

Does the Statute of Limits Protect Corruptors? A Critique of Islamic Law on the Time Limit for Prosecuting Corruption Crimes

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Abstrak: Korupsi di Indonesia tetap menjadi masalah yang sistemik dan terus-menerus, yang merugikan keuangan negara, melemahkan kepercayaan publik, dan menantang efektivitas penegakan hukum. Salah satu isu krusial dalam penuntutan kasus korupsi adalah penerapan daluwarsa penuntutan (*verjaring*), yang berpotensi membatasi kewenangan negara untuk menjerat pelaku setelah jangka waktu tertentu. Penelitian ini bertujuan untuk menganalisis konsep daluwarsa penuntutan dalam kasus korupsi dalam kerangka hukum positif Indonesia dan mengkritisnya dari perspektif hukum Islam, khususnya terkait prinsip keadilan ilahiah. Penelitian ini menggunakan metode penelitian hukum normatif, dengan pendekatan perundang-undangan, kasus, dan konseptual. Data penelitian bersumber dari data sekunder, termasuk bahan hukum primer seperti Kitab Undang-Undang Hukum Pidana (KUHP), Undang-Undang Pemberantasan Tindak Pidana Korupsi, instrumen hukum internasional, serta sumber hukum Islam, termasuk Al-Qur'an, Hadis, dan fiqh jinayah. Analisis dilakukan secara kualitatif melalui metode deskriptif-analitis dan preskriptif. Hasil penelitian menunjukkan bahwa penerapan daluwarsa penuntutan dalam perkara korupsi menimbulkan tantangan hukum dan praktis yang signifikan. Hal ini dapat mengakibatkan hilangnya hak negara untuk menuntut dan memulihkan kerugian keuangan, menurunnya efek jera, serta melemahnya kepercayaan publik terhadap sistem hukum. Dari perspektif hukum Islam, konsep daluwarsa secara mendasar tidak sejalan, khususnya dalam perkara yang berkaitan dengan hak manusia (*huquq al-'ibad*), di mana pertanggungjawaban tidak dapat dihapus hanya karena berlalunya waktu. Hukum Islam menekankan keadilan substantif, pemulihan hak, dan pertanggungjawaban yang terus berlangsung, baik dalam dimensi duniawi maupun ukhrawi. Penelitian ini merekomendasikan rekonstruksi konsep daluwarsa berbasis prinsip keadilan ilahiah, termasuk perpanjangan atau penghapusan masa daluwarsa untuk kasus korupsi, penerapan *discovery rule*, serta prioritas pemulihan kerugian negara. Integrasi nilai-nilai hukum Islam dalam sistem hukum nasional diharapkan dapat memperkuat pendekatan yang lebih adil, efektif, dan bermoral dalam upaya pemberantasan korupsi di Indonesia.

Kata Kunci: Korupsi, Daluwarsa, Hukum, Islam.

*Abstract: Corruption in Indonesia remains a persistent and systemic problem that undermines state finances, weakens public trust, and challenges the effectiveness of law enforcement. One of the critical issues in the prosecution of corruption cases is the application of the statute of limitations (*verjaring*), which potentially limits the state's authority to prosecute offenders after a certain period. This study aims to analyze the concept of the statute of limitations in corruption cases within the framework of Indonesian positive law and to critically examine it from the*

