

PARTICIPATION OF FORMER CORRUPTION PRISONERS IN ELECTIONS IN ISLAMIC PERSPECTIVE

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Received:
4th January 2022

Reviewed:
February-June 2022

Published:
20th July 2022

ABSTRACT

*The Indonesian General Election Commission (KPU) as the organizer of the General Election stipulates KPU Regulation Number 20 of 2018 concerning the nomination of members of the DPR RI, Provincial DPRD and Regency or City DPRD. One of the points in the PKPU regulates the prohibition of former corruption convicts from registering as legislative candidates. This is a matter of debate in various circles. However, if we examine the *fiqh siyasa* regarding the rules of ex-convicts of corruption, it is very contrary to the requirements of *ahl halli wal-aqdi*, whether it is a matter of fair conditions or also with an attitude of wisdom, and is contrary to the function or authority of *ahl halli wal-aqdi*. Therefore, the revocation of the right to vote and be elected (participation in the General Election) is the implementation of an extraordinary enforcement of criminal law. The legal classification is that it is permissible for ex-corruptors to become legislative candidates if viewed from the level of their need is *al-Hajiyat* but based on its scope it is of special interest (*al-Maslahah al-Khossob*) which is oriented to the benefit of the corruptors whose political rights are taken away, while what needs to be underlined is the rights of the wider community, who are deprived of their social and economic rights so as to further distance them from justice and welfare as the main core of the purpose of the law itself.*

Keywords: Prisoners, Corruption, Elections, Islam

ABSTRAK

*Komisi Pemilihan Umum sebagai penyelenggara Pemilihan Umum menetapkan Peraturan KPU Nomor 20 tahun 2018 tentang pencalonan anggota DPR RI, DPRD Provinsi dan DPRD Kabupaten atau Kota. Salah satu poin di dalam PKPU tersebut mengatur mengenai pelarangan mantan narapidana korupsi mendaftarkan diri sebagai calon legislatif. Hal ini menjadi perdebatan diberbagai kalangan. Namun jika kita kaji dalam *fiqh siyasah* perihal aturan mantan narapidana korupsi sangat bertentangan dengan syarat *ahl halli wal-aqdi* baik masalah syarat adil ataupun juga dengan sikap kebijaksanaan, serta sudah bertentangan dengan fungsi atau wewenang *ahl halli wal-aqdi*. Oleh karena itu, maka pencabutan hak memilih dan dipilih (partisipasi dalam Pemilu) merupakan implementasi penerapan pidana yang bersifat *extra ordinary enforcement*. Penggolongan hukum bolehnya mantan koruptor menjadi caleg jika ditinjau dari tingkat kebutuhannya adalah *al-Hajiyat* akan tetapi berdasarkan cakupannya bersifat kepentingan khusus (*al-Maslahah al-Khossob*) yakni berorientasi pada kemaslahatan para koruptor yang direnggut hak politiknya, sementara yang perlu digarisbawahi adalah hak masyarakat luas yang direnggut hak social dan hak ekonominya sehingga semakin menjauhkan mereka dari keadilan dan kesejahteraan sebagaimana yang menjadi inti pokok dari tujuan hukum itu sendiri.*

Kata Kunci: Narapidana, Korupsi, Pemilu, Islam

INTRODUCTION

The concept of democracy is a key word in itself, especially in the field of political science. This is because democracy is currently touted as an indicator in the political development of a country, including Indonesia. Democracy is a very vital position in the people with state power derived from and must also be used for the welfare of the people. Democracy and often liberating as two things in one package, getting democracy “definitely” also gets freedom, on the other hand, democracy and freedom sometimes encounter many problems in its implementation, with the freedom of citizens, freedom can only be obtained or obtained if there is democracy and a constitution that guarantees it.

In essence, democracy cannot guarantee absolute freedom, there needs to be a commitment to build a tradition of freedom, a tradition among all citizens which is embodied in rules and strict law enforcement, that everyone is free to speak and express his opinion (Jailani, 2015).

