

Islamic And Criminal Law Review About Infaq Distribution Using Charity Boxes On The Road Traffic

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Abstract

Distribution of infaq using charity boxes on the road traffic room in the context of construction or renovation of houses of worship is increasingly being done by people in the middle of the highway along with the dense traffic flow which can certainly disrupt smooth and safety for road users. The purpose of this study is to examine how the existence of charity boxes in the middle of the road in terms of Islamic law and criminal law based on Law Number 22 Year 2009 concerning Road Traffic and Transportation and Law Number 38 Year 2004 concerning Roads. Through normative juridical research, it was concluded that the distribution of infaq using charity boxes on the road traffic hall is prohibited in Islamic law and even constitutes a violation in criminal law which can make the culprit punished.

Keywords: Islamic Law, Criminal Law, Infaq, Charity Box, Road Traffic

A. Introduction

Distribution of infaq using a charity boxes on the road traffic has so far not yet found a solution even more in line with the increase in construction or renovation of houses of worship and the proliferation of charitable or social institutions. The infaq box that was once inside or around the mosque, is now in the middle of highway placed by a person or caretaker of the mosque for the purpose of worship. The role of religion becomes increasingly important, when religion is embraced by human social groups, which are associated with various activities that fulfill the complex needs of human life in society. In such developments, religion is directly related to culture, so that religion, society and culture have mutual relations that influence each other.[1]

In a situation where the influence of religious teachings is very strong on the existing value system in society, the cultural system is transformed into various sacred symbols whose meanings are sourced from the religious teachings that become the terms of reference. Thus, directly the ethos that guides the existence and activities of various social institutions that exist in society, is influenced, driven, and directed by various value systems whose sources are on the religious values embraced and manifested in the activities of community members as actions and works that are enveloped by sacred symbols.[2] The sacred symbol in question is the charity box.

Charity boxes are now very easy to find in the middle of the road, sidewalks and even crossroads. The charity box comes from charity institutions, both charity institutions and social institutions that come from mosques and Islamic boarding schools which are sometimes not around the location where the charity boxes are found. Religious charitable institutions have now been transformed into a box.[3]

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Various fundraising models in the middle of the road are considered inappropriate, can be illustrated as:

- a. By placing a cask or a charity box, then he stands in the middle of the road all day by alternating fellow friends, of course disrupting the smooth flow of traffic, even endanger yourself.
- b. By making permanent buildings on the side of the road, such as small huts or posts as we have seen along many highways, this method is also said to be inappropriate because it can narrow the highway, which could endanger the passing.
- c. Asking for donations using a loudspeaker, then this is really an act that disturbs the people who live around the area.[4]
- d. Placing charity boxes with flags, chairs that are sometimes accompanied by prayers, lectures and also music that disturbs the peace of road users.

Placement of the charity box which is a legal issue is in the middle of the road which certainly causes public order disruption and disrupts the smooth use of the Road. Discomfort in driving activity has a very large impact, namely the higher psychological burden, which can cause stress and ultimately lead to neglect which of course can be detrimental to himself and others. The phenomenon of channeling infaq through charity boxes on the highway has actually "brought" suffering to others. In this context, the search for funds to build a mosque on the highway can bring harm. A real case occurred in Banyuwangi, where three charity seekers who were standing in the middle of the road died from being hit by a car.[5]

It cannot be known with certainty where these charity boxes began. The existence of a charity box in the road traffic room cannot be justified from various aspects, both in the perspective of Islamic law and even criminal law because it can threaten the safety of motorists and road users. Even the perpetrators can be prosecuted according to Law Number 38 of 2004 concerning Roads and Law Number 22 of 2009 concerning Road Traffic and Transportation if there are parties who are injured or become victims.

The research on the charity box was explained by Yoram Bar-Gal[6] about "*how the charity box which was driven by the Jewish National Fund (JNF) became a tool to collect donations as well as a propaganda and hegemony tool carried out by the Jews in their struggle to obtain land to establish the state of Israel. The charity box, called the blue box, was used as a propaganda tool by being distributed throughout the countries in Europe and America which became the domicile of Jewish society.*" The strength of this charity box is its outer design, which is drawn from the imaginary map of Israel in areas adjacent to Palestine. The purpose of the map image propaganda in the charity box is:

- (1) nationalize land,
- (2) marking Israeli land.

