

MAQASHID ASY-SYARI'AH REVIEW ON FORMER CORRUPTION CONVICTS AS PROSPECTIVE LEGISLATIVE MEMBERS

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Abstract. Corruption convicts in Indonesia have been considered to enjoy much special treatment rather than being sentenced to maximum finalty. They were given punishment periodreduction and allowed to be legislative members after released form prison. However, study on corruption convicts as prospective leagislative members from maqashid asy-syariah is scares. This paper, therefore, discusses the *maqashidasy-syari'ah* study of former corrupt convicts as candidates for legislative members. Specifically, it tries to dissect the reasons why corrupt convicts are allowed to become candidates for members of the legislature and examine the *MaqashidAsy-Shari'ah* regarding the permissibility of corrupt convicts to become candidates for legislative members. By using a literature study approach. The results of this study indicate that it is permissible for former corrupt convicts to nominate themselves as legislature members. Based on the large value of *masalahah* contained when it is allowed for former corrupt convicts to re-run as legislative members representing electoral districts where the community has been harmed and betrayed by the ex-convicts. This benefit is not only in the position of ex-convicts as individual Muslims or as individual citizens, but the benefits include the stability of the culture of social life in society and the maintenance of a legal system that is following ideal legal as well as in the context of realizing the principles of justice in society.

Keywords:Corrupt Convicts, Legislative Members, *Maqashid Ash-Syari'ah*.

Abstrak. Tulisan ini mencoba untuk mendiskusikan mengenai telaah maqashid asy-syari'ah terhadap mantan narapidana koruptor sebagai calon anggota legislatif. Secara spesifik mencoba membedah alasan narapidana koruptor dibolehka nmenjadi calon anggota legislatif dan telaah Maqashid Asy-Syari'ah mengenai dibolehkan narapidana koruptor menjadi calon anggota legislative. Dengan menggunakan pendekatan study literature. Hasil penelitian ini menunjukkan bahwa dibolehkannya mantan narapidana koruptor mencalonkan diri sebagai anggota legislative dikarenakan besarnya nilai masalah yang terkandung apabila dibolehkannya mantan

narapidana koruptor untuk kembali mencalonkan diri sebagai anggota legislative yang mewakili daerah pemilihan di mana masyarakatnya pernah dirugikan dan dikhianati oleh sang mantan narapidana. Kemaslahatan ini, bukan saja pada posisi mantan narapidana sebagai individu umat Islam ataupun sebagai individu warga Negara tetapi kemaslahatan mencakup stabilitas kultur kehidupan social masyarakat dan penjagaan system hukum yang sesuai pada cita hukum ideal sekaligus dalam rangka mewujudkan prinsip-prinsip keadilan di dalam masyarakat.

Kata Kunci: Anggota Legislatif, Maqashid Asy-Syari'ah, Narapidana Koruptor.

Introduction

This research departs from the polemic that occurred during the existence of the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu), both of which are electoral institutions. The three functions carried out by Bawaslu include a legislative function, where Bawaslu can make regulations that apply internally and externally, for example, regulations regarding dispute resolution, and executive functions, namely the primary function of Bawaslu to carry out supervision. The enforcement authority is in some respects close to the judicial function, especially in dispute resolution, and this function is the existence of Bawaslu as an election supervisory body.¹

Prohibition of ex-corruptor convicts from running as Legislative Members after the discussion of KPU Regulation Number 20 of 2018 article 4 regarding the nomination of the People's Representative Council, Provincial Regional Representative Council, and Regency/City Regional People's Representative Council, which became a centralized issue in facing preparations for the 2019 general election.² The reason is that the regulation issued by the

¹Gunawan Suswanto, *Mengawal Penegak Demokrasi; Di Balik Tata Kelola Bawaslu & DKPP*, (Erlangga, 2016), 179.

²See <http://M.Tribunnews.Com> Tribun News "PKPU Nomor 20 Tahun 2018: Mantan Koruptor Resmi Tak Boleh Nyaleg" 30 Juni 2018 through Official website.

KPU as an election management body has received mixed responses because it bypasses a higher law, namely Law No. 7 of 2017 on elections.³

KPU commissioner Ilham Saputra stated that the KPU's actions to prohibit former corruptors from becoming legislative candidates were part of the KPU's efforts to run an anti-corruption government, collusion, and nepotism. Contrary to the KPU, while at the same time strengthening the presence of Bawaslu, the Minister of Law and Human Rights, Yasonna Laoly stated that ex-convicts who have served sentences of five years or more can become legislative candidates, as long as they announce the legal cases that have ensnared them to the public.⁴ KPU reasons to the public are limited to the ideals of the KPU as an independent commission that maintains the election dignity. This is to ensure that the election is carried out ideally. All forms of authority as election organizers are the KPU's right to consider the future of Indonesia, even without considering the higher provisions above.

