ANALYSIS OF *HIFZ AL-MAL* IN *MAQASID AL-SHARI'AH* AGAINST THE ARTICLE "CRIMINAL ACT OF CORRUPTION" IN THE CRIMINAL CODE OF INDONESIA

Sanuri
sanuri@uinsby.ac.id
UIN Sunan Ampel Surabaya
Jl. A. Yani 117 Surabaya, Indonesia

Abstract*: This research highlights the ongoing debate in Indonesian society regarding several points in the Criminal Code (KUHP) which are considered controversial. The theme above will be broken down through several important features in the theory of maqasid al-shari'ah, namely: (1) the principle of maslahah in the rubber article of corruption; (2) reduction of criminal penalties for corruptors in the lens of hifz al-nafs; (3) corruption as an extraordinary crime vs. hifz al-mal; (4) distance the deterrent effect and benefit corruptors from the perspective of hifz al-mal; and (5) daruriyyah level for the Corruption Perception Index (CPI) in Indonesia. In this study, data were obtained through documentation techniques while still based on a deductive mindset and a descriptive-critical-analysis model. The results of the study explain that the spirit of novelty in the Criminal Code in Indonesia is directly proportional to the spirit of realizing maslahah for all components of the nation and has fulfilled the character of daruriyyah. However, there are still a few problems in the aspects of hifz al-nafs and hifz al-mal because several points of change have not fully reflected the demands of the wider community.*
Key words*: Corruption crime, Criminal Code, hifz al-mal, maqasid al-shari'ah*

Abstrak: ini adalah penelitian kepustakaan yang menyoroti perdebatan yang sedang ramai di masyarakat Indonesia terhadap beberapa poin pada Kitab Undang-Undang Hukum Pidana (KUHP) yang dianggap kontroversi. Tema di atas akan diurai melalui beberapa poin penting dalam teori *maqasid al-shari'ah*, yakni: (1) prinsip maslahah dalam pasal karet dari tindak pidana korupsi; (2) pemangkasan hukuman pidana bagi pelaku korupsi dalam lensa *hifz al-nafs*; (3) korupsi sebagai *extraordinary crime Vs. hifz al-mal*; (4) menjauhkan efek jera dan menguntungkan koruptor perspektif *hifz al-mal*; dan (5) level *daruriyyah* untuk Indeks Persepsi Korupsi (IPK) di Indonesia. Dalam penelitian ini, data diperoleh melalui tehnik dokumentasi dengan tetap berpijak pada pola pikir deduktif dan model deskriptif-kritis-analisis. Hasil penelitian menjelaskan bahwa semangat kebaruan dalam Kitab Undang-Undang Hukum Pidana di Indonesia berbanding lurus dengan spirit merealisasikan maslahah untuk semua komponen bangsa dan telah memenuhi karakter *daruriyyah*. Namun, masih ada sedikit masalah pada aspek *hifz al-nafs* dan *hifz al-mal* karena beberapa poin perubahan yang ada belum sepenuhnya merefleksikan tuntutan masyarakat luas.
Kata Kunci: pidana korupsi, Kitab Undang-Undang Hukum Pidana, *hifz al-mal, maqasid al-shari'ah*

Introduction

The legal issues that are currently being debated by Indonesian society, particularly academics, are several points in the Draft of the Criminal Code (RKUHP).[1] They consider that these points are problematic and detrimental to the civil rights of citizens. Apart from that, it is also more profitable for certain parties, particularly the government as administrator of the State.[2] The Director of the Jakarta Legal Aid Institute (LBH), Arif Maulana, explained

[1] Emma Palmer, *Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Code* (Cambridge, United Kingdom, New York: 2020), 148-149.
[2] Among the civil and political rights of citizens are: (1) the Right to life; (2) The right to be free from torture and inhumane treatment; (3) The right to be free from slavery and forced labor; (4) The right to freedom and security

in detail the articles that have the potential to cause problems from the latest draft (Draft Indonesian Criminal Code) which was passed by the House of Representatives of the Rebuplic of Indonesia (DPR-RI) together with the Government on December 6, 2022.[3] In response to this, the Jakarta Legal Aid Institute and a number of other civil society organizations held a demonstration in front of the DPR-RI Building as a form of protest against the Draft Criminal Code which was deemed detrimental to civil society.

According to Arif, there are several "rubber articles" that have become the focus of the civil society coalition. Among them are the issue of defaming the government and state institutions (Article 240), the issue of setting fines (Article 81), the issue of capital punishment (Article 100), the issue of prohibiting demonstrations without notification (Article 256), the issue of subversion (Article 188) and acts of corruption (Article 603-606). These articles have attracted the attention of many people. At least, before the government passes the Draft Law, there must be a judicial review by actively involving the public whether the Draft Law is feasible or not. This mechanism, according to Arif, has not been fully implemented by the government, so it seems that it is not in line with democratic ideals. In a democratic government, the voice is in the hands of the people and they have full power to determine their own destiny. Meanwhile, the government only functions as the executor of the mandate of the people. So all policies, including the legal system, mechanisms for establishing laws, and enforcing laws must return to the interests of the people.[4]

One of the articles which is considered problematic, as mentioned in the paragraph above, is criminal penalties for corruptors trimmed in the Criminal Code (KUHP). The issue of reducing criminal penalties for corruptors is not in line with the government's enthusiasm to eradicate corruption from its roots. In the Criminal Code which was just passed on December 6, 2022, provisions regarding corruption are contained in articles 603-606. In Article 603, for example, perpetrators of criminal acts of corruption are sentenced to life imprisonment to a minimum of two years and a maximum of 20 years. In the Criminal Code, perpetrators of corruption are referred to as people who unlawfully commit acts of enriching themselves, other people, or corporations which harm state finances or the country's economy.

In fact, in Law Number 31 of 1999 concerning Corruption Crimes (*Tipikor*), the perpetrators of the same crime are sentenced to a minimum of four years in prison. In other articles, for example, civil servants or state administrators who accept bribes are only punishable by a minimum of one year in prison and a maximum of six years in prison, as well as a minimum fine of IDR 50 million and a maximum of IDR 500 million. As for the Corruption Law, civil servants or state officials who abuse their authority, such as accepting bribes, are subject to criminal law for a minimum of four years and a maximum of 20 years, and are subject to a minimum fine of IDR 200 million and a maximum of IDR 1 billion.

Regarding the Criminal Code in Indonesia which is still causing polemic, the Head of the Surabaya Center for Anti-Corruption and Democracy Studies, Satria Unggul Wicaksana, also provided comments and made several notes. First, Satria said that the presence of Law Number 31 of 1999 concerning Corruption Crimes was the antithesis of corrupt practices in the New Order era. This was a legal implication of the issuance of TAP MPR Number XI/MPR/1998 and TAP MPRS Number VIII/MPR/2001. And then rised to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK). Thus, the Corruption

---

of person; (5) The right to freedom of movement; (6) The right to recognition and so on. See Hendardi, *Mengadvokasi Hak Sipil Politik* (Jakarta: Kepustakaan Populer Gramedia, 2020), 73-75.

[3] One of the potential problems in making statutory regulations is if there is overlap between the new regulations and the existing regulations. See Muslimah, *Politik Hukum Program Legislasi Nasional dalam Pembentukan Undang-Undang* (CV Cahaya Arsh Publishing & Printing, 2018), 135.

