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Analysis of the Return of Evidence 220 to 258 in Decision Number 1240/Pid.sus/2022/PN.Tng With the Defendant Indra Kusuma or Indra Kenz (Perspective of the Principles of Justice, Benefit, and Al-Maslahah)

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Abstract

On August 14, 2022 the judge at the Tangerang district court stated that the defendant Indra Kusuma or Indra Kenz had spread false news which resulted in consumer losses in electronic transactions and money laundering, sentenced the defendant Indra Kenz to 10 years imprisonment and a fine of 10 billion, provided that if the sentence is not paid, it will be replaced with confinement for 10 years 2 months, and so on. Interestingly, in this decision the judge disagreed with the public prosecutor regarding the return of evidence number 220-254 to the victim-witness through the United Indonesian Traders Association because the goods were the result of a crime. Therefore the purpose of this study is to analyze aspects*al-'is* (justice) and *al-maslahah*(benefits) viewed from the side of the victim and the accused. This research is a normative research with a normative juridical approach. This research uses secondary legal materials in the form of decisions 1240/Pid.sus/2022/PN.Tng, related laws, legal theories, theories*al-'is*, and theory*problem*. The research results show The judge's decision regarding the refusal to return evidence number 220-258 violates the principles of certainty, expediency and benefit in Islamic law. The researcher's solution is that the judge should select which evidence belongs to the victim and should return it to the victim.

Keywords: Evidence; Victims; Verdict.

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Abstrak

Tanggal 14 Agustus 2022 hakim pengandilan negeri tanggerang menyatakan terdakwa Indra Kusuma atau Indra Kenz melakukan penyebaran berita bohong yang mengakibatkan kerugian konsumen dalam transaksi elektronik dan pencucian uang, menjatuhkan terdakwa Indra Kenz pidana 10 tahun dan denda 10 miliar dengan ketentuan apabila pidana tidak dibayar dignati dengan kurungan selama 10 tahun 2 bulan, dan sebagainya. Menariknya dalam putusan tersebut hakim tidak sependapat dengan jaksa penuntut umum terhadap pengembalian barang bukti nomor 220-254 terhadap saksi korban melalui paguyuban trader Indonesia bersatu dikarenakan barang tersebut merupakan hasil dari kejahatan. Oleh karena itu tujuan penelitian ini untuk mengalisis aspek *al-'adalah* (keadilan) dan *al-maslahah*(kemaslahatan) yang ditnjau dari sisi korban dan terdakwa. Penelitian ini merupakan penelitian normatif dengan pendekatan yuridis normatif. Penelitian ini menggunakan bahan hukum sekunder berupa putusan 1240/Pid.sus/2022/PN.Tng, undang-udnag terkait, teori-teori hukum, teori *al-'adalah*, dan teori *maslahah*. Hasil penelitian menunjukkan putusan hakim terhadap penolakan pengembalian barang bukti nomor 220-258 mencedrai asas kepastian, kemanfaatan, dan kemaslahatan dalam hukum Islam. Solusi peneliti, seyogyanya hakim mengseleksi mana barang bukti milik korban dan seyogyanya dikembalikan pada koraban.

Kata Kunci*:* Barang Bukti; Korban; Putusan.

INTRODUCTION

Section dated August 14, 2022 the judge at the Tangerang district court stated that the defendant Indra Kusuma or Indra Kenz had spread false news which resulted in consumer losses in electronic transactions and money laundering, sentenced the defendant Indra Kenz to 10 years in prison and a fine of 10 billion, provided that if the sentence is not paid, it will be replaced with confinement for 10 years 2 months, and so on. Interestingly, in this decision the judge disagreed with the public prosecutor regarding the return of evidence number 220-254 to the victim-witness through the United Indonesian Traders Association because the goods were the result of crime/gambling (Pada Putusan Nomor 1240/Pid.Sus/2022/PN.Tng, 2022).