This dispute between the two electoral institutions is not the first time. Although previously, in December 2013, a poll conducted by Kompas expressed public dissatisfaction with the quality of the election organizers, the results showed that 52.7% of respondents were dissatisfied with the performance of the KPU.⁵ This dissatisfaction stems from the tension in relations between the two institutions. In addition, determining the electoral district also creates controversy between the KPU and Bawaslu. The KPU had crossed out seven electoral districts of four political parties that did not meet the requirements for women's representation. However, after the parties complained to Bawaslu, their rights were restored, and the parties also had the right to contest in the seven electoral districts the previous KPU crossed out.⁶

³Undang Nomor No. 7 tahun 2017 tentang pemilu pasal 240 ayat (1) huruf g

⁴See [Http://Bbc.Com](http://Bbc.Com), BBC News "Mahkamah Agung Bolehkan Eks Koruptor Menjadi Caleg".

⁵Gunawan Suswanto, *Mengawal Penegak Demokrasi; Di Balik Tata Kelola Bawaslu & DKPP*, Erlangga, 2016, 180.

⁶ibid, 180.

Still, when facing the feud between the two institutions, the KPU objected to the political product in its action. The KPU finally filed this lawsuit to the Supreme Court on July 9, 2018, and even then became the umpteenth discussion within the judiciary, either the Supreme Court or the Constitutional Court. Based on the absolute competence of the Supreme Court, which has the authority to examine the regulations against the above Act, it produces results that can be known together. Through the decision number 46 P/HUM/2018, the Supreme Court finally rejected the KPU's judicial review lawsuit because it was not proven to have violated the relevant law.⁷ Consequently, the KPU must accept the existing provisions regarding permitting former corrupt convicts to nominate themselves as members of the legislature.

Lord Actonry states that power tends to be misused, power tends to corrupt, but absolute power is absolutely corrupt. Likewise, Peter Merkl, quoted from the book *Basics of Political Science*, Miriam Budiardjo, formulated that politics at its worst is a selfish grab for power, glory, and riches. In short, politics is a struggle for power, throne, and property.⁸ Then power tends to be misused despite many still run ideally and professionally.

However, as a state of law (*Rechstaate*) all activities and abuse of authority are regulated hierarchically in the state constitution, as a guarantee that Indonesia is a legal state that prioritizes justice and legal certainty while guaranteeing the rights of every individual in carrying out their obligations as citizens who pay taxes. According to Jimly Asshiddiqie, in understanding the rule it is the law that holds the highest command in the administration of the state. All following the principles of the rule of law and the power exercised by law itself.⁹

⁷Uji materil terhadap UU No. 7 tahun 2017 tentang pemilihan umum, Undang-Undang No. 12 tahun 2011 tentang pembentukan peraturan perundang-undangan dan UU Nomor 12 tahun 1995 tentang pemasyarakatan.

⁸Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia Pustaka, 2010), 16.

⁹Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika, 2014), 57.

Islam as a religion also has normative teachings and rules related to anticipating the actions of its people who deviate from acts of abuse of power, violating the mandate, and corrupt practices.

Islamic concerns regarding trust have been regulated beforehand, not to mention the sources of Islamic law under the Qur'an, which regulate the issue of betrayal of trust, abuse of authority, corruption, and the like. Even though corruption has occurred since the Prophet and his companions era, but the form of sanctions and the impact after law enforcement needs to be explored.

Today's corruption has taken root, especially if former corrupt convicts are running again as candidates for legislature members. The irony again. The majority of corruptors are religious people who should believe in religious teachings. Yet, there is no single religion that legalizes corrupt practices. Muslims' religious values have been built on fundamental principles that have become the norm of life in religious postulates. However, as humans, we need to look more wisely, religious teachings do not deny the concept of repentance and forgiveness in a *qath'i* manner. Moreover, Islamic law considers aspects of life by prioritizing justice because it is human nature to make mistakes. But what needs to be seen later is how Islam as a religion that is *rahmatan lil alamin* treats its people as former corrupt convicts to be allowed to run again as members of the legislature.

Research Methodology

Departing from the problems above, the researcher tries to dissect why corrupt convicts are allowed to become candidates for legislative members and how *Maqashid Asy-Shari'ah* studies allow corrupt convicts to be candidates for legislative members. First, this study uses a literature study because the materials and data in its preparation use books and journals related to the study of *maqashid ash-syari'ah* on former corrupt convicts as candidates for legislative members. The method used is a qualitative study with descriptive-analytical

design. Data from various sources were analyzed using thematic approach¹⁰. From the data analysis we found some themes of maqasyid syariah perperspective on corruption convicts as prospective legislative members.