[4] Pebriyan, "Ini Poin Permasalahan RKUHP yang Ditolak oleh Koalisi Masyarakat Sipil", within https://nasional.tempo.co/read/1664784/ini-poin-permasalahan-rkuhp-yang-ditolak-oleh-koalisi-masyarakat-sipil

Law is a lex specialist and should be a priority rather than rearranging it in the Criminal Code in Indonesia as a lex generalist.

Second, the decline in the effectiveness of the Corruption Eradication Commission (KPK) in carrying out its duties, as mandated by Law Number 30 of 2022, is namely maintaining accountability and commitment to eradicating corruption carried out by the Indonesian Police and the Indonesian Attorney General's Office. Third, according to Satria, there are various irregularities in the formulation of the Corruption Law in the Criminal Code, for example in Article 607 of the Draft of the Criminal Code which is a new form of Article 2 paragraph (1) of the Corruption Law. This regulation apparently contained a reduction in criminal penalties from 4 years to 2 years in prison. Not only that, the minimum fine has also decreased from IDR 200 million to only IDR 10 million.[5]

Fourth, the formulation will certainly be detrimental to the state's finances. This is regulated in Article 607 of the Draft of the Criminal Code which contradicts the decision of the Constitutional Court Number 31/PUU-X/2012. This means that the Draft of the Criminal Code is contrary to the decisions of the Constitutional Court, and will be biased in determining state finances. According to Satria, the 4 points explained in the articles of the Draft of the Criminal Code should not be included because they are already clearly contained in the Corruption Law.[6]

In this case, President Joko Widodo's administration reiterated the existing articles in the Corruption Law in the Draft of the Criminal Code Bill (RUU-KUHP), and it was submitted to Commission III of the House of Representatives through the Minister of Law and Human Rights (*Menkumham*) Yasonna H. Laoly. Amidst the pros and cons among the public regarding the draft, President Jokowi, as the head of state, guarantees that these articles are not meant to silence the voice of the people, but rather to protect and restore the dignity and authority of the state itself. Furthermore, President Jokowi considered that it was law enforcement officials who would interpret what, how, and for what purpose these articles were enforced.

In the view of the Constitutional Court, Article 608 of the Draft of the Criminal Code, which is a new form of Article 3 of the Corruption Law, does not conflict with the 1945 Constitution (UUD 1945). The Constitutional Court is of the opinion that the perpetrators of corruption, besides being obliged to receive punishment, they also have the basic right to obtain legal protection because this is a constitutional right that must be protected by law. However, as a middle way, the Constitutional Court still provides space for community groups that disagree with the government through a mechanism for reviewing liability based on fault through a legislative review, not a judicial review. And the path of legislative jurisdiction can be carried out by means of amendments or revisions to the material of the law.

However, many people consider that the Constitutional Court's decision by giving space in the form of legislative jurisdiction actually invites controversy. This is because the decision of the Constitutional Court is considered to be contrary to the previous decision of the Constitutional Court regarding the punishment of perpetrators of corruption which is considered too lenient. This is inversely proportional to the spirit of eradicating corruption.

[5] Another example is in Article 608 of the Draft of the Criminal Code (RKUHP), which is a new form of Article 3 of the Corruption Law, states that corporal punishment has increased from 1 year to 2 years in prison. Furthermore, Article 610 paragraph (2) of the Draft of the Criminal Code, which is a new form of Article 11 of the Corruption Law, states that the sentences aimed at bribe recipients have also decreased, from 5 years to 4 years in prison. Other principal punishments, such as fines, have also decreased, from IDR 250 million to IDR 200 million. These are among the points that considered to have further reduced the spirit of eradicating corruption that has been built so far after the reform. See the Draft of the Criminal Code in Indonesia.

[6] Uswah, "Polemik Tindak Pidana Korupsi Masuk RUU KUHP, Ini Kata Pakar Hukum UM Surabaya", within https://www.um-surabaya.ac.id/homepage/news_article?slug=polemik-tindak-pidana-korupsi-masuk-ruu-kuhp-ini-kata-pakar-hukum-um-surabaya-1

This study discusses Articles 603-606 of the Criminal Code as a manifestation of Article 3 of the Corruption Law in the perspective of *hifz al-mal* in *maqasid al-shari'ah.*

Maqasid al-Shari'ah in Islamic Law

Maqasid shari'ah is a theory of Islamic law which seeks to find the purpose of law originates from *al-Qur'an* and *hadis*. The intended purpose is in the form of benefits for humans and the universe as desired by the *shari'ah* maker. The value of this benefit is always attached to every command of Allah SWT and His Messenger. Benefits can also be extracted from the decrees, sayings, or deeds done by the Prophet Muhammad. In addition to how to find a purpose in every command and prohibition of lawmakers (Allah SWT and His Messenger), *maqasid al-shari'ah* also tries their best to avoid danger for humans and the universe. So, the keywords in the study of *maqasid al-shari'ah* are "maslahah" and "mafsadah".

Maqasid scholars, such as 'Abd al-Wahhab Ibn 'Ali al-Subki, define *maslahah* as "bringing all forms of benefits or rejecting all possibilities that can possibly damage human life". The *maqasid* scholars (scholars who are experts in the field of *maqasid*) agree that *maslahah* is the main goal of *shari'ah* which is oriented towards achieving sustainability and perfecting human life in accordance with common sense.[7]

According to al-Shatibi, the basic objective of Islamic law is to realize *maslahah* (benefit) which includes five basic objectives, namely: protecting religion (*hifz al-din*), protecting the soul (*hifz al-nafs*), protecting the mind (*hifz al-'aql*), protecting human preservation (*hifz al-nasl*), and protecting property (*hifz al-mal*). Other scholars add six or seven or even more. However, in general it has been summarized in five features as initiated by Imam al-Shatibi.[8]

Various definitions of *maslahah* as given by the scholars show that the dimension of *maslahah* is a noble principle and must be fought for through a methodology of Islamic law. Therefore, through the principle of *maslahah*, the theo-centric paradigm of Islamic law (theology-based theory) will shift towards anthropo-centric (anthropology-based theory). As a legal approach that is closer to reason (ratio-based methodology), of course not all jurists want to accept *maslahah*. Among the scholars, there are those who do not want to accept *maslahah* as a result of human cognition. According to them *maslahah* is as given as textually stated in al-Qur'an and hadis.

Contemporary *maqasid* experts agree that *maslahah* is the keyword as the core goal of Islamic law itself. Therefore, according to them, *maslahah* can be used as evidence in determining Islamic law. Jasser Audah, a professor in *maqasid al-shari'ah* studies, added that the categorization of *maslahah* into *maslahah mu'tabarah* and *maslahah mursalah* will actually narrow the scope of benefits in law. Islamic teaching, therefore, whether *maslahah mu'tabarah* or *maslahah mursalah* should is supposed to be seen as *maslahah* as long as it is able to contribute benefits for humans. That is why Auda sees that the new *maqasid* will be more effective if it is based on *maslahah* while still paying attention to the principles of universality, breadth and flexibility of Islamic law through the methods of searching of involving advances in science and modern technology. Thus, the character of Islamic law as a flexible and adaptive rule will always have the ability to contribute to solving various contemporary problems of Muslims.

