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Criticism of Islamic Law on the Application of the Principle of Restorative Justice in Handling Corruption Cases and its Relevance to Jampidsus Circular Letter No. B-1113/F/Fd.1/05/2010

Hardi Muhar Sungguh¹, Bahrul Ulum², Hermanto Harun³

¹UIN Sulthan Thaha Syaifuddin Jambi, Indonesia, dafajambi2@gmail.com

²UIN Sulthan Thaha Syaifuddin Jambi, Indonesia, bahrululum@uinjambi.ac.id

³UIN Sulthan Thaha Syaifuddin Jambi, Indonesia, hermantoharun@gmail.com

Corresponding Author: dafajambi2@gmail.com¹

Abstract: This study aims to critically examine the application of the restorative justice principle in the handling of corruption crimes (tipikor) in Indonesia, particularly as facilitated by the Circular Letter of the Deputy Attorney General for Special Crimes (JAMPIDSUS) No. B-1113/F/Fd.1/05/2010. Although restorative justice emphasizes restitution and participatory resolution, its implementation in corruption cases raises serious concerns regarding substantive justice, legal certainty, and the potential for impunity. This research adopts a normative juridical approach, employing Islamic legal principles as an analytical framework to assess the alignment of restorative justice with the core values of Islamic law, including justice (‘adl), public interest (maṣlaḥah), and the prevention of wrongdoing (zajr). Initial findings indicate that restorative justice, when applied loosely and without strict boundaries or adequate sanctions, may conflict with Islamic legal values, especially in the context of corruption, which is categorized as an extraordinary crime. Therefore, this study aims to formulate a model for the application of restorative justice that is fair, proportional, and aligned with maqāṣid al-sharī‘ah, thereby contributing to the reform of Indonesia’s criminal law system.

Keywords: restorative justice, corruption, Islamic law, justice, JAMPIDSUS circular letter

INTRODUCTION

Background of the problem.

Every student, both Strata 1, Strata 2 and Strata 3, must conduct research in the form of a thesis, thesis and dissertation. Likewise, lecturers, researchers and other functional personnel are actively conducting research and making scientific articles for publication in scientific journals.

Scientific work is one of the requirements for students to complete their studies at most universities in Indonesia. This provision applies to all levels of education, namely the first strata thesis (S1), the strata two thesis (S2), and the strata three dissertation (S3).

Based on empirical experience, many students and authors have difficulty finding supporting articles for their scientific works as previous research or as relevant research. Relevant articles are needed to strengthen the theory being studied, to see the relationship or influence between the phenomena being studied and to build theoretical presuppositions. This article discusses the criticism of Islamic law on the application of the principle of restorative justice in handling corruption cases and its relevance to the Jampidsus Circular No. B-1113/F/FD.1/05/2010.

Based on the background, the purpose of writing this article is to critically analyze the application of the principle of restorative justice in handling corruption crimes (tipikor) in Indonesia using the perspective of Islamic law, as well as assess its relevance to law enforcement policies regulated in JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010, so that a formulation of a legal approach can be found that not only upholds high principles of restorative justice, but also in line with the values of substantive justice, the benefit of the ummah, and the principle of prevention of tyranny in Islamic law.

The main focus of this research is to critically examine the application of the principle of *restorative justice* in handling corruption cases as made possible by the Circular Letter of the Deputy Attorney General for Special Crimes (JAMPIDSUS) No. B-1113/F/Fd.1/05/2010. This research focuses on an analysis of the normative construction of the circular within the framework of positive Indonesian law, as well as the implications of its application to the principles of legal certainty, substantive justice, and the effectiveness of corruption criminal law enforcement. This study also seeks to examine the extent to which the principle of *restorative justice* can be applied in corruption which is incidentally an *extraordinary crime* with a systemic impact on state governance and the lives of the wider community.

On the other hand, the focus of this research is directed at normative evaluation based on the perspective of Islamic law on the policy of implementing restorative justice in corruption cases. Islamic law is positioned as an analytical knife to assess the suitability of the restorative approach with sharia principles, such as justice ('adl), benefit (maṣlaḥah), prevention of tyranny (zajr), and moral and social responsibility. Thus, this research not only aims to examine the problem at a positive-legal level, but also offers an alternative framework based on Islamic values to assess, improve, and build a just, accountable, and religious criminal law enforcement policy model.

