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FROM CONSTITUTIONAL JIHAD TO LEGISLATIVE COMPROMISE: AN ISLAMIC LEGAL PARADIGM IN INDONESIA'S POST-REFORM ANTI-CORRUPTION MOVEMENT

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Abstract

This research analyzes the paradigm shift of Islamic law within the anti-corruption discourse and movement in Indonesia, from the 1998 Reformasi era to the contemporary legislative landscape. In the early Reformasi period, corruption was framed not merely as a legal crime but as a national moral crisis that gained strong theological legitimacy from Islamic civil society organizations (CSOs). The fight against corruption was perceived as a "constitutional jihad" based on fiqh jinayah (Islamic criminal law) concepts such as the prohibition of risywah (bribery) and ghulul (breach of public trust). This spirit was institutionalized through the establishment of the Corruption Eradication Commission (KPK) via Law No. 30 of 2002, whose institutional design reflected Islamic values of justice and accountability. However, this study argues that a fundamental shift has occurred. The turning point was the revision of the KPK Law through Law No. 19 of 2019, which marked a sharp divergence between the anti-corruption aspirations of Islamic civil society and the political pragmatism of the elite, including those from Islam-based political parties. This shift was consolidated by the enactment of Law No. 11 of 2020 on Job Creation, which demonstrated the subordination of the anti-corruption agenda to the priority of economic investment. Using a socio-legal and historical research method, this study demonstrates that the paradigm of Islamic law has shifted from an external moral-critical force to an internal component of political compromise. Key concepts such as ta'zir (discretionary punishment) and maslahah (public interest), which once formed the foundation for eradicating corruption, have now become contested arenas vulnerable to instrumentalization to legitimize policies that weaken the rule of law.

Keyword: *Islamic Law, Corruption, Legal Policy, Reformation, KPK, Fiqh Siyasah*

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A. PENDAHULUAN

The collapse of the New Order regime in May 1998 marked a new dawn in Indonesian political history. The Reform Movement, spearheaded by students and supported by various elements of civil society, was born from a multidimensional crisis gripping the nation. At the heart of the crisis lies the

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practice of corruption, collusion, and nepotism (KKN) that has become a systemic cancer. The eradication of corruption, collusion, and nepotism (KKN) is not merely a political or legal agenda, but rather a collective moral call, a cry to restore the dignity of a nation torn apart by the greed of the ruling elite. The most urgent reform agenda is to eradicate KKN, yet ironically, corruption has become even more rampant in this era, involving officials at both the central and regional levels[1].

In this turbulent socio-political landscape, religious discourse, particularly Islam, plays a central role in providing a moral foundation and legitimacy for the anti-corruption movement. The largest Islamic civil society organizations in Indonesia, such as Muhammadiyah and Nahdlatul Ulama (NU), are at the forefront of framing corruption not only as a violation of positive law but as a fundamental theological crime.

In their view, corruption is a form of betrayal (khianat) against the trust of the people and God, even equated with the act of shirk (associating partners with God), because it makes money and power new gods to be worshiped.[2] This framing transforms the struggle against corruption from mere policy advocacy into a "jihad" in the modern sense: a serious effort to uphold truth and justice in the public sphere.

This phenomenon creates a crucial analytical gap: how does the discourse of Islamic law, which was once the main driving force behind the anti-corruption movement, appear to be marginalized in contemporary legislative processes that threaten that agenda? The main research question posed is: "How has the paradigm of Islamic law in the discourse and anti-corruption movement in Indonesia shifted from the moralistic spirit of the Reformation era toward pragmatism manifested in political compromises in contemporary legislation?" The main research question posed is: "How has the Islamic law paradigm in the discourse and anti-corruption movement in Indonesia shifted from the moralistic spirit of the Reformation era toward pragmatism manifested in political compromises in contemporary legislation?" The thesis proposed in this research is that a fundamental paradigm shift has occurred in the role of Islamic law related to anti-corruption efforts in Indonesia. The thesis proposed in this research is that there has been a fundamental paradigm shift in the role of Islamic law concerning the eradication of corruption in Indonesia. This shift moves from a value-based approach driven by the Islamic civil society as an external critical force, toward a transactional approach dominated by the political interests of elites within the power arena

[1] Nurun Solikin, "Integration of Islamic Law into Anti-Corruption Education in Indonesia" (Disertasi, UIN Sunan Ampel Surabaya, 2022).

[2] *Ibid*, Solikin, "Integration of Islamic Law."

