

The Law of Bribery in the Judiciary: A Comparative Analysis of the Opinions of Yusuf Qardhawi and Asy-Syaukani

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Abstract. *This research focuses on the principle of justice in Islamic law, which is seen as the main foundation for the entire sharia legal system, especially in the context of bribery cases in upholding rights and eliminating injustice. The main objective of this research is to understand the limitations and exceptions related to the law of bribery according to the views of two major scholars, Yusuf al-Qaradawi and Asy-Syaukani, and how the concept of maqasid sharia (the purpose of sharia) is applied in emergency situations that allow the permissibility of bribery. The research method used is a comparative analysis between the two views, by exploring the background of the arguments and the underlying context of Islamic law. The results show that Yusuf al-Qaradawi permits bribery in urgent emergencies, especially when it is the only way to defend a neglected right or eliminate injustice, after all legitimate efforts allowed by religion have been taken. In contrast, Asy-Syaukani forbids bribery absolutely without exception, based on the generality of the hadith that forbids the practice of bribery. In this comparison, Asy-Syaukani's view is considered stronger in terms of evidence, but in the current context, Yusuf al-Qaradawi's view is considered more relevant to the conditions in Indonesia, where bribery is sometimes used as a way to defend rights in urgent situations. The conclusion of this study confirms that the maqasid principle of sharia, which includes the fulfillment of emergency needs (dharuriyyat), general needs (hajiyat), and refinement (tahsiniyyat), can be the basis for the permissibility of bribery under certain conditions. The legal consequences of bribery in order to defend rights are imposed on the recipient of the bribe and its intermediaries, while the bribe giver is not subject to sanctions because the aim is to claim legitimate rights.*

Keyword: *Bribery; Comparative; Justice, Maqasid.*

1. INTRODUCTION

In Islamic law, a very important principle is justice. So important is this principle that it can be called the cornerstone of all Islamic law. The Qur'an, as the most important source of Islamic jurisprudence, very often addresses the issue of justice. One of them is found in Surah Sad verse 26, where Allah commands the ruler, the law enforcer as

the khalifah on earth, to administer the law as well as possible and to be fair to fellow human beings regardless of race and social stratification.¹

In addition, in surah al-Maidah verse 8, emphasizes that every human being upholds justice in testifying, being straight in carrying out the law, despite pressure, threats, or temptation in any form². One of the institutions established to uphold justice is the judiciary. The judiciary is a means for those who seek justice, and the most important element in it is the judge. The existence of judges is very decisive in upholding justice, so the Prophet warned judges to always be fair. Since Allah commands fairness, He automatically forbids injustice. Injustice is a deviation from religious teachings that is very detrimental to others and society. Injustice can occur in various forms of human activity, including in the judiciary. The main key in implementing justice is honesty, because honesty is one of the dimensions of justice that cannot be separated from the morality set by Allah SWT³. One of the irregularities that is often discussed by the public as a common issue in the judiciary is bribery and collusion. Bribery can be understood as the act of bribing certain parties to the authorities or judges in order to win their demands or cases.

Hypothetically, if the practice of bribery has become endemic in a society, the social community will become chaotic because the legal certainty needed by justice seekers can no longer be found in the judiciary. The logical consequence is a decline in the authority of the judiciary and the arbitrariness of the powerful against the weak. As already stated, Islamic law, which is based on the principle of justice, is strongly opposed to the practice of bribery and collusion. The Prophet said:

عَنْ أَبِي هُرَيْرَةَ قَالَ لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الرَّاشِيَّ وَالْمُرْتَشِيَّ فِي الْحُكْمِ

"*Abu Hurayrah Radhiyallahu anhu reported that he said: Rasûlullâh Sallallahu 'alaihi wa sallam cursed the giver of bribes and the receiver of bribes in the law.*" (HR. Ahmad, no. 9011)⁴

Based on this hadith, the scholars agreed (*ijma'*) that bribery is basically *haram*. This consensus reached by the scholars is only related to the basic law, while in some cases there are differences of opinion. This can be evidenced by Yusuf al-Qardawi's opinion that bribery is permissible if it aims to claim rights or eliminate injustice, in other

¹ Tamyiez Dery, (2002) "Keadilan Dalam Islam," *Mimbar: Jurnal Sosial & Pembangunan* 18, no. 3: 337–350, <https://doi.org/https://doi.org/10.29313/Mimbar.V18i3.78>.

² Afifa Rangkuti, (2017) "Konsep Keadilan Dalam Perspektif Islam," *Tazkiya, Jurnal Pendidikan Islam* 6, no. 1: 1–19, <https://doi.org/Http://Dx.Doi.Org/10.30829/Taz.V6i1.141>.

³ Nurlaila Harun, (2013) "Makna Keadilan Dalam Perspektif Hukum Islam & Perundang-Undangan," *Jurnal Ilmiah Al-Syir'ah* 11, no. 1: 1–15, <https://doi.org/Http://Dx.Doi.Org/10.30984/As.V11i1.166>.

⁴ Imam Sukadi, (2011) "Matinya Hukum Dalam Proses Penegakan Hukum Di Indonesia, Risalah Hukum7," *Risalah Hukum* 7, no. 1: 39–52, <https://doi.org/https://E-Journal.Fh.Unmul.Ac.Id/Index.Php/Risalah/Article/View/171>.

words, the prohibition of bribery is not absolute.⁵ On the other hand, Asy-Syaukani argues that the prohibition of bribery is absolute, meaning that under any conditions the practice of bribery remains forbidden, either to claim rights or to eliminate injustice. Ash-Shafiukani refutes the view that bribery is legitimized in some circumstances. He stated, "The interpretation of claiming rights by legitimizing bribery, in my opinion, is not an interpretation. So what is correct is that bribery is absolutely forbidden, taken from the generality of the hadith".⁶

This article provides a theoretical study of the various normative elements contained in Islamic law regarding justice, especially those related to the law of bribery in the judiciary, as well as the views of scholars such as Yusuf al-Qardawi and Asy-Syaukani. This study is expected to contribute to the development of Islamic law in the contemporary context, especially in the fields of Islamic criminal law and judicial ethics. Therefore, this article uses the current view of Islamic law (*ius constitutum*) as a point of departure for theoretical reflection, which will then suggest alternative methods in developing future Islamic law (*ius constituendum*). The article begins with a theoretical reflection that explores the principle of justice in the judiciary and the Islamic view of the prohibition of bribery. It then continues with a comparative analysis of the views of Yusuf al-Qardawi, who permits bribery under certain conditions, and Asy-Syaukani, who prohibits it absolutely, and concludes with an analysis of relevant cases in the modern context.