This propaganda succeeded in hegemonizing the existence of Israel in the eyes of the world and bringing in investors (wealthy Jews) to buy community land which is now Israeli territory. The existence of the charity box spearheaded by JNF and its distribution to all areas inhabited by Jews bears a resemblance to the pattern of distributing charity boxes carried out by charitable institutions in Indonesia today. In addition, to be able to absorb large funds, it is necessary to disseminate information. If you look at the time of the blue box, the dissemination of information through its own charity box is given a map of the territory of Israel, whereas at the present time a variety of ways are done. Dissemination of charity boxes in public places to advertise in print and electronic media with a moral message of concern to help others and the construction of houses of worship is a way of introduction that is a mainstay.[7]

Other researchers who saw a strong relationship between poverty and the existence of charitable institutions were also conducted by Thomas Jones through his writing entitled "Charity Organization":[8] "*that the existence of charitable institutions is inseparable from*

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poverty. Charity that can blindly create public laziness which if it continues continuously will make it a system. Poverty is now a commodity that can be traded through law and charity. Charity is one of the causes of moral decline in a society. The community also has a very low work ethic".

Charitable institutions now seem to develop very rapidly. On several occasions, charities have been able to advertise in news delivery media such as radio, newspapers and television to get donations. History records that charitable institutions have also experienced progress in the period 1870 to 1900.[9] Based on the background of the problem, this study will discuss how to review of Islamic law and criminal law about the distribution of infaq using charity boxes on road traffic.

B. Literature Review

1. Islamic law

Islamic law is all the rules that Allah created. Which aims to regulate the relationship between humans and God, human relationships among humans, along with human relationships with nature as a whole and the relationship with life. Islamic law is all the provisions of Allah. Which has been translated by the Ulama and can be found references in the books of jurisprudence and can be used as reference material.[10]

According to Anwar Haryono Islamic law is the legal basis revealed by Allah to the Prophet Muhammad, who is obliged to mankind to know as well as possible, both the relationship with God and each other.[11] Islamic law is law that originates from and forms part of the Islamic religion. Shari'at, which means the laws which are instituted by Allah for the Ummah which are carried by a prophet both laws relating to belief (aqidah) and laws relating to amaliah (deeds).[12]

2. Criminal Law

Criminal law according to Mezger is "the rules of law that bind to a certain act that meets certain conditions a consequence that is criminal." [13] Elsewhere Simons formulated the objective criminal law as "All acts of necessity (gebod) and prohibitions (verbod) made by the state or other public authorities, which violate these provisions are threatened by special suffering, namely criminal, as well as regulations determine the conditions for the legal consequences.[14]

3. Infaq

The word infaq is derived from the word anfaqa which means to spend, spend, give or take away. According to the term fiqh the word infaq has the meaning of giving some of the property owned to people who have been used by religion to give it such as faqirs, poor, orphans, relatives and others. The terms used in the Qur'an in connection with infaq include the words: zakat, sadaqah, hadyu, jizyah, hibah and wakaf.[15] The meaning of infaq in Law No. 23 of 2011 on Zakat Management, set out in Chapter I of the General Terms especially Article 1 number 3, regulates that infaq is a property issued by a person or business entity outside of zakat for general benefit.

4. Charity Box

The charity box is a tool. More than that, charity according to the Big Indonesian Dictionary (KBBI)[16] has the meaning of deeds (good or bad). Furthermore, according to KBBI, charity is (1) an activity of giving donations or assistance to disadvantaged people and social organizations; (2) doing something good; (3) pray, ask God.

5. Road Traffic

The Road Traffic Room refers to Law No. 22 of 2009 concerning Road Traffic and Transport as referred to in paragraph (11), namely: Road traffic space is infrastructure intended for moving vehicles, people and/or goods in the form of roads and supporting facilities. Followed by paragraph (12): Road is all parts of the Road, including complementary buildings and

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equipment intended for general traffic, which are on the surface of the land, above the surface of the land, below the surface of the land and/or water, and above the water surface, except rail and cable roads.

