

ACTS OF BRIBERY IN CORRUPTION CASES MAQOSHID SYARIAH PERSPECTIVE

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Abstract: Bribery is one of the special concerns that is quite big in influencing the occurrence of corruption. Bribery (*risywah*) is an act that is prohibited in Islam because it violates the principles of *maqoshid sharia* related to justice, protecting property and avoiding social damage. This action is detrimental to the bribery but also harms the public. Law No. 20 of 2001 concerning the Eradication of Corruption defines bribery as giving in a broad sense, which includes the provision of money, goods, rebates, discounts, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment and other facilities. The purpose of the research is to: find out the form of bribery in corruption cases, as well as the views of *maqoshid sharia*. The tool used in data collection in this study is through document studies. The source of data is taken based on secondary data through primary, secondary and tertiary legal materials. The results of the research and discussion explain that bribery in corruption cases is active bribery or giving bribes to civil servants or state administrators, giving bribes to judges or advocates and giving gifts or promises to civil servants. Bribery is strictly prohibited in Islam because it is contrary to the basic principles of *sharia* and *maqosyid al-sharia*. This action obstructs justice, harms property, and undermines the integrity of the law.

Keywords: Bribery, Corruption, *Maqoshid Syariah*

Introduction

Bribery is the act of giving or receiving something of value in exchange for influencing the decisions or actions of officials, both in the context of the government and the private sector. In the crime of corruption, bribery is regulated as a serious violation of the law and can cause criminal sanctions for the perpetrator. According to Andi Hamzah, bribes are gifts to officials that are carried out illegally, with the aim that the official does or does not do something in his position that is contrary to his obligations.¹

In the development of the times, corrupt practices have also developed by taking advantage of new loopholes with the weaknesses of existing laws and regulations. Gift-giving is often thought of as a thank you or congratulation to an official. But what if the gift comes from someone who has an interest in the official's decision or policy? And what if the value of the gift is given. And what if the value of the gift is above reasonableness. Does the giving of the gift not affect the objectivity of the independence in decision-making or policy, so that it can benefit others or yourself? Gift-giving is the act of giving something to another person is basically allowed. However, if the giving of the gift is in the hope of being able to influence the decision or policy of the official who is given the gift, then the giving of *iru* is not just a congratulation or a sign of gratitude, but as an effort to gain advantage from the official or auditor which will

¹ Andi hamzah, *Principles of Criminal Law*, Jakarta, Rineka Cipta, 2008.

affect the integrity, independence and objectivity, is an unjustified act and this includes the definition of bribery.²

Basically, all forms of giving bribes to someone related to their capacity as an official or state administrator are not something new. As part of efforts to eradicate corruption, bribery is a special concern, because it is a new provision in Law No. 20 of 2001 concerning the Eradication of Corruption Crime defines bribery as giving in a broad sense, which includes the provision of money, goods, rebates or discounts, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment and other facilities.

The practice of corruption in the form of bribery turns out to be as old as human civilization. This culture not only occurred during the modern government like today, but can also be found traces in the prophetic era, especially at the beginning of the development of Islamic civilization. On one occasion, as narrated by Abu Daud, the Prophet Muhammad said, "Whoever I have appointed as a worker in a position and then I give a salary, then something that is received outside of his salary is corruption."³

Bribery in theory and practice will be able to influence a decision held by state administration officials from the top leadership to the bottom, and starting from judicial, executive and legislative officials. Bribery provides direction that a final conclusion that only benefits the giving of the bribe or the purpose is made.

Bribery is not an ordinary criminal act. In criminal law theory, this act is categorized as the same as the crimes of murder, rape and theft. The act of bribery is *mala per se* or *mala in se* and not *mala prohibita*. The concept of *mala per se* based on the idea of natural wrongs considers that certain crimes are crimes related to conscience and are considered reprehensible not because the laws and regulations have prohibited them, but are already wrong in themselves.⁴ The crime of bribery is a *per se* because bribery always indicates the intention to influence (influence) the bribe (for example, involving an official to do or not to do something contrary to his obligations). Or also because the bribe has done something or not done something that is contrary to his obligations. The perpetrators, both intellectual actors, and the actors who have done something that is contrary to legal norms and other social norms (religion, decency, and decency)