perspective of Islamic law, particularly in relation to the principle of divine justice. This research employs a normative legal method, utilizing statutory, case, and conceptual approaches. The study is based on secondary data, including primary legal materials such as the Indonesian Criminal Code, the Anti-Corruption Law, and international instruments, as well as Islamic legal sources, including the Qur'an, Hadith, and fiqh jinayah. The analysis is conducted qualitatively through descriptive-analytical and prescriptive methods. The findings indicate that the application of the statute of limitations in corruption cases creates significant legal and practical challenges. It may result in the loss of the state's right to prosecute and recover financial losses, reduce the deterrent effect, and weaken public confidence in the legal system. From the perspective of Islamic law, the concept of statute of limitations is fundamentally incompatible, particularly in matters involving human rights (huquq al-'ibad), where accountability cannot be extinguished merely by the passage of time. Islamic law emphasizes substantive justice, restitution, and continuous accountability, both in worldly and spiritual dimensions. This study proposes a reconstruction of the statute of limitations based on the principle of divine justice, including the extension or elimination of limitation periods for corruption cases, the application of the discovery rule, and the prioritization of state loss recovery. The integration of Islamic legal values into the national legal system is expected to strengthen a more just, effective, and morally grounded approach to combating corruption in Indonesia.

Keywords: *Corruption, Expiration, Law, Islam.*



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A. INTRODUCTION

Corruption in Indonesia remains a structural problem that shows no significant signs of abating. This phenomenon not only harms state finances but also erodes public trust in the legal system and weakens the legitimacy of government institutions. Various eradication efforts have been implemented, both through the establishment of specific regulations and institutional strengthening, but in practice, a number of obstacles remain that have the potential to hamper the effectiveness of law enforcement. One crucial issue that continues to generate debate concerns the applicability of the statute of limitations for prosecuting corruption crimes. The statute of limitations is essentially a legal concept that limits the state's authority to prosecute after a certain period. In the context of Indonesian criminal law, provisions regarding the statute of limitations are regulated in Article 78 of the Criminal Code (KUHP). However, the applicability of these provisions to corruption crimes raises legal challenges, given that Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption (the Corruption Law) does not explicitly regulate the statute of limitations. This situation has given rise to a dual interpretation, with some arguing that the statute of limitations provisions of the Criminal Code remain applicable under Article 103 of the Criminal Code, while others argue that the extraordinary nature of corruption requires an exception to the statute of limitations principle.

This problem becomes even more complex when linked to law enforcement practices. Institutions such as the Corruption Eradication Commission (KPK) and other law enforcement agencies often face obstacles in uncovering corruption cases that are latent, systemic, and involve networks of power. The investigation and prosecution process often takes a long time, potentially exceeding the statute of limitations. In such circumstances, the state risks losing its right to prosecute perpetrators and recover state financial losses. This has also attracted the attention of various monitoring institutions, which believe that the statute of limitations could provide a loophole for corruptors to avoid legal accountability. On the other hand, developments in international law, such as the United Nations Convention Against Corruption (UNCAC), ratified by Law Number 7 of 2006, have encouraged state parties to set longer statute of limitations or even provide flexibility in the initial calculation of the statute of limitations, particularly for corruption crimes that are difficult to uncover. Although these provisions have not yet been fully adopted in national law, the principles espoused by the UNCAC reflect the need for a more progressive and responsive legal approach to the specific characteristics of corruption crimes.

From a more fundamental perspective, the debate over the statute of limitations for prosecution actually touches not only on formal legal aspects but also on the philosophical dimension of justice. Within the framework of Islamic law, corruption is viewed as an act that falls under the category of crimes that damage social order and violate the principles of justice. The Quran expressly prohibits the practice of taking property by wrongful means, as stipulated in Surah Al-Baqarah, verse 188, which emphasizes the prohibition of consuming another's property through unlawful means, including through legal manipulation and abuse of power. This principle demonstrates that crimes against public property are not only violations of positive law, but also moral and spiritual violations that carry a dimension of accountability before God. From this perspective, the concept of the statute of limitations in positive law, which has the potential to eliminate the state's right to prosecute, becomes relevant to critique within the framework of Islamic law. This is because, under the principle of divine justice, every act that harms others is not simply extinguished by the passage of time, but rather remains a responsibility that must be accounted for, both in this world and the hereafter. Thus, a fundamental question arises regarding the extent to which the concept of the statute of limitations can be justified in corruption cases when viewed from the perspective of substantive justice values in Islamic law.

