

## The Concept And Sanctions Of Qodzhaf In Hudud Criminal Law: Hadith Perspective

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<p><b>Article History</b>            Received : 2021-07-03            Revised: 2021-07-11            Published: 2021-07-30</p> <p><b>Keywords:</b>  <i>Qadzaf; Islamic Criminal Law; Hudud; Ta'zir; Individual Honor</i></p>	<p>This study discusses the hadiths related to the crime of qadzaf (accusing adultery without valid evidence) from the perspective of Islamic criminal law. The background of this study is based on the importance of maintaining individual honor and the widespread phenomenon of accusations without evidence, especially in the digital era. The method used is a library research study with a normative approach, through analysis of authentic hadiths, verses of the Qur'an, and the opinions of scholars. The research stages include data collection, analysis of takhrij hadiths and fiqhul hadith, and drawing legal conclusions. The results show that qadzaf is a major sin and a hudud crime with the main sanction of 80 lashes and rejection of the perpetrator's testimony. In addition, there is a threat of punishment in the afterlife for perpetrators who do not repent. The discussion also emphasizes that in the modern context, accusations of adultery spread through social media can be subject to ta'zir sanctions at the discretion of the judge. Thus, Islamic law aims to maintain the honor of <i>hifz al-'irdh</i>, prevent slander, and create a just social order.</p>

### I. INTRODUCTION

Indonesia, as a state based on the rule of law (*rechtstaat*), places law as the primary foundation for governance and national life. The concept of a state based on the rule of law implies that every government action must be based on statutory regulations and uphold the principle of protecting human rights. In this context, law serves not only as a regulatory tool but also as a means to ensure justice, certainty, and benefit for society (Jimly Asshiddiqie, 2006).

As the government's role in various aspects of life expands, the relationship between it and society has become increasingly complex. The government serves not only as a policymaker but also as an implementer of policies that directly impact public interests. In practice, it is not uncommon for state administrative actions to result in losses for citizens, whether due to abuse of power, procedural errors, or violations of general principles of good governance. This situation demonstrates the importance of a control mechanism for government actions to prevent arbitrary actions (Ridwan HR, 2016).

Within this framework, the State Administrative Court (PTUN) serves as a crucial instrument in the Indonesian legal system, providing legal protection to citizens against state administrative actions. The PTUN has the authority to examine, adjudicate, and decide on state administrative disputes arising between citizens and state administrative bodies or officials as a result of the issuance of an administrative decision. Thus, the PTUN serves as a judicial oversight mechanism for government actions to ensure that every decision taken remains within the legal framework (Philipus M. Hadjon, 1987).

Normatively, the position of the PTUN in the Indonesian legal system is regulated in Law Number 5 of 1986 concerning State Administrative Courts, which was later amended through Law Number 9 of 2004 and Law Number 51 of 2009. Through these regulations, the PTUN is positioned as one of the executors of judicial power that has a special role in the field of state administrative law. This position shows that the PTUN is an integral part of the national judicial system that functions to

uphold law and justice in the field of government administration.

Furthermore, the PTUN's function is not limited to resolving disputes between citizens and the government, but also plays a strategic role in promoting the principles of good governance. Through its decisions, the PTUN can correct government policies that are inconsistent with the law and encourage the creation of a government that is transparent, accountable, and responsive to the interests of the people. In this regard, the PTUN serves as a crucial instrument in maintaining a balance between government power and the protection of citizens' rights (Bagir Manan, 2004).

However, in practice, the implementation of the PTUN's functions and authorities still faces various challenges. One major problem is the limited public understanding of the mechanisms for resolving state administrative disputes, resulting in not all citizens utilizing the PTUN as a means of legal protection. Furthermore, there are also obstacles in the implementation of PTUN decisions, which are not fully complied with by state administrative bodies or officials. This indicates that the PTUN's effectiveness in ensuring legal protection still requires strengthening, both in terms of regulation and implementation (Jimly Asshiddiqie, 2006).

On the other hand, the development of globalization and modernization has had a significant impact on the dynamics of state administrative law. The increasing complexity of government policies, particularly in the economic, environmental, and technological fields, demands a more adaptive and responsive role for the State Administrative Court (PTUN). The PTUN is not only required to resolve disputes fairly but also must be able to understand the ever-changing legal developments to remain relevant in the modern legal system.

Based on this description, a study of the position and function of the State

Administrative Court within the Indonesian legal system is crucial. This study aims to deeply analyze the position of the State Administrative Court (PTUN) as a judicial institution within the national legal system and examine its function and role in providing legal protection to citizens. Furthermore, this study aims to identify various obstacles encountered in implementing the PTUN's functions and provide recommendations for improving its effectiveness in achieving justice and legal certainty.

