

## The Legal Consideration of Judges in the Crime of Village Fund Corruption: A Case Study of Decision No. 32/Pid.Sus-Tpk/2021/Pn.Pal

**Hartanto**

Universitas Muhammadiyah Surakarta

[hartanto@ums.ac.id](mailto:hartanto@ums.ac.id)

**Juan Sebastian Kusumo Putro**

Universitas Muhammadiyah Surakarta

[C100160076@student.ums.ac.id](mailto:C100160076@student.ums.ac.id)

DOI: 10.23917/jurisprudence.v12i1.1526

---

Submission

Track:

**ABSTRACT**

Received:

August 18, 2022

**Purpose of the study:** This research aims to analyze the crime of village fund corruption by a Village Head in Criminal Case No. 32/Pid.Sus-TPK/2021/PN.Pal in the legal territory of Palu State Court.

Final Revision:

15 October 2022

**Methodology:** This research used the normative juridical method with the statute and case approaches. This was descriptive qualitative research.

Available online:

31 October 2022

**Results:** Results showed that the decision of the state court on the crime of village fund corruption in Criminal Case No. 32/Pid.Sus-TPK/2021/PN.Pal defendant has violated Article 2 clause (1) *jo.* Article 8 of Law No. 31 of 1999 on the Eradication of the Crime of Corruption as what was amended and added with Law No. 20 of 2001 on the Change of Law No. 31 of 1999 on the Eradication of the Crime of Corruption. The judicial considerations on the sanctions for perpetrators of corrupting village funds are already according to the applicable regulations under the guideline of the Law on Corruption. It was also found that the crime of corruption violated Islamic Sharia.

Corresponding

Author:

Hartanto,

[hartanto@ums.ac.id](mailto:hartanto@ums.ac.id)

**Applications of this study:** It is hoped that the results of this paper may answer the issues it analyzed and so that it may become material for consideration in finding accurate and valid resolution guidelines to resolve issues on the crime of village fund corruption in Indonesia.

**Novelty/Originality of this study:** This paper focused on the crime of village fund corruption in Criminal Case No. 32/Pid.Sus-TPK/2021/PN.Pal and it was added with the perspective of Islamic

---

---

values.

*Keywords: Village fund, corruption, judicial consideration, Islamic values.*

---

## INTRODUCTION

As a state of law, Indonesia must establish a state based on the law (Fairuzzaman & Rakasiwi, 2021, p. 175). The constitution has stipulated that the Republic of Indonesia is a state that is based on the law (Enggarani, 2018, p. 83). It was established based on Pancasila (the five principles) and the Republic of Indonesia's 1945 Constitution. These two bases describe the principles sourced from the world view on legal awareness and values, including the mystical environment and philosophies of the Indonesian nation by maintaining the principles of state morality, ethics, good character, noble personality, practicing faith and piety to God Almighty, respecting diversity in society, the nation, and the state (Kurnianingsih, Dimiyati, Wardiono, & Absori, 2021, p. 206). It also has regulations on criminal actions Moeljatno defined a criminal action as “an action that is prohibited by legal regulations, which are accompanied by threats in the form of certain sanctions for those who violate these prohibitions.” In short, a criminal action may also be defined as an action that is prohibited by legal stipulations and is threatened with sanctions. According to Moeljatno, these prohibitions are directed to certain actions, i.e., situations or events that were caused by people's actions. Meanwhile, the threat of criminal sanctions is directed at the person who caused the occurrence of that event (Moeljatno, 2015, p. 54).

In Latin, the crime of corruption is called *corruptio* or *corruptus*. These terms were adopted by many European countries such as England and France, coining the term “corruption”. In Dutch, it is called “*korrupctie*”. Then, in Indonesian, it is called “*korupsi*”, meaning liking bribes (Gunawan, 2015, p. 19).

According to the Great Indonesian Dictionary, the crime of corruption is the misconduct or misuse of state (or corporate) money for personal benefit or for the benefit of certain people (Wasito, 2001, p. 597). Corruption literally means: bad, damaged, likes using items (money) that are entrusted to that person, bribable (through one's power for personal interests). Then, terminologically, corruption is the misuse or embezzlement of state or corporate money for personal interests or for the interests of certain people (Badan Pengembangan dan Pembinaan Bahasa, 2022).