C. Discussion

1. Overview of Islamic Law on Infaq Distribution Using Charity Boxes On Road Traffic

Islam is a religion that is *Shamil* (comprehensive/comprehensive) and *Kamil* (perfect),[17] so that in its laws there are various problems relating to humans in life as individual and social beings. Islam does not adhere to the understanding of authoritarianism which tends to regulate without understanding and understanding, in other words Islam tends to be democratic and oriented towards *rahmatan lil 'alamin*. [18]

Related to the problem of channeling infaq through charity boxes for the construction of mosques in road traffic spaces, it turns out that in reality there are many "embracing religious" processes to legitimize certain interests, both in political, economic and cultural terms. Another thing that can be seen is the use of religious jargon to legitimize social activities, which is a religious process in the context of forming social activities which are ultimately used as traditions that are not reviewed. This condition raises the question whether the behavior really gets religious legitimacy?[19]

In reviewing the Qur'an and the Hadith, there are no orders from Muslims to build a mosque except only to the Government. The Qur'an only commands Muslims to prosper the mosque. This indicates that building many mosques is not recommended by Islam, but prospering the existing mosque is an obligation for all Muslims.[20] Moreover, building or renovating mosques by placing charity boxes that violate positive laws.

The command to build a mosque is only in the Hadith which reads "*Whoever builds the mosque, then Allah will build a house in heaven*".[21] Even though Islam ordered its people to build a mosque through the Prophet's Hadith above, but the order to make it more prosperous and stronger. This shows that the prosperity of the mosque is more important or more ordered than building a physical mosque. The prosperity of a mosque in this context is to carry out various religious activities and other activities, such as organizing intellectual, social, cultural and other activities in the mosque. The goal is for the mosque to have an existence that gives meaning to the lives of Muslims.[22]

Another problem that must be seen is the element of disturbing the road which in turn can cause kemudharatan. In this case, Islam forbids people to do something that can interfere with the road. The problematics of the charity box in the road traffic space is the same as the begging method which is done in a dishonorable way, even though there are still many more honorable ways. But the weak management of the mosque, then these methods are taken.

Islam calls on its people to always be the best people, both in worship and in social behavior. In this context, the search for funds for the construction of mosques on the highway is recognized or not sociologically or psychologically, has defamed Muslims as a whole. This is because not all road users are Muslims. Non-Muslim communities also use the highway as a means of transportation. Though Islam is calling on his people to be the best people.[23]

In the review of *usul fiqh*, *fiqiyah* rules and *aqwal al-fuqaha*, there are 5 things to consider in the process of raising funds through a charity box, namely:[24]

- a. The activity contains elements of Madharah
- b. Its implementation tends to lead to begging activities,
- c. Its activities can undermine the dignity of Muslims in general,
- d. There is a percentage taken from the fundraising results, and
- e. The development process undertaken is not included in the darurah category.

According to Syatibi, as quoted by Permono,[25] benefit is returned to the maintenance of 5 (five) points (*al-muhafazhah 'ala al-kulliyat al-khams*), namely: *hifzh ad-*

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din (preserving religion), *hifzh an-nafs* (preserving the soul), *hifzh an-nasl* (preserving offspring), *hifzh al-aql* (preserving reason), and *hifzh al-mal* (preserving property). Benefit is the goal or ideals of Islamic law (maqashid shari'ah). Therefore it must be strictly enforced so that Islam can present itself as a universal religion.

The existence of charity boxes on the road traffic certainly interferes with the activity and endangers the road users. There are even crossroads. The Hadith of the Prophet explains that: "*No harm to self and others*"[26] This hadith gives birth to the rule: "*The harm must be eliminated*". Then another rule that comes out of this rule and according to the problem of charity boxes is: "*The harm should be eliminated as much as possible*". In the area of jurisprudence, these charity boxes may be associated with the concept of *sadd al-dzari'ah*. The meaning of *sadd al-dzari'ah* is to cover the path that leads to something, as *hissi or ma'nawi*, good or bad. [27] Ibn Qayyim says that *internally, this al-dzari'ah contains a connotation of neutral meaning without giving judgment on the outcome of the act. Therefore, he defines it as anything that is an intermediary and a path to something.*[28]

