



Analysis of the Termination of Prosecution Against Suspect “N” in a Corruption Case According to Positive Law and Islamic Criminal Law

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ABSTRACT

The termination of prosecution in corruption cases is an important issue to examine, especially from the perspective of positive law and Islamic criminal law. This study focuses on the termination of prosecution against Suspect N, who is suspected of participating in the corruption of APBD funds, and reviews its conformity with applicable legal principles. This study uses an empirical qualitative method with data collection techniques through interviews, surveys, and field observations, supported by a literature review of laws, academic literature, and other relevant documents. The approach used is non-doctrinal, focusing on the analysis of legal subjects and objects directly. The results of the study show that the termination of prosecution against Suspect N was carried out through the mechanism of deponering as stipulated in Article 35 paragraph (1) letter c of Law Number 11 of 2021 concerning the Attorney General's Office, on the grounds of public interest. However, when viewed from the perspective of Islamic criminal law, the termination of prosecution can only be justified if it is accompanied by the restitution of state losses (*istirdad*) and sincere repentance, which in this case are considered not to have been fully fulfilled. Thus, although there is a common ground between positive law and Islamic criminal law in terms of termination of prosecution, particularly in the aspect of restorative justice, the author argues that the application of deponering to Suspect N is not in line with the principles of justice and legal certainty.

Keywords: *Deponering, Positive Law, Islamic Criminal Law, Corruption*

INTRODUCTION

Corruption remains one of the most significant challenges faced by developing countries, including Indonesia. It not only hampers national development but also undermines public trust in government institutions. One case that has attracted considerable public attention involves Suspect “N,” a

village treasurer in Citemu Village, who was allegedly involved in the misappropriation of village budget funds (APBDes). This case became particularly controversial due to the legal status of the suspect and the subsequent decision to terminate prosecution.

Suspect “N” was allegedly involved in a corruption offense committed by the Head of Citemu Village, who was accused of embezzling state funds amounting to IDR 818,722,500. Although the village head was identified as the primary perpetrator, the role of Suspect “N” as a village treasurer cannot be disregarded, given the responsibility attached to managing public finances, including fund disbursement and utilization. Consequently, Suspect “N” was considered legally accountable. The case file had been declared complete (P-21) by the prosecutor, indicating that it met the requirements for prosecution in court.

However, the prosecution was ultimately terminated through a *deponering* policy issued by the Attorney General. This decision was justified on the grounds of public interest, particularly due to widespread public discourse and misinformation circulating on social media. A significant portion of the public mistakenly believed that Suspect “N” was a whistleblower who had been criminalized, whereas in fact, the report had been filed by the Chairman of the Village Consultative Body (BPD) of Citemu (CNN Indonesia, 2022). This public misperception generated pressure on law enforcement authorities, influencing the decision to halt the prosecution.

The use of *deponering* in this case has sparked significant debate. On one hand, *deponering* constitutes a legitimate authority of the Attorney General as stipulated in Article 35 paragraph (1) letter c of Law Number 11 of 2021 concerning the Prosecutor’s Office of the Republic of Indonesia, which allows the termination of prosecution for the sake of public interest. On the other hand, the application of such discretion in corruption cases raises critical questions regarding legal certainty and justice. Given that corruption directly affects public welfare, society demands strict and consistent enforcement against offenders.

Furthermore, the termination of prosecution through *deponering* in corruption cases may establish a legal precedent that potentially weakens anti-corruption efforts in Indonesia. If applied inappropriately, this mechanism could foster the perception that legal processes are susceptible to public opinion and social pressure, thereby undermining the integrity of the judicial system and eroding public trust in law enforcement institutions.

From the perspective of Islamic law, justice and accountability in the management of public funds are fundamental principles. Therefore, the termination of prosecution in corruption cases must be carefully assessed in light

of *masalah* (public interest) and the overarching objective of justice in Islamic jurisprudence. If such a decision generates greater harm (*mafsadah*) than benefit, it warrants critical re-evaluation.

In addition to the Islamic legal perspective, sociological considerations also play a crucial role in evaluating the *deponering* policy (Kurnianto, 2017). Society generally holds high expectations regarding transparency and accountability in law enforcement. The termination of prosecution, especially in a case that has reached the P-21 stage, may lead to public distrust toward legal institutions. Therefore, such a policy must be supported by clear, legally sound, and morally justifiable reasoning.