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B. RESEARCH METHODOLOGY

To answer the research question, a qualitative method with a juridical-sociological and historical approach is used. The juridical-sociological approach is employed to analyze the interaction between legal norms and the socio-political reality, while the historical approach is applied to trace the evolution of the anti-corruption discourse. Primary data sources include legislation such as Law No. 30 of 2002, Law No. 19 of 2019, and Law No. 11 of 2020, while secondary data includes scientific journal articles, books, and official documents from Islamic organizations.

C. DISCUSSION RESULT

1. Theological and Sociological Foundations of Anti-Corruption

To understand the depth of the anti-corruption movement led by Islamic elements in Indonesia, it is important to first dissect its theological foundations within the realm of Islamic law. Corruption, in the Islamic view, is not merely an administrative violation or a financial loss to the state, but rather a major sin (jarimah kabirah) that undermines the moral, social, and spiritual order.[3] Although the term "corruption" is not explicitly found in classical texts of fiqh jinayah, the substance of the act has been identified thru various terminologies.[4] The concept most often associated with corruption is bribery. Bribery is defined as giving something to an official with the aim of winning a case unfairly or obtaining something that is not rightfully theirs.[5]

This practice was explicitly cursed by Prophet Muhammad Shallahu Alaihi Wassalam.[6] This prohibition is rooted in the principle of not consuming the wealth of others unjustly. Another crucial term is ghulul, which means betrayal or embezzlement. Initially, this term referred to the act of embezzling war booty, but its meaning has been expanded to encompass all forms of betrayal of public trust by state officials[7].

The debate regarding sanctions for corruptors has become a dynamic discourse. Some views categorize it as sariqah (theft) with the punishment of hadd (amputation of the hand). However, the majority of scholars argue that modern corruption does not meet the conditions of sariqah because it is

[3] *Ibid,* Solikin, "Integration of Islamic Law."

[4] Anwar Siroj, sebagaimana dikutip dalam Nurun Solikin, "Integration of Islamic Law into Anti-Corruption Education in Indonesia" (Disertasi, UIN Sunan Ampel Surabaya, 2022).

[5] Ria Maulida et al., "Pendidikan Anti Korupsi dalam Perspektif Islam," Jurnal Syntax Admiration 1, no. 5 (2020): 552-561.

[6] *Ibid.*

[7] *Ibid,* Solikin, "Integration of Islamic Law."

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often committed by individuals who have access and authority over the assets in question.[8] Therefore, a stronger consensus places corruption in the category of ta'zir crimes. Ta'zir is a type of sanction entrusted to the discretion of the ruler (waliyyul amri) and the judge, aimed at providing deterrence and achieving public welfare (maslahah 'ammah). This paradigm provides flexibility for Islamic law to adapt to modern legal systems, where sanctions can include imprisonment, fines, asset confiscation, and even the death penalty. However, its discretionary nature conceals a vulnerability: the effectiveness of the punishment becomes highly dependent on the political will of the rulers. This vulnerability is what creates a theoretical gap for the occurrence of "legislative compromise" in the future.

Armed with this theological foundation, Islamic organizations such as Muhammadiyah and NU played an instrumental role at the beginning of the Reformation. Muhammadiyah views the jihad against corruption as an integral part of the da'wah *amar ma'ruf nahi munkar*. On the other hand, the issuance of a fatwa by some NU scholars prohibiting the funeral prayers for corruptors serves as a "shock therapy" in the socio-religious context, indicating that corruption is a highly reprehensible act

2. Institutionalization of the Reform Spirit: The Birth of the KPK

The wave of anti-corruption spirit during the Reformation era demanded concrete realization within the state governance system. This demand culminated in the establishment of the Corruption Eradication Commission (KPK) thru Law Number 30 of 2002. The old KPK Law was born from the awareness that corruption had reached a level that endangered the nation and had to be eradicated thru extraordinary means by an independent special body.[9] The philosophy behind it is to create a trigger mechanism to encourage the existing law enforcement officers to work more effectively.

The institutional design of the KPK in the Old KPK Law reflects the values of justice, accountability, and independence.

1) **Absolute Independence.** Article 3 of the Old KPK Law clearly states that the KPK is a state institution that, in carrying out its duties and authorities, is independent and free from the influence of any power.[10] This principle is in line with the concept of hisbah institutions in fiqh siyasah, which is a supervisory body that has the autonomy to address violations without being interfered with by the authorities

[8] Rizki Dedi, Siti Puadah, & Ibnu Rusydi, "Korupsi Dan Upaya Pemberantasannya Dalam Perspektif Hukum Islam," JUSTICES: Journal of Law 1, no. 1 (2022): 35-45.