Broadly speaking, the eviden.ce consists of: Broadly speaking, the evidence consists of (Pada Putusan Nomor 1240/Pid.Sus/2022/PN.Tng, 2022):

1. Cellphone,
2. Four-wheel vehicle,
3. Cash,
4. Watch,
5. Valuable letters.

The judge was of the opinion that the non-return of evidence numbers 220-258 was a preventive measure so that the community would have a deterrent effect and no longer preserve

gambling in Indonesia. In addition, the deed of establishment of the United Indonesian Trader Association has never been presented at a trial to check its legal standing.

In deciding the judge based on the principle of certainty/legality, namely the deed of establishment of the United Indonesian Trader Association has never been shown in court. In addition, the judges also based on the principle of expediency in law, namely to prevent the preservation of gambling in Indonesia (Pada Putusan Nomor 1240/Pid.Sus/2022/PN.Tng, 2022).

Benefit is the most important thing in a legal purpose, regarding the discussion of the purpose of the law, first it is known whether what is meant by its own goals and what has only human goals, but the law is not a human goal, law is only one of the tools to achieve goals in social and state life (Santoso et al., 2020) . The purpose of law can be seen in its function as a function of protecting human interests, law has goals to be achieved. If we look at the definition of benefits in the Big Indonesian Dictionary, benefits in terminology can be interpreted as for or benefit.

Regarding the benefits of this law, according to the utilistic theory, it wants to guarantee the happiness that is impressed on humans in as many numbers as possible. In essence, according to this theory, the aim of law is to benefit in producing the greatest pleasure or happiness for a large number of people(Fence, 2017).

In addition, judges are also based on the principle of certainty. According to Sudikno Mertukusumo, legal certainty is a guarantee that the law can be implemented properly. Of course legal certainty has become an integral part, this is prioritized for written legal norms. Because certainty itself is essentially the main goal of law. This legal certainty becomes the regularity of society is closely related to the certainty itself because the essence of order will cause a person to live with certainty in carrying out the activities needed to carry out the activities of the life of the community itself (Julyano & Sulistyawan, 2019).

In terms of legal certainty, according to Teubner, a law that can satisfy all parties is a responsive law, and responsive law can only be born when there is democratization of legislation. Without democracy (public participation) in the legislative process the result will never be an independent law. The law is only as a legitimacy of the government's wishes, in such conditions any government action is considered contrary to the law. The interests of society are neglected because law is independent because its meanings refer to itself (justice, certainty, expediency) (Wibawa, 2018).

In line with the principle of expediency, in Islamic law the term maslahah is also known. Maslahah, etymologically, is a single word from al-masalih, which is synonymous with the word wrong, namely "bringing goodness. Sometimes another term is

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also used, namely al-islislah, which means "seeking goodness". fate which means "things that are suitable, suitable and appropriate to their use. From these several meanings, an understanding can be drawn that anything, anything that contains benefits in it, either to gain benefit, goodness, or to reject harm, then all of this is called maslahah (Asiah, 2022).

Imam al Ghazali defines maslahah as follows that in its essential sense (aslan) maslahah is an expression to find something useful (manfaat) or get rid of something vile (harm). However, this is not what we mean because finding benefits and getting rid of harm is the purpose (maqashid) meant by creation and the goodness (as-shulhu) of creation in realizing their purposes (maqashid). What is meant by maslahah is the preservation of the objective purpose of the law, which consists of five things, namely the preservation of religion, soul, intellect, lineage, and wealth. Anyone who tries to preserve these five principles (usul) is called maslahah and anyone who removes these five principles is called mafsadat and rejecting them is called maslahah.

From the description above, it can be seen that what is meant by maslahah according to Imam al-Ghazali is an effort to maintain the objectives of Islamic law, namely maintaining religion, soul, mind, lineage, and property. Everything that is intended to maintain the five objectives of Islamic law is called maslahah. On the other hand, anything that undermines or negates the objectives of the five Islamic laws mentionedmafsadat, which is why efforts to reject and avoid it are called maslahah (Al-Ghazali, 2014).

