



# Implementation of Bribes (Risywah) Based on Law No. 20 of 2001 on Action Criminal Corruption in Legal Perspective Islam in Medan State Court

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## **Abstract:**

*In accordance with the characteristics of empirical legal research using secondary data and the approach to this research is taken from legislation and revelation. Then the instrument used in this study is the cluster technique or called area sampling and interviews. The results showed; First, that there are too many statutory arrangements relating to bribery from time to time, there is no significant change from the description of the articles, it's just that the threat of punishment is getting heavier, and even overlaps with each other. Second, that the Medan District Court basically in adjudicating and deciding cases of bribery in corruption cases have used the prevailing laws and regulations, namely Law no. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crime, however in applying the articles against the defendant still using a subjective interpretation. Third, that the responsibility for a criminal act only refers to prohibition and threatening of an act with a crime, whether the person who commits the act is then sentenced to punishment, this depends on whether in doing this act he has an error ( Geen straf zonder schuld; Actus non facit reum nisi mens sist rea ). This principle is not stated in written law but in unwritten law which also applies in Indonesia. The fiscal criminal law does not use mistakes. In fiscal punishment, if a person has violated the provisions, then he will be given a fine and confiscation. Corruption Crime Court. Whereas criminal responsibility for corruption perpetrators in the perspective of Islamic law is a lot of expert opinions, some are proposing cutting off hands, ta'zir , imprisonment and even the death penalty due to criminal acts of corruption which relies on syariqoh, ghulul , risywah and so on.*

## **Keywords:**

*bribery (risywah); crime; corruption; Islamic law*

## **I. Introduction**

Corruption that often happens in our country that is a phenomenon of crimes committed jointly, gnawing and hamper the implementation of the development. Corruption in Indonesia has shown an increase from year to year, corruption has been widespread in society, both in terms of the number of cases that have occurred and the number of losses to the state, as well as in terms of the quality of the crimes committed have become more systematic and the scope has penetrated all aspects of people's lives.

One of the increasingly sophisticated modus operandi of corruption is bribery. Bribery is also included in a form of corruption as regulated in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crime.

The threat of punishment are the toughest as stipulated by Law No. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption, if every law enforcer applies a law based on subjective interpretations, it will cause injustice and legal uncertainty to the community, especially regarding the rights of the Defendant. Purba and Syahrin (2019) stated that there is a fundamental difference between the two acts, even though the two acts are elements that determine whether or not an action can be declared a criminal act, furthermore the two acts are also important to determine whether someone can be blamed for corruption or not.

Based on the background of the aforementioned problems, the author really wants to make it a more specific thesis study regarding the application of the elements of bribery in corruption cases, with the title: "Application of Elements of Bribery Actions (Risywah) Based on Law No. 20 of 2001 in the Corruption Crime Case in the Perspective of Islamic Law at the Medan District Court.

The problems are posed is b How can the implementation of elements of the act of bribery (risywah) based on Law No. 20 of 2001 on a corruption case in the perspective of Islamic law?. This research aims to find out comprehensively and scientifically how the application of the elements of bribery based on the Republic of Indonesia Law No. 20 of 2001 on the criminal case against corruption in the perspective of Islamic law at the Medan District Court. The theory used in research this is the theory of structuralism. Application of the theory of basic structure (Underlying Structure) will result in some conclusions of law which can be categorized among others: First in the field of law reform. Second, in the field of law enforcement, and third, in the field of legal culture.

## **II. Research Methods**

Bribery in corruption cases is regulated in Law No. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crime.

The types or forms of bribery in corruption cases are as follows:

1. Bribing Civil Servants or State Administrators;
2. Civil Servants or State Officials who accept bribes;
3. Bribing Judges and bribing Advocates;
4. Civil Servants or State Administrators who receive gifts related to their position;
5. Judges and Advocates who accept bribes;

The realization of good law implementation depends on three pillars of law, namely the legal structure, legal substance and legal culture. Of the three legal pillars, the one that most influences the implementation of legislation is the community factor. Badaruddin et al (2020) stated that strong community co-operation will have an impact on people's ability to find and solve existing problems and accelerate economic development in their villages. This is in line with the sociological theory that deviations in society may occur due to several things, including not all members of society respond positively to values and norms, their social control system is irrelevant, there is a conflict of interests and people cannot act absolutely fairly.

Legal experts agree that in making a new rule of law or regulation it can be said that it is good and is likely to be obeyed by the community, if at least it is based on three foundations, namely the Philosophical Foundation (Filosofische Grondslag), Sociological Foundation (Sosiologische Grondslag) and Juridical Foundation (Juridische Grondslag).