The novelty of this article is that it examines the topic of justice in Islamic law as well as law enforcement against bribery in the judiciary through the perspective of scholarly thought, particularly Yusuf al-Qardawi and Asy-Syaukani. Although many studies have discussed justice in Islamic law, there are still few studies that specifically place justice as a substantive principle that must be upheld in the judiciary, especially in the issue of bribery that undermines the integrity of justice. Given that the essence of the judiciary is to uphold justice, the main objective of this study is to highlight the urgency of avoiding bribery practices in order to protect the rights and interests of justice seekers, ensure the integrity of the legal system, and prevent arbitrariness that harms the wider community, especially vulnerable groups.

Several previous studies have raised the issue of justice in Islamic courts and the problem of bribery, but not many have specifically compared the views of scholars regarding the prohibition of bribery. This study is important because it not only discusses the prohibition of bribery in general, but also looks at the differences in views between Yusuf al-Qardawi who allows bribery under certain conditions and Asy-Syaukani who prohibits it absolutely. This comparative approach is expected to provide a more in-depth and contextual understanding of Islamic law in issues of justice in the judiciary.

⁵ Yusuf Al-Qaradhawi, (2017). *Halal Wa Al-Haram Fi Al-Islam*, (Terj: M. Tatam Wijaya), Jakarta: Qalam, p. 499

⁶ Haryono, (2016) "Risywah (Suap-Menyuap) & Perbedaannya Dengan Hadiah Dalam Pandangan Hukum Islam (Kajian Tematik Ayat & Hadis Tentang Risywah)," *Al-Mashlahah Jurnal Hukum Islam & Pranata Sosial* 4, no. 7: 429–48, <https://doi.org/https://Doi.Org/10.30868/Am.V4i07.155>.

2. RESEARCH METHODS

The research methods used include data collection and data processing. In the data collection stage, the author uses the literature study method to obtain relevant information. Data sources are divided into two, namely: Primary sources, which consist of the opinions of Yūsuf al-Qaradawi and Asy-Syaukani in their books; and Secondary sources, in the form of classical *fiqh* books that support the opinions of the two figures. After the data is collected, the author processes it using the following method: Inductive, to draw general conclusions from specific issues; and Comparative, which compares the views of Yūsuf al-Qaradawi and ash-Syaukani in an analysis (*munāqasyah*) related to cases of bribery in court, then chooses the stronger view through the *tarjih* method.

3. RESULTS AND DISCUSSION

3.1 The Law of Bribery in the Judiciary: A Comparative Analysis of the Opinions of Yusuf Qardhawi and Asy-Syaukani

All scholars agree that the law of *risywah* (bribery) is *haram*, and this agreement has reached the degree of *ijma'* (consensus)⁷. Before the author describes the views of the two figures who will be raised in this study, first will be presented some of the views of scholars of tafsir related to the law of *risywah*.

- **Opinions of the Scholars of Tafsir**

Abi Muhammad al-Husain al-Farra' stated that the law of practicing bribery is *haram*. He also explained that bribery is an act of deviation that is often practiced by Jewish leaders and is an act that is highly hated by Allah.⁸ Ali al-Sais is of the opinion that bribery is *haram* and divides bribery into two categories. First, bribery in the legal sphere, which involves the briber, the middleman (agent), and the judge (bribe taker). A judge who accepts a bribe is classified as an impious person, even if he accepts a bribe to justify something that is true. This action violates his duties and obligations as a judge, especially if he decides cases wrongfully, which means he has committed two forms of deviation at once, namely accepting bribes and acting unjustly. Secondly, bribery outside the realm of law also remains forbidden.⁹

The author of al-Faridh li Qur'an al-Majid emphasized that bribery is *haram*, as well as the opinion of Ali al-Sabuni, Ismail Haqi al-Barwaswi, Muhammad Jamaluddin al-Qasimi, and others. These scholars of tafsir rely on the word of Allah in Surah Al-Baqarah verse 188:

⁷ Herdian Kertayasa, Deny Guntara, & Irma Garwan, (2022) "Risywah Dalam Politik Menurut Perspektif Hukum Islam," *Prosiding Konferensi Nasional Penelitian & Pengabdian Universitas Buana Perjuangan Karawang* 2, no. 1: 315–30, <https://journal.ubpkarawang.ac.id/index.php/ProsidingKNPP/article/view/2478>.