The existence of general elections is recognized by countries that adhere to the principle of popular sovereignty, and all types of political levels are held, whether democratic, authoritarian or totalitarian systems. by some democracies. Elections

are considered as symbols and benchmarks of the democratic system (Aryani & Hermanto, 2020). The General Election (*Pemilu*) is a democratic party in the context of realizing people's sovereignty, which provides the opportunity for all citizens to democratically elect their leaders and representatives for the sake of increasing welfare. General elections held in Indonesia are a means to form a democratic government through an honest and fair mechanism (Zazili, 2016). The important meaning of holding elections is to filter participation is to filter public participation in the process of administering government and this is a manifestation of the provisions of the 1945 Constitution article 1 paragraph (2) which states “sovereignty is in the hands of the people” (RI, n.d.-b).

The constitutional basis for holding elections, Article 22 E paragraph (1) of the 1945 Constitution mandates that elections be held with higher quality by involving the widest possible participation of the people on the principles of democracy, direct public, free, confidential, honest and fair through a law. Elections in democracy are carried out to fill political positions, both legislative and executive. Political positions are the most open positions. With this open character,

political positions are contested by every citizen without seeing any qualifications of that person. The only condition that can lead him to be able to occupy political positions is political support itself, both political support from people's representatives, higher bureaucrats, and from the community (Handayani, n.d.).

Based on Law Number 7 of 2017 as the Juridical basis for the Election, which consists of 573 articles. The law regulates that the election administration is carried out by a general election commission that is national, permanent, and independent. The national nature reflects that the work area and responsibility of the KPU as the organizer of the General Election covers the entire territory of the Unitary State of the Republic of Indonesia. The nature of the KPU still shows that the KPU is an institution that carries out its duties continuously even though it is limited by a certain term of office. The independent nature confirms that the KPU in holding elections is free from the influence of any party. This is in accordance with the mandate of the 1945 Constitution to meet the demands of the development of political life, community dynamics, and the development of democracy in line with the growth of the life of the nation and state (Habibi, n.d.).

However, what later became a problem was the provisions of PKPU No. 20 of 2017 concerning the nomination of members of the People's Legislative Assembly, Provincial DPRD, Regency/City Regional People's Representative Council article 4 paragraph (3), article 11 paragraph (1) guruf d, and attachments to model B.3 integrity pact for nominating candidates members of the House of Representatives or the Provincial House of Representatives, the Regency/City Regional House of Representatives in the phrase "corruptor."

With the stipulation of the PKPU, the provisions concerning the prohibition of ex-corruption convicts from registering as members of the legislature can already be applied during the registration period for the upcoming legislative candidates (caleg). This is a matter of debate in various circles. Previously, the KPU's move to prohibit former corruption convicts from becoming legislative candidates was opposed by the government, Bawaslu, and the DPR (Media, 2018). The refusal occurred because the KPU was considered to have violated the Law of the Republic of Indonesia Number 7 of 2017 concerning general elections.

After this issue, it will be very interesting if it is discussed in more detail

and in depth regarding the political rights of former corruption convicts as members of the legislative elections, whether they are still confused about the existing laws and regulations or even cause new problems if they are linked from an Islamic perspective.

Islam commands that in establishing law among humans it must be fair, because the position of being fair is as a constitutional principle and as the axis of religious politics, as stated in Surah An-Nisa: 58 Allah says:

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ﴾

Indeed, Allah has commanded you to convey the message to those who are entitled to receive it, and when you set a law between people, you should judge it justly. Indeed, Allah is the best who teaches you. Indeed, Allah is All-Hearing, All-Seeing (Translation of the Ministry of Religion 2002).

After being drawn by Islamic government, it turns out that the practice that has been carried out by Indonesia has developed, it can be said that the practice carried out by Indonesia is almost the same as Islamic government, this makes the author interesting to examine the topic

of further discussion regarding former corruption convicts becoming participants in the Legislative election which will be discussed in depth based on the analysis of fiqh siyasa later which will provide a new concept, and may be useful for the manufacture of legal products in the future.

The approach used is the legal approach—statute approach, and (comparative approach), because both approaches are very appropriate to answer the problem of this research, the nature of this research is normative juridical.