This study aims to analyze the termination of prosecution against Suspect "N" from the perspectives of positive law and Islamic criminal law. The analysis focuses on examining the legal basis of *deponering* within the Indonesian legal system and assessing its conformity with principles of justice in Islamic law. Accordingly, this research is expected to contribute to the development of legal scholarship and enrich discourse on the effectiveness of *deponering* policies in handling corruption cases.

Based on the foregoing, this study addresses three main research questions. First, how does positive law regulate the termination of prosecution (*deponering*) in the case of Suspect "N," particularly in terms of its legal basis and the use of public interest considerations? Second, how does Islamic criminal law view the termination of prosecution in corruption cases, especially in relation to principles of justice and anti-corruption efforts? Third, what are the legal and social implications of such termination from both positive law and Islamic criminal law perspectives in the broader context of anti-corruption enforcement in Indonesia?

METHOD

This study employs an empirical qualitative method, with data collected through interviews, surveys, and field observations, supported by a literature review of statutory regulations, academic literature, and other relevant documents. The research was conducted at the District Attorney's Office of Cirebon Regency. Observation was carried out at the same institution. The interview was conducted with the Head of the Special Crimes Division at the District Attorney's Office of Cirebon Regency, Mr. Suwanto, S.H., M.H. The approach adopted in this study is non-doctrinal, with a focus on the direct analysis of legal subjects and objects.

RESULTS AND DISCUSSION

1. Positive Law Perspective on the Application of Deponering to Suspect “N”

In the Indonesian criminal justice system, the termination of prosecution may be carried out based on several legal grounds as stipulated in the Criminal Procedure Code (KUHAP). One such provision is Article 140 paragraph (2) KUHAP, which authorizes public prosecutors to discontinue prosecution if there is insufficient evidence, if the act does not constitute a criminal offense, or if the case must be closed by law. However, in the context of *deponering*, the termination of prosecution is not based on these procedural grounds but rather on the principle of opportunity (*opportuniteitsbeginsel*), which grants the Attorney General the authority to set aside a case in the interest of the public. This authority is explicitly regulated under Article 35 paragraph (1) letter c of Law Number 11 of 2021 concerning the Prosecutor’s Office of the Republic of Indonesia.

In the case of Suspect “N,” the investigation had reached the P-21 stage, indicating that the case file was complete and ready for prosecution. Legally, this status confirms that at least two valid pieces of evidence had been established, thereby fulfilling the requirements for prosecution. Nevertheless, despite meeting these procedural standards, the Attorney General’s Office issued a Decree on Termination of Prosecution (SKP2) based on *deponering*. This decision has generated considerable controversy, particularly because it involves a corruption offense, which in Indonesian law is classified as an extraordinary crime. Corruption not only violates legal norms but also causes significant financial losses to the state and adversely affects public welfare. Consequently, the termination of prosecution in such cases is often perceived as undermining anti-corruption efforts.

Furthermore, the application of *deponering* in this case raises critical concerns regarding the principle of legal certainty. One of the fundamental principles of the Indonesian legal system is *equality before the law*, as enshrined in Article 27 paragraph (1) of the 1945 Constitution. The decision to set aside prosecution against Suspect “N” invites questions about whether such discretion ensures fairness for all individuals, particularly when other defendants in similar cases are still subjected to full judicial proceedings. Inconsistent application of *deponering* may lead to diminished public trust in law enforcement institutions.

From the perspective of anti-corruption law, Article 4 of Law Number 31 of 1999 on the Eradication of Corruption explicitly states that the return of state losses does not eliminate criminal liability. This provision underscores that individuals responsible for causing financial harm to the state must still be held accountable through legal proceedings, regardless of restitution. Therefore, the

termination of prosecution through *deponering* in the case of Suspect “N” may be viewed as inconsistent with the spirit of strict and transparent anti-corruption enforcement. If such decisions are made without clear and robust justification, they risk creating a negative legal precedent that could weaken the state’s commitment to combating corruption.

Moreover, the use of *deponering* in this case has implications for the accountability of law enforcement institutions. Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State emphasizes the importance of transparency in legal decision-making, particularly in corruption cases. The absence of clear justification for terminating prosecution may lead to public suspicion that the decision was influenced by extraneous factors, such as political pressure or public opinion shaped through social media. Therefore, transparency in explaining the rationale behind *deponering* is essential to maintaining institutional integrity.