A concrete example of the problematic nature of the statute of limitations can be seen in Decision Number 81/Pid.Sus/2011/PN.SBY, in which the panel of judges accepted the defendant's exception regarding the statute of limitations for prosecution under Article 78 of the Criminal Code. This decision demonstrates that, in practice, the statute of limitations provision remains a viable instrument in corruption cases, despite its controversial nature from a justice perspective. Based on this description, this study aims to critically analyze the concept of the statute of limitations for prosecution in corruption crimes, both within the framework of Indonesian positive law and from an Islamic legal perspective. This study also seeks to examine the relevance and legitimacy of applying the statute of limitations to corruption crimes,

considering the principle of divine justice as a normative foundation. The significance of this research lies in its contribution to reforming criminal law for greater justice and strengthening the effectiveness of corruption eradication in Indonesia.

B. METHOD

This research is a normative legal study that focuses on the analysis of legal norms related to the statute of limitations for prosecution in corruption crimes and their critique from an Islamic legal perspective. The data used are secondary data, including primary legal materials (the Criminal Code, the Corruption Eradication Law, and the United Nations Convention Against Corruption), secondary legal materials (books, journals, and previous research), and tertiary legal materials. The approaches used include a statute approach, a case approach through analysis of court decisions related to the statute of limitations, and a conceptual approach to examine the principle of justice in Islamic law (*fiqh jinayah*). The analysis was conducted qualitatively using descriptive-analytical and prescriptive methods to provide arguments and legal recommendations oriented towards divine justice.

C. DISCUSSION

1. Concept of Statute of Limits for Prosecution in Indonesian Criminal Law.

The statute of limitations for prosecution (*verjaring*) is a criminal law institution that limits the state's authority to prosecute perpetrators of criminal acts after a certain period of time. In the Indonesian criminal law system, this provision is regulated in Article 78 of the Criminal Code (KUHP), which sets a time limit for prosecution based on the type and severity of the criminal penalty. Philosophically, the statute of limitations is based on considerations of legal certainty, the efficiency of law enforcement, and the assumption that over time, the urgency to punish perpetrators may diminish, either due to the diminishing quality of evidence or the diminishing social urgency to prosecute.

Theoretically, the statute of limitations has its roots in the European continental legal tradition, which places legal certainty as one of the primary objectives of law. From this perspective, the law serves not only to uphold justice but also to provide clear limits on state authority to prevent it from continuing indefinitely. The statute of limitations is also considered a form of protection for individuals from the threat of uncertain and prolonged prosecution. Thus, this concept reflects a balance between the state's interest in punishing perpetrators and the individual's right to legal certainty. However, the application of the statute of limitations concept to corruption crimes raises serious problems. This is due to the characteristics of corruption as an extraordinary crime: systemic, hidden, and often involving abuse of power. Corruption is often carried out in an organized manner and uses complex methods, such as administrative manipulation, money laundering, and the use of political and bureaucratic networks. This situation makes the disclosure process difficult and time-consuming, thus potentially creating opportunities for impunity for perpetrators. In practice, many corruption cases are only uncovered years after the incident occurred, either through investigative audits, political changes, or the courage of witnesses to reveal the facts. If the statute of limitations is applied rigidly, the state potentially loses the right to prosecute perpetrators and the opportunity to recover state financial losses. This demonstrates that the

application of the statute of limitations in the context of corruption is not fully aligned with the goal of eradicating extraordinary crimes..

Furthermore, the Corruption Eradication Law (UU Tipikor) does not explicitly regulate the statute of limitations for prosecution. Based on Article 103 of the Criminal Code, provisions in Book I of the Criminal Code remain applicable to crimes outside the Criminal Code unless specifically regulated. Consequently, the statute of limitations in corruption cases normatively refers to Article 78 of the Criminal Code. This situation creates a normative gap in the specific law on corruption eradication, which should have different regulatory characteristics than general crimes. The absence of specific provisions regarding the statute of limitations in the Law on Tipikor also gives rise to a dual interpretation among academics and legal practitioners. Some argue that the principle of legality requires consistent application of the Criminal Code provisions, including regarding the statute of limitations. However, others emphasize that corruption, as an extraordinary crime, should be treated specifically, including by eliminating or extending the statute of limitations to ensure effective law enforcement.