The charity box on road traffic tends to lead the begging activities. When it is done continuously and has a bad impact and is dangerous then it is not allowed. This is in accordance with the rule: "*When it is gathered between what is lawful and what is lawful, what is won is what is illegal*".[29] In other words, when there is a conflict between the *maslahah* and the *mafsadah*, then the *maslahah* is the highest priority. According to Ibn 'Ashur that *the Shari'ah demands only the good of nature*,[30] *so that no matter what happens, the human being must prioritize well-being*. Keeping religion in any context is a top priority. While the presence of charity boxes is categorized as behavior that can bring harm to the level of degrading Islamic dignity in general, such activities should not be done as opposed to the principles that should be maintained in the Shari'ah.

2. Criminal Law Review of Infaq Distribution Using Charity Boxes on The Road Traffic

Traffic problems are problems faced by developed countries and also developing countries like Indonesia. However, in Indonesia, the problems that are often encountered today are more severe and greater than in previous years, including accidents, congestion and air pollution and traffic violations.[31] Roads as part of the national transportation system have an important role, especially in supporting the economic, social and cultural and environmental fields and are developed through a regional development approach to achieve equilibrium and equitable development among regions, form and strengthen national unity to strengthen national defense and security, and form structures space in order to realize national development goals, so the government established Law No. 38 of 2004 concerning Roads in lieu of Law No. 13 of 1980 concerning the Road.

In an effort to improve the quantity and quality of the administration of road traffic and transportation, the Government has enacted Law Number 22 of 2009 concerning Road Traffic and Transport in lieu of Law Number 14 of 1992 concerning Road Traffic and Transport that is no longer in accordance with the current situation and conditions, changes in the strategic environment, the current needs for traffic management, and road transport, including as a result of the implementation of regional autonomy and regional and central financial considerations. Law Number 22 Year 2009 is established with the aim of creating traffic conditions and road transportation that is orderly, safe, comfortable, orderly, smoothly at a cost that is affordable to the community and guaranteed in terms of safety. This means that the safety aspect is a very important aspect in a traffic activity and road transportation.

Therefore, in managing traffic there are 4 (four) main factors that must be considered, namely:

- 1) Traffic safety and road transportation are a condition of the freedom of every person, goods, and/or vehicle from the disruption of acts against the law, and/or fear in traffic.

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- 2) Traffic safety and road transportation are a condition that everyone avoids the risk of accidents during traffic caused by humans, vehicles, roads and / or the environment.
- 3) Order traffic and road transportation is a condition of traffic that takes place on a regular basis in accordance with the rights and obligations of each road user.
- 4) Smooth traffic and road transportation is a condition of traffic and the use of transportation that is free from obstacles and congestion on the road.[32]

In Article 3 of Law Number 22 Year 2009 it is stated, Road Traffic and Transportation are organized with the aim of:

- a. The realization of the implementation of Traffic and Road Transportation that is safe, safe, orderly, smooth, and integrated with other modes of transportation to encourage national economy, promote public welfare, strengthen national unity and integrity, and be able to uphold the nation's dignity;
- b. The realization of the ethics of the nation's culture and traffic; and
- c. The realization of law enforcement and legal certainty for the community.

This law applies to fostering and organizing safe, orderly and smooth Traffic and Road Transportation through:

- a. movement of vehicles, people and/or goods moving on the Road;
- b. activities that use facilities, infrastructure and supporting facilities for the Road Traffic and Transportation; and
- c. activities related to the registration and identification of motorized vehicles and drivers, traffic education, traffic management and engineering, and law enforcement of the road traffic and transportation.