⁸ Abi Muhammad Al-Husain Bin Mas'ud Al-Farra Al-Bagawiy Al-Syafi'i, *Tafsir Al-Bagawi Al Musamma Ma; Alim Al-Tanzil Juz II* (Bireut: Dar Al-Kutb Al-Ilmiyah, t.t.). P 31

⁹ Muhammad Ali Al-Sais, (1953). *Tafsir Ayat Al-Ahkam, Juz II*, Mesir: Mutba;Ah Muhammad Ali Sabin, p. 193

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

The above verse means the prohibition of eating other people's property in an unlawful or evil way, and do not bring the property to the judge, so that you can eat part of other people's property by (committing) sin, even though you know.¹⁰

According to them, this verse is general and covers all unlawful acts, including bribery. In addition, they also refer to Allah's words in Surah Al-Maidah verse 42:

سَمْعُونَ لِلْكَذِبِ أَكْثُونَ لِلسُّخْتِ فَإِنْ جَاءُوكَ فَاحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ

The verse means that they are people who like to hear falsehoods and eat unclean things. If the Jews come for trial then either decide the case or turn away from them.¹¹

Scholars interpret the word "*al-Suht*" in this verse as bribery, supported by the context of the verse's revelation which responded to the rampant practice of bribery among the Jewish community at that time.¹²

• Opinion of Hadith Scholars

The author of Syarh Sahih Bukhari equates bribery with *al-Suht*, which is forbidden by Allah SWT. The practice of bribery is hated by Allah and His Messenger. Al-Nawawi is also of the opinion that bribery is forbidden, even Allah and His Messenger cursed the act of bribery.¹³ The author of Subul al-Salam states in his interpretation of the hadith about bribery, that bribery is forbidden by Allah SWT, and this prohibition applies to both *qadhi* (judges) and other employees. The author of Mansu'at al-Sunnah also expressed a similar view that the practice of bribery is an act forbidden by Allah SWT. The prohibition of bribery is for the person who receives the bribe and for the party who is the agent of the briber. Allah SWT forbids the practice of bribery because this act destroys justice and order in society.¹⁴

There are a number of traditions that strictly prohibit the giving or receiving of bribes and gratuities, confirming that such acts are forbidden in Islam. This prohibition is an important principle in preventing corruption at the individual level. The next principle is to create a prosperous and just society. Islam encourages the establishment of a society based on justice and prosperity. Corruption, which diverts resources from

¹⁰ Departemen Agama Republik Indonesia, (2020). *Alquran & terjemah*, Jakarta: Pustaka Al-Kautsar,

¹¹ Ibid.

¹² Gugum Gunawan, (2018), "Wacana Tafsir Tentang Ayat-Ayat Al-Qur`An Yang Berhubungan Dengan Korupsi," *Pascasarjana Institut PTIQ Jakarta: Program Studi Ilmu Al-Quran & Tafsir Konsentrasi Ilmu Tafsir Program*, <https://repository.ptiq.ac.id/id/eprint/43/>. p. 102

¹³ Al-Annawawi, *Sahih Muslim Bi Sharh Al-Nawawi* (Lebanon: Dar Al Kutb Al-Ilmiyah P 164

¹⁴ Al-Murattib, (1992). *Mansuat Al-Sunnah Al-Kutb Al-Sittah Wa Syarhuna Juz XVIII* (Tunisia: Dar Sahnun, p. 775

public needs, can be a major obstacle to achieving this goal. In addition, Islam also emphasizes honesty in all aspects of life. Hadith underscores the importance of being honest in speech and action, as dishonesty and manipulation of information are considered forms of corruption.

- **Opinion of the Imam of the Madzhab**

The Imams of the Madzhab -Hanafi, Maliki, Shafi'i, and Hambali- agree that basically bribery is an act that is forbidden by Allah SWT and the Prophet Muhammad. The following is an explanation of the opinion of each madzhab:

- Hanafi Madzhab

The Hanafi Madzhab states that bribery is an act forbidden by Allah. A judge who is involved in the practice of bribery will lose the nature of justice and is considered a wicked person.¹⁵

ولو كان القاضي عدلا نفسق بأخذ الرشوان

"If a just judge accepts a bribe, then he will become wicked."

A judge who accepts something when handling a case is categorized as fasiq. Judges have an obligation to make decisions based on the truth. Law enforcers who are fasiq should be removed and not allowed to decide cases as judges.¹⁶

- Maliki Madzhab

The Maliki school of thought holds that bribery is forbidden by Allah. A judge must be fair and honest in deciding cases, and avoid any form of gift that could influence his decision.

"As for whatever you offer in the form of a bribe, then indeed it is forbidden food, we will not eat it". (HR Malik)¹⁷

- Shafi'i Madzhab

The Shafi'iyah scholars also forbid the practice of bribery. According to this Madzhab, a judge must be careful not to fall into the practice of bribery,

¹⁵ Badrus Surur Choiri, (2017), "Risywah Politik Dalam Perspektif Hanafiyah & Syafiiyah," *Fakultas Syariah & Hukum UIN Syarif Hidayatullah Jakarta*, 60, <http://repository.uinjkt.ac.id/dspace/handle/123456789/41483>.

¹⁶ Slamet Haryadi, (2015) "Reinterpretasi Tindak Pidana Korupsi Suap Oleh Penegak Hukum Dalam Perspektif Hukum Islam," *Al-Adalah* 12, no. 1: 551, <http://dx.doi.org/10.24042/adalah.v12i1.233>.

¹⁷ Bahgia, (2023) "Risywah Dalam Tinjauan Hukum Islam & Undang-Undang Tindak Pidana Sua," *Mizan; Jurnal Ilmu Syariah* 1, no. 2: 176, <https://doi.org/https://Doi.Org/10.32507/Mizan.V1i2.123>.

including accepting gifts that could influence his decision. The book al-Iqna' states:

يندب الا يشتري ولا يبيع بنفسه كلا يشتغل قلبه عما هي بصدده ولانه قد " يجب فيميل قلبه الى من يحاييه اذا وقع بينه وبين غيره حكومة والمحابات فيها رشوة أو هدية وهي محرمة

"It is mustahabb for a judge not to buy and sell for himself so that his heart will not be inclined and he will be free from the influence of gifts, because sometimes judges are given gifts, and that may make his heart inclined towards the one who gave it to him.

If a judge is deciding a case and a gift is given to the judge or any of the parties involved in the decision, this is considered a bribe or gift and is prohibited. One form of corruption that often occurs in the judiciary is the practice of bribery. The practice of bribery in the judiciary causes a lack of public trust in law enforcement. Bribery influences decisions by judges¹⁸.