---

[7] 'Abd al-Wahhab Ibn 'Ali al-Subki, *al-Ashbah wa al-Nazair*, vol. I, ed. 'Abd Mawjud (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), 12.

[8] Khairul Hamim, "Hifz al-Lisan as Maqasid al-Shari'ah al-Daruriyyah (Its Importance And Relevance In The Contemporary Era)", Samarah: Jurnal Hukum Keluarga dan Hukum Islam, Vol. 5, No. 1 (2021), 322. DOI: 10.22373/sjhk.v5i1.9139

In this study, the classification of *maqasid al-shari'ah*, which is used to examine the article "criminal acts of corruption" in the latest Indonesian Criminal Code, is *maqasid al-khassah* (particular purpose) in which there is *maqasid al-nafs* and *maqasid al-mal*. In addition, this study also explains how the "criminal act of corruption" in the Indonesian Criminal Code is seen from the perspective of the indicators in *maqasid al-nafs* and *maqasid al-mal*. On a macro level, the theory of *maqasid al-shari'ah* in this study is to see whether the punishment for corruptors as stated in the Criminal Code in Indonesia, which was just passed by the government on December 6, 2022, has fulfilled the problem aspects and justice for all components of the nation or not.

Corruption as "Extraordinary Crime"

Mark A. Drumbl stated that extraordinary crime is an extreme crime in quantitative term and is different from crimes in general. It is because these crimes are far more serious in nature, and the perpetrators are considered as enemies of all humanity.[9] Meanwhile, Muhammad Hatta was of the opinion that, although there are differences in interpretation of the classification of extraordinary crimes, generally experts are of the opinion that in so far as these offenses have a broad and systematic impact and cause massive losses, these offenses can be classified as extraordinary crimes.[10]

In its development, there are other crimes that categorized as extraordinary crimes in Indonesia. The question is, is corruption an extraordinary crime? Artidjo Alkostar stated that since 2002 the Indonesian state, with the enactment of the Corruption Eradication Commission (KPK) Law, has classified corruption crimes as extraordinary crimes (extraordinary crimes). This is because corruption in Indonesia has been widespread and systematic and has violated people's economic rights. For this reason, extraordinary and comprehensive methods of eradicating corruption are needed.[11]

The reason why corruption is categorized as an extraordinary crime is because it does not only affect the perpetrators, but also other people in general. Artidjo said that corruption as an extraordinary crime is in line with the General Elucidation of the KPK Law which states that widespread and systematic criminal acts of corruption are also violations of the social rights and economic rights of the community, and because of all of these, corruption crimes can no longer be classified as an ordinary crime but has become an extraordinary crime.

Furthermore, Eddy O.S. Hiariej, as quoted by Muhammad Hatta, explained that there are at least 4 characteristics of corruption as an extraordinary crime, namely:[12] (a) corruption is an organized crime carried out systematically; (b) corruption is usually carried out with a complex modus operandi that is not easy to prove; (c) corruption is always related to power; (d) corruption is a crime related to the fate of many people because state finances that can be harmed are very useful for improving people's welfare.[13]

A criminal law expert from Trisakti University, Abdul Fickar Hadjar, said that corruption remains an extraordinary crime. The status as extraordinary crime is also contained

---

[9] Mark A. Drumbl. *Atrocity, Punishment, and International Law, Chapter 1: Extraordinary Crime and Ordinary Punishment: An Overview* (Cambridge University Press, 2017), 3-4.

[10] Muhammad Hatta, *Kejahatan Luar Biasa: Extra Ordinary Crime* (Aceh: Unimal Press, 2019), 12.

[11] Artidjo Alkostar, "*Korupsi Sebagai Extra Ordinary Crime"*, Makalah dalam *Training Pengarusutamaan Pendekatan Hak Asasi Manusia dalam Pemberantasan Korupsi di Indonesia Bagi Hakim Seluruh Indonesia*, 2013, 2.

[12] Muhammad Hatta, *Kejahatan Luar Biasa: Extra Ordinary Crime*, 21.

[13] In addition to the crimes mentioned above, Muhammad Hatta also believes that the crime of terrorism has similarities and can be compared as an extraordinary crime because terrorism is carried out in a planned, systematic and organized manner. The targets of these crimes are foreigners and the surrounding civil society who are innocent and has no relationship with foreign interests. In addition, terrorism can be categorized as an extraordinary crime because it does not only kill humans but also destroy all public facilities, worsen the national economy and disrupt the stability of national security. See Muhammad Hatta. *Kejahatan Luar Biasa: Extra Ordinary Crime,* 15.

in the Criminal Code which was just passed by the government in December 2022. The reason is, as long as there is no definitive repeal of the term, it will automatically remain in force. This also applies to Corruption Crimes (*Tipikor*), Money Laundering Crimes (TPPU), or criminal acts due to receiving bribes are categorized as extraordinary crimes. Furthermore, Abdul explained, in the world of law, there is a legal term that specifically defeats general law (*lex specialis derogat legi generali*).[14] The specific laws are the ones that specifically regulate these crimes, including corruption, money laundering and other crimes. Thus, the law that regulates corruption continues to apply as a *lex specialis* or specific law, and defeats the general law, namely the Criminal Code.[15]

Among the meaning of corruption is political corruption. Political corruption that occurs in Indonesia is shown in various cases of corruption that have been proven to have been committed by state officials or administrators. There have been many political power holders who have been convicted of corruption that is detrimental to state finances. The victims of political corruption crimes are the people. In a democratic country, the people actually become stakeholders of the state sovereignty. The many opportunities and facilities owned by those in power in the executive and electoral power in parliament, become opportunities for corruption. With various modus operandi, perpetrators of political corruption carry out transactional actions that benefit themselves, other people or corporations.

Taking into account the very dangerous impact of political corruption for the integrity of the state and the dignity of the nation, the title of a corrupt state will and must be borne by all components of the nation, including most of the innocent people. Even though corruption in Indonesia is legally qualified as an extraordinary crime, the phenomenon of systemic and widespread corruption still worries the people nationally. The perpetrators of political corruption tarnished the nation's pride in front of the international public. The loss of state assets in the amount of trillions of rupiah has resulted in many people suffering, losing strategic rights socio-economically, experiencing degradation of human dignity and becoming a blurry future.[16]

On an international scale, Indonesia has ratified the United Nations Convention against Corruption (UNCAC), with Law Number 7 of 2006. Through this law, Indonesia wants to show the international that it has serious concern for eradicating corruption. With the presence of Law Number 7 of 2006, Indonesia has legal instruments to be proactive in efforts to return corrupted people's money and cooperate internationally to extradite corruptors who have fled abroad. The task of all components of the nation at this time is to revitalize the legal protective function for victims of corruption crimes, namely the poor people who are unable to claim their constitutional rights to live decently above the level of a democratic government system.

ICW's Critics: Removing Deterrent Effect and Benefiting Corruptors

The public's hope that corruptors can be punished as severely as possible has again been hampered following the passage of the Draft of the Criminal Code (RKUHP) on December 6, 2022. At least, the perpetrators of extraordinary crimes, who should receive

[14] Mark E. Villiger, *Customary International Law and Treaties* (Netherland: Martinus Nijhoff Publisher, 1985), 36.