The Road Traffic and Transportation (LLAJ) must be developed in terms of their potential and role in realizing security, prosperity, traffic order and road transportation in order to support economic development and the development of science and technology, regional autonomy, and accountability of state administration. There are so many problems relating to violations of the law, ranging from mild to severe.[33]

The function of criminal law in Indonesia is to provide protection to the rights and interests of individuals whether the perpetrator or victim of crime, the rights and interests of the public including witnesses as well as the rights and interests of the state represented by the government. [34] In addition, the law also regulates, protects and resolves conflicts between human beings as citizens and as well as between citizens and the rulers, even among the power holders.[35]

As a state based on the law in achieving national and state life goals, especially the achievement of public welfare in development as a mandate for the Opening of the 1945 Constitution of the Republic of Indonesia, the traffic system and road transportation have a strategic role as a means of facilitating the flow of goods and services transportation.[36] The law was formed as a control tool for the community so that the community does not violate the rules or norms that apply in a society, so that a sense of security and comfort in the community is achieved. Based on the explanation from Law No. 38 of 2004 concerning Roads, in Article 1 paragraph (4) it is explained that the road is a land transportation infrastructure that covers all parts of the road, including complementary buildings and equipment intended for traffic, which are on the surface of the land and/or water, and above the water surface, except railroad tracks, lorries, and cable roads.

Based on Article 9 paragraph (1) of Law no. 38 of 2004 concerning Roads, according to their status, public roads are grouped:

- a. National Roads are arterial and collector roads in the primary road network system that connects provincial capitals and national strategic roads, and toll roads.
- b. Provincial Roads are collector roads in the primary road network system.

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- b. which connects provincial capitals with regency/city capitals, or between regency/city capitals, and provincial strategic roads.
- c. Regency Road, is a local road in the primary road network system that connects district capital with sub-district capital, between sub-district capital, district capital with local activity center, between local activity centers, and public roads in the secondary road network system in the district area, and strategic roads district.
- d. City Road, is a public road in the secondary road network system that connects between service centers in the city, connects service centers with parcels, connects between parcels, and connects between residential centers in the city.
- e. Village Road, is a public road that connects the area and/or between settlements within the village, as well as the environmental road.
- f. While Special Roads are roads built by business entities, individuals or community groups for their own interests. The Police can impose criminal sanctions on people who violate the use of the function of public roads, because public roads are roads that are organized by the state to support the public interest. And it should be the use of public roads for personal gain must have permission from the police so that they are not subject to criminal sanctions for the use of the road.

Road benefits space includes road body, roadside channel, and safety threshold. Road space is a space along the road that is limited by a certain width, depth and height. The space belonging to this road consists of road benefit space and certain lines of land outside the road benefit space. And the last is the road supervision room, which is a certain space outside the space owned by the road whose use is under the supervision of the road organizer. The road supervision room is intended for a free view of the driver and for safeguarding road construction and securing road functions.

These road sections are parts that are very vital for road users. If the part of the road is disturbed by the community organizing the event for their personal interests, of course the function of the road is not achieved optimally. This will also create chaos for road users who pass. Not justified people or communities who do an act that can interfere with the function of the road.

This is very clearly regulated in Article 12 of Law No. 38 of 2004 concerning the road which reads:

1. Everyone is prohibited from carrying out acts that result in disruption of the function of the road in the space of the benefit of the road;
2. Everyone is prohibited from carrying out actions that result in the disruption of the function of the road in the space owned by the road;
3. Everyone is prohibited from carrying out acts that cause disruption to the function of the road in the road supervision room.

Article 28 of Law No. 22 of 2009 concerning Traffic and Road Transportation also states:

(1) Every person is prohibited from carrying out acts which result in damage and/or disruption of the function of the Road.

(2) Every person is prohibited from carrying out acts which cause disturbance to the function of the Road equipment as referred to in Article 25 paragraph (1).

People who ask for donations by placing a charity box on the highway will certainly have an impact on the smooth running of the road and disrupt the functioning of the road. Any actions that violate criminal provisions, whether committed by the permit holder, the community, or the government apparatus, if they meet the classification of criminal provisions, of course must be dealt with.[37] Of the many charity boxes on the road traffic, not a few do not yet have a permit, whereas for this matter there is a binding regulation, which is listed in Article 63 paragraph (1) of Law no. 38 of 2004 concerning the road which

