illustrate that corruption is widespread in Indonesia.

Punishment for perpetrators of corruption in Indonesia has not provided a deterrent effect on the perpetrators. This is evidenced by the rampant corruption cases that

¹ Leliana, Intan, et al. "Analisis Framing Model Robert Entman tentang Pemberitaan Kasus Korupsi Bansos Juliari Batubara di Kompas. com dan BBC Indonesia. com." *Cakrawala-Jurnal Humaniora* 21.1 (2021): p. 60-67.

² Novita, Deri, Desi Albert Mamahit, and Yusnaldi Yusnaldi. "Dampak Implementasi Peraturan Menteri Kelautan Dan Perikanan Nomor 71 Tahun 2016 Terhadap Keamanan Nasional (Studi Kasus Di Provinsi Sumatera Barat)." *Keamanan Maritim* 5.1 (2019). p. 23

occur not only for officials who have low positions but have also penetrated state officials such as ministers. Criminal sanctions for perpetrators of corruption crimes in Indonesia contained in the corruption law are only in the form of imprisonment and fines. This has not provided a deterrent effect for perpetrators of corruption. According to Islamic criminal law; Corruption is a criminal act that is substantially inconsistent with morals and religious values. The sanctions that can be given are *takzir*, namely punishments that are given according to the policies of the competent institutions in society. Contrasting with the sanctions in Indonesian criminal law, the sanctions are in the form of imprisonment. The success of imprisonment sanction as a form of criminal law reform is very insignificant, it cannot be known with certainty that the number of recidivists can be minimized by the existence of prison houses through individual coaching methods.

The form of coaching and rehabilitation programs in the prison has little effect on recidivists. Based on the research results, the effect of various sanctions shows that long duration time in the prison, long or short duration for a person serving a prison sentence does not make a difference to the success rate in eradicating corruption in Indonesia. This means that educational efforts in the form of coaching to the prisoners in the prison are still very minor influence on the inmates, while the very big influence even come from other inmates. Therefore, longer the prisoners who are in prison, especially for convicts who are recidivist, the prisoners who are in prison tend to have bad attitudes that are transmitted by other inmates. S.R. Brody stated that the length of time convicts served prison did not appear to have any effect (*reconviction*).³ The length of a person convicted of corruption does not affect the

effectiveness of fostering corruption convicts. The tendency to make prisons as a new school of corruption for convicted corruption is unavoidable.

This will be different if we look at the regulation of corruption in Islamic law, including the issue of fostering corruption convicts in countries that adhere to Islamic law. According to Islamic law, a crime or evil act can be said to be an act that violates human nature. And the crime or evil act is defined by *al jarimah* which means an act that is against law^{1,4} The perpetrators of crimes will be given sanctions against certain crimes as stated in the Qur'an and Sunnah. Allah says in Surah An-Nisa (4) verse 16: the translation is: "And to two of you who do heinous deeds, then hurt them. Then if they repent and correct themselves, then turn away from two sides".⁵ Islam formulates punishments for crimes based on texts, besides that it stipulates the types of punishments not only based on existing texts but also stipulates punishments for those who commit crimes for which no texts are submitted to the imam (ruler). The purpose of this punishment is to create awareness among the perpetrators of the crime.²

For the crime of corruption, Islam has actually determined the sanctions with *takzir* by submitting the determination of the punishment for the perpetrators of the crime to the imam (ruler). The current conditions in Indonesia for various corruptions that occur really need to be formulated in the form of effective sanctions and create deterrence for perpetrators of corruption in Indonesia. Of course, within the framework of reforming the criminal law of corruption in the future.

⁴ Fitri Wahyuni, "Hukum Pidana Islam, Aktualisasi Nilai-Nilai Hukum Pidana Islam Dalam Pembaharuan Hukum Pidana Indonesia ", (PT Nusantara Persada Utama, Jakarta, 2018), p. 25

⁵ Departemen Agama RI, *Syaamil Al-Qur'an*, Bandung, 2005, p. 21.

³ Ibid

The provisions of the criminal law of corruption in the future will not only have severe criminal sanctions such as the death penalty, but are laws that can be applied effectively in dealing with corruption crimes in Indonesia. Penal-based corruption eradication should be easy to implement so as to reduce the potential for corruption in Indonesia in the future so that order is achieved in society. It is necessary to reform the criminal law of corruption by referring to various provisions that live in society such as Islamic criminal law and even customary criminal law.³

In general, law is actually a tool for controlling society, so that the existence of law is something that humans want internally as legal subjects. Every individual certainly wants order, social order or control in carrying out all his life activities. The treatment of corruption is one of the uncontrollable so that the law, especially criminal law through sanctions, can control this irregularity (law as a social engineering tool) as an extension of the authority's hand.⁴⁶ to provide sanctions for perpetrators of corruption which later turned out to be not very effective in its application, and it is not uncommon for perpetrators of corruption to repeat their crimes again.

