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Risywah in the Perspective of Islamic and Positive Law

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ABSTRACT

Risywah is strictly prohibited in Islamic law and positive law in Indonesia. This action cannot be separated from human behavior or attitudes in which there are always evil actions or intentions. Where someone will commit theft or bribery to further their interests, this act is more identically carried out by unscrupulous government officials in order to fulfill their needs or the interests of their group. We can find these actions in everyday life where sinful actions are carried out by anyone who wants to own something that is not rightfully theirs. Thus, not only does this theft and bribery have a negative impact on the perpetrator, it also has a detrimental impact on society.

Keywords: *Risywah*, Islamic law, positive law

ABSTRAK

Risywah sangat dilarang dalam hukum Islam maupun hukum positif di Indonesia. Perbuatan ini tidak terlepas dari perilaku atau sikap manusia yang di dalam dirinya selalu terdapat perbuatan atau niat jahat. Dimana seseorang akan melakukan pencurian atau penyuapan untuk memuluskan kepentingannya, perbuatan ini lebih identik dilakukan oleh oknum pejabat pemerintah dalam rangka memenuhi kebutuhannya atau kepentingan golongannya. Perbuatan tersebut dapat kita temukan dalam kehidupan sehari-hari dimana tindakan yang berdosa itu dilakukan oleh siapa saja yang hendak ingin memiliki suatu barang yang bukan haknya. Dengan demikian pencurian dan penyuapan ini selain berdampak negatif pada pelaku juga berdampak merugikan bagi masyarakat.

Kata kunci: *Risywah*, hukum Islam, hukum positif



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1. Introduction

Risywah is an act that seriously violates religious norms. Not only that, theft or bribery is prohibited in Islam and in the positive law that applies in Indonesia. Because theft, apart from causing sin, is also an act that oppresses other people and harms other people's rights. We can find this in Indonesia itself, as cases of theft (corruption) and bribery are rampant in every sector of government, including executive, legislative and judicial.

One of the rules of Islam which aims to protect one's property from naughty hands, is that Islam prohibits stealing other people's property. Stealing is a disgraceful, sinful act, disturbing other people's interests and contrary to the objectives of Islamic law.

When a thief intends his actions, he actually wants his business (his wealth) to be increased by other people's wealth, and he underestimates halal businesses. He is not satisfied with the results of his own efforts, but instead hopes for the results of other people's efforts, so that in this way he can increase his earning power or not have to bother working or can have a guaranteed future. In other words, it is added that business or wealth is the driving factor for non-theft [1].

Basically theft and bribery or what we commonly know as corruption. Corruption is an act that carries serious penalties and criminal sanctions. This wrongful act falls into the category of "extraordinary crime" in the Criminal Code.

We can find these actions in everyday life where sinful actions are carried out by anyone who wants to own something that is not rightfully theirs. Thus, not only does this theft and bribery have a negative impact on

the perpetrator, it also has a detrimental impact on society.

Some scholars are of the opinion that theft and bribery are major sins so that these acts deserve the punishment of had (hand cutting) for the perpetrator. Meanwhile, positive law is also regulated in Law no. 20 of 2001 concerning Corruption Crimes. All types of corruption and the sanctions for punishment have been formulated in this Law, namely in the form of prison sentences and fines.

2. Result and Discussion

Definition of theft in Islam and positive law

Stealing means taking something that does not belong to them secretly without the owner's knowledge. Legally, stealing is an act that is prohibited by the state. Likewise in the Islamic view. Stealing and bribery are sinful acts and are not in accordance with the pillars of faith, the pillars of Islam and the function of religion. Allah Ta'ala says in the Koran which means:

"And do not eat the wealth between you in a false way and (don't) bribe the judges with this wealth with the intention that you can consume some of other people's wealth in a sinful way, even though you know." (QS.al-Baqarah: 188).

Theft according to Muhamad Syaltut is taking other people's property secretly by someone who is not trusted to guard the item. According to him further, this definition clearly excludes the act of embezzling other people's property entrusted to him (ikhtilas) from the category of theft. Therefore, embezzlement of other people's property is not considered theft and is certainly not punished by cutting off one's hand, but by other forms of punishment. In addition, the definition above excludes taking other people's property openly and the category of theft, such as pickpocketing which openly takes things and runs away with them. That is the agreement of the fuqaha.