[15] Furthermore, Abdul explained that the adoption of the new Criminal Code was an achievement for the government because it replaced the colonialist Criminal Code which had been in force for decades since Indonesia's independence. However, it does not mean that the Criminal Code does not contain articles that have the potential to harm society. Moreover, there is one mechanism that is considered lacking by the government, namely judicial review by involving the community in an active, effective and comprehensive manner. Therefore, in the next three years during the transition period, it is very likely that there will be many reviews of the Criminal Code through the review mechanism of certain articles to the Constitutional Court submitted by the public.

[16] Artidjo Alkostar, "KORUPSI SEBAGAI EXTRA ORDINARY CRIME DAN TUGAS YURIDIS PARA HAKIM", within https://www.dilmiltama.go.id/home/index.php/e-jurnal/87-korupsi-sebagai-extra-ordinary-crime-dan-tugas-yuridis-para-hakim.html

severe punishment as a deterrent effect, have become lighter. This increasingly shows that the direction of legal politics regarding eradicating corruption is increasingly unclear and experiencing setbacks. Why not, most of the formulations of corruption articles included in the Draft of the Criminal Code actually muzzle the work of eradicating corruption

If taken backwards, the root of the main problem lies in the unclear orientation of the government and the People's Representative Council in formulating a strategy to eradicate corruption. Even though on the commemoration of the 2022 world anti-corruption day, President Joko Widodo said that the root of the challenge for development in Indonesia was corruption, but this was instead answered through the ratification of the draft of the Criminal Code which was proposed by the government accommodated reducing the punishment for corruptors to half as light as previous punishment. This inconsistent attitude further strengthens the Indonesia Corruption Watch (ICW) that there has been disharmony among the government, the people and the People's Representative Council, especially regarding those quite crucial issues.[17]

On the other hand, the ratification of the Draft of the Criminal Code is a historic moment and a proud achievement. This statement was delivered directly by the Minister of Law and Human Rights, Yasonna H. Laoly. He also added that after years of using the Dutch-made Criminal Code, Indonesia now has its own Criminal Code. Therefore, Laoly said, we should be proud because we succeeded in having our own Criminal Code, not made by another country. If you count from the entry into force of the Dutch Criminal Code in Indonesia in 1918, it has been 104 years to date. Indonesia itself has formulated criminal law reform since 1963. It is felt that this Dutch product is no longer relevant to the conditions and needs of criminal law in Indonesia sense. This has become one of the urgencies to ratify the Draft of the Criminal Code which is considered reformative, progressive and responsive to the situation in Indonesia today. Laoly further said that the Criminal Code that had just been ratified had gone through transparent, thorough and participatory discussions. The government and the House of Representatives have accommodated various inputs and ideas from the public.[18]

Unlike the official statement of the Minister of Law and Human Rights, ICW considers that from a formal aspect, the ratification of the Draft of the Criminal Code was also filled with serious problems. For example, based on a number of reports, it was stated that only 18 people attended in person at the plenary forum and 285 members were recorded as absent. This bad portrait of legislation reminds the public of the moment of ratification of the Corruption Eradication Commission Bill in 2019. This event should be questioned, especially regarding the understanding of members of the board regarding the formal requirements for the formation of laws and regulations. Moreover, there are some important aspects to consider in the formation of regulations, namely, outside public participation and the interests of the community. In substance, there are at least 4 critical notes related to the inclusion of corruption articles in the new Criminal Code. There is a contradiction between the state's official statement submitted by the Minister of Law and Human Rights and ICW as an outside party who is also continuing to investigate the process of ratifying the Draft of the Criminal Code in Indonesia.

Protests from many groups against the Criminal Code have continued. There were even demonstrations against a number of articles in the Criminal Code, particularly regarding freedom of opinion and expression. However, there are also those who highlight the regulation of criminal acts of corruption which are considered controversial. The public's hope is that corruptors can be punished with severe sanctions. However, this is hampered by

[17] Ibid.
[18] Ima Dini Shafira, "Pasal Korupsi Dalam KUHP: Menjauhkan Efek Jera Dan Menguntungkan Koruptor", within https://antikorupsi.org/id/pasal-korupsi-dalam-kuhp-menjauhkan-efek-jera-dan-menguntungkan-koruptor

the new Criminal Code. They consider that by including most of the formulation of articles in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes has the potential to erode the work of eradicating corruption and, at the same time shows, the failure of legal politics. In fact, President Joko Widodo's statement was quite clear that corruption was the culprit for the slow implementation of the nation's development program.[19]

In substance, there are, at least, 4 critical notes related to the inclusion of corruption articles in the new Criminal Code, namely: First, the loss of the specific nature of corruption (*Tipikor*). It is important to know that merging corruption articles into the Criminal Code will actually eliminate the specific nature of corruption becoming a general crime. So that corruption is no longer referred to as an extraordinary crime. In fact, corruption crimes often use a complex, evolving modus operandi, and the impact can be detrimental to society. It is fitting that the provisions governing the criminal act of corruption are also contemporary, dynamic and can adapt to the development of this crime in society.[20]

Second, the duplication of articles on the main crimes which are regulated in the Criminal Code with Law Number 31 of 1999 concerning Corruption Crimes (*Tipikor*). For example, as in Article 603 of the Criminal Code is a similar form to Article 2 of the Corruption Law. The problem is that the low threat of punishment for perpetrators of corruption in the new Criminal Code has made the agenda for eradicating corruption experience a setback. Based on ICW records, throughout 2021 out of 1,282 corruption cases, the average prison sentence was only 3 years and 5 months. The question is how the government and the House of Representatives can think that in the midst of increasing corruption cases and low penalties for corruptors, the response is to reduce the threat of imprisonment for corruptors. Not yet, by reducing the minimum threat of corporal punishment which was previously 4 years (in the Corruption Law) to 2 years and a fine that previously imposed a minimum of IDR 200 million to IDR 10 million.

Third, it does not include provisions regarding additional punishment in the form of payment of replacement money. This certainly undermines the spirit of returning assets resulting from crime. ICW notes that in the 2021 sentencing trend, out of a total state loss of IDR 62.9 trillion, the replacement money only reached IDR 1.4 trillion. At the same time, a number of important regulations such as the Draft Law on Confiscation of Assets have never been included in the priority national legislation program.

Fourth, the regulation of the new Criminal Code actually contradicts the decision of the Constitutional Court (MK) No.31/PUU-X/2012 which confirms that law enforcers can not only coordinate with the Supreme Audit Agency (BPK)[21] when calculating state losses, but coordinate with other agencies. In fact, it allows law enforcers to prove themselves beyond the findings of these state agencies. This mechanism has the potential to hinder the process of investigating corruption cases.[22]

---

[19] This statement was made by the President of the Republic of Indonesia, Joko Widodo, during the commemoration of the 2022 World Anti-Corruption Day.

[20] Indonesia, as a member of the United Nations Convention against Corruption (UNCAC), has not yet criminalized a number of the offenses recommended in it. Thus, legislators should prioritize revising the existing Corruption Law rather than having to include problematic corruption articles in the new Criminal Code.