Result and Discussion

Concept of Maqasyidasy-syari'ah

Etymologically, *Maqāshid As-Syari'ah* is a combined term of two words, namely: *Maqāshid* and *As-Syari'ah*.¹¹ *Maqasid* is the plural form of *maqṣad* or *maqṣid*, which is a derivation of *qaṣada-yaqṣidu-qaṣdan* which means intending or wanting.¹² *As-Syari'ah* is the origin of *syar'a-yasyra'u-syar'an*, which means the road to the spring.¹³ On the other hand, in *fiqh* terminology *As-Syari'ah* means the laws prescribed by Allah for His servants.¹⁴

In terminology, *Maqāshid As-Syari'ah* is the norm for establishing law.¹⁵ It is explained in the book *Al-Muwāfaqāt* by Imam As-Syātibī (w.790 H/1388 AD) that sharia is established to create or realize a benefit for humans in this world and hereafter.¹⁶ Thus, the ultimate goal of *Maqāshid As-Syari'ah* is the benefit.¹⁷

Maslahat comes from the root word *salaha/shaluha-yashlahu-shulāhan* meaning good and *maslahat* means benefit or benefit.¹⁸ *Maslahat* also means a job

¹⁰Rusli, R., & Nurdin, N. (2021). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. doi:10.1007/s10639-021-10779-7.

¹¹Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Al-Aqalliyāt dan Evolusi Maqāshid As-Syari'ah dari Konsep Pendekatan*, (Yogyakarta:Lkis, 2010), 178.

¹²Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia* (Yogyakarta: Pustaka Progresif, 1997), 1123.

¹³Ibid., 711.

¹⁴Dozan, Wely. "Hermeneutika Versus Maqashid (Tafsir Maqashidi) Sebagai Gerakan Membumikan Tafsir Al-Qur'an." *El-Afkar: Jurnal Pemikiran Keislaman dan Tafsir Hadis*, 10.1 (2021): 1-21.

¹⁵Galuh Nasrullah Kartika Mayangsari R dan H. Hasni Noor, "Konsep Maqashid Al-Syariah dalam Menentukan Hukum Islam (Perspektif Al-Syatibi dan Jasser Auda)," *Al-Iqtishadiyah*, Vol. 1 No.1 (Desember 2014), 51.

¹⁶AbūIshāq As-Syātibī, *Al-Muwāfaqāt Fī Uṣūl Al-Syari'ah*, (Beirut: Dar Al-Kutub Al-Ilmiyah, 2004), 28.

¹⁷Ika Yuliana Fauzia dan Abdul Kadir Riyadi, *Prinsip Dasar Ekonomi Islam Perspektif Maqāshid As-Syari'ah*(Jakarta: Kencana, 2014), 45.

¹⁸Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia...*, 788-789.

that contains benefits. Meanwhile, *mudarat* comes from the word *darra-yaḍurru-ḍurran*, which means to harm or bring harm.¹⁹ Al-Jurjani defines *mudarat* as an unavoidable calamity.²⁰ *Mudarat* also means damage or actions that can damage.

The prohibition of this destructive act is based on the arguments contained in the Qur'an. In Tafsir Jalālain the destruction on land is exemplified as the cessation of rain and the reduction of vegetation, while the damage at sea is in the form of drying up of rivers due to human actions.²¹ In another commentary written by Quraish Shihab the meaning of *al-fasada* is opposite to the word *assalah* which means benefit or useful. This verse implies that the destruction that occurred could have even worse implications. Violations committed by humans cause imbalance on land and at sea. In contrast, this imbalance results in Allah's warning to humans. Thus, the more environmental damage, the greater the bad impact on humans.²²

Imam Al-Gazāli, in formulating the principle of benefit, is to take a benefit and reject harm to maintain the goals of *syara'*.²³ The purpose of *syara'* includes five basic principles, namely religion (*din*), soul (*nafs*), reason (*'aql*), offspring (*nasl*), and property (*māl*).²⁴ Meanwhile, based on the priority scale, Al-Gazāli distinguishes the above principles into three levels, *ad-darūriyyāt* or primary goals, *al-hajjiyyāt* or secondary goals, and *at-tahsīniyyāt* or tertiary goals.²⁵

Provisions for Former Corrupt Convicts as Candidates for Legislative Members in Positive Law

¹⁹*Ibid.*, 818.

²⁰Ali Bin Muhammad Al-Jurjani, *At-Ta'rifat* (Publisher: Dar Ar-Riyan, 1973), 180.

²¹Jalāluddīn Al-Maḥalli dan Jalāluddīn As-Suyūṭī, *Tafsīr Al-Jalālain*, (Beirut: Dar Al-Kutub, 2012), 286.

²²M. Quraish Shihab, *Tafsīr Al-Mishbah: Pesan, Kesan dan Keserasian Al-Quran* (Jakarta: LenteraHati 2006), 78.

²³Nasrun Harun, *Uṣūl fiqh 1* (Jakarta: Logos Publishing House, 1996), 114.