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reads: *"Every person who intentionally carries out activities that result in the disruption of the function of the road in the road benefit space, as referred to in article 12 paragraph (1), shall be liable to a maximum imprisonment of 18 (eighteen) months or a maximum fine of Rp 1,500,000,000, 00 (one billion five hundred million rupiah)."*

Article 63 paragraph (2) of Law No. 38 of 2004 concerning roads that read:

"Any person who intentionally carries out activities that result in the disruption of the function of the road in the space owned by the road, as referred to in Article 12 paragraph (2), shall be liable to a maximum imprisonment of 9 (nine) months or a maximum fine of Rp 500,000,000.00 (five hundred million) "

Article 274 paragraph (1) of Law no. 22 of 2009 concerning Road Traffic and Transport which reads:

"Every person who commits an act that results in damage and / or disruption of the function of the road as referred to in Article 28 paragraph (1) shall be sentenced to a maximum of 1 (one) year imprisonment or a maximum fine of Rp. 24,000,000.00 (twenty-four million rupiahs).

Criminal sanctions for violations of road functions or use of roads other than for traffic activities should have a fearful effect on people who want to use the road without permission from the police. But what is unfortunate is that the public ignores or underestimates the management of licenses that actually have criminal sanctions given by the Indonesian National Police. In fact, the actual violation of the function of the road is disturbing road users. This often happens due to lack of attention and also the socialization of the Police related to Law No. 38 of 2004 concerning Roads and Law No. 22 of 2009 concerning Road Traffic and Transportation, which contains criminal sanctions for those who violate road functions such as the placement of charity boxes for the construction of mosques and others.

Criminal sanctions related to violations of the use of the road for personal gain also does not seem to work, and this is what creates feelings of fear for people who violate the function of the road by putting the charity boxes in the middle of the road. With the socialization of Law No. 38 of 2004 concerning Roads and Law No. 22 of 2009 concerning Road Traffic and Transport, is expected to be able to frighten or provide a deterrent effect for everyone who violates the road function which may result in the disruption of the function of the road on the road benefit space or also the disruption of the function of the road in the space owned by the road because clear sanctions.

Criminal sanctions for violators of road functions in the road benefit space and violators of road functions in the space owned by the road contained in Law No. 38 of 2004 concerning Roads are:

1. Prison Criminal Sanctions
2. Penalty Fines

The application of criminal sanctions is not widely known by the general public, so that people can arbitrarily use the road for their personal interests. The success in implementing the law is that the purpose of the law has been achieved. The purpose of legal norms is to regulate human interests. If the legal norms are obeyed and implemented by the community and law enforcement, then the implementation of the law is said to be effective or successful in its implementation.[38]

In the case of infaq distribution through a charity box on the road traffic, it is very important to conduct socialization efforts from various parties, especially the Police regarding Law No. 22 of 2009 concerning Road Traffic and Transport and Law No. 38 of 2004 concerning Roads to make people aware that what they have been doing is apparently not in line with the positive laws in the country. Accidents occur unexpectedly and in a blink of an eye, and each incident there are 4 (four) moving factors in a single chain, namely:

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environment, danger, equipment and humans.[39] The existence of a charity box in the middle of the road not only has a negative impact on the environment, but also brings danger to humans. If these actions cause a lot of evil, then we should try to prevent harm than just thinking of benefits.

D. Closing

1. Conclusions

- a. Channeling Infaq by using a charity box on the road traffic room is against Islamic law because there is no basis in the Qur'an and the Hadith especially since its activities interfere with road users and these activities contain elements of kemudharatan. the construction and renovation of houses of worship that were carried out were not included in the dharurah category and even seemed to boast in building a mosque.
- b. The existence of charity boxes in road traffic spaces is also prohibited in the Criminal Law because it is regulated in Law No. 22 of 2009 concerning Road Traffic and Transport and Law No. 38 of 2004 concerning Roads even contains criminal sanctions for those who violate them.

2. Suggestions

- a. Distribution of infaq through charity boxes in the middle of the road must pay attention to the teachings and Islamic law so that the efforts to raise funds are more respectable and do not give birth to harm.
- b. It is very important to conduct socialization to the public regarding the prohibition and sanction of criminal law regarding the distribution of infaq by using the charity boxes on the road traffic.

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