Although the law on combating corruption There is change and change of even setting corruption regulated dala legislation and so was against the law enforcement agencies in the field of combating corruption either the police, judiciary, the Commission, Advocate maupu n judiciary as Law enforcers have been structured in such a way with ideal tasks that do not provide a more optimal guarantee in eradicating criminal acts of corruption, especially bribery. If the legal culture (public legal awareness) in participating in the eradication of corruption is changed to a better direction, then law enforcement will be difficult to carry out, or the results of law enforcement will be far as expected.

### III. Results and Discussion

In order for an act to qualify as a criminal act, it must fulfill the elements, namely that there must be a human act, the act must be prohibited in the criminal law, the act must be against the law , and the act must be due to his mistake. Broadly speaking, the criminal act of corruption has elements of an act against the law; elements of enriching oneself or others; and elements can harm state finances.

In the author's opinion, the elements of a criminal act in general or in simple language, a person can only be said to be a violator of the law if they have fulfilled the above elements, while the elements of the criminal act of bribery are descriptions of the articles regulating bribery prohibition, whether the article is regulated in Law No. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crime as well as in the Criminal Code or in other articles governing the prohibition of bribery.

Islamic law as a legal order that is guided and obeyed by the majority of the population and the people of Indonesia is a law that has lived in society, and is a part of Islamic teachings and beliefs that exist in national life, and is an ingredient in their development and development (Arifin, 2020). In Islamic criminal law, the actions of a person can be seen as a crime / criminal act (Jarimah) if it fulfills formal elements (rukun syar'i), material elements (rukun madi), and moral elements (rukun adabi).

Besides that, there is a legal principle Rule ushuliyah which is a legal principle of Islam in applying a law. Islamic legal theory is in line with the criminal law theory adopted by the Republic of Indonesia in implementing law. Thus, the application of the element of bribery in cases of corruption is guided by Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by the RI Law. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crime is in line with Indonesian criminal law theory and Islamic law theory known as naskh and mansukh.

From the descriptions above and based on an interview with one of the Panel of Judges, the writer gets a problem with the application of the article, actually the application of the article to the defendant in this case which was carried out by the Panel of Judges was not formally justified in the criminal procedural law, but the Panel of Judges took more consideration. The principle of justice in deciding this case. Even though justice can be interpreted as legality. It is fair if a rule is applied in all cases where according to the content,

the rule must be applied. It is unfair if a rule is applied to a case but not in another case. Justice in the sense of legalitas is a quality that is not related to the content of positive rules, but with its implementation. According to legality, the statement that individual actions are fair or unfair means legal or illegal, that is, the action is in accordance with or not with valid legal norms to judge as part of a positive legal system. Only in this meaning of legality can justice enter the science of law.

As for justice according to "conditions of ideal moral truth regarding a matter, whether it concerns objects or people. The division of justice according to Aristotle, which is described in a fundamental ideal in Book 5 of the Nicomachean Ethics Book, namely, cumulative justice, namely, the treatment of a person who sees the services he performs, that is, everyone gets his right. Distributive justice is the treatment of a person in accordance with the services that have been made, that is, each person gets the capacity with their respective potential and vindictive justice, namely the treatment of a person according to his behavior, namely as a reward for the crime he has committed. "That justice in its application does not have to be too straightforward, the imposition of justice that is straightforward actually creates injustice, as the saying "summum ius summa iniuria" (full application of law, full of injustice), therefore in realizing justice another principle is needed to balance it, namely appropriateness (aequitas), the principle of propriety is intended to encourage the realization of social justice.

Justice in Arabic, *salaf* is a synonym for *al-mizan* (balance / moderation). The word justice in the Qur'an is sometimes equated with *al-qist*. *Al-mizan* which means justice in the Koran is found in QS.al-Shura '(42): 17 and al-Hadiid (57): 25 in general, justice is where everyone gets what is their right and everyone gets an equal share of our common wealth (FMSuseno, 1986: 44).

Justice generally connotes the rule of law or the obligations of the king. However, justice in Islamic law includes various aspects. The principle of justice when interpreted as the principle of modernization, according to az-Zuhaili, is that Allah's orders are shown not because of their essence, because Allah does not benefit from obedience and does not benefit from human immorality.

Basically the Medan District Court in the pages of adjudicating and deciding cases of bribery in corruption cases, of course, uses the prevailing laws and regulations, namely Law no. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption, this is in line with the principle of law, namely *lex specialist derogat lex generalis* (law that specifically overrides general law), according to the author, in practice the application of these straightforward articles is not solely in accordance with justice, In fact, sometimes the articles made by legislators do not always reflect justice at the level of implementation, but don't forget that our law adheres to the civil law system, or adheres to the *lex certa* principle, namely the law must be written and the formulation must be clear as the legal principle adheres to. by our country, namely the principle of legality, this principle protects from abuse of the authority of judges, even protects against deviant interpretation of the law. Do not let the pretext of the theory of justice between the judge and the defendant commit confirming and the practice of bribery to deliberately apply the article which condemns the defendant so as to reduce and divert the article so that the defendant can get a lighter sentence.