²⁴A. HalilThahir, *Ijtihad Maqasidi: Rekonstruksi Hukum Islam Berbasis Interkoneksi Maslahat*, (Yogyakarta: LkiS, 2015), 40.

²⁵*Ibid.*, 39.

The state should pay attention to, protect and fulfill the basic rights of individuals and their citizens (to respect, protect and fulfill the citizen's constitutional rights and the human right). By doing so, social and political humanitarian activities can be carried out properly, and the state's goals can be achieved. achieved according to his goals. Indeed, normatively sovereignty is in the hands of the people. This means the people have the right to vote and be elected citizens. Therefore, participation in political activities is a real form of being a citizen.

Concerning the prohibition of former corrupt convicts from running for legislative members by the KPU in KPU Regulation Number 20 of 2018 article 7 paragraph (1) point g: prospective members of DPR, Provincial DPRD, and Regency/City DPRD are Indonesian citizens and fulfill the following requirements: has never been a convict based on a court decision that has obtained permanent legal force which is threatened with imprisonment of 5 (five) years or more based on a court decision that has permanent legal force.²⁶

Legal provisions issued by the KPU are contrary to the Election Law, which is hierarchically higher than the KPU Regulations as an Independent Commission. In the Indonesian legal system, regulations under the Constitution and the 1945 Constitution must reflect the principles of conformity and justice as reflected in the supreme constitution. Therefore, the KPU regulations are not in line with the Election Law, which reflects the principles of justice for individual Indonesian citizens.

Regulations regarding the permissibility of ex-corruption convicts to nominate themselves as legislature members are necessary. This form of political activity departs from the current real conditions that require regulation in safeguarding the rights of citizens so as not to exceed the limits of humanity and justice, as contained in the Law. Law No. 7 of 2017 concerning

²⁶KPU Regulation Number 20 of 2018 Article 7 Paragraph (1) Point G Concerning the Nomination of Members of the People's Representative Council, Provincial People's Representative Council, and Regency/City Regional People's Representative Council.

elections states that: "Prospective candidates for members of the DPR, Provincial DPRD and Regency/Municipal DPRD are Indonesian citizens and must meet the requirements of never being sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime that is threatened with imprisonment. imprisonment of 5 (five) years or more, unless openly and honestly state to the public that the person concerned is a former convict."²⁷

However, in terms of the previous norm, which allowed prisoners to run for legislative members, it must be based on the following limitations:

1. Not valid for elected officials,
2. Valid for a limited period only for 5 (five) years from the time the convict finishes serving his sentence,
3. Exceptions are made for prisoners who openly and honestly state to the public that they are ex-convicts,
4. Not as a repeat offender.

The article indicates that the rule regarding the exception to permitting former corrupt convicts to run for the legislature is a consideration that policymakers have accommodated. However, where it does not violate the principles of the law that is higher above it, considering the aspects of life that are affected by the legislative product, as stated in the explanation of the 1945 Constitution, if you want to understand a State Constitution, it is not enough just to read the text and its explanation. Behind the mysticism/psychiatric atmosphere of the Constitution. The regulations issued do not deviate from the philosophy of the 1945 Constitution as the supreme law commander of the state.

The Indonesian state does not revoke the rights of citizens in absolute terms. However, the State of Indonesia, as a country with a fundamental norm summarized from the five principles of life, namely, divinity, humanity, unity, deliberation, and social justice, has guaranteed the legal rights of every citizen.

²⁷Article 240 paragraph (1) letter g of Law no. 7 years 2017.

If you look at it explicitly, starting from the preamble of the 1945 Constitution to the body and the legislation under it, there is a lot of attention to human rights. For example, the first paragraph states that "independence is the right of all nations and because of that, colonialism in the world must be abolished because it is not following humanity and justice". This shows great acknowledgment of freedom, humanity, justice, and no exploitation or restraint of rights between human beings. Likewise, the 3rd and 4th chapters guarantee independence, justice, and free national life.²⁸

The guarantee that is very urgent in this discussion is also contained in the fourth paragraph, which pays attention to the protection of human rights in the social, political, economic, and educational fields. Where has the main idea that the State is based on the divinity of the One and Only according to just and civilized humanity. This proves that religion and moral ethics are upheld to maintain human dignity and get the right fit in social life.

In addition, there are many guarantees for the rights of citizens in the body of the 1945 Constitution. Their provisions put forward the principles of kinship, cooperation, social justice, belief in God and not too individualistic as the ideals of the Pancasila State.

Position, Rights, and Obligations of Former Corrupt Convicts in Positive Law

1. Position of Former Corrupt Convicts

A person who has carried out or has finished undergoing a criminal sanction, then that person returns to the midst of society to become an ordinary person, and his rights are restored as before, and obtain the same legal rights as other citizens after going through the prescribed sentencing process. Because Indonesia is a state of law, all mistakes are punished in the context of realizing justice and legal certainty itself. For this reason, people's sovereignty will only work well if it is based on a fair law that allows all citizens to agree that every violation has sanctions mutually.