[21] The Supreme Audit Agency of the Republic of Indonesia (abbreviated as BPK RI, formerly abbreviated as BEPEKA) is a state institution within the Indonesian constitutional system that has the authority to examine the management and accountability of state finances. According to the 1945 Constitution, BPK is a free and independent institution. BPK members are elected by the House of Representatives by taking into account the considerations of the Regional Representatives Council, and are inaugurated by the President. Before taking office, BPK members must take an oath or pledge according to their religion guided by the Chief Justice of the Supreme Court

[22] For example, in the elucidation of Article 603 of the new Criminal Code, it states, "What is meant by 'harming state finances' is based on the results of examinations by state financial audit institutions". This definition directs the only authorized party to be referred to as the Supreme Audit Agency (BPK). Meanwhile, the public knows that the results of calculating state losses by the BPK often take a long time thus hindering the process of determining suspects by law enforcement

Cases of Corruption in Indonesia

An international organization that aims to combat political corruption, Transparency International Indonesia (TII), revealed that Indonesia's Corruption Perceptions Index (CPI) for 2020 was at a score of 37. This ranking fell by three points from the previous year. Indonesia is ranked 102 out of 180 countries involved. The country that has the same score and ranking as Indonesia is Gambia. The international organization that aims to fight political corruption routinely issues a Corruption Perception Index score every year. Scores are made based on indicators from 0 (very corrupt) to 100 which means (very clean). At the ASEAN level, Indonesia is ranked fifth, still far below Singapore which received a Corruption Perceptions Index score (85), Brunei Darussalam (60), Malaysia (51) and Timor Leste (40).[23]

Some indicators used for scoring include law enforcement, bureaucracy, democracy, and public services. When viewed from the aspect of law enforcement, Indonesia has experienced an increase. However, in the aspect of improving services/bureaucracy with its relation to corruption, it is still stagnant. In addition, indicators related to politics and democracy also experienced a decrease in score. There are the top five countries with the highest Corruption Perception Index. The five countries are Denmark and New Zealand (GPA 88); Finland, Singapore, Sweden and Switzerland (85); Norway (84); Netherlands (82); Germany and Luxembourg (80). Meanwhile, the top three countries with the lowest Corruption Perception Index were Somalia and South Sudan (12); Syria (14); Yemen and Venezuela (15).[24]

On the other hand, Germany is again ranked 9th, as it was the previous year, with a score of 80 out of 100. The United States only scored and made it drop to the lowest ranking it has ever achieved since 2012, namely rank 25. Meanwhile, Indonesia, which in 2019 still won a score of 40 and ranked 85th out of 180 countries, dropped nearly 20 positions to rank 102nd, with a score of 37. Meanwhile, India, which scored 40, is now far above Indonesia, which is ranked 86th.[25]

If it is calculated from 2004 to 3 January 2022, there have been 1261 corruption cases. Geographically, based on the area, the most corruption occurred in the central government, namely 409 cases. This shows that the more crowded an area, where there are massive public services, the greater the potential for corruption. Therefore, corruption is still a latent problem in Indonesia. Most corruption occurred in the central government, namely 409 cases. This position was followed by West Java with 118 cases of rasuah. A total of 109 corruption cases occurred in East Java. Then, there were 84 corruption cases occurred in North Sumatra. Corruption cases occurred in Riau and the Riau Islands and DKI Jakarta were 68 cases and 64 cases respectively. Then, there were 55 corruption cases occurred in South Sumatra. Meanwhile, Central Java occupies the eighth position in this list. There were 53 corruption cases handled by the Corruption Eradication Commission in Central Java.[26]

The high number of corruption cases in Indonesia has reached the limit. In addition, this unhealthy climate also illustrates a problem with the nation's morals. Therefore, through the legal umbrella of Law Number 30 of 2002, the government is determined to form an institution (the Corruption Eradication Commission) which specifically has a mandate to

[23] CNN Indonesia, "Ranking Indeks Korupsi Indonesia Merosot, Urutan 102 dari 180", within https://www.cnnindonesia.com/nasional/20210128134510-12-599524/ranking-indeks-korupsi-indonesia-merosot-urutan-102-dari-180

[24] Ibid. Daniel Eriksson from the Transparency International says that it is precisely when the pandemic period is so attractive for corrupt people to suck money into their own pockets, thereby making themselves rich at the expense of the population at large. Corruption in this case is literally killing people.

[25] Transparency International's latest report released Thursday, January 28, 2021.

[26] Shilvina Widi, "Kasus Korupsi di Indonesia Terbanyak dari Pemerintah Pusat", within https://dataindonesia.id/ragam/detail/kasus-korupsi-di-indonesia-terbanyak-dari-pemerintah-pusat.

eradicate corruption in Indonesia. In carrying out its duties and authorities, the Corruption Eradication Commission is independent and free from the influence of any power, including the government and other state institutions.[27]

Throughout its journey, the Corruption Eradication Commission has uncovered and resolved many corruption cases. There have been a number of efforts to deal with criminal acts of corruption that have been carried out by this institution. In the first semester of 2022, the Corruption Eradication Commission has conducted 66 investigations, 60 investigations, 71 prosecutions, 59 inkracht cases, and executed decisions on 51 cases. Of the total investigation cases, the Corruption Eradication Commission has named 68 people as suspects out of a total of 61 investigation orders issued. If detailed, there were 99 ongoing cases in the first semester consisting of 63 carry over cases and 36 new cases with 61 investigation orders issued.[28]

The image of the Corruption Eradication Commission continues to improve when this institution conducts 52 searches and 941 seizures in the process of investigating cases. In Semester I of 2022, the Corruption Eradication Commission has recovered state financial losses arising from criminal acts of corruption or asset recovery of IDR 313.7 billion. The total asset recovery consists of IDR 248.01 billion is income from confiscated proceeds of corruption, money laundering crimes (TPPU), and replacement money that has been decided or determined by the court. Then, IDR 41.5 billion came from fines and sales of auction proceeds from corruption and money laundering, and IDR 24.2 billion came from the determination of use status and grants. This achievement of asset recovery increased by 83.2% compared to the same period in the previous year. In Semester I 2021, the Corruption Eradication Commission's asset recovery figure was IDR 171.23 billion.[29]

Deputy Chairman of the Corruption Eradication Commission (KPK), Alexander Marwata said that during Semester I-2022, he had issued 61 sprindiks, and managed to collect an asset recovery of IDR 313.7 billion. This figure is higher when compared to the asset recovery achieved by the KPK in semester 1 of 2021 of IDR 171.23 billion. Optimizing asset recovery aims to recover as much as possible state financial losses that have arisen as a result of corruption through asset recovery. He also explained that the Corruption Eradication Commission continues to be committed to enforcing the law on corruption to provide a deterrent effect, namely by not only imprisoning the perpetrators' bodies, but also carrying out asset recovery through additional criminal compensation optimally. Thus, the Corruption Eradication Commission also continues to work on developing cases on the Crime of Money Laundering (TPPU).[30]

ICW noted that there were, at least, 252 corruption cases with 612 of them being named suspects and the potential loss to the state reached IDR 33.6 trillion. Departing from the results of this monitoring, it shows that the government is serious about eradicating corruption even though it has not been able to run optimally. This achievement can be seen through the target indicators listed in the Budget Implementation Entry List (DIPA) for the 2022 fiscal year. The overall target for law enforcement during semester I of 2022 is 1,387 cases at the investigation level or only 18% of the target.[31]

---

[27] Laurensius Arliman Simbolon, *Lembaga-Lembaga Negara Independen di dalam Undang-Undang Dasar 1945* (Yogjakarta: Deepublish Publisher, 2019), 175.