The most common forms of corruption in villages include fund embezzlement, misuse of the budget, and misuse of authorities. The most common one is fund embezzlement as the village apparatus were tempted by the great amount of money and they are confused about what they should do. The misuse of authority in the management of village money as described in the case above is certainly a serious issue that affects the fate and welfare of the people in that village. In general, the misuse of village financial management will surely inhibit its development, as stipulated in Law No. 31 of 1999 on the Eradication of the Crime of Corruption that was amended into Law No. 20 of 2001. This law regulates that there is a threat of sanctions for people who inhibit societal welfare and who bring losses to the state or regional finance.

The act of corruption has become a habit in society and in the state of Indonesia, both among government officials and among society in general. The crime of corruption is highly linked to certain sectors of life, such as the political, economic, and sociocultural sectors. Thus, the eradication of corruption must involve all parties that are associated with this issue.

In the field of criminal law, the crime of corruption is a crime that contains stipulations on the deviation from legal principles and general regulations of the Criminal Code. Article 103 of the Criminal Code states that in resolving this issue, special regulations and methods must be used. Explanation of Law No. 20 of 2001 on the Change of Law No. 31 of 1999 on the Eradication of the Crime of Corruption states that considering that corruption in Indonesia systematically and extensively occurs, thus not only bringing loss to the state finance but has also violated the social and economic rights of the wider society, the eradication of corruption must be carried out using extraordinary measures. An extraordinary measure to eradicate corruption may be the application of the reverse evidencing system, where the evidence process is burdened on the defendant. Based on the background above, the problems discussed in this paper are: (1) what are the considerations of judges on the act of village fund corruption in the Judicial Decision No. 32/Pid.Sus-TPK /2021/PN.Pal? (2) was the decision of the state court judges in the criminal case No. 32/Pid.Sus-TPK/2021/PN.Pal according to the stipulations of the Law on the Eradication of the Crime of Corruption? and (3) how does the Islamic perspective view the act of village fund corruption?

## **RESEARCH METHOD**

This research used the juridical-normative method with the statute and case approaches. It was descriptive qualitative research. This research analyzed criminal case No.

32/Pid.Sus-TPK /2021/PN.Pal on the act of village fund corruption. It was conducted by collecting, arranging, classifying, analyzing, and interpreting data (Chazawi, 2008, p. 103). It used a qualitative type of analysis to study the various events that occurred based on the theory and articles that apply, thus producing valid and factual data. The normative research also aims to analyze various theories and written regulations and compare them with the phenomena in the field. Thus, the data produced are relevant to the applicable regulations.

## **RESULTS & DISCUSSION**

### **A. Judicial Consideration of Decision No. No. 32/Pid.Sus-TPK/2021/PN.Pal**

According to Article 2 clause (1) of the Law No. 20 of 2001 on the Change of Law No. 31 of 1999 on the Eradication of the Crime of Corruption, the crime of corruption is defined as, “Anyone who unlawfully committed the act of enriching oneself or a corporation that may bring loss to the state finance or economy will be punished with life-long imprisonment or imprisonment of at least 4 (four) years and at most 20 (twenty) years and a minimum fine of Rp.200.000.000,00 (two hundred million rupiahs) and at most Rp.1.000.000.000,00 (one billion rupiahs)”.

The judicial consideration on the crime of village fund corruption in judicial Decision No. 32/Pid.Sus-TPK/2021/PN.Pal was that in this case, the judges initially proved the primary indictment of Article 2 clause (1) that was changed into Article 18 clause (1) letter b, clause (2) and clause (3) of the Republic of Indonesia's Law No. 31 of 1999 on the Eradication of the Crime of Corruption as what was amended into the Republic of Indonesia's Law No. 20 of 2001 on the Change of Law No. 31 of 1999 on the Eradication of the Crime of Corruption in place of Article 64 clause (1) of the Criminal Law. In the case where the Primary Indictment is proven, the Subsidiary Indictment is no longer considered. But in the case where the Primary Indictment is not proven, the Judicial Assembly will consider the Subsidiary Indictment.

The General Prosecutor's Primary Indictment as regulated in Article 2 clause (1) that was changed into Article 18 clause (1) letter b, clause (2) and clause (3) of the Republic of Indonesia's Law No. 31 of 1999 on the Eradication of the Crime of Corruption as what was amended into the Republic of Indonesia's Law No. 20 of 2001 on the Change of Law No. 31 of 1999 on the Eradication of the Crime of Corruption in lieu of Article 64 clause (1) of the Criminal Law, the elements were as follows:

1. The element of “anyone”;

The individual as the legal subject that was submitted in the face of the court was Yakub Dj. Kaning. In this court trial, his identity has been examined and it was according to the information written in the General Prosecutor’s Indictment Letter. Thus, there is no *error in persona*. The defendant was in a healthy condition, both physically and mentally. He was able to follow the trial and answered the questions asked properly. He can be liable for the actions indicated to him. During the courtly process, no reason for forgiveness or justification can avoid Yakub Dj. Kaning from the criminal liability was found.