Legal reform and codification are one of the ways or answers to efforts to obtain legal certainty or perfection of a rule of law, which must then follow the development of society, including the rules regarding corruption. Legal reform is the replacement of the old legal rules with new legal rules or renewal is said to change part of the whole or certain parts such as, changing only the material of some articles of the old law, changes can also be made to the structure, content or culture of the amended laws.

These changes can also occur because the principles and principles of the law change and so on.² Islamic law as a part or source of reference in changes to the law of criminal acts of corruption can certainly be done in order to achieve perfection and legal certainty of the rule of law in eradicating criminal acts. future corruption.

Efforts and efforts in reforming the criminal law of corruption are actually related to the field of criminal law policies in general and policies to eradicate corruption in particular, of course also related to law enforcement policies, social in a wider scope. In principle, the policy of the criminal law of corruption is almost the same as efforts to reform the law (rational efforts to update the substance in order to make law enforcement more effective, to tackle corruption crimes in the context of protecting society, of course also to overcome social problems in the country). The problem of reforming the criminal law of corruption is also at the same time the implementation of the penal policy in overcoming the crime of corruption. One source of legal reform that determines the penal policy is sourced from Islamic law as the legitimacy of the existence of religious law in legal reform in Indonesia.

Indonesia is neither a religious country nor a secular country, namely separating religion from the state too far, this is regulated in the Indonesian constitution. Also included in the issue of legal reform, besides Indonesia being said to be a state of law (*recht staat*), the existence of Islamic law in criminal law reform in general cannot be separated.⁷ The use of criminal policies in the renewal of the criminal law of corruption as *shock therapy* for perpetrators of crimes is a general effort of criminal law by imposing

⁶ Aris Irawan, "Hukum Islam dalam Kerangka Pembaharuan Hukum Pidana di Indonesia", (*ALHURRIYAH: Jurnal Hukum Islam*, Vol 04., No. 02. Juli-Desember 2019). p. 103-114.

⁷ Dwiyan Achmad Hartanto, "Kontribusi Hukum Islam Dalam Pembaharuan Hukum Pidana Di Indonesia" Studi Pidana Cambuk di Nanggroe Aceh Darussalam, *Al AHKAM, Jurnal Ilmu Syari'ah Dan Hukum*, Vol. 1, Nomor 2, 2016 ISSN: 2527-8169 (P); 2527-8150 (E), (Surakarta: Fakultas Syari'ah IAIN, 2016), p. 1-22.

criminal sanctions in dealing with crimes, such as capital punishment for perpetrators of corruption in the implementation of penal policies, of course this can be associated with the implementation of capital punishment in developing countries. Many Islamic countries also apply the death penalty in crime prevention.⁸

The reform of the criminal law of corruption which is very rarely studied in legal research is about the Provision of Criminal Sanctions for Criminal Corruption Perpetrators according to Islamic Criminal Law in relation to the Reform of Criminal Law. It is true that the provisions of sanctions in the law on eradicating criminal acts of corruption already have maximum sanctions in the form of capital punishment, but it turns out that maximum sanctions such as the death penalty do not deter perpetrators who often turn out to be recidivists. There is a need for formulations in imposing appropriate sanctions for corruption perpetrators, including by updating regulations that can be sourced from Islamic law related to the provision of sanctions for perpetrators of corruption. To discuss this, in this study the method used is in the form of normative legal research⁹ that is descriptive in nature, namely analyzing sanctions for corruption crimes and formulating them in the form of sanctions that are more appropriate in the future. The data used are secondary data with data sources, namely primary legal materials, secondary legal materials and tertiary legal materials⁹ as well as other materials related to the subject matter.

⁸ R. Bondan Agung Kardono, Nyoman Serikat Putra Jaya, Nur Rochaeti, "Hukuman Kebiri terhadap Kejahatan Seksual Anak," *Kanun Jurnal Ilmu Hukum Unsyah*, Vol. 22, No. 3, (Desember, 2020), p. 567-582.

⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan ke-11, (Jakarta:PT Raja Grafindo Persada, 2009), p. 13-14.

⁹ H. Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, (Bandung: Alfabeta, 2017), p.101-102.