## II. RESEARCH METHODS

This study uses a normative legal research method, namely research that focuses on the study of legal norms contained in laws and regulations, court decisions, and the doctrines or opinions of legal experts. Normative legal research aims to find legal rules, legal principles, and legal concepts relevant to the problem being studied, particularly those related to the position and function of the State Administrative Court (PTUN) in the Indonesian legal system (Peter Mahmud Marzuki, 2011).

The research approaches used in this study include a statutory approach and a conceptual approach. The statutory approach is carried out by examining various laws and regulations related to the State Administrative Court, such as Law Number 5 of 1986 concerning the State Administrative Court and its amendments. This approach aims to understand the legal basis governing the position and authority of the PTUN in the national legal system. Meanwhile, the conceptual approach is used to examine legal concepts that have developed in doctrine, such as the concept of the rule of law, legal protection, and the function of state administrative justice (Johnny Ibrahim, 2006).

The legal sources used in this study consist of primary legal materials, secondary

legal materials, and tertiary legal materials. Primary legal materials include relevant laws and regulations, particularly those governing State Administrative Courts, as well as court decisions related to state administrative disputes. Secondary legal materials consist of legal literature such as books, scientific journals, previous research results, and expert opinions relevant to the research topic. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that support an understanding of the legal terms used in this study (Soerjono Soekanto, 2007).

The legal material collection technique is carried out through library research, namely by gathering various relevant legal materials from books, journals, laws and regulations, and other scientific sources. Next, these legal materials are identified, classified, and systematically arranged according to the main issues being studied.

The analysis of legal materials in this study was conducted using a descriptive-analytical method. The descriptive method was used to systematically describe the position and function of the State Administrative Court (PTUN) in the Indonesian legal system, while the analytical method was used to examine and interpret the obtained legal materials to find answers to the research questions. This method is expected to provide a comprehensive understanding of the PTUN's role in providing legal protection to citizens.

### III. RESULTS AND DISCUSSION

#### A. Results Study

The research findings show that the State Administrative Court (PTUN) holds a crucial position in the Indonesian legal system as a judicial institution authorized to resolve disputes between citizens and state administrative bodies or officials. The existence of the PTUN is a concrete

manifestation of the application of the rule of law principle, which guarantees legal protection for the public from detrimental government administrative actions.

In practice, the PTUN functions to test the validity of state administrative decisions based on authority, procedure, and substance. Through this function, the PTUN not only provides justice for aggrieved parties but also acts as a watchdog over government actions to prevent abuse of authority. Furthermore, PTUN decisions contribute to legal certainty and serve as guidelines for the government in exercising its authority more carefully.

However, the PTUN's effective role still faces several challenges, such as low public legal awareness, limited access to justice, and suboptimal implementation of decisions by state administrative officials. Therefore, strengthening efforts are needed to ensure the PTUN functions more effectively in providing legal protection to citizens.

#### B. Discussion

##### 1. The Position of State Administrative Courts in the Indonesian Legal System

The State Administrative Court (PTUN) is one of the executors of judicial power in Indonesia and holds a crucial position within the national legal system. Within the framework of a state based on the rule of law (*rechtstaat*), the existence of the PTUN is inseparable from the principle of limiting power and protecting citizens' rights. This aligns with the concept of a state based on the rule of law, which places law as a tool of control over government actions (Jimly Asshiddiqie, 2006).

Constitutionally, judicial power in Indonesia is exercised by the Supreme Court and its subordinate courts, including the State Administrative Court (PTUN). This demonstrates that the PTUN holds equal standing with other courts, such as general courts, religious courts, and military courts. As

such, the PTUN enjoys strong legitimacy as the institution authorized to enforce laws in the field of state administration.

The regulations regarding the PTUN are specifically regulated in Law Number 5 of 1986 concerning State Administrative Courts, which was later amended through Law Number 9 of 2004 and Law Number 51 of 2009. Through these regulations, the PTUN is given the authority to adjudicate state administrative disputes arising from the issuance of state administrative decisions (*beschikking*) by state administrative officials.

The position of the PTUN in the Indonesian legal system also reflects the existence of a narrow judicial review mechanism, namely the judicial review of state administrative decisions. This is crucial to ensure that every government action does not violate the law and remains within the principles of legality. Therefore, the PTUN functions as an instrument of judicial oversight of government actions (Philipus M. Hadjon, 1987).

## **2. The Function of State Administrative Courts in Providing Legal Protection**

The primary function of the PTUN is to provide legal protection to citizens against detrimental state administrative actions or decisions. This legal protection encompasses two main aspects: preventive and repressive protection. Preventive protection aims to prevent legal violations by the government, while repressive protection aims to resolve disputes that have already occurred (Philipus M. Hadjon, 1987).