2. The element of “unlawfully committed”;

The Defendant’s actions violated: 1. Article 2 clause (1) of the Regulation of the Minister of Internal Affairs No. 11 of 2014 on the Village Financial Management, “The village finance is managed based on the principles of transparency, accountably, participation, and it must be carried out in an orderly manner that is disciplined towards the budget”; and 2. Article 7 clause (2) of the Regulation of the Minister of Internal Affairs No. 11 of 2014 on the Village Financial Management, “Treasurers as stated in clause (1) have the job to: receive, keep, store, manage, and become responsible for receiving village income and expenditures to implement the Village Budget.”

3. The element of “enriching oneself or a corporation”;

The state losses were under the power of and were directly managed by Defendant. He did not involve village treasurers or other village apparatus. Then, Defendant cannot be liable for his control and management of the village funds as it was mixed with his personal money. It was used for the Defendant's personal interests.

4. The element of “that may bring loss to the state finance or economy”;

Due to his actions, Defendant Yakub Dj. Kaning has caused the state to experience a loss of Rp. 457.192.222,00 (four hundred fifty-seven million a hundred ninety-two thousand two hundred and twenty-two rupiahs) or around that amount as reported by the Report of the Audit Results on the Calculations on State Losses on the Misuse of the Village Budget of Tiga Pulau Villahe, Walea Islands District, the Budget Years of 2015 and 2016 No. 708/05/RHS/ITDA/2020 dated July 22<sup>nd</sup>, 2020 by the Regional Inspectorate of Tojo Una Una Regency.

5. In the element where there are several criminal actions or violations, there was a certain relationship; thus, it must be viewed as one continuous action.

In the application of the material criminal law, based on the case in the Decision of Palu State Court No. 32/Pid.Sus-TPK/2021/PN.Pal., judges assessed that the primary indictment can be applied to the Defendant as in Article 2 clause (1) the characteristic of legal violation had an extensive meaning. Meanwhile, Defendant's law-violating action was more specific as it regarded the misuse of authority as regulated in Article 3 *jo.* Article 18 of Law No. 31 of 1999 on the Eradication of the Crime of Corruption as what was amended into the Republic of Indonesia's Law No. 20 of 2001. Therefore, in this case, based on the judicial consideration, it was more appropriate to apply the primary indictment on the Defendant, as the law violation he committed was more specific, as it concerned the misuse of authority.

With the fulfillment of the elements in Article 3, the Judge Assembly imposed sanctions on Defendant Yakub DJ. Kaning in the form of imprisonment for 4 (four) years and a fine of Rp.250.000.000,00 (two hundred and fifty million rupiahs). In this case, it was already according to the minimum and maximum limits of the sanctions of imprisonment and fines as stipulated in Article 3. Just as in the Law on the Eradication of the Crime of Corruption, the stipulations of compensatory money are regulated in Article 18 clause (1) letter b. Thus, in the Decision of the Palu State Court No. 32/Pid.Sus-TPK/2021/PN.Pal, the judges imposed an additional sanction on Defendant Yakub DJ. Kaning by obliging him to pay compensation fees to return the state losses in the amount of Rp. 457.192.222,00 (four hundred fifty-seven million a hundred ninety-two thousand two hundred and twenty-two rupiahs).

### **B. The Crime of Corruption from the Islamic Perspective**

The Holy Qur'an and the Hadeeth do not explicitly discuss the issue of corruption. This becomes a problem because to comprehensively understand the issue of corruption, a *fiqh* (Islamic jurisprudence) concept must be made, such as the issue of theft whose law is clear in the Quran. Theft is regulated in the Qur'an, Chapter Al-Maidah as follows: "As for male and female thieves, cut off their hands for what they have done—a deterrent from Allah. And Allah is Almighty, All-Wise." (The Holy Qur'an, Chapter Al-Maidah (5):38).