In addition to al-Ghazali Ibn Taymiyyah, as quoted by Imam Abu Zahrah, says that the problem is the mujtahid's view of actions that contain clear goodness and not actions that are contrary to the Sharia" (Rozalinda, 2016).

Of the three definitions above, both those put forward by Jalaluddin Abdurrahman, Imam Ghazali, and Ibn Taimiyah, in principle contain the same essence. That is, the problem in question is benefit which is the goal of syara', not benefit based solely on human desires and desires (Syatibi, 2017). Because it is fully realized that the purpose of legal syari'at is none other than to realize the benefit for humans, in all aspects and aspects of life in the world, so as to avoid various forms that can lead to damage. In other words, every legal provision that has been outlined by syari' is aimed at creating benefit for humans. There is no doubt that the benefit cannot be scrutinized carefully and is not responded to with appropriate decisions, only fixated on the existence of arguments that govern it. Undoubtedly the benefit will disappear from human life, and the growth of law will stop (Shalih, 2003).

On the one hand, the judge's decision not to return evidence numbers 220-258 is good so that gambling is not sustainable in Indonesia and becomes a consequence for the players. But on the

other hand, if the owner of evidence number 220-258 is said to be a victim. So there are victims' rights that have not been fulfilled. This has the potential to harm the principle of certainty, expediency and benefit in Islamic law.

RESEARCH METHODS

In this study using normative research with a normative juridical approach, namely research that places law as part of a building of norms that includes principles, rules of law and regulations, especially those related to the principles of certainty, expediency, and benefit related to judge's decisions are not returned evidence number 220-258 to the victim in the case with the defendant Indra Kenz. This research uses secondary legal materials in the form of decisions of the Tangerang District Court Number: 1240/Pid.sus/2022/PN.Tng, relevant laws and regulations, scientific journals, websites and so on (Henni, 2015). In collecting data researchers used literature study techniques*(library research*). The analysis technique in this study uses the legal analysis method, namely grammatically analyzing the words in the decision of the Tangerang District Court Number: 1240/Pid.sus/2022/PN.Tng and related laws and regulations. In addition, this study also uses a systematic analysis method, namely linking the provisions in the Tanggerang District Court decision with specifi

c legal theories regarding certainty, expediency, and benefit in Islamic law (Pikahulan, 2022).

RESULTS AND DISCUSSION

In the decision of the Tanggerang District Court Number: 1240 / Pid.sus / 2022 / PN.Tng the judge rejected the public prosecutor's request to return evidence number 220-258 which included:

Table 1
Detail of Evidence 220-258

Types of goods	Amount
Car	2
Watch	4
The land/letters	2
hp	3
Envelopes containing important papers	2

In full, the judge rejected the public prosecutor's application for the following reasons:

Menimbang, bahwa Penuntut Umum menuntut agar barang bukti nomor 220 sampai dengan 258 dikembalikan kepada saksi korban melalui Paguyuban Trader Indonesia Bersatu;----------

Menimbang, bahwa mengenai hal ini Majelis Hakim tidak sependapat, dengan pertimbangan sebagai berikut :----------

- Bahwa sesungguhnya para trader dalam perkara aquo adalah pemain judi yang berkedok trading Binomo;----------
- Bahwa menurut Pasal 303 KUHP yang diartikan dengan main judi adalah tiap-tiap permainan yang mendasarkan pengharapan buat menang, pada umumnya bergantung pada untung-untungan saja dan juga kalau pengharapan itu bertambah besar, dikarenakan kepintaran dan kebiasaan pemain, jadi harapan untuk menang bergantung pada untung-untungan;----------
- Bahwa permainan judi adalah suatu tindak pidana yang meresahkan masyarakat, sehubungan dengan itu, perintah KAPOLRI kepada jajarannya pada hari Jumat, 19 Agustus 2022 melalui Instagram resmi Divisi Humas Polri mengatakan : "Perjudian apapun itu bentuknya apakah itu darat atau online dan segala macam bentuknya harus ditindak, Kapolri tidak akan memberikan toleransi kalau masih ada yang kedapatan pejabat Kapolres, Kapolda, Direktur akan dicopot. Agar semua memperhatikan", sejalan dengan perintah KAPOLRI tersebut, Presiden Republik Indonesia dalam pengarahannya kepada jajaran POLRI, pada hari Jumat, 14 Oktober 2022 melalui akun Youtube resmi Sekretariat Presiden, mengatakan : "Urusan judi online bersihkan !";----------
- Bahwa sebagai upaya preventif dan represif serta untuk memberikan edukasi yang benar kepada masyarakat agar tidak melestarikan permainan judi dan tidak cepat tergiur akan iming-iming cepat