In the Shafi'i Mazhab, there is an explanation that bribing to claim rights is permissible. Sharh al-Muhazzab states: 'If a person demands his right by giving a bribe, it is not forbidden.' However, the permissibility of bribery only applies to those who bribe in order to claim their rights. As for the one who receives the bribe, there is still no way for him to make it permissible. Thus, the Shafi'i Mazhab does not forbid bribery absolutely like the Hanafi Mazhab.

- **Hambali Madzhab**

The Hambali Madzhab also forbids bribery. The scholars in this Madzhab agree that the practice of bribery will undermine the nature of justice of a judge, and any form of gift that can affect the enforcement of justice is forbidden.

فأما الرشوة في الحكم و الرشوة العامل فحرام

"As for bribery in law and bribing employees, it is haram."

According to the Hanbali school of thought, the bribes that are forbidden are bribes to establish what is false or nullify what is right. On the other hand, bribes made to remove injustice are permissible.¹⁹

The opinions of scholars regarding the ruling of bribery are very diverse, both among scholars of tafsir, scholars of hadith, and imams of the Madzhab. The following are the opinions of two important figures in this study:

¹⁸ M. Fadli & Iskandar, (2022) "Praktik Tindak Pidana Korupsi Dalam Peradilan Indonesia & Upaya Pencegahan Korupsi Oleh Penegak Hukum Di Indonesia," *Khazanah Multidisiplin* 3, no. 1: 64–81.

¹⁹ Abdullah Bin Abd. Muhsin, (2001). *Suap Dalam Pandangan Islam*, Jakarta: Gema Insani Press, p. 9-11

- **Bribery practices according to Yusuf al-Qaradawi**

As already explained, all scholars agree that the law of bribery is *haram*, and this agreement has reached *ijma'* (consensus). Corruption in the form of bribery refers to the act of giving or accepting bribes, monetary or otherwise, in order to establish dishonest relationships. Usually, bribery is done to make easier, especially when having to go through official bureaucratic procedures.²⁰ Yusuf al-Qaradawi argues that Islam forbids bribery in any form and by any name. Giving it another name such as 'gift' will not change the legal status of bribery from *haram* to *halal*.²¹ Yusuf al-Qaradawi refers to a hadith of the Prophet narrated by Abu Dawud:

مَنْ اسْتَعْمَلَنَا عَلَى عَمَلٍ فَرَزَقْنَاهُ رِزْقًا (مِنْحَنَاهُ رَائِبًا) فَمَا أَخَذَ بَعْدَ ذَلِكَ فَهُوَ غُلُوبٌ

"Whoever works for us on a job, then we give him sustenance (wages), then what he takes after that is treason"

On one occasion, Umar bin Abdul Aziz refused a gift given to him while serving as caliph. When someone questioned him, Umar explained that the gifts received during the Prophet's time were only given as gifts to the Prophet, not to the ruler. This shows that gifts related to the duties of the ruler are not gifts, but bribes²².

Yusuf al-Qaradawi emphasized that any gift accompanied by a desire to get something from the recipient, such as from a government official or employee, judge, teacher, or lecturer, is a bribe. All officials or employees already have duties that must be carried out, so that all gifts related to their positions cannot be categorized as gifts, but are included as bribes.²³

Another hadith quoted by Yusuf al-Qaradawi in discussing bribery is:

"There is no reason for me (as a Messenger) to hire one of you, then he says, 'This is for you and this is for me as a gift.' Let him sit in his mother's house until he is actually given the gift. By the One in Whose hand is my soul, whoever among you takes something without right, Allah will confront him on the Day of Resurrection with a camel, cow, or goat. Then the Prophet raised his hands until the whiteness of his armpits was visible and said, 'O Allah, have I conveyed...?'"

In commenting on this hadith, Yūsuf al-Qaradawi cites the basis and commentary of al-Ghazali. According to al-Ghazali, if this basis has been established, then a *qadhi* (judge) or wali (leader) should make decisions with full awareness of his authority.

²⁰ Moh Hilmi Badrut Tamam & Andris Nurita, (2023) "Korupsi dalam Perspektif Hadis Imam Bukhari," *El-Nubuwwah: Jurnal Ilmu Hadis* 1, no. 2: 206–33, <https://doi.org/10.19105/elnuwwah.v1i2.9792>.

²¹ Yusuf Al-Qaradawi, (2017). *Halal Wa Al-Haram Fi Al-Islam Terj: M. Tatam Wijaya*, Jakarta: Qalam, p. 464

²² Ali Muhammad Ash-Shalaby, (2017). *Biografi Umar Bin Abdul Aziz*, Jakarta: Ummul Qura, p. 132

²³ Ilgafur Tanjung, "Pemberian Hadiah Kepada Pegawai/Pejabat (Tinjauan Hukum Islam & Undang-Undang Republik Indonesia Nomor 20 Tahun 2001," *Pascasarjana Universitas Islam Negeri Sumatera Utara*, 2017, 63, <http://repository.uinsu.ac.id/5374/>.

They need to distinguish between gifts given to them by virtue of their office and gifts acquired personally after they are no longer in office²⁴. This is important because accepting gifts in the context of office or authority can create an element of uncertainty (*shubhat*).

Al-Qaradawi emphasized that Islam strictly forbids bribery, both for a judge and employees who assist judges in carrying out their duties. Islam also prohibits a Muslim from accepting a bribe given to him to resolve a problem, and prohibits third parties (intermediaries) who act as agents in this bribery practice, whether they are recipients or givers. The basis of this prohibition also refers to the Qur'anic verse in Surah Al-Baqarah verse 188. The prohibition of bribery is also based on a hadith:

لَعْنَةُ اللَّهِ عَلَى الرَّاشِي وَالْمُرْتَشِي وَالْحَكَمِ

*"The curse of Allah is upon the briber and the bribe-taker in law (HR. Abu Daud and al-Tirmizi)"*²⁵.