From a constitutional perspective, the authority of the Attorney General to apply *deponering* constitutes a form of executive discretion. While such discretion allows flexibility in pursuing public interest, it must still adhere to the principles of legal certainty and accountability as mandated by Article 1 paragraph (3) of the 1945 Constitution, which establishes Indonesia as a state governed by the rule of law. Accordingly, any exercise of discretionary power must be grounded in clear legal reasoning and be subject to rational justification.

In contemporary legal discourse, the termination of prosecution through *deponering* is sometimes associated with a restorative justice approach, which prioritizes flexible dispute resolution and considers broader social impacts. However, this approach is generally applied to minor offenses and cases that can be resolved outside formal litigation. In corruption cases, restorative justice cannot serve as the primary basis for terminating prosecution, given the significant impact of such crimes on public finances and societal welfare. Therefore, if *deponering* in this case is justified on the grounds of public interest, it is necessary to critically assess whether such interest outweighs the negative consequences of halting prosecution.

Considering these legal dimensions, the application of *deponering* in the case of Suspect “N” must be approached with utmost caution and supported by strong legal justification. Without transparent and well-reasoned explanations, such decisions risk fostering negative public perceptions, suggesting that law enforcement is not conducted fairly and may be influenced by non-legal factors. Consequently, public oversight and institutional monitoring are essential to ensure that the use of *deponering* aligns with the principles of justice and legal certainty.

2. Analysis of the Compatibility between Positive Law and Islamic Law in Corruption Cases Subject to Deponering

Under Indonesian positive law, *deponering* is a form of termination of prosecution that may only be exercised by the Attorney General. This authority is regulated under Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which was later amended by Law Number 11 of 2021, stating that the Attorney General has the authority to set aside a case in the public interest. In practice, *deponering* is intended to maintain a balance between legal certainty and social stability. However, in corruption cases, the use of *deponering* often gives rise to controversy because corruption is categorized as an extraordinary crime.

In the corruption case that occurred in Cirebon Regency, Suspect "N" emerged from the development of the main case involving the Head of Citemu Village. The village head was proven to have misused Village Revenue and Expenditure Budget (APBDes) funds, causing state losses amounting to IDR 818,722,500 (eight hundred eighteen million seven hundred twenty-two thousand five hundred rupiah). Suspect "N" was alleged to have been involved in the flow of these funds, although the involvement was indirect and not as the principal offender. On that basis, the District Attorney's Office of Cirebon Regency decided to apply *deponering* to Suspect "N" on the grounds of public interest.

In Islamic law, corruption is classified as a form of *jarimah ta'zir*, namely an offense for which the punishment is not specifically prescribed in the Qur'an or Hadith, but is left to the discretion of the ruler or authority. The fundamental principle in Islamic law is the enforcement of justice and the promotion of public welfare, as emphasized in Qur'an Surah An-Nisa verse 58: "*Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice*" (Qur'an 4:58).

According to the Hanafi and Shafi'i schools of thought, the ruler possesses authority to determine the form of punishment for offenses falling under the category of *ta'zir*, including corruption. If a particular case is considered not to produce significant harm, and the termination of prosecution instead brings benefit to society, such a policy may be permitted. This is broadly in line with the principle of opportunity recognized in Indonesian positive law.

On the other hand, the Maliki and Hanbali schools maintain that corruption constitutes a betrayal of the trust vested by society and the state. Therefore, a mechanism such as *deponering* cannot be accepted in corruption cases. The argument supporting this position is often linked to the broader Qur'anic condemnation of unlawful appropriation of property, as reflected in Surah Al-

Ma'idah verse 38: "As for the thief, male and female, cut off their hands as recompense for what they committed, as a deterrent from Allah" (Qur'an 5:38).

In Islam, justice is the primary principle in every application of law. The implementation of *deponering* in the case of Suspect "N" must therefore be assessed against this principle so that it does not conflict with the values of justice in Islam. If the termination of prosecution is carried out for valid reasons and genuinely produces public benefit, it may still be regarded as acceptable. However, if it is used as a loophole to protect certain individuals, then it is contrary to Islamic principles.

Thus, there is a degree of similarity between the principle of opportunity in positive law and the concept of *ta'zir* in Islamic law. Nevertheless, Islamic law continues to stress that every legal decision must be based on justice and must not be used to shield particular individuals from punishment. For that reason, the application of *deponering* in corruption cases must be undertaken with careful consideration and a high degree of transparency so as not to undermine the principle of justice in Islam.