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mendapatkan uang dengan cara yang mudah tanpa bekerja keras, maka barang bukti nomor 220 sampai dengan 258 dikualifisir sebagai hasil kejahatan, dan oleh karena itu harus dirampas untuk Negara (vide Pasal 39 KUHP Jo. Pasal 46 KUHAP);----------

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From the picture above, in general the judge rejected the public prosecutor's request for evidence number 220-258 as follows (Pada Putusan Nomor 1240/Pid.Sus/2022/PN.Tng, 2022):

1. The owner of the evidence is a gambler so he must accept the consequences.
2. Gambling is a criminal act that is expressly prohibited in Article 303 of the Criminal Code and the order of the Chief of Police,
3. As a preventive measure so that gambling is not preserved in Indonesia.

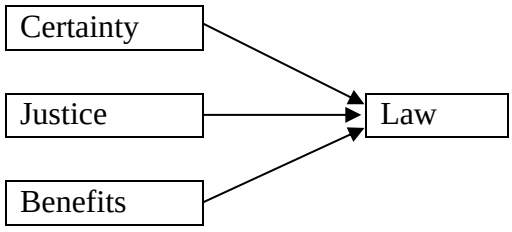
Based on this, the researcher analyzes more deeply the rejection of the panel of judges at the Tangerang District Court on the prosecutor's request for the return of evidence number 220-258 using the principles of certainty, expediency and benefit in Islamic law.

Basic Certainty

According to Sudikno Mertukusumo, legal certainty is a guarantee that the law can be implemented properly. Of course legal certainty has become an integral part, this is prioritized for written legal norms. Because certainty itself is essentially the main goal of law. This legal certainty becomes the regularity of society is closely related to the certainty itself because the essence of order will cause a person to live with certainty in carrying out the activities needed to carry out the activities of the life of the community itself (Wibawa, 2018).

In terms of legal certainty, according to Teubner, a law that can satisfy all parties is a responsive law, and responsive law can only be born when there is democratization of legislation. Without democracy (public participation) in the legislative process the result will never be an independent law. The law is only as a legitimacy of the government's wishes, in such conditions any government action is considered contrary to the law. The interests of society are neglected because law is independent because its meanings refer to itself (justice, certainty, expediency) (Julyano & Sulistyawan, 2019).

In his book Ilmu Hukum, Satjipto Rahardjo demonstrates the three basic values with the basis of their validity. The design is as follows (Turiman 2015):



Described by Mirza Satria Buana in his thesis that the three basic values are like a "king" who fights with each other (*voltage ratio)* to apply in law.

Returning to the discussion regarding the principle of legal certainty, in fact the existence of this principle is interpreted as a situation in which the law is certain because there is concrete power for the law in question.

The existence of the principle of legal certainty is a form of protection for justice (seekers of justice) against arbitrary actions, which means that someone will and can obtain something that is expected in certain circumstances. This statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely the ability to determine the law in concrete terms and legal security. This means that the party seeking justice wants to know what is the law in a certain matter before starting a case and providing protection for justice seekers(Wibawa, 2018).

In relation to the reason for the panel of judges' rejection of the prosecutor's request, namely because they did not show the deed of establishment of the United Indonesia Traders Association during the trial. However, basically this cannot be further disputed because the judge is active in nature and could have asked the public prosecutor to show the deed of establishment of the association.

