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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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LEGAL STATUS OF AKTOR'S FOR CORRUPTION (*In the Perspective of Islamic Law*)

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I. Introduction

Corruption is a universal problem faced by all countries and a thorny problem that is difficult to eradicate, it is not because the problem of corruption is not only related to economic issues alone but also related to political problems, the power, and law enforcement. In Indonesia "virus" attacking corruption continues to spread in all joints of social life. Even the latest trend of corruption is no longer carried out individually by the timid and furtive but in congregation, and is regarded as a 'reasonableness'. Corruption has been entrenched in the culture of which he is religious, so that the level of corruption in Indonesia has included systemic corruption.

Problems and challenges must be overcome, in particular the Islamic community who are the majority of Indonesian citizens. Ironically, the country that is predominantly Muslim and uphold the spiritual values have been ranked first as the most corrupt country in Asia and the slowest country out of the crisis than its neighbors; The tragic reality of the issue, a moral burden and responsibility that is not light. With corrupt person could collect the money in large enough quantities in a relatively short period of time. The culprit is not only high-level officials but also officials menggurita levels down even to the "top" of the people. This is illustrated by his grounded term drinking money, gas money, lubricants, administrative costs, and many other terms that actually belong to the illegal fees.

In the context of the broader Islamic teachings, corruption is an act that is contrary to the principle of justice (al-'adalah), accountability (al-trust), and responsibility. Corruption with all its negative impacts that cause various distortions on the life of state and society. Is a naive if ironic fact above inflicted upon Islam as a religion professed by the majority of the population. What needs to be scrutinized here is our religious orientation that emphasizes piety-formal ritual to ignore piety and moral-social individual. Religious models like this are difficult to prevent followers from bad behaviors (corruption).

This study aims to contribute ideas related to the concept of corruption and the legal status for the perpetrators of acts of corruption in the perspective of Islamic law, so that at

least the subject of reflection and a warning that corruption is a sin / damned, because the resulting adverse impacts for a community and a nation very big and serious.

II. Formulation of the problem

1. How is the view of Islamic law against corruption?
2. What is the legal status for the perpetrators of corruption according to Islamic law?

III. Discussion

Allah Islamic law prescribed for human benefit. Among the benefit to be realized with the law Syari'at is the preservation of the alienation of property that is not in accordance with legal procedures, and of their use that is not in accordance with the will of Allah. Therefore, the prohibition of stealing, robbery, pickpocketing, cheating and corruption, collusion and nepotism, is to maintain the security of property from unauthorized ownership.

Corruption is a legal phenomenon that is widespread in society. Progress continues to increase from year to year. Both of the number of cases and the amount of losses to the state and in terms of the quality of criminal offenses committed increasingly systematic and scope to penetrate all aspects of community life (Asmawi, 2010; 97-98).

Corruption from any standpoint clearly can not be justified. Therefore, corruption is wrongdoing. In Islamic law, sin or wrong deed called jinayah or - more appropriately called - "jarimah". Jarimah is prohibited by Personality ', as they may pose a danger to life, religion, property, descent, and resourceful. Jarimah can be threatened with punishment ta'zir or had ". The difference between had and ta'zir, had legal sanction provisions are already confirmed by NASS, while ta'zir execution of his sentence left entirely to the authorities.

What causes an act considered as a crime is none other because the act is very detrimental to the social order, or beliefs or possessions, reputation, honor, spirit, etc., all of which according to Islamic rules' should be maintained and respected and protected. A sanctions applied to violators of Personality 'in order for a person not easily do jarimah. Corruption is a profound disservice both to the individual, community, and country. Even the impact of corruption so widespread against public morals (al-al-karimah morality), life of the nation. Therefore, it is fitting that corruption in the positive law entered as 'extraordinary crime', an extraordinary crime.

Although corruption is clearly a wrong act and categorized jinayah or jarimah but clearly Personality 'do not mention the word' corruption 'in the texts of both the Qur'an and Hadith. Therefore, it is necessary to 'ijtihad' - for example - by using qiyas (analogy) to find the equation of corruption in the legal literature of Islam, with how see common elements-specifically his jarimah, and determine sanctions.

A. The concept of Anticorruption Legal Perspective of Islam

Etymologically, the word corruption comes from the Latin *is corruption* or *corruptus*; which comes from the word *corrumpere*, which is a Latin word older. From the Latin that then down to the European languages such as English, namely *corruption*, *corrupt*. In French, namely *corruption*, while in the Dutch language is referred to as *corruptie*. Of the Dutch language that may have been absorbed into the Indonesian namely *corruption* (Andi Hamzah, 2008: 4). *Corruptio* or *corruptus* word meaning damage or dilapidation that initially the public's understanding using language that comes from the Greek meaning corruption deeds are not good, treacherous, incorruptible, immoral, deviating from the purity.