Furthermore, when linked to the development of modern criminal law, there is a tendency to limit or even eliminate the statute of limitations for certain crimes that have a broad impact on society, such as crimes against humanity and large-scale corruption. This approach is based on the principle that crimes that significantly harm the public interest should not be protected by the statute of limitations mechanism. In this context, corruption can be viewed as a crime that undermines the very foundations of national and state life, thus requiring stricter legal treatment..

2. Problems of Applying the Limitation of Limitation in Law Enforcement Practices.

In judicial practice, the statute of limitations is often used by defendants to file an exception to avoid prosecution. This is reflected in Decision Number 81/Pid.Sus/2011/PN.SBY, in which the panel of judges accepted the defendant's objection on the grounds that the prosecution period, as stipulated in Article 78 of the Criminal Code, had expired. This decision demonstrates that the statute of limitations is not merely a normative concept but has real implications in practice, even potentially weakening efforts to eradicate corruption systematically. This phenomenon confirms the tendency for corruptors to use the statute of limitations as a legal defense strategy, particularly in cases involving a long time span between the act and the law enforcement process. In many cases, perpetrators exploit administrative and procedural loopholes, as well as weak coordination between law enforcement agencies, to delay the investigation process until it approaches or exceeds the statute of limitations. Thus, the statute of limitations no longer functions as a neutral instrument of legal protection but instead has the potential to become a means of impunity.

From a law enforcement perspective, this situation has several significant negative impacts. First, it deprives the state of the opportunity to recover state financial losses due to the inability to continue the legal process. In the context of corruption, asset recovery is one of the primary objectives, in addition to criminal prosecution, so the suspension of the prosecution process due to the statute of limitations directly harms the public interest.

Second, the deterrent effect on perpetrators of corruption is reduced due to the perception that the legal system can be "circumvented" through time-delay strategies. Third, public trust in the criminal justice system is weakened, which is considered incapable of delivering substantive justice, especially in cases concerning the wider public interest. Furthermore, the problem of the statute of limitations cannot be separated from structural and cultural factors in law enforcement in Indonesia. Limited human resources, weak coordination between institutions, and the potential for intervention by authorities in the legal process often lead to slow handling of corruption cases. In such situations, time becomes a factor that benefits the perpetrators, not law enforcement. This shows that the statute of limitations is not only a normative issue, but is also closely related to institutional capacity and the integrity of the legal system. Furthermore, the complexity of proof in corruption cases also increases the likelihood of statute of limitations. Modern corruption often involves complex financial schemes, including money laundering, the use of shell companies, and cross-jurisdictional transactions. Collecting evidence in such circumstances requires international cooperation, forensic audits, and considerable time. Consequently, rigid statutes of limitations are no longer relevant to the increasingly complex dynamics of corruption crimes.

Equally important, there is also the issue of the starting point of the limitation period. In many cases, corruption is only discovered years after the incident, particularly when an audit is conducted or a political change occurs. If the limitation period is calculated from the moment the act occurs, this clearly harms law enforcement efforts. Therefore, there is a discussion about adopting the discovery rule approach, which calculates the limitation period from the time the crime is discovered or should have been discovered by law enforcement officials. On the other hand, the application of the limitation period in corruption cases also creates tension between the formal and substantive aspects of the law. Formally, the termination of prosecution due to the statute of limitations can be considered legitimate and in accordance with positive law. However, substantively, this can conflict with the public's sense of justice, especially when perpetrators who have clearly harmed the state are exempt from legal accountability. This tension demonstrates the gap between the law on the books and the law in action in the Indonesian criminal justice system. From an Islamic legal perspective, corruption can be categorized as an act containing elements of *ghulul* (embezzlement), *risywah* (bribery), and the taking of property by wrongful means. This act falls under the category of criminal offenses, which not only harm individuals but also undermine the collective interests of society (*al-maslahah al-'ammah*). Corruption, within this framework, is viewed as a violation of the principles of trust and justice, which are the primary foundations of the Islamic legal system.