According to Yusuf al-Qaradawi, the prohibition of bribery is very clear, and this is not something new in Islamic teachings. Everyone who allies in the practice of bribery (*risywah*) is highly condemned, because the damage and injustice caused by *risywah* is known to have a wide and fatal impact. Bribery can cause a person to give decisions without right, reject decisions that should be right, give priority to people who should be later, or otherwise ignore people who should be prioritized. All of these actions go against the principles of justice and bring no real benefit.

However, Yusuf al-Qaradawi also explained that there are certain conditions in which bribery is permitted, namely to claim rights and eliminate injustice. This permissibility only applies after other efforts justified by religion have been taken. If all these maximum efforts do not produce results, then under certain conditions it is permissible to give bribes.

There are two main conditions for the permissibility of bribery according to al-Qaradawi, namely that maximum efforts have been made to resolve the problem through appropriate means. And the action aims to eliminate injustice without ignoring the rights of others.²⁶

Al-Qaradawi refers to the Prophet's hadith which is narrated as follows:

"Indeed, one of you came out of my house with charity hidden in his armpit, but it was only the lure of hell for him." Umar then asked, "O Messenger of Allah, why did you give it to him, when you knew it was the stuff of hell for him?" The Prophet replied, "What should I do, while they are constantly asking me, and Allah forbids me to be miserly."

²⁴ Samsudin, "Analisis Pendapat Al Ghazali Tentang Kriteria Pemimpin Dalam Islam," *Universitas Islam Negeri Walisongo*, 2016, 49, <https://eprints.walisongo.ac.id/id/eprint/5699/>.

²⁵ Ibnu Hajar Al-Asqallani, (2016). *Bulugul Maram Min Adillatih Al-Ahkam*, 8 ed. Bandung: Jabal, p. 178

²⁶ Al-Qaradawi, *Halal Wa Al-Haram Fi Al-Islam Terj: M. Tatam Wijaya*. p. 466

Al-Qaradawi interprets this hadith as an indication that in urgent circumstances, the Prophet gave something to the supplicant even though he knew the consequences. Thus, in urgent circumstances to remove injustice or claim rights, bribery may be permissible even though the original law is forbidden.

"ولا اكلم اسد الكريبتكم بالباطل وتدلي ايها الحكماء"

This quote relates to the principle that there is no way but to perform a prohibited action to defend a right. This rule can be understood that under certain conditions, if there is no legalized way, then doing something that is prohibited, either to eliminate injustice or to defend rights, can be justified. In the general purpose of sharia, the law is prescribed to realize human benefit by ensuring the needs that are *daruriyat* (primary), *hajiyat* (secondary), and *tahsiniyat* (tertiary). The relevant rules in this context are:

"الضرورات تبيح المحظورات"

"Circumstances of necessity make forbidden acts permissible".²⁷

Based on this rule, the act of bribery in court can be justified if it aims to defend rights, especially when the situation is urgent or emergency. This is because if the bribe is not taken, there is a concern that the judge will act unjustly and harm the party concerned. However, Asy-Syaukani has a different opinion. He absolutely forbids the practice of bribery. His reasoning is based on the Qur'anic verse in Surat Al-Baqarah verse 188.

Furthermore, Asy-Syaukani bases his opinion on the following traditions: Hadith narrated by Abu Daud from Abu Hurairah r.a.

عن ابي هريرة قال : قال رسول الله صلى الله عليه وسلم لعنة الله على الراشي والمرتشي فى الحكم . (رواه ابو داود و الترمذي)

"Abu Hurairah reported: The Messenger of Allah (peace and blessings of Allah be upon him) said: 'The curse of Allah is upon the giver and the taker of bribes in law'." (Hadith narrated by Abu Daud and Tirmidhi)²⁸

Hadith narrated by al-Khamsah except An-Nasa'i from 'Abdullah ibn 'Umar r.a.

**والتخصيص لطالب الحق يجوز تسليم الرشوة منه للحاكم لا أدرى بوجود ما يخصص،
فالحق التحريم مطلقا استنادا لعموم الحديث**

"In my opinion, there is no exception for a person claiming his right to give a bribe to a judge. I am not aware of any takhsis (exception) that permits this action. The correct view is that it is absolutely forbidden, based on the generality of the hadith."

²⁷ Mukhsin Nyak Umar, (2006). *Kaidah Fiqhiyyah & Pembaharuan Hukum Islam*, Aceh: Yayasan WDC, p. 102

²⁸ Al-Asqallani, *Bulugul Maram Min Adillatih Al-Ahkam*. p. 178

Asy-Syaukani quoted Ibn Ruslan's statement that bribes given to rulers or officials fall under the category of taking charity illegally, and this is *haram* based on scholarly consensus.²⁹ Asy-Syaukani's statement shows that he does not recognize any justification for claiming rights as a basis for exempting the generality of the original ruling on bribery. Ash-Shafiukani strongly criticizes the view that there is an exception in this case of bribery. He stated that this opinion does not have a strong argumentative basis and is only based on personal opinion (*ra'yu*) without a solid foundation in correct terminology. Asy-Syaukani said:

**وهو تخصيص بدون مخصصى ومعارضة لعموم الحديث بمحض الرأي الذي ليس عليه
أثارة من علم ولا يغتر مثل هذا الا من يعرف كيفية الاستدلال**

"It is an exception without any sufficient basis for it, and it is challenging the generality of the hadith with reasoning that has no basis in science. This view is only expressed by those who do not understand the method of ruling (istidlal)"³⁰.