There are several legal sanctions or criminal liability in the perspective of Islamic law, while the legal sanctions are in the form of: Qishas, Hudud and Ta'zir. These three types of sanctions that are in accordance with the applicable law in Indonesia are ta'zir, which is a law

made by the ruler or the state as long as it does not contradict Islamic law. Of the many criminal theories. One of the criminal theories that has recently emerged is the impoverishment of the perpetrators of corruption, some even discuss the death penalty and so on, this shows that imprisonment is considered by some circles to be unable to provide a deterrent effect for officials or perpetrators of corruption.

In the case of criminal sanctions for perpetrators of bribery in corruption cases, according to the authors, bribery in a corruption case is different from other criminal acts of corruption which contain elements of detrimental to state finances or the state economy, in bribery there is no element of financial and economic loss to the state. but it is detrimental and damaging to the social order of society, as well as detrimental to the rights of other people which should be the rights of the person concerned, thus if we rely on theft or other criminal acts (Jarimah), such as adultery, murder, apostasy, rebellion, considering these actions according to fiqh jinayat are included in the field of hudud.

So according to the author it is not appropriate if the sanction for the perpetrator of bribery in a corruption case is cutting off his hand or the death penalty. Because robbery equates bribery with stealing or rebellion, robbery is tantamount to making an analogy in the hudud field.

Thus, according to the author, imprisonment for the perpetrators of bribery in the case of corruption is not against Islamic law, as for had and qishas are the rights of Allah SWT as clearly and firmly regulated for the perpetrators of adultery, murder, theft and so on.

#### **IV. Conclusion**

1. Whereas there are too many statutory arrangements relating to bribery from time to time, there is no significant change from the description of the articles, it's just that the threat of punishment is getting heavier, even overlapping one another, based on legal principles as mentioned in the previous chapters, then the application of the element of bribery must of course refer to Law No. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crime;
2. Whereas the Medan District Court in essence adjudicates and decides cases of bribery in cases of corruption, of course, uses the prevailing laws and regulations, namely Law no. 31 of 1999 concerning the Eradication of Corruption Crime as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption, however in applying the articles against the defendant still using subjective interpretations on the pretext of the theory of justice, even though our country adheres to and adopts the principle of *lex certa* (law must be written) and based on the principle of legality, this principle protects against abuse of authority of judges, even protecting against deviant interpretation of the law. Do not let the pretext of the theory of justice between the judge and the defendant commit conspiracy and bribery practices to deliberately apply articles that are beneficial to the defendant so as to reduce and divert the articles so that the defendant can get lighter sentences. Whereas in the perspective of Islamic law there is a *ushuliyah* rule which is the principle of Islamic law in applying a law, according to the author, it turns out that the criminal law theories adopted by the Republic of Indonesia are in line with the principles of Islamic law in applying law. Thus, the application of the element of bribery in cases of corruption is guided by Law No. 31 of 1999 concerning the eradication of criminal acts of corruption as amended by the RI Law. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crime is

not against the theory of Indonesian criminal law or Islamic law principles known as naskh and mansukh;

3. Whereas liability for a criminal act only refers to prohibition and threatening of an act with a crime, whether the person who commits the act is then sentenced to a criminal offense, this depends on whether in doing this act he has an error ( Geen straf zonder schuld; Actus non facit reum nisi mens system rea ). This principle is not stated in written law but in unwritten law which also applies in Indonesia. The fiscal criminal law does not use mistakes. In fiscal punishment, if a person has violated the provisions, then he will be given a fine and confiscation. Corruption Crime Court. There are a lot of opinions from experts, some suggest cutting hands, ta'zir, imprisonment and even the death penalty because corruption is based on syariqoh, ghulul , risywah and so on. So according to the author it is not appropriate if the sanction for the perpetrator of bribery in a corruption case is cutting off his hand or the death penalty. Because equating bribery with stealing or rebellion, robbery, adultery and murder is tantamount to making an analogy in the hudud field. According to M. Cherif Bassiouni, as stated by Andi Hamzah, that hudud, crime wich are codified in the Quran, require a rigid application of the principles of legality, hudud a finger that has been explicitly stated in the Qur'an must be implemented in a standard manner, expressly or as is in accordance with the principles of legal validity. Hudud is strictly and not analogy , it is strictly forbidden to use hudud analysis. Thus, according to the author, imprisonment for the perpetrators of bribery in the case of corruption is not against Islamic law, as for had and qishas are the rights of Allah SWT as have been clearly and firmly regulated for perpetrators of adultery, murder, theft and so on.

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