In epistemologi, corruption is a form of crime against property. As a crime against the five basic pillars of human life, then this form of crime is categorized as *jarimah* should get penalized. As if by Islam; corruption is shown as a criminal act that is in principle contrary to the moral and religious ethics, therefore there is no term that explicitly states the terms of corruption. Thus, criminal sanctions for corruption is *takzir*, form of punishment which is decided based policies competent authority within a society (Munawar Fuad Noeh, 1997: 90).

Corruption itself is categorized in *Maliyah* crime, which has three elements; 1) their *tasharruf*, which is a legal act in the form of taking, receiving, and giving; 2) the element of betrayal of the public mandate in the form of power; 3) the losses incurred by the public or the public. Islam termed the corruption in some etymology according to the type or form of corruption that is done, including:

1. **Risywah** according to language is something that can deliver goal by all means so that these goals can be achieved. That definition is taken from the word meaningful *rosya* rope bucket used for wells. While *ar-raasyi* are people who give something to both parties to support the evil intent of his actions. Then *ar-roisyi* is a mediator or liaison between the bribe giver and the recipient of bribes, kickbacks while the receiver is referred to as *al-murtasyi* (Abu Fida 'Abdur Rafi', 2004: 3). It can be concluded that *risywah* is part of corruption relating to bribery to someone who has the power or authority so that the goal can be achieved or facilitate the objectives of the people who bribed him. One part of this form of corruption that have undermined the moral and justice structures in each line of public life. Because with bribery, fairness in legal proceedings can not be reached or can influence the decision of a judge in the nominal money can vibrate the faith of a law enforcement.

2. **Al-ghulul** is the act of embezzling state treasury or treasury or in the historical literature of Islam call to steal the spoils of war or in part to conceal owned before presenting it to the division. The word "ghulul" in the text of the hadith is a fraud, but in other sources interpreted that "ghulul" is embezzlement related to the state treasury or treasury (Abu Fida 'Abdur Rafi', 2004: 2) The act of including the *al-ghulul* category are:

- a) *Steal ghanimah (spoils of war)*
- b) *Darken the state treasury.*
- c) *Darken zakat.*

3. **Al-maksu** is the act of picking up the excise namely taking what is not his and give to that is not right anyway. This act is identified to the extortion that usually happens when someone would take care of something that was then charged a fee by the offender publican without the willingness of the people who picked them. As was mentioned earlier, that if the levy is not met by the victim, then the people's business will be compounded by the perpetrators of the publican. This is then called by al maksu (Abu Fida 'Abdur Rafi', 2004; 33).

B. Analysis of Islamic Law against Corruption

Islam revealed by God -Subhanahu wa Ta'ala- is to be a guide in structuring human life, both in the family, community, and state. No side is ignored (not governed) by Islam. Rules or concepts that are "binding" for everyone who are Muslims. One of the rules of Islam that is individualized, is looking for a life of halal sources. Islam teaches his people in order to earn a living life, should follow the path which is lawful and commendable in view of Personality. In the treasures of Islamic legal thought (fiqh) classic, corruption has not obtained an adequate portion of the discussion, when the jurists talk about crime-consuming human treasures incorrectly as forbidden in the Qur'an.

Although in Islamic literature does not explicitly contained the term corruption, as *ijtihad*, corruption can be categorized as a crime (criminal). Corruption is synonymous with abuse of office which is defined as a treasonous act in the perspective of Islam. Because the positions that have been carried by a person is a trust from the people who have already put her expectations. Or positions which are charged on behalf of the state that would aim to run a variety of programs geared towards the welfare of the people. Moreover, if the mandate that touches on the realm of law as an employee in the field of police, prosecutors, the judiciary, etc. based to justice is desired by all parties. Mandate that has carried that is certainly required to be implemented as well as possible. Allah Almighty says in several verses about *keajiban* execute the mandate;

Meaning: "O ye who believe, do not betray Allah and the Messenger (Muhammad), and (also) do not betray mandates entrusted on you, you know." (Qur'an, al-Anfal (8): 27)

Mandate of course is a belief that is required to be maintained and communicated to those who deserve it. Allah Almighty says:

Meaning: "Indeed, Allah orders you convey the message to those who deserve it, and (told you) if it establishes the law among men that you assign to the fair. Verily Allah gives his best teaching you. God is All-hearing, All-seeing." (QS. An-Nisa (4): 58.