Furthermore, the judge's reason for rejecting the prosecutor's request for the return of evidence number 220-258 was that the owner of the evidence was a gambling fraudster. Therefore, any items carried out to commit a crime can be confiscated in accordance with Article 39 of the Criminal Procedure Code as follows:

Items that may be subject to confiscation are(Hukum Acara Pidana, 1981):

1. Objects or bills of the suspect or defendant which are wholly or partly alleged to have been obtained from a criminal act or as the result of a criminal act,
2. Objects that have been used directly to commit a crime or to prepare it,
3. Objects used to obstruct the investigation of criminal acts,
4. Objects specifically made or intended to commit a crime,
5. Other things that have a direct relationship with the criminal act committed.

Based on the provisions in article 39 of the Criminal Procedure Code. In terms of legality/certainty, the judge decided to refuse the return of evidence to the United Indonesia Traders Association. However, if the paradigm used by the owner of evidence items 220-258 is that the perpetrator should also be subject to criminal sanctions.

The researcher saves, in the decision of the Tangerang District Court Number: 1240/Pid.sus/2022/PN.Tng there is an inconsistency regarding the position of the holder of evidence number 220-258 as the perpetrator or victim. If as a perpetrator, the holder of evidence should also be subject to criminal sanctions. If you are a victim, the evidence should be returned according to the request of the public prosecutor.

Basis of Expediency

Benefit is the most important thing in a legal purpose, regarding the discussion of the purpose of the law,

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first it is known whether what is meant by its own goals and what has only human goals, but the law is not a human goal, law is only one of the tools to achieve goals in social and state life . The purpose of law can be seen in its function as a function of protecting human interests, law has goals to be achieved. If we look at the definition of benefits in the Big Indonesian Dictionary, benefits in terminology can be interpreted as for or benefit.

Regarding the benefits of this law, according to the utilistic theory, it wants to guarantee the happiness that is impressed on humans in the greatest possible number. In essence, according to this theory, the aim of law is to benefit in producing the greatest pleasure or happiness for a large number of people.

In relation to the decision of the Tangerang District Court Number: 1240/Pid.sus/2022/PN.Tng the researchers divided the benefits from two sides, namely from the side of the owner of the evidence and the side of the defendant's family. Basically, the decision of the Tanggerang District Court Number: 1240/Pid.sus/2022/PN.Tng in general, namely imposing a 10 year prison sentence and a fine of 5 billion rupiah, a subsidiary of 10 years 2 months in prison, is in accordance with the principle of benefit which aims to guarantee the benefit and happiness for the victims. However, the refusal of the panel of judges to the public prosecutor's request to return evidence number 220-258 has the potential to injure the principle of expediency.

If the owner of the evidence is positioned as the perpetrator of the crime, the perpetrator other than the defendant Indra Kenz should also be charged with a similar crime in accordance with Article 303 of the Criminal Code that gamblers are threatened with a maximum of 4 years in prison and/or a maximum fine of 10 million. In fact, the punishment was not given to the owner of the evidence. In this way, the researcher concludes that the status of the owner of the evidence is a victim of fraud by the defendant Indra Kenz. The logical consequence is that every right of the victim must be fulfilled, including the goods owned by the victim. Researchers are of the opinion that the status of evidence numbers 220-258 is the same as stolen goods. As regulated in article 46 paragraph 1 of the Criminal Code states "Objects subject to confiscation are returned to the person or to those from whom the object was confiscated, or to the person or to those who are most entitled if(Pada Putusan Nomor 1240/Pid.Sus/2022/PN.Tng, 2022):

1. The interests of investigation and prosecution no longer require
2. The case was not prosecuted because there was insufficient evidence or it turned out that it was not a crime,
3. The case is set aside in the public interest or the case is closed for the sake of law, unless the object is obtained from a crime or used to commit a crime.