METHOD

This research uses a juridical normative approach based on library research, by examining legal documents, laws and regulations, fatwa scholars, as well as relevant Islamic literature and criminal law. This approach was chosen because the problems studied are normative, namely regarding the conflict between the principle of restorative justice in corruption cases and the principles of Islamic law. This approach allows researchers to analyze how positive legal norms and Islamic law form a critical perspective on the application of national criminal law policies in corruption cases.

This type of research is a descriptive-analytical qualitative research, which aims to systematically explain the object being studied and provide an assessment or interpretation of the applicable legal principles. Using this approach, the researcher can comprehensively describe the dynamics of the implementation of restorative justice based on JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010 and assess its conformity with maqāṣid al-syarī'ah and the principles of Islamic law such as justice ('adl), benefit (maṣlaḥah), and prevention (zajr).

The data used consisted of primary data in the form of statutory documents such as Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption, JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010, and relevant verses of the Qur'an and hadiths. Secondary data were obtained from books, journal articles, dissertations, as well as fatwas and opinions of contemporary scholars. The analysis of the data is carried out using the legal hermeneutic method, which is to interpret the legal meaning of normative texts, both from positive law and Islamic legal sources, to then examine its relevance and application in the contemporary context.

The data analysis technique in this study is carried out qualitatively with the stages of data reduction, categorization, normative interpretation, and conclusion. This analysis aims to find Islamic legal arguments for the practice of restorative justice policies in corruption cases and formulate an ideal form of application of the principle so as not to conflict with the principle of substantive justice. The results of the analysis are expected to be a basis for consideration in the reformulation of law enforcement policies in Indonesia, which are more fair and in line with Islamic legal values.

RESULTS AND DISCUSSION

Result

Based on the background, objectives and methods, the results of this article are as follows: Corruption is an extraordinary crime that not only harms the state's finances, but also weakens public trust in the law and government. In the context of eradicating corruption in Indonesia, an alternative approach has emerged in the form of the principle of restorative justice that emphasizes more on redressing losses and reconciliation, rather than just punishment. The application of this approach to corruption cases has attracted controversy, especially because not all corruption cases have characteristics that are in line with the principles of restorative justice. JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010 had provided opportunities for the application of restorative justice for corruption cases with a small loss value, but without clear parameters regarding the limit of "small losses", causing legal uncertainty and inconsistency in law enforcement.

Normatively, Indonesia's positive law, especially Law No. 31 of 1999 jo. Law No. 20 of 2001, has not explicitly provided space for the application of the principle of restorative justice in corruption cases. On the other hand, Islamic law has a critical view of the application of a soft approach to corrupt actors, because it is seen as contrary to the principles of justice ('adl), benefit (maslahah), and prevention (zajr). Corruption in Islamic law is categorized as a form of betrayal of public trust and social tyranny (fasād fil-ardh), which demands strict punishment and deterrent effects, not simply the return of state losses. When corrupt perpetrators are given space to escape punishment only by compensating for damages, the principle of substantive justice is reduced. The disparity in treatment in two cases of small-scale corruption, both of which have restored state losses but only one of them was stopped with a restorative approach, shows the inconsistency in the application of this principle.

This is where the importance of Islamic legal criticism lies, which does not reject the principle of restoration, but emphasizes that restoration must be accompanied by morally and social and legal accountability in a fair manner. Therefore, the study of the relevance of the application of the principle of restorative justice in corruption cases using the Islamic law approach is very important in order to formulate a criminal law policy that is fair, non-discriminatory, and still upholds the principle of accountability in the management of state power and finances.

Discussion

Based on the theoretical study, the discussion of *this literature review* article is to review relevant articles, analyze the influence between variables and make conceptual thinking of the research plan:

Based on the results of the research, the discussion of *this* article is to review relevant articles, analyze the influence between variables and make conceptual thinking of the research plan:

1. Conceptual Framework

The conceptual framework in this study is built by integrating three main concepts, namely: Islamic law, restorative justice, and corruption. Islamic law is based on normative sources such as the Qur'an, Hadith, ijma', and qiyas, as well as basic principles such as justice ('adl), benefit (maṣlaḥah), prevention (zajr), and equality (al-musāwah). Within the framework of Islamic law, corruption is seen as a form of betrayal of public trust and is classified as a crime that causes social damage (fasād fil-ardh), which is not enough to be dealt with with just a loss recovery approach, but must be accompanied by the enforcement of firm and fair sanctions.

The concept of restorative justice as an alternative approach in the criminal justice system emphasizes the restoration of relationships between perpetrators, victims, and the community through dialogue, confession, and compensation. Although it provides a more humane non-litigation solution, this concept is considered less relevant for corruption cases that are systemic in nature and detrimental to the public at large. In this context, the conceptual framework of this study uses restorative justice as an object of criticism of its inappropriateness in corruption cases, especially from the perspective of Islamic law which emphasizes the deterrent effect and protection of the public interest.