[28] Romli Atmasasmita, *Sisi Lain Akuntabilitas Kapita dan Lembaga Pegiat Antikorupsi* (Jakarta: Prenadamedia Grup, 2020), 49-50.

[29] Shilvina Widi, "Kasus Korupsi di Indonesia Terbanyak dari Pemerintah Pusat", within https://dataindonesia.id/ragam/detail/kasus-korupsi-di-indonesia-terbanyak-dari-pemerintah-pusat

[30] Mochamad Januar Rizki, "KPK Catat Pengumpulan Asset Recovery Sebesar Rp313,7 Miliar Semester I", within https://www.hukumonline.com/berita/a/kpk-catat-pengumpulan-asset-recovery-sebesar-rp313-7-miliar-semester-i-lt630353b6bbf62/

[31] Indonesia Corruption Watch, "Tren Penindakan Kasus Korupsi Semester 1 Tahun 2022", within https://antikorupsi.org/id/tren-penindakan-kasus-korupsi-semester-1-tahun-2022

Material of Articles on Bribery in the Latest Criminal Code

As stated in Article 603, the punishment for corruptors is experiencing an increasingly mitigating trend. Among the Articles of the Criminal Code, which are considered controversial, they tend to be more mitigating. The sentence for corruptors, which was previously four years and a maximum of 20 years, becomes a minimum of 2 years in prison and a maximum of 10 years. Likewise with fines used to be IDR 200 million and a maximum of IDR 2 billion, now they are, at least, IDR 10 million. The following is the reading of article 603 of the latest Criminal Code which is considered controversial:

Article 603: "Any person who unlawfully commits an act of enriching himself, another person, or a corporation that is detrimental to the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a minimum fine of category II and a maximum of category VI".

Article 604 is related to abuse of authority: "Anyone who with the aim of benefiting himself, another person, or a corporation abuses the authority, opportunity, or facilities available to him because of his position which is detrimental to the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI".

Article 605 is related to bribery: (1) Sentenced to a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and a minimum fine of category III and a maximum of category V, Everyone who: (a) gives or promises something to a civil servant or state administrator with the intention that said civil servant or state administrator will do or not do something in his position that is contrary to his obligations; or (b) gives something to a civil servant or state administrator because of or in connection with something that is contrary to obligations, which is done or not done in his position. (2) Civil servants or state administrators who receive gifts or promises as referred to in paragraph (1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a fine of at least category III and a maximum of category V.

Article 606: Regarding gratuities: "(1) Everyone who gives gifts or promises to civil servants or state administrators by considering the power or authority attached to their position, or the giver of gifts or promises is considered to be attached to that position, shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of category IV; (2) Civil servants or state officials who receive gifts or promises as referred to in paragraph (1) shall be punished with imprisonment for a maximum of 4 (four) years and a maximum fine of category IV".[32]

Law Number 31 of 1999 concerning Eradication of Corruption Crimes

Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption Initially, the punishment for corruptors was stipulated with the threat of very high criminal penalties and still accompanied by fines. In fact, there is a threat of life imprisonment and or the death penalty. That is the reason why many people are questioning the new Criminal Code. Because if it is true that the spirit of government administrators is to eradicate corruption, then of course, the penalties set in the new Criminal Code will be higher or at least the same. However, the reality is the opposite. The followings are several articles of Law Number 31 of 1999 which provide for more severe punishment than the provisions in the new Criminal Code:

---

[32] Copy of the latest Indonesian Criminal Code of Indonesia

Article 2 paragraph (1) states "Anyone who violates the law and enriches himself, other people or corporations that can harm the state or the country's economy, is punishable by life imprisonment or a maximum of 4 years in prison and a maximum of 20 years". In addition, corruptors are also fined a minimum of IDR 10 million and a maximum of category IV or IDR 2 billion. Whereas in article 2 paragraph (2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment may be imposed.

Article 3 concerning Abuse of Authority: "Anyone who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his position, which can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least IDR 50,000,000.00 (fifty million Rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

Article 5 is regarding Bribery. Meanwhile, the penalties for perpetrators of bribery in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes are as follows: 1 (one) year and a maximum of 5 (five) years and/or a fine of a minimum of IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiah)".[33]

"Rubber Article" in the Criminal Code under the Lense of *Maslahah*

Rubber article is a practical term which is often used to define articles in the Criminal Code that have a negative connotation. Judges and the government, as law enforcers, usually use these articles subjectively to protect their own interests. As the name implies, the article on rubber refers to the characters of a flexible rubber that can be stretched, has very elastic boundaries and definitions and can reach anything according to the wishes of the interested parties. Politically, articles like this are often used to hit their political opponents, especially those who are at odds in policies, decisions and even laws and regulations.

As the data in the sub-chapter above, there are a number of rubber articles that are in the spotlight of the civil society coalition. Among them is the problem of criminal acts of corruption (Articles 603-606). These articles have attracted the attention of many groups, especially criminal law experts. However, if we go back to history, the term "rubber article" has existed since the Dutch East Indies era. They include special articles on crimes against the dignity of the President and Vice President. These articles prohibited citizens from mocking the Queen of the Netherlands. In Dutch, the insult article is referred to as *haatzaai pasalen* (hate speech). This article is very important because they understand that the Queen is a symbol to represent the state. So, insulting or harassing the queen is the same as belittling the state. However, in Indonesia, the article was abolished on 4 December 2006 by the Constitutional Court.

After independence, the rubber article was attributed to articles on complaint offenses, in the form of slander and defamation (articles 310 and 311 of the Criminal Code). Even though they are rubber articles, these articles are not too scary because the criminal threat for libel and defamation offenses is only 4 (four) years in prison, so investigators cannot detain someone with the status of "suspect" based on articles 310 and 311 of the Indonesian Criminal Code. However, as political and legal dynamics develop, rubber articles are often used to protect the interests of power in various forms.

On the other hand, there is also a term of progressive law as initiated by Prof. Satjipto Rahardjo. The term of progressive means a character of law that always adapts to change. Progressive law holds that "law is made for humans, not humans for law". Rahardjo's rationale is that current legal studies have reached a deep ecology which is fundamental to

[33] Copy of the Law Number 31 of 1999 concerning Eradication of Corruption Crimes

anthropocentrism thinking.[34] In this case, the government has full authority to choose which legal system is right for certain conditions as long as it leads to the interests of all components of the nation.

It is possible that what is meant by rubber articles in the Criminal Code are those whice have a linear spirit with progressive law, two terms that are different both in terms of meaning and connotation. The similarity is actually quite easy if both are oriented towards defending the interests of the people and being firm against the perpetrators of corruption. If the rubber article in question, however, is more synonymous with a unilateral interpretation for the sake of defending the interests of those in power so that they can exploit the people, then the character of progressive law is totally the opposite of the rubber article as observers worry.