[9] Indonesia, Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi, Konsiderans.

[10] Indonesia, UU No. 30/2002, Pasal 3.

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2) **Extraordinary Powers**. To tackle extraordinary crimes, the KPK is equipped with extraordinary powers as well. The KPK unites the functions of investigation, prosecution, and adjudication under one roof, and possesses crucial authorities such as wiretapping.

which has proven to be the most powerful weapon in uncovering major corruption cases.

The presence of the KPK with this strong design can be seen as a meeting point between the aspirations of modern law and the substantive values of Islamic law. The KPK is viewed as the institutional embodiment of the anti-corruption "jihad" that has been championed since 1998, where the supremacy of law and the values of moral-religious justice can go hand in hand.

3. Turning Point of Weakening: Revision of the KPK Law

After more than one and a half decades of operation, the KPK began to be seen as a threat by some political elites. The peak occurred in September 2019 with the enactment of Law Number 19 of 2019 (the New KPK Law), which marked a turning point toward political pragmatism. The process of its formation was fraught with anomalies: the bill never entered the 2019 Priority National Legislation Program, and its discussion took place "lightning-fast" in just about 13 days, closing off space for meaningful public participation. The substance of the changes fundamentally deconstructs the pillars of the KPK's power. The most fundamental change is the institutional status of the KPK from an "independent state institution" to a "state institution within the executive branch of power," making it vulnerable to presidential intervention. The subsequent weakening is carried out thru the establishment of the Supervisory Board (Dewas) appointed by the President, with the authority to grant permission for crucial actions such as wiretapping, searches, and seizures. This creates a new bureaucracy that has the potential to slow down work and is prone to information leaks.

he revision of the KPK Law has triggered a wave of massive rejection from civil society, including Islamic organizations. Muhammadiyah, from the central level to its autonomous organizations, has simultaneously and firmly rejected the revision, considering it a betrayal of the Reformation mandate.[11] Other organizations such as Al-Irsyad Al-Islamiyyah also voiced strong opposition. However, a sharp paradox occurred: on one side, there was a consensus among the Islamic civil society to reject the weakening of the KPK, while on the other side, there was a unanimous consensus among the political elite in the DPR, including from Islamic-based parties, to endorse it. This total divergence marks the victory of political pragmatism over moral struggle, where the narrative of "constitutional jihad" begins to erode and is replaced by the reality of "Legislative compromise".

[11] Suara Muhammadiyah, "Sikap PP Muhammadiyah tentang Revisi UU KPK," September 13, 2019; Ikatan Pelajar Muhammadiyah (IPM), "Pernyataan Sikap PP IPM Terkait Revisi UU KPK," September 9, 2019.

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Tabel 1.

Comparison of KPK Authority Before and After the Revision of Law No. 19 of 2019

Aspect	Law Number 30 of 2002 (Old Law)	Law Number 19 of 2019 (New Law)	Implications of Weakening
Institutional Status	An independent state institution, free from the influence of any power (Article 3)	State institution within the executive branch of power (Article 3)	The loss of independence, vulnerable to presidential intervention.
Supervision	Internal supervision and by other state institutions (DPR, BPK, President).	The Supervisory Board (Dewas) is formed and elected by the President (Article 37A)	A new bureaucracy that slows down work; potential conflicts of interest and politicization of oversight.
Wiretapping authority	Carried out on the orders of the KPK leadership during the investigation,inquiry and prosecution stages.	Must obtain written permission from the supervisory board (Article 12B)	Slowing down the process, risking information leaks,and paralycing sting operations (OTT).
Officer Status	KPK employees are independen employees appointed by the commission	KPK employees become state civil Apparatus (ASN) (Article 1 Number 6)	Threatens the independence and integrity of employees,subject to government bureaucracy
SP3 (Investigation Termination Order)	Does not have the authority to issue SP3.	Authorized to stop investigation and prosecution if not completed within 2 years (Article 40)	Providing loopholes for corruption suspect to escape the clutches of the law by extending time

Source: Researches's processing of UU No. 30/2002 dan UU No. 19/2019.

4. Consolidation of Pragmatism: Job Creation Omnibus Law

The enactment of Law Number 11 of 2020 on Job Creation (Job Creation Law) can be seen as a consolidation of a new direction in Indonesia's legal politics. This law is part of a single policy breath with the weakening of the KPK: a paradigm that prioritizes investment over the pillars of oversight and

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accountability. The process of its formation repeats the same pattern as the revision of the KPK Law: rushed, lacking transparency, and disregarding public participation. The weakening of the KPK in 2019 can be argued as a political prerequisite to smooth the way for a massive deregulation agenda in the Job Creation Law. A strong KPK would be the main obstacle to potential abuse of power that might arise from the implementation of the Job Creation Law. Thus, the weakening of the KPK and the enactment of the Job Creation Law are two sides of the same coin: a policy that trades accountability for the promise of economic growth.