One of the important references in this conceptual framework is the JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010, which opens up space for the application of restorative justice in corruption cases with small losses. However, the circular does not explicitly explain the nominal limit of the loss in question, thus causing potential legal uncertainty. This research departs from the question of whether such policies can be aligned with the principles of Islamic law, as well as whether substantive justice can be realized if restorative justice is applied in corruption cases involving public funds.

2. Theoretical Foundations

The theoretical basis in this study starts from the theory of restorative justice, an alternative approach in the criminal justice system that is not only oriented towards punishment (retributive), but prioritizes recovery for losses caused by criminal acts. In practice, restorative justice involves perpetrators, victims, and the community in a dialogue forum to seek a fair and comprehensive solution to the criminal acts that occur. This theory emerged in response to the rigidity of the conventional criminal system which often does not provide space for victims to voice their losses directly, as well as for perpetrators to take responsibility constructively. In this approach, justice is not solely a matter of the state versus the perpetrators, but also about the restoration of the social balance disturbed by crime. The main feature of this theory is the focus on reconciliation, dialogue, apology, and reparations, all of which are carried out on the basis of the voluntary participation of the parties concerned.

In the context of modern criminal law, restorative justice theory has developed rapidly and has been applied to various types of criminal acts, especially those that do not cause fatalities, such as petty abuse, petty theft, and crimes against children. However, when this approach is applied to corruption cases, critical questions arise because corruption is

classified as a systemic crime and has a broad impact on the public interest. In practice, several countries have explored the application of restorative justice in economic crimes, including corruption, citing the efficiency of handling cases, savings in prosecution costs, and accelerating the return of state assets. However, serious challenges arise when this approach is considered to have the potential to weaken the deterrent effect on criminals who are incidentally from the elite, as well as give room for covert impunity if it is not controlled by strict and transparent rules.

Furthermore, the criminal theory of corruption is used as an analytical basis to understand the characteristics of corruption crimes, both juridically and sociologically. Corruption is a crime committed by abusing power and authority for personal or group gain, which causes direct state losses. From the perspective of Indonesian criminal law, this act is regulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, which stipulates that the return of state losses does not abolish the criminal offense of the perpetrator. Corruption is also seen as an extraordinary crime, because its impact on the government system and public trust is very large. Therefore, its handling requires a firm, consistent, and non-discriminatory legal approach. This theory emphasizes that in the eradication of corruption, a balance must be maintained between efforts to recover state finances and provide a deterrent effect as a form of legal accountability.

Within the framework of Islamic law, the approach to crime and punishment has a strong normative foundation sourced from the Qur'an, Hadith, *ijma'*, and *qiyas*. In this regard, Islamic law has the main principles of justice (*'adl*), benefit (*maṣlaḥah*), and prevention (*zajr*), which not only emphasizes the recovery of losses, but also pays serious attention to the need for appropriate sanctions against the perpetrators of crimes. Corruption in Islamic law is seen as a form of betrayal of the public trust and is classified as an act of *fasād fil-ardh* (damage to the earth), which must be dealt with strictly as a form of protection for the interests of the wider community. Therefore, the application of restorative justice that relies on soft approaches such as restitution or apologies without just punishment can be considered contrary to the principles of Islamic law that demand clarity of moral and legal accountability.

The theory of legal certainty is also one of the bases in this study, which emphasizes the importance of clear, firm, and consistent legal rules in their implementation. Legal certainty creates a sense of security for the community because they know that their rights and obligations are regulated fairly and non-discriminatory. In the context of law enforcement against corruption, the lack of clarity in the application of restorative justice—as reflected in JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010—has the potential to cause legal uncertainty. For example, the circular opens up the possibility of applying restorative justice to "small" state losses, but does not provide a firm nominal limit, thus creating a wide scope for interpretation and prone to abuse. This is contrary to the principle of legal certainty which demands clarity, equality of treatment, and consistency in law enforcement.

On the other hand, Islamic legal theory also teaches the importance of a balance between individual rights and the interests of society, as well as between forgiveness and punishment. The concept of *'afw* (forgiveness) is indeed recognized in Islam, but it should not be used to remove responsibility for major crimes such as corruption, unless there is good faith accompanied by a real restoration of rights and repentance. In the hadith of the Prophet PBUH, it is stated that the destruction of the previous ummah occurred because it allowed the respected people to be free from punishment, while the weak were punished harshly. Thus, Islamic law strongly emphasizes that justice should not be bought or influenced by power. In this context, the application of restorative justice in corruption cases must be truly selective, accountable, and uphold the principle of legal non-discrimination.