A study cannot be said to be research if it does not have a research method.⁵ This research method is a normative juridical legal research with a legal approach to find legal rules, legal principles, and legal doctrines to answer the legal issues faced is the application of bribery in corruption cases. The aim is to ensnare perpetrators, both active and passive, who can harm the state's finances. The type of research used in this paper is library *research*, which is research that uses written documents as data, and the data sources used in this research include primary legal materials and secondary legal materials. The approach used in this study is to use a legislative approach. Legal material is by using the content analysis method which is carried out by

² Muladi, "The Essence of Bribery and Corruption", <http://www.unisosdem.org/article-detail.php?aid=5118&caid=3&caid%20&gid=3>., Retrieved April 20, 2025.

³ Heri Sasono, "Riswah (Bribery) in the view of Islam", <http://herry-sasono.blogspot.com/>, Retrieved 20 April 2025

⁴ Indonesian media. "Bribery as a Crime of Corruption", <http://www.mediaindonesia.com/read/2010/23/183347/68/11/Bribery-As-Crime-Corruption>, Retrieved 21 April 2025

⁵ Ismail Koto, 2021, Legal Protection for Victims of Terrorism Crimes, Proceedings of the National Seminar on Entrepreneurship 2(1) pp. 1052-1059

describing legal material or legal products in detail.⁶ This study uses a doctrinal approach that tends to be qualitative based on secondary data.⁷

Result and Discussion

Corruption that harms the interests of the public should not be tolerated in imposing criminal verdicts. The exploitation of power is a cruel act and deeply denies the public's trust in the political elite who are directly elected by the people. The existence of a mandate in carrying out power should be understood as the sacredization of trust bestowed on political elites who are directly elected by the community. The integrity and openness of the political elite are a good mirror for the community to avoid the practice of political corruption.⁸

1) Definition of Corruption

In the Indonesian encyclopedia it is called corruption (from Latin: *Corruptio* = bribery; *Corruptore* = destructive) a symptom where officials, state agencies abuse their authority in the occurrence of bribery, forgery and other irregularities.⁹

Corruption is the behavior of individuals who use authority and position to extract personal benefits to the detriment of the public and state interests. So corruption for personal gain, mismanagement of power for personal gain, mismanagement of the state's resources by using formal authority and power (for example, for legal reasons and the power of arms) to enrich oneself.¹⁰ In Articles 2, 3 and 4 of the Corruption Law, there are 3 legal terms that need to be clarified, namely the terms of corruption, state finances and the state economy. What is meant by Corruption Crimes are:

- Anyone who unlawfully commits an act of enriching themselves or others or a corporation that can harm the state's finances or the country's economy.
- Every person who with the aim of benefiting himself or others or a corporation, abuses the authority of opportunities or means available to him because of his position or position that can be detrimental to state finances (according to Articles 2 and 3 of Law No. 31 of 1999).

State Finance in this Law is all state wealth in any form, whether separated or unseparated, including all state wealth and all rights and obligations arising from it. Meanwhile, the state economy according to the Law is as follows: economic life which is arranged as a joint venture based on the principle of kinship or independent community business based on government policies, both at the central and regional levels in accordance with the provisions of applicable laws and regulations and aims to provide benefits, prosperity and welfare to all people.

Meanwhile, the state administrator is also explained in Article 2 of Law Number 28/1999. The so-called state administrators include (a) state officials at the highest state institutions, (b) officials of high state institutions, (c) ministers, (d) governors, and (e) judges. Furthermore, (f) state officials who are in accordance with the provisions of the applicable laws and regulations, and (g) other officials who have a strategic function in the administration of the state in accordance with the

⁶ Rahmad Ramadhani and Ramlan, 2019, Build Operate and Transfer (Bot) Agreement of Lapangan Merdeka Medan in the Perspective of State Administration Law and Business Law, De Lega Lat, Legal Journal, 4 (2) Page 528

⁷ Prof. J. Supranto, Legal and Statistical Research Methods, Rineka Cipta Jakarta 2003.

⁸ Andrryan & Benito Asdhi Kodiya, *The Legal Politics of Corruption Prevention Through the Restriction of Political Rights of Ex-Corruption Prisoners*, Available online <http://ojs.uma.ac.id/index.php/gakkum>, Retrieved April 20, 2025.