The substantive analysis of the Job Creation Law shows the presence of various "red carpets" for corrupt practices, which contradicts the spirit of Reform and the Islamic legal values of maintaining trust and preventing corruption (fasad). Several key clusters have the potential to create a new ecosystem of corruption:

1. **Environmental and Spatial Planning Cluster:** The simplification of AMDAL requirements and the restriction of public involvement create a significant gap for the occurrence of "green corruption," where environmental permits can be traded without adequate supervision.[12]
2. **Labor Cluster:** The ease of using outsourced labor and changes to severance pay formulas indicate a legislative bias toward capital interests, a form of political corruption (state capture) whose impact is directly felt by the wider community. Employment Cluster: The ease of using outsourced labor and changes to severance pay formulas indicate legislative bias toward capital interests, a form of political corruption (state capture) whose impacts are directly felt by the broader community.[13]
3. **Ease of Doing Business Cluster:** When the licensing process is simplified and field supervision is reduced, the potential for bribery to obtain a lower risk classification or to neglect compliance with standards becomes very high.

5. Shifts in the Paradigm of Contemporary Political Jurisprudence

The shift in the landscape of anti-corruption legal politics cannot be separated from the dynamics of Islamic political thot (fiqh siyasah) itself. In the context of modern Indonesia, the thot of fiqh siyasah has shifted from a normative-ideological approach (focusing on the formal form of an Islamic state) toward a more substantial and realistic approach. The focus is no longer on formalization, but rather on efforts to internalize Islamic values such as justice ('adalah), consultation (syura), and public welfare (maslahah) into the existing nation-state framework.

However, this political realism brings complex consequences when Islamic political actors enter the arena of power. The central concept of maslahah mursalah (public interest) has become an arena for

[12] Fakultas Hukum UGM, Naskah Akademik Analisis Kritis Omnibus Law RUU Cipta Kerja (Yogyakarta: UGM, 2020).

[13] Ayu A. Prasasti, "Kajian Yuridis Mengenai Omnibus Law Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Klaster Ketenagakerjaan," Veritas et Justitia 7, no. 2 (2021): 342-363.

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interpretative contestation. At the beginning of the Reformation, there was a consensus that the greatest maslahah was the eradication of corruption. This is the framework of thot that underlies the massive rejection of the revision of the KPK Law by the Islamic civil society. However, for the elite of the Islamic party in the government coalition, the definition of maslahah can shift to encompass pragmatic goals such as maintaining political stability or gaining access to power. The contestation of the interpretation of maslahah is what explains the gap between the stance of Islamic mass organizations as a moral movement and the behavior of their political elites in the realm of power. Islamic civil society tends to uphold an idealistic interpretation of maslahah, while its political elite are bound by the logic of compromise and are forced to adopt a more pragmatic and transactional interpretation.[14] This shift is a manifestation of the evolution of the Islamic legal paradigm: from the strength of external criticism to being internal players entangled in the logic of systemic compromise.

D. CONCLUSION

The journey of the Islamic law paradigm in the anti-corruption movement in Indonesia post- Reform is a narrative about idealism, institutionalization, and ultimately, compromise. There has been a fundamental shift from "constitutional jihad" to "legislative compromise." Initially, Islamic law emerged as a moral-theological force that encouraged the establishment of the KPK as an independent institution reflecting the synergy between the modern rule of law and Islamic justice values. At this phase, the paradigm of Islamic law functions as a critical force from outside the system.

The turning point occurred in 2019 with the revision of the KPK Law, marking the victory of political pragmatism over moral idealism. This shift was consolidated with the enactment of the Job Creation Law in 2020, which demonstrated the subordination of the anti-corruption agenda to investment priorities. Theoretically, this research reveals how key concepts such as ta'zir and maslahah can become arenas of contestation, instrumentalized by political elites to legitimize compromises that weaken the anti-corruption agenda. Practically, these findings serve as a warning that when moral-religious power is absorbed into the logic of transactional power, its supervisory function will become blunt. The future implications demand a revitalization of the role of Islamic civil society, not as practical political players, but as independent external overseers of power, to restore the position of Islamic law as a source of moral critique outside the circle of power.

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