The Purpose of Giving Criminal Sentences to Criminals Based on Islamic Criminal Law and Indonesian Criminal Law

Islamic law is prescribed by Allah SWT with the aim of applying, realizing, protecting the matters of all humans, both for the individuals matters and society in the protection for religion, soul, mind, property and descendants¹⁰. In order to ensure, protect and maintain these matters, Islamic law has provided rules in the form of commands and prohibitions, both of them must be obeyed. The set of rules referred to Islamic criminal law is known as *fiqh jina`iy*¹⁰¹¹ which is part of the entirety of Islamic law. Fiqh *Jinayah* is a rule of law regarding crime or criminal behavior committed by people who can be burdened with obligations.¹² If these rules are not obeyed, the perpetrators will be sentenced or *u'qubah* both worldly and hereafter, to be useful and preventing all impractical things for human life.

All forms of destruction of other people or their creatures are prohibited by Islamic law and those are included to be crimes or *Jinayah* and are also called *jarimah*. An act is called *jarimah* if the act causes harm to other

¹⁰ Amir Syarifuddin, *Garis-Garis Besar Fiqh*, (Jakarta: Prenada Media, 2005), p. 254.

¹¹ *Fiqh Jinayah* terdiri dari dua kata *fiqh* dan *jinayah*. Fiqh adalah ilmu tentang hukum-hukum syara' praktis yang diambil dari dalil-dalil yang terperinci. Sedangkan jinayah adalah suatu istilah untuk perbuatan yang dilarang oleh syara' baik perbuatan tersebut mengenai jiwa, harta atau lainnya. Apabila digabung dua kata tersebut maka pengertian fiqh jinayah adalah ilmu tentang hukum syara' yang berkaitan dengan masalah perbuatan yang dilarang (jarimah) dan hukumannya, yang diambil dari dalil-dalil yang terperinci. Ahmad Wardi Muslich, *Pengantar dan Asas Hukum Pidana Islam Fikih Jinayah*, (Jakarta: Sinar Grafika, 2006), p. 1-2.

¹² H. Zainuddin Ali, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2007), p. 1.

people or society.¹³ Islam has provided rules for crime and imposed penalties to protect common interests in society. It also aims to save the community in order to create good moral values and life. Actions that are contrary to the rule of law or disobedience to all or part of humans on this earth do not cause harm or damage to Allah SWT, but Allah SWT has given rules or *Shari'a* for humans, so humans live with the *Shari'a* in their lives.¹⁴

Punishment or sanction is a bad thing, painful, miserable, shackles freedom for perpetrators of crime. The point of applying punishment for perpetrators of criminal acts or *jarimah* is to maintain the interests of the community, peace of life, and the survival of the community. The general purpose of the rules set by God is basically to bring benefit to humans, in order to realize advantages and benefits for humans to avoid damage and harm to humans. In this case, Allah wants humans to avoid all forms of damage. According to the hadith conveyed by the Prophet Muhammad SAW: "There should be no damage to humans and humans should not do damage to the souls of others".

The purpose of punishment according to Islamic law is not only as retaliation (retribution), but also as prevention (deterrence) and improvement (reformation), and contains the goal of education (*altahzib*) for the community. From the several forms of sentencing purposes mentioned above, it is a unified whole in order to apply Islamic criminal law so that the realization of it could bring advantage to humans. The superiority of Islamic law can be seen in the

principles, theories, and rules contained in Islamic law whose truth is universal.¹⁵

Criminal or punishment is basically a means to achieve certain goals, in the form of community protection and individual protection. Thus, the provision of criminal sanctions for perpetrators of crimes with prevention means preventing the maker from repeating his crime or so that he/ she does not continue to do the same act. In addition, the punishment is also a form of prevention against other people from committing criminal acts, by knowing that there are crimes and punishment, people will act more carefully, so they are not to be subject to a criminal or punishment. It was further explained that the purpose of sentencing from the aspect of prevention can also be understood that the severity of the punishment imposed according to Islamic law will deter and fear the perpetrators of the crime from repeating their actions.¹⁶ Perpetrators not to repeat their actions and prevent others from doing the same acts as the perpetrators of the crime and stay away from the environment.¹⁷

Acts that are threatened with punishment can also be in the form of violating the prohibition or leaving the obligation, therefore the purpose of prevention in the first situation is in the form of a prohibition to perform the act. While the purpose of prevention in the second situation is to make the perpetrator no longer leaves the obligations that have been set, with the punish-

¹³ Ishaq, "Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia," *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol 14, No. 1 Juni 2014, (Salatiga: STAIN, 2014), p. 85.

¹⁴ Ahmad Wardi Muslich, *Pengantar dan Asas Hukum Pidana Islam Fikih Jinayah*, p. 22.

¹⁵ Satria Efendi M. Zein, "Prinsip-Prinsip Dasar Hukum Jinayat dan Permasalahan Penerapannya Masa Kini," *Mimbar Hukum*, No. 20 tahun VI al-Hikmah, Jakarta, 1995), p. 32.