²⁸Azhary, *Negara Hukum Indonesia*, (Jakarta: UI Press, 1995), 88.

Sovereignty in the hands of the people and implemented according to the law is an affirmation that democracy is a paradigm, not independent. Still, the built paradigm must be guarded and even based on legal values so that democratic products can be controlled normatively by the legal paradigm. The concept of the ideal of the rule of law is always realized and developed following the conditions of society. Everyone gets the same treatment as the fulfillment of the rights of citizens and individual rights to get balanced treatment, proper treatment, and proportional treatment which will lead to true justice.

The post-reform laws and regulations have given full sovereignty in the hands of the people to elect their regional leaders directly. Therefore, people will know who is elected and who is not elected. If someone has been guilty and did not contribute to his area, that person will not be elected as a leader. However, this does not mean that someone who has been found guilty based on a court decision with permanent legal force cannot participate actively in the regional head election or as a representative of the people in the legislature. The law must not discriminate by limiting everyone's opportunities because of actions that someone has carried out, let the people's sovereignty decide.

2. Rights and Obligations of Corrupt Convicts as Indonesian Citizens

The highest hierarchy, as in the 1945 Constitution, guarantees rights and positions before the law for all Indonesian citizens. That is:

- a. Equality in law and government must uphold the law and government without exception.²⁹
- b. The right to work and a decent living for humanity.³⁰
- c. The right to defend the country, including its obligations.³¹
- d. Right to receive teaching.³²

²⁹Undang-Undang Dasar 1945 Pasal 27 ayat (1).

³⁰Undang-Undang Dasar 1945 Pasal 27 ayat (2).

³¹Undang-Undang Dasar 1945 Pasal 30.

³²Undang-Undang Dasar 1945 Pasal 31 ayat (1).

- e. Freedom to embrace their respective religions and worship according to their respective religions.³³
- f. Freedom of assembly, association and expression.³⁴
- g. Social welfare rights for the poor and abandoned children.³⁵
- h. The right to do business in the economy.³⁶

Many human rights in the constitution are given to citizen. The guarantee of position applies to everyone without exception, especially those who have committed a criminal act of corruption. There is no distinction between people who have been convicted because their status is back to being free and independent. Because as a state of law we need time restrictions so that discrimination does not apply arbitrarily and continuously.

The 1945 Constitution, as the highest constitution, has regulated the basic rights of citizens related rights in articles. This proves that the State has obligations and responsibilities to protect and fulfill the fundamental rights of every citizen.

As a state of law that upholds the norms of law and justice, a person cannot be punished without going through a fair legal procedure. Furthermore, there is a prohibition on nominating someone to become a member of the DPR/DPRD because they have been convicted of a criminal act of corruption, which is an arbitrary rule. This means that the legislators punishing someone indefinitely and prohibiting people who have been convicted are unconstitutional acts.

Every ex-convict has rights and obligations, including participating in being part of a citizen who obeys all the legal provisions and accepting the consequences of punishment if they deviate from the legal norms.

³³Undang-Undang Dasar 1945 Pasal 29 ayat (2).

³⁴Undang-Undang Dasar 1945 Pasal 28.

³⁵Undang-Undang Dasar 1945 Pasal 34.

³⁶Undang-Undang Dasar 1945 Pasal 33.

In addition, ex-convicts have the right to participate again as citizens after going through punishment for their actions. With the rights annulled by Article 28C paragraph (2) of the 1945 Constitution, everyone is competing in building the community, nation, and state in a fair and law-based way. The constitution also guarantees the right of everyone to fight for themselves collectively to build society so that ordinary people and ex-convicts have the same rights in the development of the Indonesian nation, one of which is to become people's representatives. Because there is no guarantee that someone who has never been convicted will be able to lead the area in a fair, clean, and prosperous manner, there is no guarantee that ex-convicts will commit crimes forever.

However, in this case, the norm that allows prisoners to run for legislative members is based on clear boundaries. Among them: Not valid for elected officials; Valid for a limited period only for 5 (five) years from the time the convict finishes serving his sentence; except for prisoners who openly and honestly state to the public that the person concerned is an ex-convict; Not as a repeat offender.

In addition, ex-convicts who want to run as legislature members have passed the obligation of coaching at the Correctional Institution. As the philosophy that prisons educate people to be good people, no longer punish the person, torture the person so that they are deterred, but so that the person becomes aware and when the individual to life in the community could become a good citizen. As article 1 paragraph (2) of Law no. 12 of 1995 concerning correctional institutions: "The correctional system is an order regarding the directions and boundaries and the method of fostering Correctional Inmates based on Pancasila which is carried out in an integrated manner between the coaches, those who are fostered, and the community to improve the quality of Correctional inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted again

by the community, can play an active role in development, and can normally live as good and responsible citizens.³⁷

The philosophy of prisons is clearly following the goals and philosophy of punishment outlined in Article 54 of the Criminal Code³⁸:

1. Sentencing aims to:
 - a. Preventing the commission of criminal acts by enforcing legal norms to protect society.
 - b. Socializing convicts by conducting coaching so that they become good and useful people.
 - c. Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society, and
 - d. Release the guilt of the convict.
2. Sentencing is not intended to suffer and demean human dignity

So, if the goals and philosophy of punishment have not been achieved, then what needs to be improved is the criminal system itself.