RESULTS AND DISCUSSION

Understanding Corruption According to Islamic Law and Positive Law

Islam is a religion that is *rahmatan lil'alam*, which is a mercy for all nature, covering everything on this earth, nothing escapes from being regulated by Islam, if Islam is the name given to a teaching in life, when juxtaposed with the terminology of religion as an equivalent word from al-din from semitic language means law or law, then actually al-din al-Islam are the rules that regulate human behavior in all its aspects (vertical and horizontal relationships) so that humans get ridho from their Lord (Allah swt) in their lives. so that they will achieve salvation in this world and in the hereafter. That's why the message of Islam is

complete and universal, nothing escapes the reach of Islam, including corruption. In the rules of ushul fiqh it is stated that there is no event that is not regulated in Islam. "There is nothing in Islam, unless there is a law of Allah swt (Anshori & Harahap, 2008).

Islam views corruption as a heinous act. Corruption in the context of Islam is the same as facade, namely an act that destroys the order of life whose perpetrators are categorized as committing *Jinayat al-kubra* (major sin) (Widjojanto, 2010).

Corruption in Islam is an act that violates the Shari'a. Islamic law aims to realize the benefit of mankind with what is called *maqashidussy syaria'ah*. Among the benefits to be addressed is the maintenance of property (*hifdzul maal*) from various forms of violations and fraud. Islam regulates and evaluates property from its acquisition to its expenditure, Islam provides guidance so that obtaining property is carried out in moral ways and in accordance with Islamic law, namely by not cheating, not taking usury, not betraying, not embezzling other people's belongings, not stealing, not cheating in measurements and scales, not corruption, and so on. As in the word of Allah swt in Surah Al-Baqarah: 188.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَآ إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنتُمْ تَعْلَمُونَ

And do not eat the wealth among yourselves by means of vanity, and (don't) bribe you with that wealth to the judges, with the intention that you can eat up some of the wealth of others by way of sin, even though you know (Translation of the Ministry of Religion 2002).

Also His word in Surah An-Nisa: 29,

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

O you who believe! Do not eat each other's property in a false way (not true), except in trade which is carried out on the basis of consensual between you. And don't kill yourself. Indeed, Allah is Most Merciful to you (Translation of the Ministry of Religion 2002).

In a hadith the Prophet said: "Every body that develops from the unclean, then hell is more important for him" (HR. Ahmad). The law of corruption in the opinion of fiqh scholars, by acclamation and consensus (Ijma') is haram because it is contrary to the principle of *maqashidussy shari'ah*. The prohibition of

acts of corruption can be viewed from various aspects, first, acts of corruption are fraudulent and fraudulent acts that have the potential to harm state finances and the public interest (society) which is condemned by Allah swt with appropriate punishment in the hereafter. (Utomo, 2003).

In Surah Ali Imran: 161, Allah says:

وَمَا كَانَ لِنَبِيٍّ أَنْ يَغُلَّ وَمَنْ يَغْلُلْ يَأْتِ بِمَا
غَلَّ يَوْمَ الْقِيَمَةِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَا كَسَبَتْ
وَهُمْ لَا يُظْلَمُونَ

And it is impossible for a prophet to be treacherous (in the matter of spoils of war). Whoever betrays, surely on the Day of Resurrection he will come with what he betrayed. Then everyone will be given a perfect recompense according to what he did, and they will not be wronged (Translation of the Ministry of Religion 2002).

This verse was revealed in connection with the incident narrated by Abu Dawud, at-Tirmidhi, and Ibn Jarir, namely the loss of a piece of wool cloth obtained from the spoils of war. After being searched for, the cloth was not in the inventory records of the spoils of war so that some were presumptuous to say, "Perhaps the Messenger of Allah himself took the cloth for himself." So that these accusations do not cause unrest among Muslims and clean up his image, the above

verse was revealed which confirms that the Prophet saw. It is impossible to be corrupt and fraudulent in the trust of public property in the form of spoils of war. Even the Prophet threatened anyone who corrupts the property of the State will become coals of fire for him in hell and similarly his deeds that come from the results of his corruption will not be accepted by Allah swt. His example was emulated by Caliph Umar bin Abdul Aziz (63-102 H) who ordered his daughter to return the gold necklace that was donated by the State treasury supervisor (baitul mal) as a sign of service and respect for her father. Literally the word corruption is not found in Islamic literature, but the substance and similarities can be found and traced. His book, as quoted by Abu Hapsin, provides a general understanding of corruption as an act that violates the law with the intention of enriching oneself, other people or corporations which results in financial loss. country or country's economy. Forms of corruption when viewed from the side of Islamic law can be classified under the names *ar-risywah*, *al-maksu*, grants/gifts, and *alghulul*. (Rafi', 2006).