¹⁶ Ishaq, "Sanksi Pidana Pembunuhan Dalam Hukum Pidana Indonesia Dan Hukum Pidana Islam Sebagai Kontribusi Bagi Pembaruan Hukum Pidana Indonesia," *Jurnal Al-Risalah forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol.16 No.1, Juni 2016, Fakultas Syariah IAIN Sulthan Thaha Saifuddin Jambi, 2016), p. 41.

¹⁷ Ibid

ment, the perpetrator will carry out the obligations that have been determined, the same as people who leave prayer or do not want to pay zakat or people who do not want to give alms or giving food to their children who are still underage.¹⁸ If both of the above cases occur, the punishment that will be given will be heavier than someone who is in the first situation, because the purpose of giving punishment to those who leave the stipulated obligations is to force the perpetrator to do his duty. Therefore, the punishment given will force a person to fulfill his obligations.¹⁹ The purpose of punishment is in the form of prevention, it also means that the punishment can realize that goal, therefore, the punishment given should not be less or more than the specified limit, so that there is a principle of justice in sentencing. In addition, to prevent and frighten other people not to do the same thing as the perpetrator.

Islamic law never ignores the perpetrators of crimes or violations. This is proven by the existence of the punishment in order to provide lessons and seek improvement for the perpetrator as the main goal, this is of course a form of prevention so that humans are afraid to do *jarimah* not because of fear of punishment, but also to the self-awareness and hatred for each other is born, do not do *jarimah*, and keep away from the environment, in order to get the pleasure of Allah SWT, the Almighty God. Such awareness is of course the best and most appropriate way to eradicate crime or *jarimah*, because before a person commits an act of *jarimah*, he/she will think first that God will know his actions and surely punishment will be given to him/her, whether it is known by people or not. And surely, he/she will not be able to avoid himself/herself from punishment in the hereafter. This kind

of awareness is coveted by positive law scholars and authorities.²⁰

Scholars who are experts in the field of fiqh explain that the punishment for perpetrators consists of three objectives which include the following:

First is showing justice. The punishment given must not be heavier than the guilt of the perpetrator and the victim of the crime must be given back the rights that were seized and harmed by the perpetrator of the crime. Second, as a means to protect people's lives, it is intended that the punishment imposed can prevent others from committing crimes so that life in society becomes orderly, safe, and peaceful and society can easily build its civilization. Third, as a means of deterrent effect for perpetrators of crime. Giving punishment for criminals aims to encourage criminals to repent and realize their mistakes, besides that the punishment also aims to eliminate guilt from the perpetrators so that the perpetrators are encouraged to return to the truth or a normal life. In other words, the punishment given will be able to erase the sins of the perpetrators of the crime.²¹ Actually, this is all in line with the purpose of giving criminal sanctions in general and in the national criminal law.

Meanwhile, the purpose of providing criminal sanctions against criminals in Indonesian criminal law also has 3 (three) objectives, as explained by Moeljatno, that there are 3 (three) objectives or functions of criminal law, first; criminal law aims to determine what actions are prohibited which are said to be crimes then what sanctions will be applied to the violators, second; to determine if and how and what sanctions can be applied to violators in accordance with what is stipulated in the provisions of

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid., p. 257.

²¹ Ridwan Syah Beruh, *Membumikan Hukum Tuhan Perlindungan HAM Perspektif Hukum Pidana Islam*, (Yogyakarta: Pustaka Ilmu, 2015), p. 191.

the law, third; forms of punishment that can be given to those who have violated the prohibited acts. This is also related to the function of criminal law according to Moeljatno, which is to protect from rape attempts against the interests of individuals, society and the state, serves to provide legitimacy for law enforcers to apply punishment, also serves to limit the legitimacy of the state through law enforcers from abusing the authority to punish them.²²

The provision of punishment for criminals in the law is useful for determining what actions are subject to crime, so that it is not only related to the crime or the offense, but also that criminal sanctions are one of the methods used to achieve the objectives of criminal law.²³ It is emphasized that the crime has two very important goals, namely to have an influence on human behavior and to resolve conflicts that occur.²⁴ In addition to the criminal objectives mentioned above, Adami Chazawi also explained that the purpose of the crime is to create legal certainty so that there are restrictions on state power, and also prevent (preventive) so that people are protected from acts that violate criminal law.²⁵ This preventive anticipation also consists of prevention in general and prevention in particular, in general, by means of providing severe criminal threats in order to frighten those who will commit crimes, but also to give fear to others not to commit crimes. Meanwhile, prevention specifically aims to prevent criminals who have been convicted of repeating their crimes, and to prevent other people who have bad

intentions, so that their intentions are in the form of real actions.²⁶

According to Pontang Moerad M.B, that the purpose of a crime has three main ideas, namely: (1) the purpose of the crime is to improve the perpetrator of the crime himself; (2) create a deterrent effect for people who commit another crime; (3) to make the perpetrators of certain crimes (minor crimes) unable to commit other crimes.²⁷