⁹ Evi Hartanti 2005, Corruption Crimes, Jakarta Sinar grafika, page 8

¹⁰ Indonesian media. "Bribery as a Crime of Corruption", <http://www.mediaindonesia.com/read/2010/23/183347/68/11/Bribery-As-Crime-Corruption>, Retrieved 21 April 2025

provisions of the applicable laws and regulations. What is meant by officials who have a "strategic function" are officials whose duties and authorities in carrying out the implementation of the state are prone to KKN practices, including: (a) directors, commissioners, and other structural officials in SOEs/BUMDs; (b) the leadership of Bank Indonesia; and (c) university leaders. Then, (d) echelon 1 officials and other officials who are equalized in the civil servants, Police, and Military; (e) the prosecutor; (f) investigators; (g) the clerk of the court; and (h) the project leader and treasurer.

2) Definition of Bribery

Bribery is the act of giving or receiving bribes with the aim of influencing the actions or decisions of someone who has authority or influence in a certain situation. These actions are contrary to the principles of justice, integrity, and ethics in various areas of life, including business, politics, and the public sector. A briber is a person who gives a bribe. that is, a person who gives up property or money or services to achieve a goal. An act is categorized as bribery if a person gives something or a promise to a party with the intention of doing something related to his position. Bribery can also be interpreted as a bribe-giver, in the provisions of article 5 of Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning Corruption ("**Corruption Law**"), which reads:

"Sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 5 (years) and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) each person who:

Bribery originated from the origin of the word *briberie* (French) which means 'begging' or 'vagrancy'. In Latin it is called *bribe*, which means '*a piece of bread given to beggar*'. In its development, bribe means 'alms' (alms), 'blackmail', or '*extortion*' in relation to '*gifts received or given in order to influence corruptly*'. Thus, a person who is involved in the act of bribery should actually be ashamed if he appreciates the meaning of the word bribery which is very reprehensible and even very degrading to human dignity, especially for the recipient of the bribe.¹¹

3) Subject and Object of Bribery

Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to the Law on the Eradication of Corruption simplifies corruption in seven groups, including causing state losses, bribery, gratuities, conflicts of interest in the procurement of goods/services, extortion, fraudulent acts, and embezzlement in office. Of the seven groups, the bribery article has the most bribery compared to other groups, including Article 5 paragraph 1 letter (a), Article 5 paragraph 1 letter (b), Article 13, Article 5 paragraph 2, Article 12 letter (a), Article 12 letter (b), Article 12 letter (c), Article 12 letter (d) Article 11, Article 6 paragraph 1 letter (a), Article 6 paragraph 1 letter (b), and Article 6 paragraph 2. So, in bribery cases, both the giver and the recipient of bribes are punished.

The object of bribes is a gift or promise, the bribe giver can be anyone, while the recipient of bribes is state administrators, civil servants, judges, and advocates. Bribes are related to the position of the bribe recipient, namely civil servants or state administrators.

4) In the view of Maqoshid Syariah

¹¹ Prof.Dr.Muladi, SH, The nature of bribery and corruption, www.kompas.com, Cyber Media.com, accessed 27 April 2025

Maqosyid Syariah is the goal of sharia goals that are to be achieved through the implementation of Islamic law. The concept of Maqosyid Syariah was developed by Imam Ghazali and then further developed by Imam Al-Syatibi.

In the perspective of Islamic law, bribery (*risywah*), although it does not directly mention the word bribery in the legal context, is included in the category of prohibited acts (*haram*) because it is an unlawful act and an act of tyranny. This prohibition is based on various postulates from the Qur'an and Hadith. In addition to the Qur'anic verses mentioned earlier (Surah Al-Baqarah verse 188), there is also a hadith that narrates that the Prophet PBUH said: "Allah curses bribers and bribes in the law" (HR. Ahmad, Abu Dawud, and At-Tirmidhi).¹² The scholars agree that *risywah* (bribery) is *haram* based on these postulates. Imam Al-Qurthubi in his commentary states that *risywah* is something given by a person to a judge or another to get a ruling in his favor or to get something he wants in a wrong way.¹³ Ibn Qudamah in his book *Al-Mughni* also emphasized the *haram* of *risywah*, especially in the context of justice and government.¹⁴