The Quran expressly prohibits the practice of unlawful appropriation of property, as stated in Surah Al-Baqarah, verse 188, which emphasizes the prohibition of consuming another's property through false means and abusing power to legitimize such acts. This prohibition demonstrates that property in Islam is not merely economic in value but also has moral and spiritual dimensions that must be safeguarded. Therefore, corruption is not only viewed as a violation of positive law but also as a form of betrayal of trust and a violation of divine values. Within the framework of Islamic criminal law (*fiqh jinayah*), an act that harms the rights of others, particularly those categorized as *huquq al-'ibad* (human rights), cannot be easily erased simply because of time. Unlike positive law, which recognizes the concept of a

statute of limitations as a reason for the removal of the authority to prosecute, Islamic law emphasizes that the perpetrator's responsibility remains until the restoration of rights and a just resolution occurs. This can be achieved through the return of assets (radd al-mazalim), the imposition of sanctions (uqubah), or through a process of sincere repentance (taubah). This principle emphasizes that justice in Islam is substantive and restorative, not merely formalistic. This means that the primary goal of law enforcement is not merely to impose sanctions, but also to restore the social balance disturbed by corruption. Therefore, the concept of a statute of limitations, which eliminates the state's right to prosecute, potentially contradicts this principle of justice, as it ignores the aspects of restitution and accountability of the perpetrator.

Furthermore, Islamic law distinguishes between huquq Allah (the rights of God) and huquq al-'ibad (the rights of humans). In the context of corruption, the dimension of huquq al-'ibad becomes very dominant because it concerns the rights of the wider community to public property. In cases involving human rights, formal sanctions alone are not sufficient; they must be accompanied by the restoration of rights to the injured party. Therefore, eliminating prosecution through a statute of limitations without restitution of losses is contrary to the principle of justice in Islam. Furthermore, the concept of divine justice in Islam places every human action within a comprehensive framework of accountability, encompassing both worldly and hereafter dimensions. From this perspective, no action is truly lost due to the passage of time, as all human actions will be accounted for before God. This principle provides a strong ethical dimension to law enforcement, where justice is measured not only by adherence to formal procedures but also by conformity with moral and spiritual values.

Furthermore, scholars in the Islamic jurisprudence tradition also emphasize the importance of deterrence (zajr) and the deterrent effect in imposing sanctions. If a statute of limitations is applied to corruption cases, this has the potential to weaken the preventive function of the law, as it provides an opportunity for perpetrators to evade sanctions through delaying strategies. In the long term, this situation can encourage the development of a culture of corruption that contradicts the objectives of sharia (maqasid al-shari'ah), particularly in safeguarding property (hifz al-mal) and realizing social justice. On the other hand, although Islamic law does not explicitly recognize the concept of a statute of limitations, there is a principle of flexibility in law enforcement through ijtiḥad, particularly in the context of ta'zir (sanctions determined by the ruler). However, this flexibility is not intended to eliminate accountability, but rather to adapt the form and type of sanctions to evolving social conditions. Therefore, the application of a statute of limitations as a reason for eliminating prosecution in corruption cases remains difficult to justify within the framework of Islamic law. Based on this explanation, the concept of a statute of limitations in positive law, particularly in corruption cases, contains fundamental weaknesses when viewed from an Islamic legal perspective. A statute of limitations has the potential to eliminate formal legal accountability, while in Islamic law, such responsibility remains until substantive justice is fulfilled. Based on the previous analysis, a reconstruction of the concept of a statute of limitations in corruption crimes is needed that is not solely oriented towards formal legal certainty but also reflects substantive justice rooted in the values of divine justice. This reconstruction is crucial given the characteristics of corruption as an extraordinary crime with widespread impacts on social, economic, and political life, thus requiring a more