Islamic scholars (*ulama*) have agreed that the crime of corruption encompasses various forms. In *fiqh* literature for instance, there are the elements of *sariqoh* (theft), *ikhtilas* (embezzlement), *al-Ibtizaz* (extortion), and *al-Istighlal* or *ghulul* (corruption). All these things are haram (prohibited) as they violate the *Maqashid Syari'ah* (the goals of Islamic law). The decision of the Indonesian Islamic Scholar Assembly (*Majelis Ulama Indonesia*/MUI) in National Deliberation VI also issued a *fatwa* (a legal pronouncement) on *risywah* (bribery),

*ghulul* (corruption), and gratification to officials. It stated that giving and accepting *risywah* is haram. Committing corruption is also haram. According to *fiqh* scholars, based on acclamation and consensus (*ijma'*), corruption is haram because it violated the principle of *maqashidussy syari'ah*. It is haram when viewed in various aspects. For instance, corruption is an act of deceit and fraud that may potentially bring loss to the state and the public interests (of society) that is cursed by Allah with a just punishment in the Hereafter.

In Islam, corruption is an action that violates the sharia. The Islamic sharia aims to achieve welfare for human beings using what is called *maqashidussy syaria'ah*. In a wider context in the perspective of Islamic teachings, the practice of corruption violates the principles of justice, accountability, and responsibility. Corruption and all of its negative impacts bring various distortions towards the life of the state and society.

The crime of corruption (*ikhhtilas*) was also deemed as a misuse of authority to enrich oneself or other people. It is an action that violates the mandate given by society to the official. The crime of corruption to enrich oneself with state wealth is a *zhalim* (inappropriate/abusive) action. This is because state wealth is wealth that was collected from society, including poor people, who gained the money with great effort. Even, this action has a great impact and it increases the quantity of new poor people. Because of that, it is very abusive for an official to enrich himself using the people's wealth. Thus, it is appropriate to categorize them into the group of people that fight against Allah (God) and Prophet Muhammad (peace be upon him) and create destruction on earth (*fasad*) that is highly cursed by God.

## CONCLUSION

In making decisions on a case, the judicial assembly made juridical considerations based on the facts in court. Apart from that, the judicial assembly also carried out non-judicial considerations based on the background of the Defendant, impacts that occur due to his actions, as well as the defendant's capabilities for undergoing criminal liability.

The application of formal criminal law in the case of the Palu State Court No. 32/Pid.Sus-TPK/2021/PN.Pal was based on Law No. 8 of 1981 on the Criminal Code. In this case, the judges assessed that the primary indictment was more appropriate to be applied to the Defendant as the characteristic of his law-violating actions was more specific as it concerned misuse of power as stipulated in Article 3 *jo*. Article 18 of Law No. 31 of 1999 on

the Eradication of the Crime of Corruption as what was amended into the Republic of Indonesia's Law No. 20 of 2001. The writer had the same opinion on the imposition of sanctions by the judges on the Defendant. According to the writer, it is appropriate for the judges to impose more severe sanctions so that the perpetrators of corruption crimes experienced a deterrent effect.

In Islam, corruption is an action that violates the sharia. The Islamic sharia aims to achieve welfare for human beings using what is called *maqashidussy syaria'ah*. In a wider context from the perspective of Islamic teachings, the practice of corruption violates the principles of justice, accountability, and responsibility. It is very abusive for an official to enrich himself using the people's wealth. Thus, it is appropriate to categorize them into the group of people that fight against Allah (God) and Prophet Muhammad (peace be upon him) and create destruction on earth (*fasad*) that is highly cursed by God.

## REFERENCES

- Badan Pengembangan dan Pembinaan Bahasa. (2022). *Kamus Besar Bahasa Indonesia (The Great Indonesian Dictionary)*.
- Chazawi, A. (2008). *Hukum Pembuktian Tindak Pidana Korupsi*. Bandung: Media Nusantara Creative.
- Enggarani, N. S. (2018). Independensi Peradilan dan Negara Hukum. *Jurnal Law and Justice*, 3(2), 82–90.
- Fairuzzaman, F., & Rakasiwi, D. A. (2021). COVID-19 Vaccination Policy: Quo Vadis Fulfillment of Citizen's Right to Life. *Jurnal Law and Justice*, 6(2), 174–190.
- Gunawan, K. Y. (2015). *Tindak Pidana Korupsi*. Bandung: PT Refika Aditama.
- Kurnianingsih, M., Dimiyati, K., Wardiono, K., & Absori, A. (2021). Sexual Exploitation of Children in the Digital Age in the Victimology Perspective. *Jurnal Jurisprudence*, 11(2), 251.
- Moeljatno. (2015). *Asas-Asas Hukum Pidana (The Principles of Criminal Law)*. Jakarta: Rineka Cipta.
- Wasito, W. (2001). *Kamus Bahasa Indonesia*. Yogyakarta: Balai Pustaka.