Based on the explanation of the criminal objectives mentioned above, a comparison of punishment according to Islamic criminal law and Indonesian criminal law can be obtained, in general it can be described in the table below, as follows:

Comparison of the objectives of the criminal according to Islamic criminal law giving punishment is a way to enforce justice, create a deterrent effect, prevent similar behavior and so that the perpetrator does not repeat it. This is of course in line with Indonesian criminal law, the purpose of the criminal being imposed in addition to repaying the criminal's behavior is how then the perpetrator of the crime does not repeat his behavior. The patterns of punishment in the Islamic criminal system can then be a way out in the problem of eradicating corruption, by reforming the law by taking the nature of the purpose of punishment in Islamic law and then applying it in regulating corruption in the future.

²² Moeljatno, *Asas-asas Hukum Pidana*, Edisi Revisi, (Jakarta: Rineka Cipta, 2007), p. 23-28.

²³ Roni Wiyanto, *Asas-Asas Hukum Pidana Indonesia*, (Bandung: Mandar Maju, 2012), p. 111.

²⁴ Nandang Sambas, Ade Mahmud, *Perkembangan Hukum Pidana dan Asas-Asas dalam RKUHP*, (Bandung: Refika Aditama, 2019), p. 204.

²⁵ Adami Chazawi, *Pelajaran Hukum Pidana*, Bagian I, (Jakarta: Raja Grafindo Persada, 2002), p. 25.

²⁶ H. Ishaq, *Hukum Pidana*, (Jakarta: Raja Grafindo Persada, 2020), p. 7-8.

²⁷ Pontang Moerad M.B dalam Syamsul Fatoni, *Pembaharuan Sistem Pemidanaan Perspektif Teoritis dan Pragmatis untuk Keadilan*, (Malang: Setara Press, 2016), p. 99

Criminal Sanctions for Perpetrators of Corruption Crimes According to the Relation of Criminal Law Relation to Islamic Criminal Law

The Islamic Criminal Law System has a view that is not the same as other legal systems towards criminal acts and sanctions. Islam is firmly guided by the principle of absolute justice, and this of course is in accordance with the maximum limit and philosophically can be realized in this world. In Islam, it is never excessive in culting general rights, nor is it excessive in culting individual rights.²⁸ Islamic law, which is part of the Islamic religion, aims to benefit human beings, both spiritually and physically, as well as individual and social life,²⁹ so that the main purpose of criminal law in Islamic criminal law is *rahmatan lila'lamin*, this is in line with the Qur'an in surah al-Anbiyaa (21), verse 107, which means: And We have not sent you (Muhammad) but to be a mercy to the whole world.³⁰

Islamic law comes, principally, as a mercy for human society, even for the whole world. Thus, this grace will not be realized except by realizing Islamic law in the daily life of the human being.

²⁸ Sa'id Hawwa, *Al-Islam, Al-I'tishom*, (Jakarta: Cahaya Umat, 2002), p. 338.,

²⁹ Abdul Ghofur Anshori, Yulkarnain Harahab, *Hukum Islam Dinamika dan Perkembangannya di Indonesia*, (Yogyakarta: Kreasi Total Media, 2008), p. 3

³⁰ Departemen Agama RI, *Alqur'an dan Terjemahnya*, (Jakarta: Magfirah Pustaka, 2006), p. 331

Table 1: Comparison of Punishment Goals

Punishment Purposes based on Islamic Penal Law	Punishment Purposes based on Indonesian Penal Law
<ol style="list-style-type: none"> 1. Uphold justice 2. To deter perpetrators/ special prevention 3. Provide general prevention/ general prevention 4. Fix the perpetrator 	<ol style="list-style-type: none"> 1. Reverence 2. Preventing crime/ deterrent effect 3. Reply and cause a deterrent effect

This goal remains tangible, because none of Islamic law does not contain an essential benefit, even though that benefit is not clearly seen by some people.³¹ The firmness of Islamic law, or in this case the Islamic criminal law, is established by Allah SWT as a form of grace (*rahmat*) to humans and the natural surroundings, so that human life becomes peaceful, fair, peaceful and prosperous. In other words, the firmness of the threat of punishment in Islamic criminal law which has been determined by Allah to the perpetrators of the crime is intended as a form of prevention against damage and of course with the intention of bringing safety, peace life in this world and in the hereafter, directed to the truth, justice, wisdom and illuminate the path of ultimate truth.³²