By integrating the above theories, the theoretical framework of this research aims to build a critical and comprehensive analysis of the application of the principle of restorative justice in corruption cases. Restorative justice as an alternative approach does bring humanist and peace values, but in the context of corruption that has a wide impact on society and the state, it must be carefully studied from the perspective of Islamic law. This theoretical foundation supports the main goal of the research, which is to find a model for the application of restorative justice that remains in line with sharia principles, does not weaken law enforcement, and is able to restore public trust in the integrity of the law in Indonesia.

Although there have been various studies that have discussed the application of the principle of restorative justice in the criminal justice system in Indonesia, including in the context of corruption crimes, most of these studies still focus on positive legal approaches, normative juridical approaches, and practical policies without including a critical perspective of Islamic law. Previous studies have generally raised the effectiveness, efficiency, and urgency of the application of restorative justice in small-scale corruption cases with pragmatic foundations, such as recovering state losses, accelerating legal processes, and saving case costs. However, these studies have not delved deeper into the issues of substantive justice, moral values, and the principle of accountability that are the foundation of Islamic law.

The fundamental difference in this study lies in the approach of Islamic law criticism to the policy of implementing restorative justice in corruption cases, especially in the context of the enactment of JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010. This research not only assesses the effectiveness or feasibility of the implementation of restorative justice, but also places Islamic sharia values such as the principles of justice ('adl), benefit (maṣlaḥah), and prevention (zajr) as evaluative instruments for the criminal law policy. In this context, this study criticizes the potential for irregularities and injustices that arise when restorative justice is enforced without strict restrictions, especially on crimes that have a wide impact and damage the social order such as corruption.

This research is also different from previous research in terms of the object of criticism, namely on the substance of non-legislative law in the form of the Circular Letter of the Deputy Attorney General for Special Crimes (JAMPIDSUS), which is juridically outside the hierarchy of laws and regulations. Thus, this study raises important issues related to the validity of legal norms, the binding power of an internal policy of the prosecutor's office, and its conformity with the principles of Islamic law and the principle of legality in the state of law. It is at this point that this research presents a distinctive scientific contribution, because it links modern law enforcement policies with the framework of maqāṣid al-syarī'ah, thus opening up space for criminal law reform based on religious values and transcendental justice.

In other words, the uniqueness and scientific contribution (novelty) of this research lies not only in the specific object of analysis and non-regulatory policies, but also in the normative Islamic perspective as an evaluative framework. If most of the research only uses the theoretical approach of criminal law and public policy, then this study provides a new offer in the form of constructive criticism of Islamic law on the application of the principle of restorative justice in the realm of positive law. This is where the difference and added value of this dissertation lies, which not only aims to improve legal policy, but also affirms that Islamic law has a strategic and relevant position in formulating a substantive and socially just justice system.

CONCLUSION

Based on the conceptual description and background that has been presented, it can be concluded that the application of the principle of restorative justice in corruption cases, although it aims to encourage the rapid settlement of cases and the recovery of state losses, still leaves various normative and ethical problems. JAMPIDSUS Circular Letter No. B-1113/F/Fd.1/05/2010 provides space for the application of restorative justice in corruption cases with a relatively small loss value, but does not provide strict parameter limits on the definition of "small", thus giving rise to multiple interpretations and potential abuse of discretion in legal practice.

From the perspective of Islamic law, restorative justice must be placed within the corridor of sharia principles that uphold the values of justice ('adl), benefit (maṣlaḥah), and prevention of tyranny (zajr). A lenient approach to corruption that only focuses on the return of losses without commensurate legal sanctions can be considered contrary to the principles of justice in Islam, considering that corruption is a form of fasād fil-ardh (damage on the earth) whose impact damages the social and financial systems of the public. Therefore, restorative justice in corruption cases must be carried out selectively and accountably, and must not erase the essence of criminal responsibility of the perpetrator.

Thus, this study emphasizes the importance of reconstructing corruption criminal law policies to be in line with Islamic law values and principles of substantive justice. Criticism of Islamic law on the application of restorative justice in corruption can be a normative basis in formulating a new formulation of law enforcement policies that not only emphasize efficiency, but also ensure complete justice and prevent the practice of impunity. This research is expected to be able to make a theoretical and practical contribution to the reform of Indonesian criminal law that is just and spiritually valuable.

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