In fact, what the government has done to change the legal system is a form of responsibility and the good will of those in power for the mandate given to them by the people. However, these changes need to be seen comprehensively from various aspects. In the *maqasid* study, the term rubber article, by reducing penalties or increasing penalties for perpetrators of corruption, will be seen further from the aspect of the large or small value of benefits (*maslahah*) for all components of the nation, not just the perpetrators of corruption, but also the aggrieved parties. The greater the value of the benefits, the more *maslahah* for the people they are.

On the other hand, the smaller the potential benefits for humans, the less profitable it is. At least, the logic of the law says "if the perpetrators of corruption increase with harsh sentences, what will happen if the penalties for corruptors are lowered, they will, of course, be even more daring to commit massive corruption".[35] If this legal logic is proven, then there are several characters of *maslahah* that have not been fulfilled in reducing sentences for perpetrators of corruption, namely the potential for harm is more dominant.

Corruption as *Extraordinary Crime Vs Hifz al-Mal*

The term extraordinary crime is used to describe an extreme crime quantitatively and different from crimes in general. This is because this crime is far more serious in nature, and the perpetrators are seen as enemies of all mankind.[36] Corruption is a crime that has a serious impact on human life. At least, there are 4 characteristics of corruption as an extraordinary crime, namely:[37] (1) corruption is an organized and systematic crime; (2) corruption is usually carried out with a complex modus operandi which is not easy to prove; (3) corruption is always related to power; (4) corruption is a crime related to the fate of many people because state finances, which should be used to improve people's welfare, are consumed by the corruptors themselves.[38]

The Corruption Eradication Commission (KPK) Law, which was created by the government, classifies corruption crime as extraordinary crime. This is because corruption in Indonesia is widespread, systematic and has violated people's economic rights. Therefore,

---

[34] See “Progressive law” is a legal idea introduced by Satjipto Rahardjo. The idea stems from concerns about macro-legal life in Indonesia, including after the 1998 reform, which did not move towards the ideal, namely for the welfare and happiness of its people. What is happening with legal life is actually a decline and decline, seen among others in the judicial mafia, commercialization, and the commodification of law. To overcome this situation, according to Satjipto Rahardjo with his progressive law, law enforcement must have the courage to leave conventional methods and the status quo. See Zulfa Aulia, “Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi”, Undang: Jurnal Hukum, Vol. 1 No. 1 (2018): 159-185, DOI: 10.22437/ujh.1.1.159-185.

[35] In 2019, Indonesia still scored 40 and was ranked 85th out of 180 countries. However, currently it has fallen almost 20 positions to rank 102nd, with a score of 37. Meanwhile, India, which scored 40, is now far above Indonesia, which is ranked 86th.

[36] Mark A. Drumbl. *Atrocity, Punishment, and International Law, Chapter 1: Extraordinary Crime and Ordinary Punishment: An Overview*, 3-4.

[37] Muhammad Hatta, *Kejahatan Luar Biasa: Extra Ordinary Crime*, 21.

[38] Ibid., 15.

smart innovation is needed to ensnare corruptors so that their space for movement becomes narrower.[39] The status as an extraordinary crime for corruption is also contained in the Criminal Code which was just passed by the government in December 2022.

On an international scale, Indonesia has ratified the United Nations Convention against Corruption (UNCAC), with Law Number 7 of 2006. Through this law, Indonesia wants to show the international that it has serious concern for eradicating corruption. Law Number 7 of 2006 is a legal instrument to return corrupted people's money. What the government has done by categorizing corruption as an extraordinary crime is something that needs to be appreciated. This is because giving the label extraordinary crime means that the government is trying extra hard to minimize corruption at the lowest possible level.

One of the features in *maqasid al-shari'ah* is *hifz al-mal* (guarding wealth). Some contemporary *maqasid* experts have shifted *hifz al-mal* to *al-tanmiyyah al-iqtisadiyyah* (developing the nation's economy). That is, the scope of the meaning of *al-tanmiyyah al-iqtisadiyyah* (macro) is much wider than just *hifz al-mal* (micro). Thus, the purpose of Islamic law is not only how assets can be protected from damage, theft, corruption and all actions that cause one's property to be insecure, but, furthermore, how to improve the nation's economy to compete on the world stage. *Al-Qur'an* itself, when talking about wealth, also talks about how to get property and how to treat property so that it has a beneficial value both for the owner and for other people.

In *al-Qur'an*, there are many verses discuss wealth starting from the aspect of having to seek the grace of Allah SWT in the form of material wealth, how to get wealth, how to use wealth after it is obtained, and the prohibition on obtaining wealth in a way that can harm other people. Among the verses in question are as mentioned in *al-Qur'an* chapter *al-Baqarah* verse 168:

> Meaning: "O mankind, eat from whatever is on earth [that is] lawful and good and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy". (Q.C. *al-Baqarah*: 168)

According to the verse above, it is explained about the human obligation to eat lawful and good food and obtained in a good way. In addition, the verse above also provides a strict prohibition for a Muslim to take actions that can harm other people, whether done individually or collectively because these methods will definitely harm other people. This verse is further clarified by the word of Allah SWT in *al-Qur'an* chapter *al-Baqarah*: 188.

> Meaning: "Do not eat up one another's property among yourselves by false means (unjustly) nor give bribery to the judges so that you may knowingly eat up a part of the property of others sinfully". (Q.C. *al-Baqarah*: 188)

Chapter *al-Baqarah* verse 188 above further emphasizes the prohibition on eating, using, stealing, corrupting other people's property in unconstitutional ways because apart from that, it can take away other people's rights, morally, the perpetrator has committed a highly commendable act in society before Allah SWT. Besides that, verse 188 in chapter *al-Baqarah* also explains the prohibition of obtaining wealth by deceitful means, such as fraud, engineering the law for material gain, conspiring with the authorities, and manipulating the law for personal gain.

Among other meanings of corruption is political corruption. Political corruption that occurs in Indonesia is shown in various cases of corruption that have been proven to have been committed by state officials or administrators. There have been many political power

[39] Artidjo Alkostar, "*Korupsi Sebagai Extra Ordinary Crime"*, 2.

holders who have been convicted of corruption that is detrimental to state finances. The victims of political corruption crimes are the people. Entering corruption as an extraordinary crime is a government action that needs to be appreciated. At least there are government efforts to maintain the stability of the nation's economy.

Daruriyyah for Corruption Perception Index (GPA) in Indonesia

Based on Transparency International Indonesia's records, Indonesia's Corruption Perceptions Index (CPI) for 2020 was at a score of 37. And currently Indonesia is ranked 102 out of 180 countries. Meanwhile, at the ASEAN level, Indonesia is ranked 5th, still far below Singapore which received a Corruption Perceptions Index score (85), Brunei Darussalam (60), Malaysia (51) and Timor Leste (40).[40] The higher Indonesia's Corruption Perceptions Index ranking, both at the international and ASEAN levels, the stronger the suspicion about a problem with the existing legal system. This is, of course, also directly proportional to the decline in public confidence in efforts to eradicate corruption in Indonesia.