Maqashid Al-Syariah's Study on the Permissibility of Former Corrupt Convicts to Run as Legislative Members

Maqasyid al-Syariah has a goal in enforcing a law, none other than for the benefit of humanity. Therefore, it is permissible for former corrupt convicts to nominate themselves as members of the legislature because of the magnitude of the *maslahah* value contained if it is allowed for former corrupt convicts to re-run as members of the legislature representing electoral districts. This benefit is not only in the position of ex-convicts as individual Muslims or as individual citizens, but the benefits include the stability of the culture of social life in society and the maintenance of a legal system that follows legal ideals as well as in the context of realizing the principles of justice in society.

³⁷Undang-Undang No. 12 Tahun 1995 tentang Lembaga pemasyarakatan pasal 1 ayat (2).

³⁸Kitab Undang-Undang Hukum Pidana Pasal 54.

To realize the overall benefit, there are core values in Islamic criminal law that must be returned to former corrupt convicts and their community, including:

1. As the creation of divine and human justice.

Allah treats all his servants in the same condition. The only difference is the righteousness of each servant, regardless of whether a servant ever made a mistake. If someone repents of an error and then shows his faith in Allah, then Allah will forgive and accept the repentance of the one who has sinned. In addition to vertical justice, horizontal justice must also be cultivated for the people who live in ex-convicts' environment, that's how ex-convicts should be held accountable for their actions ethically and morally by apologizing and admitting their mistakes in front of the community. It is not an easy word, it requires courage, mentality, and bias just such a big shame. However, this will be better if the system can restore the social rights of the people who have been injured so that it will become a preventive effort in the future. Growing individual and community awareness that the world's life is a test must be accounted for in the afterlife. Suppose this is realized as part of the teachings of the *Shari'ah*. In that case, awareness will grow from the most minor layers of society to remind each other, monitor, and prevent deviant acts prohibited by religious law.

2. As the creation of universal humanity

As an effort to remind that the main characteristics of Islamic law prioritize humanity, justice, equality, love and compassion between human beings, as expressed by NurcholishMadjid that ..." the law in the Qur'an contains elements of toughness in upholding justice, as well as gentleness in the spirit of humanity. '. So that society can control and straighten people's lives in the future, which does not intend to destroy the individual freedoms of ex-convicts and their families, but controls it for the benefit of the community, including by

providing a second chance in carrying out the same mandate, with more vigilant control and the principle of prudence.

3. Removal of worldly sins

In Islam there is no known term for ex-convicts. Because in Islam if someone is aware of committing a mistake and has carried out sanctions or punishments, the overall status of a person returns to zero. That is, a person who has passed the period of retaliation for his actions will have the same status as an ordinary human being who has been freed from his sins.

In this context, the status of ex-convicts in positive law becomes the status of ordinary people who are equal to the whole community. Moreover, there is no more negative stigma related to past mistakes because Islam respects the personal rights of every human being. The ex-convicts are Muslims who realize that every Islamic teaching calls for goodness and forbids evil.

Concerning the context of ex-convicts, when someone wants to run as a member of the legislature but has been caught in a criminal case, especially a corruption case, then one of the provisions is to announce to the community and the public as a whole that the person concerned has experienced a crime as stipulated in positive law, what form of crime was carried out, the sanctions imposed and the length of time for carrying out the sanctions, as well as what efforts were made to atone for past mistakes. It aims to convince the public that he desires to erase worldly sins.

4. As an embodiment of human responsibility in all forms of action

Looking at the concepts required by law, the researchers looked at the concept of repentance contained in the highest sources of Islamic law. Where has substantive and philosophical power for all human beings. Repentance is one of the paths specified in the Qur'an for people who want to admit their mistakes and return to intending to become human beings who leave all their sins and mistakes and improve themselves for the better, according to religious guidance.

As a religion that is *rahmatanlilalamin*, Islam determines the principles that a leader must be Muslim, intelligent, and capable of law. In this case, the members of the DPR are the people's representatives with the contract that the representatives of the candidates for DPR members are people who come from the community who propose, in line with the community's social order.

Based on the Qur'an, open acknowledgment of the concept of Repentance in Islamic Law is an attempt to find a law that is philosophically a similar event that has been determined in the Nash Al-Qur'an, which later became one of the sources in producing a law. The concept of repentance put forward in the Qur'an is a solution to supporting someone who has made mistakes in the past, as the Qur'an has given special attention to repentance.