According to the view of Islam, law and justice cannot be separated, Allah SWT is the holder of authority, He is all-powerful, and He creates law through His revelations in the form of the Qur'an and the Hadith Rasul. God's justice is contained in His revelations and the Hadith of the Rasul which is the main source (primary) in creating direction in the society and also to meet the needs and expectations of the existing community. All laws that have been set by Allah SWT must be believed that the law is equitable, because it is certain and real, ideal and perfect and

cannot be contested, and applies forever to all humans.³³ Even to make humans act fairly, it is an instruction from Allah SWT to humans: "Do justice, because justice is closer to piety".³⁴ This sentence is in line with Allah words in the Qur'an, Surah al-Maidah (5) verse 8 which is translated as follows: "For you who believe, let you become people who always uphold (the truth) only because of Allah, be a fair witness. And don't let your hatred of people encourage you to act unjustly. Be fair because justice is closer to piety. And fear Allah, verily Allah is aware of whatever you do."³⁵

Giving criminal sanctions for perpetrators of crimes in Islamic law is the realization of justice from Allah to humans so that humans take lessons from the sanctions that have been set by Allah for perpetrators of these crimes, and to prevent other humans from committing crimes and criminals can repent of their actions, so the perpetrators become deterrent and afraid to repeat their crimes. In relation to the formulation of criminal sanctions for corruption and in the context of achieving future sentencing goals,

³¹ Teungku Muhammad Hasbi Ash-Shiddieqy, *Falsafah Hukum Islam*, (Semarang: Pustaka Rizki Putra, 2013), p. 115.

³² Ridwan Syah Beruh, *Membumikan Hukum Tuhan Perlindungan HAM Perspektif Hukum Pidana Islam*, p. 186-187.

³³ Agus Santoso, *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*, (Jakarta: Kencana Prenada Media Group, 2014), p. 92.

³⁴ "O you who believe, let those who always uphold (the truth) for Allah be witnesses with justice. And never do your hatred of a people encourage you to act unjustly. Be fair because fair is closer to piety. And fear Allah, verily Allah is Knowing of what you do." (QS. Al - Maidah (5):8)

³⁵ Departemen Agama RI, *Alqur'an dan Terjemahnya*, p. 108.

Mochtar Kusumaatmaja put forward a way of thinking with *sociological jurisprudence*,² namely by shifting it in the form of the concept of Indonesian legal development, especially to implement the Program National Legislation. According to Mochtar Kusumaatmaja, the law should not be seen as merely a normative symptom, where the law is in the form of all the principles and rules that govern human life in society. It can even be said that the law is a reflection of the values prevailing in the existing society. As a reinforcement of his opinion, Mochtar Kusumaatmaja stated that a good law is a law that is in accordance with the living law in society, of course also in accordance with the application of the values prevailing in society.³⁶

Then Achmad Ali explained, that:

“The living law is a law that lives in society and is actual, so there is no need for a re-actualization effort. The living law is not something that is static, but also changes from time to time. The living law is the law that lives in society, it can be an unwritten law and it can also be a written law. Likewise, the living law can be in the form of customary law (which is not written), and it can also be in the form of modern customary law (which is not written) originating from Western law and Islamic law in certain fields of law.³⁷

In addition, Eugen Ehrlich as a thought leader in Sociological Jurisprudence argues that:

“The emphasis of legal development lies not only in the laws and regulations and also not in court decisions or in law knowledge, but in society. In fact, the regulations that will be followed by the

community are real living laws, namely laws that have a much wider scope than the norms made and stipulated by government officials.”³⁸

Then Ehrlich also strongly emphasized that living law is the law that actually exists and lives in society, continues to evolve, even always exceeding the law created by the rigid and immovable state,³⁹ so in Ehrlich's opinion that state law should be able to adapt or able to harmonize with the values that live in society. Do not let the legislators make laws and implement laws that are inappropriate and contrary to the laws that live in society. This means that the law will be said to be effective if the law reflects the values that live in society.⁴⁰ The living law is of course a law that comes from religious beliefs, because when Allah sent down His legal provisions for humans, Allah had no interest in the provisions of the law. Likewise, the hereditary traditions are obeyed by the residents because they know that the rules regarding an action are born from what they think is good and bad from generation to generation.

In relation to Eugen Ehrlich's thoughts, Satjipto Rahardjo argues that law discipline is not only in the form of ideas obtained from human thought, but also must be able to follow the development of existing laws in society. Laws that do not adapt to the values that develop in society will of course be ignored by the community. Even though it is a state law where there are sanctions that will be given to perpetrators in an organized manner by the executive agency, but

³⁶ R. Otje Salman Soemardiningrat, *Rekonseptualisasi Hukum Kontemporer Edisi Cetakan Kesatu*, (Bandung: Alumni, 2003), p. 22.