The definition of corruption according to Black's Law Dictionary is an act carried out with the intention of providing an illegal advantage by using the rights of another party, who wrongly uses his position or character to obtain an advantage for himself or another person, which is contrary to with its obligations and the rights of other parties.

Corruption comes from the Greek word "corruptio" which means actions that are not good, bad, fraudulent, can be bribed, immoral, deviate from purity, violate material, mental and legal religious norms. .

Meanwhile, according to positive law, theft or what is known as corruption is an unlawful act with the intention of enriching oneself, others, or corruption which results in harm to the state or the country's economy (UU No. 20 of 2001 concerning Corruption Crimes).

Definition of Risywah in Islam and positive law

Bribery in the Big Indonesian Dictionary is bribe money. Bribery in Arabic is *Risywah* or *rusywah*. Etymologically, *al-Risywah* or *al-rasywah*. The more popular use of the word *al-Risywah* means gift, reward, gift, or commission.

Etymologically, Ibn al-Atsir defines the term *Risywah* as delivering something desired by offering something. In other words, *al-Risywah* is something (money or objects) given to someone to get something they hope for. *al-Risywah* is taken from the word *al-risyah* which means a rope that can carry water in a well. These two words have similar meanings, namely using something to get something you want.

Other scholars define *Risywah* as something given to cancel truth or establish falsehood. There are also scholars who define *al-Risywah* as something that a person gives to a judge or someone else so that the person can obtain legal certainty or something they want.

Meanwhile, *al-rasyi* is a person who gives something to a second party who is ready to support falsehood. *Roisyi* is an ambassador or mediator between the briber and the bribe recipient, while *al-murtasyi* is the bribe recipient.

This understanding is the same as Ibn al-Atsir's opinion in *al-Nihayah fi Gharib al-Hadith wa al-Atsar*, that *Risywah* is a gift given by someone to another person (official) with the intention of passing an act that is

false (not correct according to sharia). or canceling a rightful action.

Bribery according to Law number 20 of 2001 concerning the Eradication of Corruption Crimes is any person who gives a gift or promise to a civil servant considering the power or authority attached to the position or position, or by the giver of the gift or promise deemed to be attached to that position or position.

Based on the definition of theft and bribery, they are almost similar because their behavior both harms other people's rights and this is contrary to religious teachings and state law. So these two actions are inappropriate for anyone to do.

Prohibition of Risywah in the Perspective of Islami and Positive Law

In Islam, the law of stealing and rasuwah (*Risywah*) is highly discouraged because these acts are not regulated by the pillars of faith, the pillars of Islam and religious teachings. Rasuwah is also a fraudulent act carried out by a handful of people (individuals) by giving lures or gifts to officials who have influence or policy in a government agency.

Islam is a religion of mercy for all nature in the world. In it there are teachings and guidance about human life, both regarding humans and their gods and humans and their environment. In order to regulate human life, the Qur'an and Sunnah have regulated teachings in such a way as a reference and guideline for human life so that their lives do not stray into a path that is not approved by Allah SWT.

The Qur'an and Sunnah are sources of law that regulate human life from all aspects, so that humans receive Allah's approval in their lives to achieve salvation in this world and the hereafter. That's why the Islamic message is complete, nothing is left out of the Islamic message, including government, both with regard to administration and legislation. In the fiqh proposal, it is stated that "there is not a single event that is not regulated in Islam, unless there is a law of Allah SWT. This means that all forms of deeds, both praiseworthy and prohibited acts, are all regulated in Islam, including acts of theft.

That is a very perfect and complete explanation and description of theft (corruption) and bribery regulated in Islam. The Qur'an also explains the prohibition against consuming property that is not rightfully yours or someone else's property with the intention of wanting to own it. Allah SWT, says in Qs. Surah Al-Baqarah which means:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ
لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

"And do not eat the wealth between you in a false way and (don't) bribe the judges with this wealth with the intention that you can consume some of other people's wealth in a sinful way, even though you know."

(QS.al-Baqarah: 188).