The Qur'an explains the prohibition of bribery or corruption and also the words of the Prophet regarding the perpetrators of bribery, namely:

عَ وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ وَتَدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ
It means: "And do not sebahagian ye eat up the property sebahagian others among you with the falsehood and (do not) you bring the (affairs) the treasure to the judge, so that you can take sebahagian than the possessions of others with (the act) sin , In fact, you know. "(Qur'an, al-Baqarah (2): 188)

That is; O ye who believe, do not eat each other neighbor's property by way of vanity, except by way of commerce that goes with the same love-love between you. And do not kill yourselves; Verily Allah is Merciful to you. (Q.S. An-Nisa: 29)

لعنة الله عليه الرشى والمرتشى

It means: "Allah curse those who offer bribes and kickbacks" (HR. Ahmad, Abu Daud, Turmudzi, and Ibn Majah from Ibn Umar)

Corruption was categorized as acts of fraud (al-gasysy) which expressly accepted in those sayings by the Prophet that God forbid a haven for those who commit fraud. Messenger of Allah said: *"From Abu Ya'la Ma'qal ibn Yasar said: I heard the Messenger of Allah said:" a servant who was awarded a leadership position, then he is deceiving his people, God menghrmakannya enter Paradise. "(HR. Bukhari and Muslim)*

In another tradition as well accepted in those sayings about the corruption that is included in the category of fraud, namely:

غلول فهو ذلك بعد فرزقناه رزقا على اخذ فما استعملناه عمل من

It means: "Whoever that I have hired in a job, then I give her salary, then something is taken out of his salary yng it is a fraud (unlawful)."(HR. Abu Daud, Hakim of Buraidah (Hj. Khuzaymah Tahido Yanggo, 2005: 56)

When viewed more corruption somewhat akin to theft. It is when we see that the actors take and enrich themselves with the wealth that is not right. However, the offense of theft as jarimah hudud can not be analogous to a similar offense. Since there is no qiyas in matters of hudud. Because hudud is a form of punishment that have been standard on the concept in the Qur'an.

Then there is a difference between the offense of corruption and theft. In the crime of theft, stolen property as the object is beyond the power of the perpetrator and no relation to the position of the offender. While the corruption offense, the property as the object of a criminal act, is under his control and related degan notch actors. In fact, there may be proprietary rights in his corruption treasure. Given the possible perpetrators can have a share in the treasure dikorupsinya. Treasure under the authority of the offender and the stock is still possible to be in possession corruption, making

corruption offense has an element doubtful if it is referred to as the crime of theft (H.M Nurul Irfan, 2011: 135).

Because hudud identical to act with great threat, then any criminal sanction may be said very heavy. In case of theft is punishable by cutting off hands. Therefore, when a jarimah hudud has a doubtful element, required to be canceled. Fearing a mistake when the imposition of criminal sanctions. One expression and at the same time become a basic principle in the criminal sanctions that should be avoided with the hudud punishments because the element doubtful. Also the rules reveal that a better one in the freeing of the wrong in punishing.

So based on the above legal basis of the views and attitudes of the Koran against corruption is very firm that is haram, because it is included in the treasure-consuming fellow with a false path. Many of the arguments why corruption is strictly forbidden in Islam. Besides being in principle opposed to the social mission of Islam who want to uphold social justice and the welfare of the universe (*iqomatul-'is alijtimâ'iyah wal-mashlahatil-'amma*), corruption was also considered as an act of betrayal of the mandate received and vandalism are serious about building a system accountable. So corruption doktrinner Islamic law defined as a crime, because it includes al-ma'siyyah form of action, and is open to criminalized.

C. Sanctions towards corruption

In the perspective of Islamic law sanctions against perpetrators of corruption are applied varies according to the level of crimes. Starting from material sanctions, imprisonment, dismissal position, whip, suspending certain rights to the death penalty. Why is varied? Due to the absence qath nash "i pertaining to crimes of this one. This means that the sanctions law that regulates it is not a finished package of Allah SWT, which is ready to use. The sanctions in this case including sanctions ta 'zir, where a judge (the priest / leader) was given full authority to choose the course in accordance with the provisions of the Shari'a certain forms of sanctions are effective and in accordance with the conditions of space and time, in which the offense was committed.

Umar bin Abdul Aziz sanction set corrupt is bound and held in a very long time. Zaid bin Tsabit set sanction corruptors are restrained (prisons) or penalties begi pliers can be a lesson to others. While Qatada says his punishment is imprisoned (Al-Islami Bulletin, Issue 585: 3).