In carrying out its functions, the PTUN has the authority to annul or declare invalid any state administrative decision that is proven to be contrary to laws and regulations or the general principles of good governance (AUPB). AUPB are principles that must be adhered to by the government in exercising its authority, such as the principle of legal certainty, the

principle of accuracy, the principle of openness, and the principle of not abusing authority (Ridwan HR, 2016).

Furthermore, the PTUN also serves as a means to uphold administrative justice. In this regard, the PTUN serves not only as a "mouthpiece for the law" but also as an institution actively exploring the values of justice that exist within society. Therefore, PTUN decisions are expected to not only provide legal certainty but also reflect a sense of justice for the disputing parties.

## **3. The Role of the PTUN in Realizing Good Governance**

In modern legal developments, the State Administrative Court (PTUN) plays an increasingly important role in promoting the principles of good governance. Good governance is a concept that emphasizes the importance of transparent, accountable, participatory, and public-interest-oriented governance.

Through its authority, the PTUN can monitor government actions that do not align with these principles. For example, if a state administrative decision is issued without following proper procedures or is not based on objective considerations, the PTUN can overturn the decision. Thus, the PTUN functions as a check on abuse of power by state officials (Bagir Manan, 2004).

Furthermore, the existence of the PTUN can also increase public trust in the government. This is because the public has legal means to challenge harmful government actions. With the guarantee of effective legal protection, the public will feel more protected and have more confidence in the legal system.

## **4. Constraint in the Implementation of PTUN Functions**

Despite its strategic position and function, the implementation of the PTUN's role in practice still faces various obstacles. One of the main obstacles is the low level of public legal

awareness. Many citizens do not understand their rights and the dispute resolution mechanisms through the PTUN, thus preventing them from optimally utilizing this institution.

Furthermore, there are also obstacles in the implementation of PTUN decisions. In some cases, PTUN decisions that have become legally binding are not implemented by state administrative officials. This indicates weaknesses in the PTUN decision execution system, which can reduce the effectiveness of the legal protection provided (Soerjono Soekanto, 2007).

Another obstacle is the limited authority of the PTUN to adjudicate certain disputes. Not all government actions can be disputed in the PTUN, leaving some areas not fully covered by this judicial mechanism. This necessitates legal reforms to expand the PTUN's authority and make it more adaptable to changing times.

### **5. Effort Strengthening the Role of the Administrative Court**

To improve the effectiveness of the PTUN in the Indonesian legal system, various strengthening efforts are needed, both from a normative and implementation perspective. From a normative perspective, legislation needs to be updated to expand the PTUN's authority and clarify the mechanism for implementing court decisions.

From an implementation perspective, improvements in the quality of human resources, both judges and other judicial officials, are needed to enable them to handle increasingly complex administrative disputes. Furthermore, public awareness of the PTUN's functions and roles needs to be raised to increase public legal awareness.

With these strengthening efforts, it is hoped that the PTUN can optimally carry out its function as a judicial institution that provides legal protection to citizens and

encourages the realization of good and clean governance.

## **IV. CONCLUSION AND SUGGESTIONS**

### **A. Sconclusion**

Based on the research and discussion, it can be concluded that the State Administrative Court (PTUN) holds a strategic position in the Indonesian legal system as a judicial institution authorized to resolve administrative disputes between citizens and the government. The PTUN serves as a means of legal protection against state administrative actions that have the potential to harm the public, while also serving as a means of controlling government power to prevent abuse of authority.

In its implementation, the State Administrative Court (PTUN) carries out the function of reviewing state administrative decisions based on aspects of authority, procedure, and substance. Through this function, the PTUN plays a role in realizing legal certainty, justice, and supporting the creation of good governance. However, the effectiveness of the PTUN's role still faces various obstacles, such as low public legal awareness, limited access to justice, and suboptimal implementation of court decisions by state administrative officials.

### **B. Suggestions**

Based on these conclusions, several efforts are needed to improve the effectiveness of the State Administrative Court. First, public legal awareness must be increased through education and outreach to ensure the public understands their rights and the mechanisms for resolving state administrative disputes. Second, strengthening the implementation of PTUN decisions is necessary to ensure more effective enforcement, thereby ensuring legal certainty and justice for the public.

Third, the government needs to improve the quality of governance by upholding legal principles and general principles of good

governance to minimize disputes. Fourth, the institutional capacity of the PTUN (State Administrative Court), both in terms of human resources and supporting facilities, needs to be increased to enable it to handle increasingly complex disputes.

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