In the explanation of the verse above, it is said that for every wealth that is sought through false means, stealing (corruption) or bribery, the sin will be punished with very large rewards and punishments. Therefore, corruption is also explained in the hadith of the Prophet Muahmmad Saw, namely: Or more specifically, corruption is included in the category of ghulul (betrayal of authority) found in the word of Allah QS 3:161 which means:

"It is impossible for a prophet to betray the spoils of war. Whoever betrays the spoils of war, then on the Day of Resurrection he will take with him what he betrayed; then each person will be rewarded for what he has done with (retribution) in proportion, while they are not wronged."

Then in another verse it is also explained that the act of consuming other people's wealth in a way that is not approved by Allah is a wasteful act because it can harm oneself and others. This act is very reprehensible both in the eyes of God and humans. Therefore Allah explains in Qs An-Nisa: 29 which means:

"O you who believe! Do not consume each other's wealth in a false way, except in trade

that is based on mutual consent between you. And don't kill yourself. Indeed, Allah is Most Merciful to you." (Qs An-Nisa: 29).

Another explanation regarding theft (corruption) and bribery is basically behavior that is favored by liars, namely Jews. They obtain wealth by committing fraud and other forms of deception to obtain wealth from ill-gotten gains. Allah SWT. Says in the Qur'an which means:

"They really like to hear fake news, eat a lot of haram (food). If they (the Jews) come to you (Muhammad to ask for a verdict), then judge between them or turn away from them, and if you turn away from them, then they will not harm you in the slightest. But if you decide (their case), then decide fairly. Indeed, Allah loves those who are just."
(Al-Maidah 5:42).

Bribery is very dangerous in people's lives because it will damage various systems of order in society, and cause carelessness and errors in establishing legal provisions so that the law can be manipulated with money. The result is chaos and injustice. With bribery, many violators who should have been given severe punishments actually received light sentences, and even escaped justice. on the contrary, many small lawbreakers, committed by small people, were punished very harshly because they did not have the money to bribe the judges. This is explained in the Hadith of the Prophet Muhammad. which means:

"Abu Hurairah Radliyallaahu 'anhu said: Rasulullah Sallallaahu 'alaihi wa Sallam cursed bribers and bribe takers in legal matters. History of Ahmad and Imam Empat. Hasan hadith according to Tirmidhi and authentic according to Ibn Hibban."
(Tsani 2013:6).

Thus, the law of stealing and bribery is one of the acts that is classified as a major sin and is prohibited in religion and if someone violates this, the sanction is to have their hands cut off. Likewise with bribery, whoever does it will be in hell.

This means that stealing and bribing are not permitted in Islam. If such a thing happens then it is prohibited and punishable by a criminal offense. In state law, it is very clearly regulated in Law no. 20 of 2001 concerning the crime of corruption states that every act of theft and bribery is subject to imprisonment and a fine.

Risywah in Islamic law

As for the punishments stipulated in the Koran for perpetrators of theft, they will receive very heavy sanctions. Ulama stated that theft is one of the seven radius of hudud. This is in line with the words of Allah SWT:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ.

Meaning: *"The man who steals and the woman who steals, have their hands cut off (as) retribution for what they did and as a punishment from Allah. And Allah is all-mighty, all-wise." (QS. Al-Ma'idah (5): 38).*

However, if he repents then Allah SWT. Will forgive anyone who wants to repent from their actions. Allah SWT. Says in the Qur'an which means:

"But whoever repents after committing a crime and improves himself, then indeed Allah accepts his repentance. Indeed, Allah is Forgiving, Most Merciful."
(QS. Al-Ma'idah (5): 38).

In the verse above, Allah states firmly that male thieves and female thieves must have their hands cut off. Ulama have agreed on this, but they have different opinions regarding the minimum limit (nisab) for stolen goods and which side of the hand should be cut off.

So it is clear that this punishment only applies to some thieves, not every thief. Theft of less than a quarter of a dinar is not punishable by hand amputation. This is the opinion of Umar bin Al-Khattab, Uthman bin

Affan, Ali bin Abi Thallib, Umar bin Abdul Aziz, Al-Laits, As-Syafi'i and Abu Saur. Imam Malik said: "Thieves' hands are also cut off for stealing a quarter of a dinar or three dirhams. If you steal something worth two dirhams which is worth a quarter of a dinar, because of the difference in exchange rate, the thief's hand cannot be cut.