According to him, the law of the prohibition of *risywah* (bribery) is *'amm muthlaq*, which is a general and absolute prohibition. Thus, the law of bribery is absolutely forbidden in Islamic law. Asy-Syaukani supports this argument by referring to a legal principle:

فإن الأصل في مال المسلم التحريم

"Basically, the wealth of a Muslim is forbidden (to be taken) "

From this rule, it can be understood that every Muslim's property cannot be taken except in a way that is permitted by Sharia. Taking someone else's property through bribery means violating this principle because bribery is a *haram* way³¹. This rule of law is supported by Surah al-Baqarah verse 188:

ولا تأكلوا أموالكم بينكم بالباطل

"And let not some of you eat of the wealth of others by unlawful means."

Asy-Syaukani in his commentary also mentions a relevant hadith:

لا يحل مال امرئ مسلم إلا بطيبة من نفسه

²⁹ Syafiq Riza Hasan, Teguh Dwi Cahyadi, & Farchan Mu'aziz, (2023) "Risywah Dalam Rangka Mengambil Hak," *Al-Majaalis: Jurnal Dirasat Islamiyah* 10, no. 2: 188–203, <https://doi.org/10.37397/amj.v10i2.300>.

³⁰ Al Mmam Muhammad al-Syaukani, (1994). *Terjemah Nailul Authar jilid VIII*, Semarang: Cv Asy syifa, p. 302

³¹ Ismi Wakhidatul Hikmah, (2022). "Bribery in Q.S. Al-Baqarah/2: 188 (Analytical Study of isma'na-Cum-Maghza)," *Pappasang Journal: Journal of Quranic Studies - Hadith and Islamic Thought* 4, no. 1: 79-91, <https://doi.org/https://Doi.Org/10.46870/Jiat.V4i1.156>.

"It is not lawful for a Muslim's property (to be taken) except with his consent"³².

For the person who commits bribery, there are two possible underlying intentions, and both are unacceptable in Islam: The bribe is taken to establish Allah's law. If the intention is true, this is not justified because he is paying for something that should be done by the judge without a bribe. It is the judge's duty to settle disputes without any unlawful reward. If the intention is true, this is not permissible because he is paying for something that should be done by the judge without injustice or injustice.

In both cases, bribery remains *haram*, both in the context of upholding the truth and supporting falsehood, because bribery violates the principles of justice and the sanctity of property in Islam.

3.2 Causes for Differences of Opinion

In *fiqh* studies, comparing the causes of differences of opinion is an aspect that needs to be addressed in comparative analysis. *Risywah*, in terminology, refers to the practice of giving money, goods, or the promise of something to certain individuals or groups with the aim of obtaining a certain benefit³³. This is necessary to understand the background that caused the difference in views between the two figures in this study. The issues in the research will be discussed in depth as needed.

In the case of judicial bribery, Yusuf al-Qaradawi has a different view from Asy-Syaukani. These two figures base their opinions on different arguments, so they understand this issue in different ways. Yusuf al-Qaradawi allows bribery under certain conditions, namely when a person demands his rights or eliminates injustice. However, this is only allowed after all legitimate efforts according to religion have been taken. In one incident, Yusuf al-Qaradawi quoted a hadith of the Prophet Muhammad which was used as evidence to allow bribery. As told, there was once a person who came out of the Prophet's house with something in his armpit. Apparently, the item was alms given by the Prophet. When Umar asked about the alms, the Prophet explained that it was a burning coal of hell. The Prophet gave the item because the person kept asking for it, while Allah forbade the nature of greed. From this incident, Yusuf al-Qaradawi understood that in an urgent situation, the Prophet himself was willing to give something even though the item was likened to coals of hellfire. So, in the context of bribery, he argues that bribery can be done in order to overcome injustice or obtain rights that are ignored³⁴.

In contrast, Asy-Syaukani is of the opinion that bribery is absolutely forbidden. For him, there is no *takhsis* in the case of bribery. He does not condone bribery in any situation, even to claim rights. He adheres to the generality of the hadith that forbids

³² Muhammad Zaki, (2014) "Kepemilikan Individu Menurut Islam," *Mizan; Jurnal Ilmu Syariah* 2, no. 1: 100, <https://doi.org/10.32507/Mizan.V2i1.136>.

³³ Yusron Ali Sya'bana, Asmuni, & Tuti Anggraini, (2023) "Dampak Ikhtikar & Risywah Dalam Perekonomian," *Jurnal Tabarru': Islamic Banking and Finance* 6, no. 1: 217–28, [https://doi.org/10.25299/jtb.2023.vol6\(1\).13287](https://doi.org/10.25299/jtb.2023.vol6(1).13287).

³⁴ Al-Qaradhawi, *Halal Wa Al-Haram Fi Al-Islam Terj: M. Tatam Wijaya*. p. 499

bribery absolutely. Ash-Shafiukani strongly criticized the view that there are exceptions in the matter of bribery, and he argued that the opinion that allows bribery is only based on reason without a strong evidence base.

The difference of opinion between Yusuf al-Qaradawi and Asy-Syaukani lies in the application of the concept of *takhsis* in the hadith related to bribery. Yusuf al-Qaradawi applies *takhsis* in certain cases in order to claim rights that have been neglected. In contrast, Asy-Syaukani argues that there is no *takhsis* in the matter of bribery; the law of bribery remains absolutely forbidden. Regarding the law of bribery, Yusuf al-Qaradawi is of the opinion that bribery is permissible if a person has done his utmost according to religious rules. In this case, he views that sin only applies to the recipient of the bribe (e.g. a judge), while the giver of the bribe is not subject to sin because it aims to save rights or eliminate injustice. On the other hand, Asy-Syaukani emphasizes that bribery is absolutely forbidden. Both the giver, receiver, and intermediary of a bribe are considered to go to hell without exception, regardless of the situation surrounding them.