³⁷ Achmad Ali, *Menguak Realitas Hukum Rampai Kolom & Artikel Pilihan Dalam Bidang Hukum*, (Kencana: Jakarta, 2008), p. 216.

³⁸ Ehrlich dalam Lili Rasjidi, *Hukum Sebagai Sistem*, (Bandung: Mandar Maju, 2003), hlm.122, Lihat juga dalam Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Alumni, 1986), p. 256.

³⁹ Friedmann, *The Legal System, A Social Science Perspective*, (New York: Russell Sage Foundation, 1980), p. 14.

⁴⁰ Sunaryayati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, (Bandung: Alumni, 1991), p. 84.

because the state law is considered unfavorable by the public, the state law will not be used and will simply be ignored.⁴¹ Roscoe Pound also argues that law is a means of changing society (*a tool of social engineering*),⁴² which positioned the law as a driving force that will later spread and also stimulate ideas that will be realized by law. Thus, law implementation not only functions as a mere statutory rule, but also carries out bureaucratic activities. The law is said to be *social engineering* which is needed as a reinforcement in the civilization of human society in order to control anti-social behavior that is not in accordance with the rules of social order in society. Law as a means of social control is the main function of a country by applying the law through an institution specifically appointed to implement it. In addition, Pound also argues that the law itself is not enough to be applied properly, therefore it is very necessary to support from family, educational, moral and religious institutions.

Barda Nawai Arief expressed his opinion that the study of the legal system that lives in society is very important and urgent to be carried out in the current national criminal law reform. Therefore, in addition to being able to support national development and the needs of international relations, the national criminal law system must be sourced and must not ignore legal values and aspirations that live and develop in society. In addition to this, in the formulation of criminal law policies, the criminalization process has a very important role, because at this stage the legislators determine an act that was originally not a criminal act becomes a criminal act. Every act that is formulated as an act of criminalization must consider many

things, such as the legal interests to be protected, the dangers that will occur, the losses incurred, the costs, readiness and mastery of technology from the apparatus and other related institutions.

Within the framework of reforming the Indonesia's criminal law attempts, the effort to reform criminal law has actually been started since 1968.⁴³ Moreover, Muladi also argues that reform of criminal law must also be based on comprehensive and adaptive studies. The efforts to reform criminal law are a series of criminal law policies (*Penal Policy*).⁴⁴ It should be emphasized that criminal law policy efforts are an inseparable part of integral policies of social policy, policies as efforts with the aim of achieving social welfare policies and social protection policies as policies in crime prevention. Social policy is the basis for the framework of thinking, when you want to carry out social protection policies, of course you need *criminal policy*.⁴⁵ Criminal politics, including criminal law reform, is essentially a comprehensive part of social politics, namely policies or efforts to realize social welfare.⁴⁶

This policy is included in the issue of corruption eradication, rational efforts to tackle corruption crimes are also a series of criminal policies which are known as legal politics or efforts to reform the state law implementation through authorized institutions in regulating corruption. In an effort to update criminal law, especially the criminal law of corruption, these reforming laws are also sometimes sourced from living law in

⁴¹ Satjipto Rahardjo, *Ilmu Hukum*, (Surakarta: University Press, 2004), p. 40.

⁴² Munir Fuadi, *Teori-Teori Besar (Grand Theory) Dalam Hukum*, (Jakarta: Kencana Prennamdeia Group, 2013), p. 248.

⁴³ Mohd. Din, "Kebijakan Pidana Qanun Aceh dalam Preskriptif Kebijakan Hukum Pidana," *Kanun Jurnal Ilmu Hukum* No. 67, Th. XVII (Desember, 2015), p. 555-583.

⁴⁴ Sudarto, "*Hukum Pidana dan Perkembangan Masyarakat, Kajian terhadap Pembaharuan Hukum Pidana*," Sinar Baru Bandung, 1983, p. 20.

⁴⁵ Faisal, *Politik Hukum Pidana*, (Tangerang: Rangkang Education, 2020), p. 73.