Al-Qur'an, as the highest source of law, clearly accommodates repentance. According to Al-jurjani quoted by Nurul Irfan, the indication of *taubatannasuha* is a feeling of regret in the heart, *istigfar* (asking for forgiveness) verbally, intending to withdraw from sin by limbs and promise not to repeat the sin.³⁹

In line with this, Imam Nawawi in Syarh sahih Muslim stated that repentance has three conditions; must absolve himself of the disobedience, must be sorry for the disobedience he has committed, and must promise not to carry out the same disobedience forever. Furthermore, if the sin is related to individual rights, a fourth requirement is added: returning the right to the owner or asking for his sincerity. If it is related to collective and community rights, it can be transferred instead by establishing a prayer room, school, or hospital.⁴⁰

Based on these considerations, the concept of repentance is a reason for forgiveness for former corrupt convicts in Indonesia. However, with the precautionary principle, the implications of allowing former corrupt convicts to

³⁹Nurul Irfan, *Korupsi dalam hukum pidana Islam*, (Jakarta: Azah, 2014), 160.

⁴⁰Ibid. 161.

become candidates for legislative members need to be limited by the following provisions:

- a. Former corrupt convicts have repented and announced to the public.
- b. Ex-convicts who will run for office have an interval of at least 5 (five) years in running for the legislature with permission and recommendation from leaders and the public.
- c. Former convicts are people who are proven to have become part of the community as evidenced by authentic validation from the community that the person concerned is aware of past actions and has shown changes in the future so that the representation of candidates for legislative members is a proposal from the regional community representatives to represent the voice of the community.
- d. There is supervision from the representative community and the authorities so that the anticipation of not repeating it a second time becomes an improvement in the Indonesian legal system.
- e. Making additional punishments, if ex-convicts of corruption are proven to have committed corruption for the second time, as a form of state's caution to legislative candidates, it is necessary to formulate a more severe recidivist sentence as one of the preventive measures so that there is no abuse of power for the second time.
- f. Get involved in socialization, counseling, and training on character and religion as a bulwark in carrying out the mandate.
- g. The need for special legal rules or fiqh or anti-corruption fatwas as a formula for a more comprehensive explanation, especially for Muslims who are a subsystem of national law.

Restoring one's rights is in the context of carrying out the teachings in the *Shari'a*, where Islam prioritizes the realization of benefit or *maslahah* as it can create human life following the guidelines. Therefore, a servant should

respond well to the mistakes and faults of others, just as he wants Allah to be kind to him when he commits a mistake and sin.⁴¹ Verily, the reward is following the deeds done. Therefore, whoever forgives the mistakes of others, Allah will forgive him. Likewise, whoever makes it difficult for others, Allah will make it difficult for him.

If a servant has sinned, he will apologize to others, so Allah sends down broad mercy and is released from the difficulties and narrowness of his life. So the purpose of the *Shari'a* in this application is to become a *maslahah*. Where every human being can protect himself from hostility and fighting, the creation of values of kindness and mutual forgiveness in the social order, so that the better the local culture of the community, the better the social structure.

From the perspective of *daruriyat* Imam As-Syatibi, in terms of *hifdzulnafs*, namely: if a servant sins, sins, and does things that are prohibited by religion, then he must get an equal reply as a form of justice and treatment of Islamic law so as not to act arbitrarily. Maintaining the rights of others is an effort to maintain and develop oneself. A person has the right to continue the struggle of life, struggle in the context of self-actualization, and carry out obligations to maintain individual and collective rights is in the context of grounding the teachings of Islam, which is a blessing and *taufik* for universe “*Rahmatanlil 'Alamin*”

Meanwhile, in terms of *hifdzuldiin*, borrowing Kuntowijoyo's prophetic ethical theory, humans have humanization and transcendence values as role models for the universe to spread goodness and prevent evil. Through repentance, which is the implementation of vertical worship, without neglecting horizontal obligations in the context of humanizing humans who are God's creations, who are not free from mistakes and sins but always maximize themselves in carrying out religious orders as guidelines for living in the world. By itself, the purpose and nature of life will be achieved properly.

⁴¹Syaikh Muhammad Bin Ibrahim Al-Hamd., *Taubat Surge Pertama Anda*, (Pustaka Imam Asy-Syafi'i, 2012), 63.

Hifdzulaql, namely: it is permissible for ex-convicts to run for legislative members as representatives of humans in general and ex-convicts in understanding political rights in Islamic teachings, the law that Allah SWT has revealed is to keep people always upholding religious teachings, always think and remembrance to live a dynamic life, that every action has a punishment, every violation has a sanction, and every tyranny has a warning. This is a reminder that Islam always commands humans to *Iqro'* or read so that humans are in a state to be the best beings who always hold religious teachings and guidance and can understand and control adverse situations and conditions.