progressive, adaptive, and equitable legal approach. One fundamental step in this reconstruction is to consider eliminating, or at least extending, the statute of limitations for corruption crimes. This approach aligns with the principles of international law, particularly the global anti-corruption regime, which recognizes that corruption crimes are often latent and only come to light after a considerable period of time. From an Islamic legal perspective, this step also aligns with the principle that violations of public rights (*huquq al-'ibad*) cannot be abated simply by the passage of time, so accountability must remain in place until justice is achieved. Furthermore, the reconstruction also needs to be directed at changing the starting point for calculating the statute of limitations, no longer counting from the time the act occurred, but rather from the discovery of the crime (the discovery rule). This approach is crucial to avoid time manipulation by perpetrators who deliberately conceal their actions through various complex methods. Thus, the legal system no longer benefits perpetrators who are able to conceal their crimes, but instead strengthens the state's position in effectively uncovering and prosecuting corruption crimes.

Furthermore, the reconstruction of the statute of limitations concept must place the restitution of state losses as a central element of legal accountability. In this context, the statute of limitations should not eliminate the perpetrator's obligation to reimburse the losses incurred. This principle strongly aligns with Islamic law, particularly the concept of *radd al-mazalim*, where the restoration of rights to the injured party is an obligation that cannot be abated by time. Therefore, despite limitations on criminal prosecution, the aspect of restitution must remain a non-negotiable priority. Furthermore, this reconstruction also demands the integration of moral and spiritual values within the criminal legal system. Law is understood not merely as a set of technical and procedural rules, but also as an instrument for realizing true justice. From an Islamic legal perspective, values such as trustworthiness, honesty, and responsibility play a central role in shaping individual behavior and social systems. Therefore, internalizing these values within the legal system can strengthen legal legitimacy and increase public legal awareness.

Furthermore, the reconstruction of the statute of limitations also needs to be supported by strengthening institutional aspects and legal policies. This includes increasing the capacity of law enforcement officers, optimizing inter-agency coordination, and simplifying procedures for handling corruption cases to prevent protracted proceedings. Without such systemic support, normative changes related to the statute of limitations have the potential to be ineffective in practice. In other words, legal reconstruction must go hand in hand with institutional reform to optimally achieve the goal of eradicating corruption. Equally important, this reconstruction must also consider an integrative approach between positive law and Islamic law in the context of Indonesia, a predominantly Muslim country. This integration is not intended to replace the existing legal system, but rather to enrich the values and orientation of justice within national law. By adopting the principles of divine justice, the Indonesian criminal law system is expected to shift from a formalistic paradigm to a more substantive and welfare-oriented one.

D. CONCLUSION

The concept of the statute of limitations for prosecution in Indonesian criminal law is essentially intended to provide legal certainty and limit the state's authority to prosecute individuals.

However, in corruption cases, the statute of limitations can be problematic because corruption is a complex, hidden crime, and often takes a long time to uncover. If the statute of limitations for prosecution remains generally applied, corruptors have the potential to avoid legal responsibility, thereby harming the state, weakening the deterrent effect, and undermining public trust in the law. From an Islamic legal perspective, responsibility for corruption does not disappear simply because time has passed, as corruption is related to justice, trust, and the rights of the public. Therefore, the statute of limitations in corruption cases needs to be reviewed, for example by extending or eliminating the statute of limitations, calculating the time limit from the time the crime was discovered, and emphasizing that restitution of state losses must still be made. In this way, the law will not only provide certainty but also be able to realize more substantive justice and support the interests of the community.

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