Jurists have divided the Islamic criminal offense to three groups, namely hudud criminal acts, criminal acts of murder, and the crime of takzir (jarimah). Corruption included in the group a criminal offense takzir. Therefore, the determination of sentence, the good kind. shape, and number syara' delegated to the judge. In determining the penalties against criminals, a judge must refer to the purpose of Personality 'in determining the sentence, the benefit of society, situations and environmental conditions, and circumstances of the criminals, so that the criminals would be a deterrent to corruption and the punishment it can also be a preventive measure for people other. Punishment for corruption during this time did not bring a deterrent effect. Therefore, it is important

there are thought to reconstruct the maximum punishment of the perpetrators of corruption was sentenced to death. In addition to encouraging the implementation of the maximum punishment that can presumably also suggested that corruption convicts sentenced to community service.

Indonesian Ulama Council even encourage judges Corruption Court sentenced the harshest to the big corruptors, even the death penalty. Related proposed the death penalty for criminals actually has delivered a number of agencies and anti-corruption activist whom can be found in the results of the National Council of Ulama Nahdlatul Ulama, expressed a similar fatwa. Jurists have agreed to say that acts of corruption are unlawful and prohibited. Because contrary to the *al-maqasid ash-Shariah*. As for the prohibition of acts of corruption can be viewed from various aspects, including the following:

1. Acts of corruption is cheating and fraud that directly harm state finances (public). Allah gave warning against cheating and fraud was avoided, as in his words, QS. Ali Imran: 161, and QS. Al-Anfal: 41).
2. Betraying the mandate was forbidden and sinful as confirmed by Allah in the Qur'an, Sura. Al-Anfal: 27 and QS. An-Nisa: 58). Both of these verses implies that betray the mandate of such acts of corruption for officials is haram forbidden anymore.
3. The act of corruption to enrich themselves from state property is an act wrongfully (persecution), because the wealth of the country is a treasure that is withheld from the public, including society who are poor and illiterate that their hard-earned, according to the Qur'an mail: Az -Zukhruf: 65.
4. Included in the category of corruption, the act of giving state property to someone because he wants to accept bribes from the facility. This act by the Prophet Muhammad. :
- "*Allah has cursed the people who bribe and accepting a bribe.*" (Ahmad bin Hanbal).

D. REPLY TO ACTOR'S OF CORRUPTION

It is not God forbid something, but behind it (definitely) contained evil and harm for the culprit. Similarly, the act of corruption, including:

- a) Perpetrators of corruption will be chained, or he will bring the results of corruption on the Day of Resurrection;
- b) The act of corruption to be the cause of humiliation and torment of hell fire on the Day of Judgment.

In a hadits the Prophet said:

Meaning: "... (because) the real ghulul (corruption) it is humiliation, disgrace and hellfire for the perpetrators".

- c) People who die in a state of bringing the treasure of corruption, are not guaranteed or shut out of heaven;

The Prophet said: *Meaning: "He split the spirit from the body (dead) in a state free of the three cases, then he (guaranteed) to go to heaven. That is vanity, ghulul (corruption) and debt."*

- d) A treasure of corruption is forbidden, so that God does not accept shodaqah of treasure corruption and became one of the causes his In conclusion prayer; Hadits of the Prophet: *Meaning: "Prayers will not be accepted without purification and Sadaqah is not received from property (corruption)".*

IV. CONCLUSION

Interest derived and his held Shari'a or Islamic law is to realize human welfare, the happiness in the world and in the hereafter as well, which is to be the "protector" mercy for the worlds (Q.S. Al-Anbiya ': 107). The benefit is realized by means of "taking advantage and resist damage". That should by or maintenance rests on five things, *al-maqasidu principles of Shari'ah* which include the protection of religion, life, intellect, lineage and property.

Based on Islamic law; views and attitudes towards corruption is very firm that is "haram", because it is included in the treasure-consuming fellow with roads that are not "haq" (false), because of corruption in principle opposed to the social mission of Islam who want to uphold social justice and the welfare of the universe (*iqomatul-'is alijtimâ 'iyyah wal-mashlahatil-'Ammah*). Corruption is also considered as an act of betrayal of the mandate received and vandalism are serious about building an accountable system, and the resulting mass suffering, and doktrinner Islamic law defined corruption as a criminal offense (jinayah), because it includes al-ma'siyyah form of action. In Islamic law, sin or wrongdoing referred jinayah or - more appropriately called - "jarimah". That is an act that is prohibited by Personality ', as they may pose a danger to life, religion, property, descent, and resourceful. Jarimah can be threatened with punishment ta'zir or had ". The difference between had and ta'zir, had legal sanction provisions are already confirmed by NASS, while ta'zir execution of his sentence left entirely to the authorities. Including hukumanya shape both in quantity and quality.

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