Yūsuf al-Qardawi put forward an argumentative reason in addressing the law of bribery. According to him, in urgent conditions, forbidden things can become permissible, as the rule "Emergencies make forbidden actions permissible." This concept of "*dharuri*" is closely related to saving rights. However, as long as there is no real demand for rights, then the law of bribery remains *haram*. The current state of judicial complexity is also an important factor in allowing bribery in certain circumstances.

In contrast, Asy-Syaukani is of the opinion that there is no exception (*takhsis*) in the case of bribery. He said: "There is no *takhsis* for demanding rights by permitting the practice of bribery. So what is correct is that bribery remains absolutely forbidden, based on the generality of the hadith." This is supported by the Qur'anic verse in QS. Al-Baqarah [2:188].

3.3 Strongest Opinion

After conducting a comparison (*munaqasyah*) between the opinions of the two figures, the author concludes that there are two forms of views that are considered strong. In terms of Comparison of Evidence (*Adillah*) Asy-Syaukani's opinion is considered stronger in this regard, with the reason:

- Asy-Syaukani considers the practice of bribery to be absolutely *haram*.
- Allah curses the perpetrators of bribery, both the briber, the recipient, and the intermediary.
- There are no exceptions when it comes to claiming rights by allowing bribes.
- Asy-Syaukani's opinion has no criticism in terms of evidence.

In terms of relevance in the current context, Yusuf al-Qardawi as a contemporary scholar sees that the conditions of modern laws and regulations have changed compared to the time of Asy-Syaukani. Therefore, he proposes an exception to the law

in certain situations, especially in terms of demanding rights that are ignored. The reasons this opinion was chosen are:

- Yusuf al-Qardawi allows bribery in urgent conditions, if all maximum efforts allowed by religion have been made but still fail.
- The Prophet himself once gave something to a supplicant, although he called it a "burning coal of hell" because of the urgency of the situation.
- The general purpose of Islamic law is to realize the benefit by guaranteeing things that are emergency (*dharuriy*), necessity (*hajjiyat*), and refinement (*tahsiniyat*). Based on the rule *الضرورات تبيح المحظورات* ("The emergency permits prohibited acts"), bribery, which is originally prohibited, can be allowed in an emergency to claim rights and eliminate injustice.

According to Yusuf al-Qardawi, bribery is still considered *haram*, but in certain emergency situations it is allowed for those who claim rights, while the sanction of *haram* only applies to the recipient of the bribe or its intermediary, not the bribe giver. In terms of evidence, Asy-Syaukani's opinion which states that bribery is absolutely forbidden is the stronger opinion. However, in the current context, Yusuf al-Qardawi's opinion is more relevant to be applied in Indonesia. Factors that support Yusuf al-Qardawi's opinion in the Indonesian context include:

- The tradition of bribery has become culturally ingrained and is difficult to eradicate, despite reform efforts.
- Social conditions are diverse, so often the weak are further oppressed.
- There is a lack of awareness and honesty in society to recognize the merits of others, which makes bribery considered an effective way to fight for rights.

By considering the objective conditions of Indonesia, Yusuf al-Qardawi's opinion that allows bribery under certain conditions is taken as a solution that allows oppressed people to defend their rights.

4. CONCLUSION

Justice is such an important principle in Islamic law that it is called the foundation of all Islamic law. Therefore, Allah commands rulers and law enforcers as caliphs on earth to enforce the law fairly. Islamic law emphasizes the principle of justice and opposes bribery and collusion. The Prophet cursed the givers and receivers of bribes and those who intercede for them. According to the strongest opinion, bribery is permissible under certain conditions, namely to claim rights and eliminate injustice, after all maximum efforts justified by religion have been made. Based on the objectives of sharia (*maqasid sharia*) which consist of emergency needs (*dharuriyyat*), general needs (*hajjiyyat*), and refinement needs (*tahsiniyyat*), bribery in emergency conditions is permitted. The legal consequences of the practice of bribery in an effort to claim rights and eliminate injustice will be imposed on the recipient of the bribe and its intermediaries (agents). As for the bribe giver, there are no sanctions because his actions are to save his rights.

5. REFERENCES

Journals:

- Bahgia. (2023). *Risywah* Dalam Tinjauan Hukum Islam & Undang-Undang Tindak Pidana Sua. *Mizan; Jurnal Ilmu Syariah*, 1(2), 176. <https://doi.org/https://doi.org/10.32507/Mizan.V1i2.123>
- Choiri, B. S. (2017). *Risywah* Politik Dalam Perspektif Hanafiyah & Syafiiyah. *Fakultas Syariah & Hukum UIN Syarif Hidayatullah Jakarta*, 60. <http://repository.uinjkt.ac.id/dspace/handle/123456789/41483>
- Dery, T. (2002). Keadilan Dalam Islam. *Mimbar: Jurnal Sosial & Pembangunan*, 18(3), 337–350. <https://doi.org/https://doi.org/10.29313/Mimbar.V18i3.78>
- Fadli, M., & Iskandar,. (2022). Praktik Tindak Pidana Korupsi Dalam Peradilan Indonesia & Upaya Pencegahan Korupsi Oleh Penegak Hukum Di Indonesia. *Khazanah Multidisiplin*, 3(1), 64–81. <https://doi.org/10.15575/kl.v3i1.17170>
- Gunawan, G. (2018). Wacana Tafsir Tentang Ayat-Ayat Al-Qur`An Yang Berhubungan Dengan Korupsi. *Pascasarjana Institut PTIQ Jakarta: Program Studi Ilmu Al-Quran & Tafsir Konsentrasi Ilmu Tafsir Program*. <https://repository.ptiq.ac.id/id/eprint/43/>
- Harun, N. (2013). Makna Keadilan Dalam Perspektif Hukum Islam & Perundang-Undangan. *Jurnal Ilmiah Al-Syir'ah*, 11(1), 1–15. <https://doi.org/http://dx.doi.org/10.30984/As.V11i1.166>
- Haryadi, S. (2015). Reinterpretasi Tindak Pidana Korupsi Suap Oleh Penegak Hukum Dalam Perspektif Hukum Islam. *Al-'Adalah*, 12(1), 551. <http://dx.doi.org/10.24042/adalah.v12i1.233>
- Haryono. (2016). *Risywah* (Suap-Menyuap) & Perbedaannya Dengan Hadiah Dalam Pandangan Hukum Islam (Kajian Tematik Ayat & Hadis Tentang *Risywah*). *Al-Mashlahah Jurnal Hukum Islam & Pranata Sosial*, 4(7), 429–448. <https://doi.org/https://doi.org/10.30868/Am.V4i07.155>
- Hasan, S. R., Cahyadi, T. D., & Mu'aziz, F. (2023). *Risywah* Dalam Rangka Mengambil Hak. *Al-Majaalis: Jurnal Dirasat Islamiyah*, 10(2), 188–203. <https://doi.org/10.37397/amj.v10i2.300>
- Hikmah, I. W. (2022). Suap Dalam Q.S. Al-Baqarah/2: 188 (Studi Analisisma'na-Cum-Maghza). *Jurnal Pappasang: Jurnal Studi Studi Al Quran – Hadis & Pemikiran Islam*, 4(1), 79–91. <https://doi.org/https://doi.org/10.46870/Jiat.V4i1.156>
- Kertayasa, H., Guntara, D., & Garwan, I. (2022). *Risywah* Dalam Politik Menurut Perspektif Hukum Islam. *Prosiding Konferensi Nasional Penelitian & Pengabdian Universitas Buana Perjuangan Karawang*, 2(1), 315–330. <https://journal.ubpkarawang.ac.id/index.php/ProsidingKNPP/article/view/2478>
- Maulida, A., Hafidhuddin, D., Syafri, U. A., & Tamam, A. M. (2020). Tindak Pidana Korupsi Dalam Perspektif Hukum Indonesia & Pidana Islam. *Al-Mashlahah: Jurnal Hukum Islam & Pranata Sosial Islam*, 8(1), 43–67. <https://doi.org/10.30868/am.v8i01.677>
- Rangkuti, A. (2017). Konsep Keadilan Dalam Perspektif Islam. *Tazkiya, Jurnal Pendidikan Islam*, 6(1), 1–19. <https://doi.org/http://dx.doi.org/10.30829/Taz.V6i1.141>
- Samsudin. (2016). Analisis Pendapat Al Ghazali Tentang Kriteria Pemimpin Dalam Islam. *Universitas Islam Negeri Walisongo*, 49. <https://eprints.walisongo.ac.id/id/eprint/5699/>

- Sukadi, I. (2011). Matinya Hukum Dalam Proses Penegakan Hukum Di Indonesia, Risalah Hukum7. *Risalah Hukum*, 7(1), 39–52. [https://doi.org/10.25299/jtb.2023.vol6\(1\).13287](https://doi.org/10.25299/jtb.2023.vol6(1).13287)
- Sya'bana, Y. A., Asmuni, & Anggraini, T. (2023). Dampak Ikhtikar & Risywah Dalam Perekonomian. *Jurnal Tabarru': Islamic Banking and Finance*, 6(1), 217–228. [https://doi.org/10.25299/jtb.2023.vol6\(1\).13287](https://doi.org/10.25299/jtb.2023.vol6(1).13287)
- Tamam, M. H. B., & Nurita, A. (2023). Korupsi dalam Perspektif Hadis Imam Bukhari. *El-Nubuwwah: Jurnal Ilmu Hadis*, 1(2), 206–233. <https://doi.org/10.19105/elnuwwah.v1i2.9792>
- Tanjung, I. (2017). Pemberian Hadiah Kepada Pegawai/Pejabat (Tinjauan Hukum Islam & Undang-Undang Republik Indonesia Nomor 20 Tahun 2001. *Pascasarjana Universitas Islam Negeri Sumatera Utara*, 63. <http://repository.uinsu.ac.id/5374/>
- Zaki, M. (2014). Kepemilikan Individu Menurut Islam. *Mizan; Jurnal Ilmu Syariah*, 2(1), 100. <https://doi.org/10.32507/Mizan.V2i1.136>

Books:

- Abd. Muhsin, A. B. (2001). *Suap Dalam Pandangan Islam*. Gema Insani Press.
- al-Syaukani, al imam muhammad. (1994). *Terjemah Nailul Authar jilid VIII*. Cv Asy syifa.
- Al-Annawawi. (2008). *Shahih Muslim Bi Syarh Al-Nawawi*. Dar Al Kutb Al-Ilmiyah.
- Al-Asqallani, I. H. (2016). *Bulugul Maram Min Adillatih Al-Ahkam* (8 ed.). Jabal.
- Al-Murattib. (1992). *Mansuat Al-Sunnah Al-Kutb Al-Sittah Wa SyarhunaJuz XVIII*. Dar Sahnun.
- Al-Qaradhawi, Y. (2017a). *Halal Wa Al-Haram Fi Al-Islam, (Terj: M. Tatam Wijaya)*. Qalam.
- Al-Sais, M. A. (1953). *Tafsir Ayat Al-Ahkam, Juz II*. Mutba;Ah Muhammad Ali Sabin.
- Al-Syafi'i, A. M. A.-H. B. M. A.-F. A.-B. (t.t.). *Tafsir Al-Bagawi Al Musamma Ma;Alim Al-Tanzil Juz II*. Dar Al-Kutb Al-Ilmiyah.
- Ash-Shalaby, A. M. (2017). *Biografi Umar Bin Abdul Aziz*. Ummul Qura.
- Republik Indonesia, D. A. (2020). *Alquran & terjemah*. Pustaka Al-Kautsar.
- Umar, M. N. (2006). *Kaidah Fiqhiyyah & Pembaharuan Hukum Islam*. Yayasan WDC.