In line with the principle of benefit that guarantees the benefit of sacrifice for the victim. The judge's rejection of

the public prosecutor's request harms the basis of exploitation

Maslahah

Imam al Ghazali defines maslahah as follows that in its essential sense (aslan) maslahah is an expression to find something useful (manfaat) or get rid of something vile (harm). However, this is not what we mean because finding benefits and getting rid of harm is the purpose (maqashid) meant by creation and the goodness (as-shulhu) of creation in realizing their purposes (maqashid). What is meant by maslahah is the preservation of the objective purpose of the law, which consists of five things, namely the preservation of religion, soul, intellect, lineage, and property. Anyone who tries to preserve these five principles (usul) is called maslahah and anyone who removes these five principles is called mafsadat and rejecting them is called maslahah(Al-Ghazali, 2018).

From the description above, it can be seen that what is meant by maslahah according to Imam al-Ghazali is an effort to maintain the objectives of Islamic law, namely maintaining religion, soul, mind, lineage, and property. Everything that is intended to maintain the five objectives of Islamic law is called maslahah. On the other hand, anything that undermines or negates the objectives of the five Islamic laws mentioned mafsadat, which is why efforts to reject and avoid it are called maslahah(Rozalinda, 2016).

In addition to al-Ghazali Ibn Taymiyyah, as quoted by Imam Abu Zahrah, says that the problem is the mujtahid's view of actions that contain clear goodness and not actions that are contrary to the Sharia"(Syatibi, 2017).

Of the three definitions above, both those put forward by Jalaluddin Abdurrahman, Imam Ghazali, and Ibn Taimiyah, in principle contain the same essence. That is, the problem in question is benefit which is the goal of syara', not benefit based solely on human desires and desires. Because it is fully realized that the purpose of legal syari'at is none other than to realize the benefit for humans, in all aspects and aspects of life in the world, so as to avoid various forms that can lead to damage. In other words, every legal provision that has been outlined by syari' is aimed at creating benefit for humans. There is no doubt that the benefit cannot be scrutinized carefully and is not responded to with appropriate decisions, only fixated on the existence of arguments that govern it. Undoubtedly the benefit will disappear from human life, and the growth of law will stop(Shalih, 2003).

In line with the opinion of Al-Ghazali and Ibn Taimiyah at the end of the created law to create benefit for mankind in reaching 5*maqashid syari'ah*. One of them is related to the care of property /*hifdz al-mal*. The judge's refusal to return evidence number 220-258 Tangerang District Court Number: 1240/Pid.sus/2022/PN.Tng. In the opinion of the researcher, from the evidence numbers 220-258, they should choose which evidence belonged to the victim of fraud by the defendant Indra Kenz and which property belonged to

the defendant. The judge should return the defendant's property in line with Article 46 paragraph 1 of the Criminal Code which states "Objects subject to confiscation are returned to the person or to those from whom the object was confiscated, or to the person or those who are most entitled if:(Kementerian Hukum dan HAM, 2018)

1. The interests of investigation and prosecution no longer require
2. The case was not prosecuted because there was insufficient evidence or it turned out that it was not a crime,
3. The case is set aside in the public interest or the case is closed for the sake of law, unless the object is obtained from a crime or used to commit a crime.

CONCLUSION

Based on the explanation above, the judge's decision to reject the public prosecutor's request to return evidence number 220-258 is not in line with the principle of certainty because the owner of the evidence is a victim of the defendant Indra Kenz's fraud. Thus the status of the evidence is equivalent to stolen goods and has the right to be returned to the owner of the goods as stipulated in Article 46 paragraph 1 of the Criminal Code. In addition, the refusal to return evidence numbers 220-258 is also not in line with the principle of usefulness because it has the potential to create disadvantage and unhappiness for the owner of the evidence. Finally, the refusal also violates the principle of safeguarding assets/hifdz al-mal for victims of fraud by the defendant Indra Kusuma. The judge should select which of the 38 items of evidence belonged to the victim and the defendant. Evidence belonging to the victim should be returned to the victim.

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