Likewise, from the aspect of the number of corruption cases occur from year to year, the graph tends to increase. Counting from 2004 to January 2022, there have been 1261 corruption cases. This is a very high number for Indonesia, especially since it already has special legal instruments dealing with corruption. Actually what the government is doing through Law Number 30 of 2002 (Corruption Eradication Commission), Law Number 31 of 1999 concerning Corruption Crimes (*Tipikor)*, Law Number 30 of 2022 concerning accountability and commitment to eradicating corruption is carried out by The Indonesian National Police and the Indonesian Attorney General's Office and the Criminal Code, and the recently passed Criminal Code, are forms of special attention from the government to eradicate corruption and at the same time convince the international community. However, the high number of corruption cases in Indonesia has reached the limit. In addition, this unhealthy climate also illustrates a problem with the nation's morals.

In terms of nominal state losses due to corruption, it has reached IDR 33.6 trillion. The quite large number came from 252 corruption cases with 612 people named as suspects. This data is based on ICW's records. Based on the results of this monitoring, it shows that the government is serious about efforts to eradicate corruption, even though it has not been able to run optimally. The government's seriousness is also evidenced by the formation of the Corruption Eradication Commission (KPK) which continues to be committed to enforcing corruption laws to provide a deterrent effect, namely by not only imprisoning the perpetrators' bodies, but also carrying out asset recovery through additional criminal compensation optimally.

Based on *daruriyyat* analysis in *maqasid al-shari'ah*, the Corruption Perception Index (CPI) in Indonesia is seen from several aspects. *Daruriyyat* itself is one of the features in *maqasid* in terms of the urgency and priority of achieving *maslahah. Daruriyyat* (primary needs) have an urgent nature. If this need is not met, it will result in quite a fatal hazard. The second level is *hajiyyat* as a secondary need. And at the lowest level is *tahsiniyyah* as a complementary need. The existence of *tahsiniyyah* is less urgent compared to *daruriyyah* and *tahsiniyyah*.

Cases occupying the three positions are also relative. In conditions where religious harmony is going well, *hifz al-din* (safeguarding religion) does not occupy a *daruriyyah* position anymore but can be at the level of *hajiyyah* or even *tahsiniyyah*. And vice versa, in the economic conditions of a country experiencing bankruptcy or loss, then economic development is a priority and occupies a *daruriyyah* position. In the context of eradicating

[40] CNN Indonesia, "Ranking Indeks Korupsi Indonesia Merosot, Urutan 102 dari 180", within https://www.cnnindonesia.com/nasional/20210128134510-12-599524/ranking-indeks-korupsi-indonesia-merosot-urutan-102-dari-180

corruption, Indonesia has fulfilled the *daruriyyah* criteria. There are, at least, three reasons why eradicating corruption in Indonesia occupies a very urgent or *daruriyyah* level, namely: (1) Based on Transparency International Indonesia's records, Indonesia's Corruption Perception Index (CPI) is currently ranked 102 out of 180 countries; (2) from the aspect of the number of corruption cases occur from year to year, the graph tends to increase, namely 1261 cases; and (3) in terms of nominal state losses due to corruption, it has reached IDR 33.6 trillion. The amount is quite large for Indonesia.

Conclusion

According to an analysis of several features in *maqasid al-shari'ah*, several notes on the Criminal Code in Indonesia are indicated to invite controversy among the wider community, namely: (1) The rubber article for corruption in the Criminal Code does not meet the ideal *maslahah* criteria because there are still parties who are harmed by the act of corruption where the danger is more dominant than the benefit; (2) reducing criminal penalties for corruptors in the lens of *hifz al-nafs* must still be seen as a form of government responsibility to realize *hifz al-nafs* (safeguarding the soul), even though there are several legal logics that have not proven effective in realizing *hifz al-nafs* broadly (3) By looking at the magnitude of the danger due to corruption, then in the perspective of *hifz al-mal*, the criminal act of corruption has met the criteria as an extraordinary crime; and (4) Seeing the graph of corruption in Indonesia and Indonesia's ranking which tends to soar, both at the ASEAN and international levels, efforts to eradicate corruption in Indonesia are at the *daruriyyah* (emergence) level and require serious handling by all components of the nation.

Referrences

Alkostar, Artidjo, "*Korupsi Sebagai Extra Ordinary Crime"*, Paper within *Training Pengarusutamaan Pendekatan Hak Asasi Manusia dalam Pemberantasan Korupsi di Indonesia Bagi Hakim Seluruh Indonesia*, 2013.

Atmasasmita, Romli, *Sisi Lain Akuntabilitas Kapita dan Lembaga Pegiat Antikorupsi*, Jakarta: Prenadamedia Grup, 2020.

Aulia, Zulfa, "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi**",** Undang: Jurnal Hukum, Vol. 1 No. 1 (2018): 159-185, DOI: 10.22437/ujh.1.1.159-185.

Drumbl, Mark A., *Atrocity, Punishment, and International Law, Chapter 1: Extraordinary Crime and Ordinary Punishment: An Overview*, Cambridge University Press, 2017.

Hamim, Khairul, "Ḥifẓ Al-Lisān As Maqāṣid Al-Sharī'ah Al-Ḍarūriyyah (Its Importance And Relevance In The Contemporary Era)", Samarah: Jurnal Hukum Keluarga dan Hukum Islam, Vol. 5, No. 1 (2021), 322. DOI: 10.22373/sjhk.v5i1.9139

Hatta, Muhammad, *Kejahatan Luar Biasa: Extra Ordinary Crime*, Aceh: Unimal Press, 2019.

Hendardi, *Mengadvokasi Hak Sipil Politik*, Jakarta: Kepustakaan Populer Gramedia, 2020.

Muslimah, *Politik Hukum Program Legislasi Nasional dalam Pembentukan Undang-Undang*, CV Cahaya Arsh Publishing & Printing, 2018.

Palmer, Emma, *Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Code*, Cambridge, United Kingdom, New York: 2020.

Simbolon, Laurensius Arliman, *Lembaga-Lembaga Negara Independen di dalam Undang-Undang Dasar 1945*, Yogjakarta: Deepublish Publisher, 2019.

Subki (al), 'Abd al-Wahhab Ibn 'Ali, *al-Ashbah wa al-Nazair*, vol. I, ed. 'Abd Mawjud, Beirut: Dar al-Kutub al-'Ilmiyyah, 1991.

Villiger, Mark E., *Customary International Law and Treaties*, Netherand: Martinus Nijhoff Publisher, 1985.

Transparency International's latest report released Thursday, January 28, 2021.

Copy of the latest Indonesian Criminal Code

Copy of the Law Number 31 of 1999

https://www.cnnindonesia.com/nasional/20210128134510-12-599524/ranking-indeks-korupsi-indonesia-merosot-urutan-102-dari-180

https://nasional.tempo.co/read/1664784/ini-poin-permasalahan-rkuhp-yang-ditolak-oleh-koalisi-masyarakat-sipil

https://www.um-surabaya.ac.id/homepage/news_article?slug=polemik-tindak-pidana-korupsi-masuk-ruu-kuhp-ini-kata-pakar-hukum-um-surabaya-1

https://dataindonesia.id/ragam/detail/kasus-korupsi-di-indonesia-terbanyak-dari-pemerintah-pusat

https://www.hukumonline.com/berita/a/kpk-catat-pengumpulan-asset-recovery-sebesar-rp313-7-miliar-semester-i-lt630353b6bbf62/

https://antikorupsi.org/id/tren-penindakan-kasus-korupsi-semester-1-tahun-2022