The jurists have agreed that theft is haram, and the punishment of cutting off the hands of the perpetrator must be carried out and it is not permissible for a judge or through someone else's intercession to abort it if the theft has been fulfilled. Their opinion is based on the hadith of the Prophet PBUH:

عن عائشة : أن أسامة كرم النبي صلى الله عليه و سلم في امرأة فقال: إنما هلك من كان قبلكم أنهم كانوا يقيمون الحد على الوضيع ويتكفون على الشريف والذي نفسي بيده لو فاطمة فعلت ذلك لقطعتم يدها.

From Aisyah ra; Usamah actually asked for forgiveness from the Messenger of Allah. about someone who steals, then the Messenger of Allah said; that the people before you perished because they carried out punishment only on the lowly and they did not carry it out on noble people. By Whose power my soul is, if Fatimah had done this, I would have cut off her hand. (HR. Bukhari).

In another hadith:

يا أيها الناس إنما ضل من كان قبلكم أنهم كانوا إذا سرق الشريف تركوه وإذا سرق الضعيف فيهم أقاموا عليه الحد وإيم الله لو أن فاطمة بنت محمد سرقت لقطع محمد يدها.

O people; that the people before you were misguided because if noble people stole they did not punish them and if weak people stole they punished them. By Allah, if Fatima bint Muhammad had stolen, Muhammad would have cut off her hand. (HR. Bukhari).

The above hadith relates to the anger of the Prophet Muhammad. because he was visited by Usamah who asked for forgiveness for a woman who stole something that had been punished by the Messenger of Allah. hand amputation law.

The hadith shows that the law of cutting off one's hand is obligatory even if the person stealing is a close relative. As emphasized by the Prophet Muhammad. with his words "If Fatima bint Rasulallah stole, her hands would definitely be cut off" (Muslim 2010).

Risywah in Positive Law

a. Theft (corruption)

One form of crime listed in the second book of the Criminal Code is theft which is specifically regulated in Articles 363-367 of the Criminal Code. Regarding the crime of theft, this is one of the qualifications with a form of aggravation, especially as regulated in Articles 363 and 365 of the Criminal Code. Theft is generally formulated in Article 362 of the Criminal Code which reads as follows:

"Anyone who takes something, which wholly or partly belongs to another person with the intention of possessing it unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiah."

Based on the formulation above, the elements of the crime of theft (ordinary) are as follows:

1. Objective elements, which include the elements:
 - a) Take
 - b) An item
 - c) Which wholly or partly belongs to another person.
2. Subjective elements, which include the following elements:
 - a) With intent
 - b) To take the goods/objects for himself
 - c) Unlawfully.

b. Bribery (*Risywah*)

Bribery is a criminal offense that has long been regulated in Law no. 3 of 1980 concerning the Crime of Bribery. Article 3 of the Law states: Whoever receives something or a promise, while he knows or reasonably suspects that the giving of something or the promise is intended to make him do something or not do something in his duties, which is contrary to his authority or obligation which concerns the public interest, shall be punished for accepting bribes is subject to imprisonment for a maximum of 3 (three) years or a fine of up to IDR 15,000,000 (fifteen million rupiah).

Apart from that, the Criminal Code (KUHPidana) also regulates the crime of bribery, namely in Article 209 and Article 210 of the Criminal Code (active bribery), as well as in Article 418, Article 419 and Article 420 of the Criminal Code (passive bribery).

4. Conclusion

Theft and bribery are acts that were never exemplified by the Prophet. Doing this actually brings the wrath of Allah SWT, because this action is a big sin. Even the Prophet Muhammad SAW "cursed those who gave bribes and those who accepted bribes. Not only that, theft and infiltration are also prohibited in the Al-Qur'an, Surah Al-Baqarah, verse 118.

Then the sanction for those who commit theft is to have their hands cut off so that this sanction provides an example to others so that they will not commit theft that is not their right. In line with the punishment explained in Qs. Al-Maidah 5:38, namely, if a man or woman commits theft then cut off their hands. However, if they want to repent, Allah is truly forgiving of all sins.

In positive law, punishment for perpetrators of theft is also regulated in Law no. 20 of 2001 concerning Corruption Crimes. The punishment ranges from 4 (four) years imprisonment to life imprisonment and a maximum fine of 1 billion rupiah.

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