Besides the *maslahah* side, of course there is a *mafsadah* side regarding the permissibility of former corrupt convicts to nominate themselves as members of the legislature, including:

1. Opening a violation Possibility for former corrupt convicts

In connection with the new election law that allows former corrupt convicts to run again, several parties can misuse it by following their interests. This rule will be a gap and opportunity for individuals and members of political parties to commit criminal acts of corruption when they first serve as members of the legislature. So, to warn that this happens, it is necessary to look at the track record of each ex-convict who will be promoted to run for the second time.

2. Weakening law enforcement to eradicate corruption in Indonesia

If the legal system is not strictly enforced, it will be easy for former corrupt convicts to run for office again. Therefore, the more likely the practice of *KKN* (Corruption, Collusion, and Nepotism) will occur. So to maintain this existing system, it is necessary to understand the community through political education, social awareness, and character in choosing candidates for people's representatives, which are socialized by people who have no interest but are pure as elements of socialization regarding political education. The lack of

quality parties that can be trusted for their professionalism in front of the public.

In the Indonesian context, positive law and Islamic law have accommodated basic human rights as citizens, providing equal opportunities for the second time to citizens and followers of Islam. The similarity of the principles of justice, equality, and legal certainty has been stated in the normative legal sources where the highest source of law guarantees the rights of individuals in carrying out their social functions.

Providing the same opportunity for the second time is not easy, requiring greater supervision and effort in anticipating more significant risks. Still, everything can be achieved through the precautionary principle to achieve the benefit. So with that, the law will provide justice, and society grows from experience so that the system, structure, and culture can be mutually reinforced.

Furthermore, it is permissible for former corrupt convicts to run for legislative candidates to protect each individual's political rights as Islam guarantees *hurriyatulfikr*. Whereas as a legal state that guarantees the human rights of citizens, it accommodates all rights as citizens because all citizens are equal under the law, and the government is obliged to uphold the law and government without exception. Every citizen has the right to work and a livelihood appropriate for humanity and freedom in thinking, expressing opinions, and association as guaranteed by the 1945 Constitution, which covers freedom of association and assembly, expressing thoughts orally and in writing, and so on stipulated by law.⁴²

Through constitutional rights, the requirement for repentance or public recognition in the election law indicates that juridically the existence of the Election Law is much more human because it provides opportunities and does not limit human political rights. Some provisions allow former corrupt convicts

⁴²Undang-Undang Dasar 1945 pasal 28.

to run for office. Being a parliament member is an effort to transfer the values of constitutionalism to maintain the stability and rights of the people. This is in line with Islam as a subsystem of national law that does not limit the political rights of its people.

As a dignified country, eradicating corruptors with various entanglements and sanctions is limited to efforts to create a deterrent effect and restore justice so as not to conflict with grace and benefit. WasitAulawi emphasized that realizing the goal of Islamic law in transforming Islamic law into national law includes three dimensions that move from the most abstract level to the most concrete level.

The first dimension, fundamental values, is *maqashid al-syari'ah*, human happiness, which can be described as benefits, favors, justice, grace, and so on. This goal must be realized by humans based on the teachings of Islam.

The second dimension is the instrumental value contained in practicing Islamic teachings, which is essentially a transformation of Islamic legal matters in abstract towards realizing Islamic religious values in concreto. The process of operationalizing or actualizing Islamic law into all social life.

The third dimension is the value of praxis. Praxis is the most concrete manifestation of Islamic law in the form of every Muslim's attitudes, behavior, and actions in various circumstances and times. So it can be understood ex-convict and a group of people incarnate in real and reflected in the behavior of its adherents. Here, the understanding, appreciation, and practice of law as a process of transforming fundamental values into instrumental values can be tested so that the praxis of Islamic law, which is *shalihun li kulli Zaman wa Makan*, can be realized ideally and more realistically.

In addition, the community to be built through Islamic law is a community-building based on noble character and high humanitarian ethics. Abdul Qadir 'Audah stated: "Shari'a views high morals, as the most important pillar, which can be enforced by society, and *Shari'a* is essential to maintain

morals. The most important reason that Islamic *Shari'ah* attaches importance to morals and must be guarded fully.

Conclusion

Maqasyid al-Syariah has a goal in enforcing a law, none other than for the benefit of humankind. It is permissible for former corrupt convicts to nominate themselves as members of the legislature because of the magnitude of the *maslahah* value contained if it is allowed for former corrupt convicts to re-run as members of the legislature representing electoral districts where the community has been harmed and betrayed by the ex-convicts. This benefit is not only in the position of ex-convicts as individual Muslims or as individual citizens, but the benefits include the stability of the culture of social life in society and the maintenance of a legal system that follows ideal legal ideals as well as in the context of realizing the principles of justice in society.

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