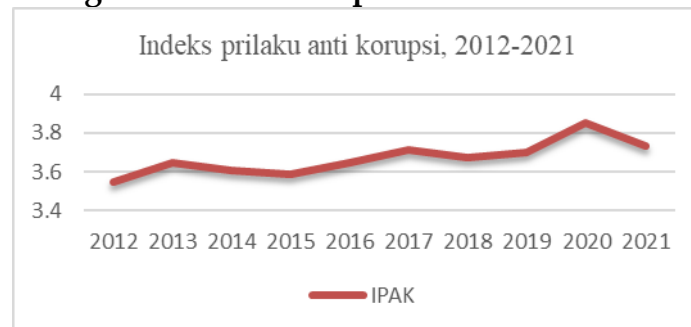
⁴⁶ Rusli Muhammad, *Pembaharuan Hukum Pidana Indonesia*, (Jakarta : UII Press, 2019), p. 23.

addition to Islamic law, including customary law as the applicable law in Indonesian society before the entry of Dutch criminal law.

Indeed, in terms of anti-corruption behavior in Indonesia, it is increasing from time to time which we can see from the data from the Central Statistics Agency related to the anti-corruption behavior index, from 2012 to October 2021, but this increase does not mean a reduction in the number of cor-

ruption crimes that occur, the criminal law policy of the eradication of corruption in Indonesia which displays the death penalty as a maximum criminal brand does not provide a deterrent effect for the perpetrators. Every day, news reports in the mass media of corruption perpetrators enter the KPK building one after another. This shows us that the mere ineffectiveness of the sanction policy is in the form of a criminal.

Figure 1. Anti-Corruption Behavior Index



Source: Central Bureau of Statistics.

From the data above, it is clearly seen that there is an increase in anti-corruption behavior by the Indonesian people. Regulations should support the increase in anti-corruption behavior by reforming the criminal law as part of the criminal law policy (rational effort) implemented to update the legal substance to streamline law enforcement efforts. The reform of criminal law is also basically part of a policy (rational effort) to eradicate and or overcome crimes that exist in society in order to protect the community.⁴⁷ In addition, Muladi also argues that in reforming criminal law, it must be from comprehensive and adaptive studies.¹¹ Therefore, the renewal of criminal sanctions for perpetrators of corruption is currently a matter that needs to be reformulated consid-

ering that the sanctions currently in force and applied have not yet created a deterrent effect for perpetrators of corruption through legal reform and incorporating Islamic values into the formulation of these sanctions, especially the value of justice fairness in Islamic criminal law. Therefore, people's anti-corruption behavior that increases from year to year can be followed by a renewal of criminal sanctions for corruption crime based on justice that comes from living law; Islamic law as part of efforts to reform the criminal law of corruption in Indonesia. With the renewal of laws and regulations on the eradication of anti-corruption acts and behavior, it is hoped that it will be a powerful solution in dealing with anti-corruption crimes in Indonesia.

⁴⁷ Teguh Prasetyo, *Pembaharuan Hukum Perspektif Teori Keadilan Bermartabat*, (Malang: Setara Press, 2017), p. 33.

¹¹ Fitri Wahyuni, *Dasar-Dasar Hukum Pidana di Indonesia*, (Jakarta: PT Nusantara Persada Utama, 2017), p. 197.

Conclusion

The imposition of sanctions in the corruption eradication legislation in Indonesia ac-

tually has two objectives, namely as repressive judicial dan Preventive justice, the existence of sanctions in the law should be able to function not only penalize, but also as part of prevention efforts which stemming from sanctions in the law. Included in the prevention of criminal acts of corruption, the provision of sanctions in the law is actually also a prevention which is in line with Islamic law. If we look at the legislation related to corruption in Indonesia, the maximum sanction of the death penalty is not too influential on prevention so that people do not commit corruption, the punishment should be in accordance with the type of crime which makes the advantages of Islamic criminal law in giving sanctions, in Islamic criminal law it should not be less or more than the limit that has been set by holding the principle of justice in punishment. Thus, there is a principle of justice for perpetrators and the state as victims in the context of corruption. In imposing punishment in Islamic criminal law, the Qur'an which is the source of law has clearly explained the basics of justice in giving sanctions, so the concept of justice in the Qur'an should be a reference in renewing sanctions in the corruption eradication law in Indonesia. The concept of justice in the Qur'an is a concept that is always relevant to be used throughout the ages. In reforming criminal law, especially the criminal law of corruption, it should also be oriented to the prevention and handling of crimes based on the concept of justice in punishment. The existence of the death penalty law in the criminal sanctions of corruption in Indonesia can actually be said to be inappropriate in its placement, because it is threatened alternatively after the application of maximum imprisonment of death penalty and life imprisonment. Hence, future renewal of the criminal law of corruption could be sourced from the values of Islamic law as a law that grows and lives in the life of the Indonesian people, so it can support the improvement of the anti-corruption legal

culture of the Indonesian people from year to year. Undeniably, the solution is in the form of reforming the legislation to eradicate corruption, especially regarding criminal sanctions that can be applied in eradicating corruption in society.

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