3. Legal Consequences of the Deponering of Corruption Cases According to Positive Law and Islamic Law

Under positive law, the termination of prosecution through *deponering* has significant legal consequences. Although prosecution is discontinued, the legal status of the suspect does not entirely disappear. This means that if, at a later stage, new evidence is discovered or there is a change in circumstances affecting the public interest, the *deponering* may be revoked and the case may be reopened. In addition, the use of *deponering* in corruption cases may generate social consequences, such as declining public trust in the judicial system and in the government's commitment to combating corruption.

In the Islamic legal system, the legal consequences of terminating prosecution depend greatly on the principles of justice and *maslahah* (public benefit). If *deponering* is carried out for valid reasons, such as preserving social stability or preventing injustice against an individual whose role in the crime was only minor, then the termination of prosecution may be accepted. However, if the termination instead creates injustice and opens opportunities for offenders to evade punishment, then it is contrary to the principles of Islamic law.

Islam strongly emphasizes the importance of fair and impartial law enforcement. The Prophet Muhammad (peace be upon him) said: "Indeed, the destruction of the nations before you was because when a noble person among them stole, they left him alone, but when a weak person stole, they imposed the punishment upon him" (Narrated by al-Bukhari and Muslim).

This hadith affirms that justice must be applied equally without distinction based on social status. If *deponering* is used as a tool to protect certain individuals from legal process, then it contradicts the Islamic principle of equality before the law.

From the perspective of Islamic legal politics, a leader does have the authority to grant leniency in certain cases, but such discretion must still observe the principle of justice. A leader may not grant relief to an individual who has clearly committed a crime and caused harm to society. Therefore, if *deponering* in the case of Suspect “N” is carried out for legitimate reasons and does not violate the principle of justice, it may still be accepted in Islamic law.

However, if the termination of prosecution is intended merely to shield certain individuals from the punishment they deserve, then it is inconsistent with the fundamental principle of justice in Islam. For this reason, transparency in legal proceedings is essential to ensure that the termination of prosecution does not harm society as a whole.

In positive law, the application of *deponering* in corruption cases may set a negative precedent for the judicial system in Indonesia. Therefore, decisions to terminate prosecution through *deponering* must be made with the utmost caution so as not to create legal loopholes that may be exploited by irresponsible parties.

Accordingly, both in positive law and in Islamic law, the termination of prosecution through *deponering* must be carried out with careful consideration so that it does not undermine public confidence in the legal system. The principle of justice must remain the primary guideline in every legal decision, both within the Indonesian judicial system and within the framework of Islamic law.

Based on the foregoing discussion, the conclusion may be summarized in the following diagram/flowchart:

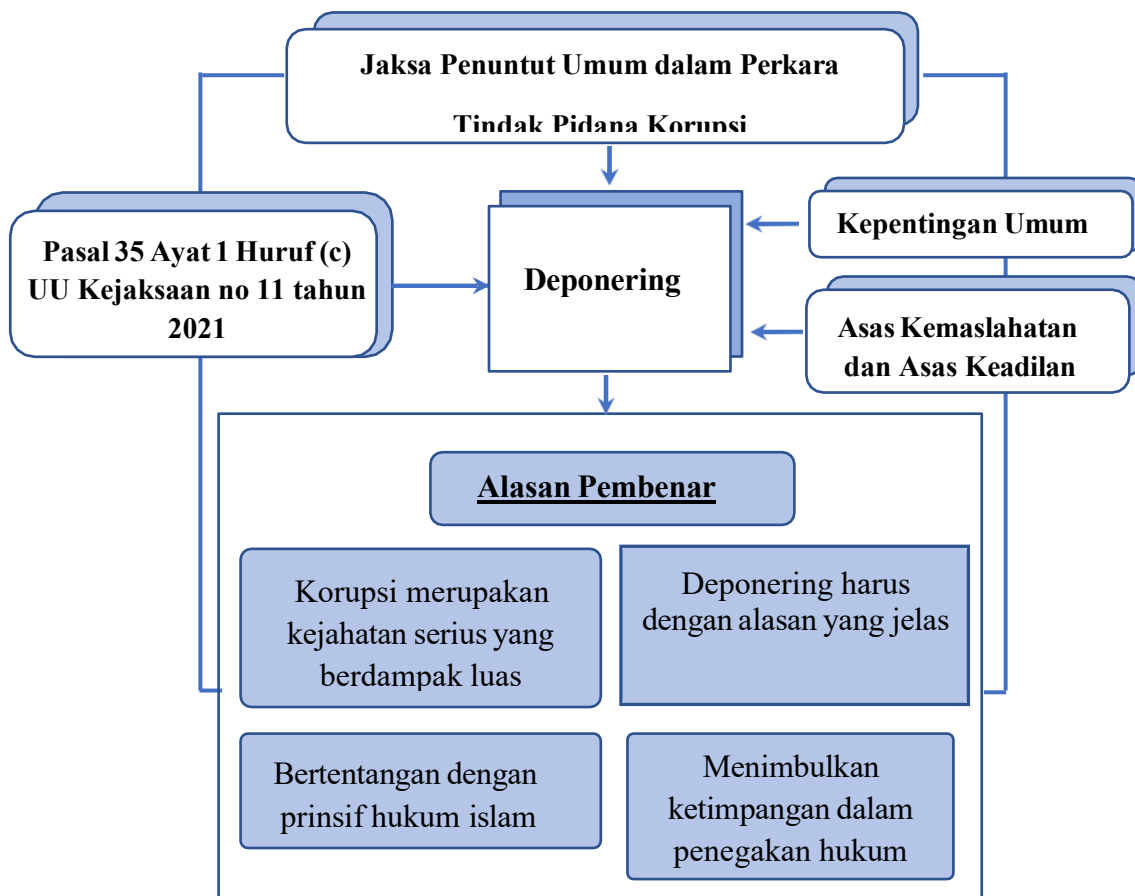


Figure 2. Research Findings Flowchart

Based on the explanation presented in the diagram/flowchart above, it can be concluded that the application of *deponering* in corruption cases generates significant legal consequences, particularly in its impact on public trust in the legal system. The termination of prosecution in such cases risks weakening public confidence in law enforcement institutions and may be perceived as a form of inconsistency in the commitment to combating corruption.

Accordingly, this study firmly asserts a critical position by rejecting the application of *deponering* in the case of Suspect "N," considering the strong indication of involvement in a corruption offense. From both the perspective of positive law and Islamic law, such termination of prosecution is viewed as inconsistent with the principles of justice, legal certainty, and accountability, which should serve as the foundation of law enforcement in corruption cases.

CONCLUSION

Based on the results of the analysis, several conclusions may be drawn. First, the termination of prosecution against Suspect "N" in the corruption case is juridically grounded in the principle of opportunity, which is vested in the Attorney General, as stipulated in Article 35 letter c of Law Number 16 of 2004

concerning the Prosecutor's Office of the Republic of Indonesia, as amended by Law Number 11 of 2021. In addition, the policy of *deponering* is also reinforced by the jurisprudential practice of the Supreme Court. The principal justification for this decision was the consideration of public interest, namely the need to maintain public order amid conflicting information circulating on social media, which had generated mistaken perceptions regarding the legal position of Suspect "N."

Although this policy is normatively lawful, ethically it remains highly debatable because it touches upon the issues of substantive justice and commitment to legal integrity.

Within the framework of Islamic criminal law, corruption is classified as a reprehensible act comparable to *ghulul*, *risywah*, or *sariqah*. The fundamental principle in Islamic law is the establishment of justice (*'adl*) and the protection of the public good (*maslahah 'ammah*). Therefore, the termination of prosecution against a corruption offender without a valid Sharia-based justification is considered contrary to the values of justice upheld in Islam. In the context of corruption—which falls under the category of *jarimah ta'zir* and has broad societal consequences—the termination of prosecution may in fact be viewed as a neglect of the principle of trust (*amanah*) and a betrayal of public responsibility, both of which are highly valued in Islam.

The decision to apply *deponering* to Suspect "N" creates tension between legal propriety under positive law and substantive justice. From a legal standpoint, the authority of the Attorney General to terminate prosecution cannot be denied. However, from a sociological perspective and in the view of Islamic law, this decision risks eroding public trust in the legal system, particularly in the context of law enforcement against corruption.

Based on the overall findings of this study, the author takes the position of rejecting the *deponering* policy in the case of Suspect "N" for several reasons. Corruption is an extraordinary crime. The argument of "public interest" used to justify the *deponering* of Suspect "N" is not sufficiently strong and appears to lean more toward the protection of personal or group interests. From the perspective of Islamic criminal law, corruption must be prosecuted fairly and proportionately. The termination of prosecution without a transparent legal process is contrary to the principles of justice and *amanah*. Moreover, the application of *deponering* in this case creates disparity in legal treatment.

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