According to Ali bin Muhammad as-Sayyid as-Syarif al-Jurjani, *risywah* is a gift given to a person to cancel something that is right (true) or justify what is wrong. Meanwhile, according to other scholars, *risywah* is a gift that becomes a tool of persuasion to achieve certain goals.¹⁵ Meanwhile, according to the term, several definitions of bribery (*risywah*) are known as follows:

1. Bribery is a gift to an official with the aim that the interests of the giver can be realized even through unhealthy and unregulated businesses. This kind of bribery is illegal, both for the giver and the receiver. If the gift is intended to defend the rights of the giver because it is on the right side, then the gift is only *haram* for the recipient.
2. A bribe is something that is given to a person on the condition that the person given can help the giver. It means a gift in the form of money, goods or services given to someone with the aim of achieving something desired, thanks to the help of the person given.
3. A bribe is something that is given after someone has asked for help based on the agreement. .
4. Bribery is something that is given to exploit a right to be null and void to be a right. It means that something is handed over or given to someone else so that the giver is helped even though his affairs are not justified by sharia'. .
5. A bribe is something given to a person so that the person given it to punish in a null manner or to give a position to do *dhalim*. In other words, something that the briber gives to someone with the aim that the briber gets help with the null law of the right issue or to get an unworthy position for him.
6. A bribe is something that a person gives to a judge or others so that the person gets legal certainty or gets his wishes.¹⁶

¹² M. Nurul Irfan, *Corruption in Islamic Criminal Law*, 92

¹³ Muhammad bin Ahmad Al-Qurthubi, *Al-Jami' li Ahkam Al-Qur'an* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1993), Juz 2, 338.

¹⁴ Abdullah bin Ahmad Ibn Qudamah, *Al-Mughni* (Riyadh: Dar 'Alam al-Kutub, 1997), Juz 9, 5.

¹⁵ Mahmud Yunus, *Dictionary of Arabic-Indonesian Language*, (Jakarta: Handika Agung, 1989), p. 142

¹⁶ Indra Ismawan, *Money Politics The Influence of Money in Elections*, (Yogyakarta: Presindo Media Publisher, 1999), h. Sec. 4.

Thus, bribery in Islamic law is not only considered a violation of positive law, but also as an act that is morally and spiritually destructive. Islam encourages its ummah to be fair and honest in all matters. Bribery in addition to unlawful acts is also included in the category of major sins. Although Islamic law does not provide for specific punishments such as imprisonment or fines, bribery perpetrators can be punished by rulers or judges based on policies or the need to maintain public order. The punishment of ta'zir can be in the form of corporal punishment, a fine or any other form of punishment that is considered appropriate. Meanwhile, the punishment of the hereafter is even heavier, namely going to hell.

In the perspective of maqoshid sharia, bribery is considered an act that is contrary to the principles of sharia and can cause damage to society because:

1. Eliminate justice.
2. Destroying the order of society.
3. Creating tyranny.
4. Destroying morality and the blessing of life.

In Maqoshid sharia there are several principles that must be followed:

1. Putting the public interest first
2. Avoid damage.
3. Prioritizing justice
4. Avoid irregularities.

1. Conclusion

Categories of Forms of Bribery for Corruption Crimes:

- a.. Active bribery or bribery
 - 1) Giving bribes to state officials or state administrators.
 - 2) Giving bribes to judges or advocates.
 - 3) Giving gifts or promises to state officials.
- b.. Passive bribery or accepting bribes.
 - 1) Accepting bribes by state officials or state administrators.
 - 2) Bribes received by judges or advocates

2. According to Maqoshid Syariah

Bribery can cause damage to several sharia purposes, including:

- 1) Safeguarding religion: Bribery can lead to violations of religious principles such as honesty and justice.
- 2) Safeguarding the soul: Bribery can cause stress and anxiety in the bribe recipient and can cause damage to social relationships.
- 3) Keeping your senses: Bribery can lead to a loss of common sense and can lead to improper decision-making.
- 4) Safeguarding Property: Bribery can cause property loss to the party who does not receive the bribe, as well as can lead to misuse of state property.
- 5) Safeguarding offspring: Bribery can cause damage to the morale and morals of the younger generation.

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