Meanwhile, according to positive law, etymologically, corruption comes from the Latin language, namely *corruption* or *corruptus*, and the oldest Latin term is

used as corumpere. and corruptie which then descended into Indonesian into corruption. The literal meaning of the word is, rottenness, ugliness, depravity, dishonesty, bribery, immorality, deviation from chastity (Hamzah, 2010).

Literally corruption is something that is rotten, evil and destructive. If you talk about corruption, you will indeed find such a reality because corruption involves moral aspects, rotten nature and conditions, positions in government agencies or apparatus, abuse of power in office due to gifts, economic and political factors, as well as the placement of families or groups in official service. under the authority (Hartanti, 2005).

Corruption is generally defined as an act related to the interests of the public or the wider community or private interests and or certain groups. And so specifically there are three phenomena that are included in the term corruption, namely bribery, extortion (extraction), and nepotism.

The crime of corruption is essentially an economic crime, this can be compared with the anatomy of economic crime as follows (Muladi & Arief, 1992): 1) The disguise or hidden nature of the intent or purpose of the crime; 2) The perpetrator's belief in the stupidity and

recklessness of the victim; 3) Concealment of violations.

As for the definition of criminal acts of corruption according to Law Number 20 of 2001, Corruption Crimes are: (RI, n.d.-a): a) Every person unlawfully commits an act of enriching himself or another person or a corporation that can harm the State's finances or the State's economy (article 2 paragraph (1)); b) Any person who with the aim of benefiting himself or herself or another person or a corporation abuses the authority, opportunity, or facilities available to him because of his position or position that can harm the state finances or the state economy (article 3);

c) Anyone who gives a gift or promise to a civil servant by considering the power and authority attached to his position or position, or by the giver of a gift or promise is considered attached to that position or position (article 16); d) Any person who conducts an attempt, assistance, or conspiracy to commit a criminal act of corruption (article 15); e) Everyone outside the Territory of the Republic of Indonesia who provides assistance, opportunities, facilities or information for the occurrence of a criminal act of corruption (Article 16).

Taking into account Article 2 paragraph (1) above, the following

elements of corruption will be found: a) Against the law; b) Enriching oneself or another person or a corporation can be detrimental to the state's finances and the state's economy; c) Giving gifts, giving promises to civil servants, conducting experiments, assistance, conspiracy, and providing opportunities for general explanations. Law Number 20 of 2001, elements against the law include these acts are considered disgraceful because they are not in accordance with the sense of justice and norms. social life in society, the act can be punished. As for what is meant by the act of being done to become even richer in an incorrect way.

The law on corruption eradication specifically regulates its own procedural law for law enforcement of criminal acts of corruption, in general it is distinguished from other special crimes. This is considering that corruption is an extraordinary thing that must take precedence over other criminal acts (Nurdajana, 2010).

Corruption is a part of special criminal law in addition to having certain specifications that are different from general criminal law. Just as there are deviations from the procedural law and when viewed from the material regulated, therefore the criminal act of corruption is directly or indirectly intended to minimize

the occurrence of leakage and irregularities in the state's finances and economy. By being anticipated as early as possible, so that corruption as an extraordinary crime does not happen again (Mulyadi, 2007).

The criminal act of corruption has a special procedural law that deviates from the provisions of the procedural law in general. General procedural law. The criminal procedure law applied is "lex specialist", namely the existence of deviations intended to speed up procedures and obtain prosecution investigations and examinations in court in obtaining evidence of a corruption and deviant criminal case. corruption is not guaranteed or protected, but efforts are made in such a way that these deviations do not constitute a complete elimination that must be done to save these human rights from the dangers caused by corruption. Whereas on the other hand, as a general provision or "lex generalis" in the sense of how to conduct investigations, prosecutions and court hearings in corruption cases as long as there are no irregularities in Law No. 31 of 1999, the process is identical to criminal cases generally referring to the Criminal Procedure Code. (Ifрани, 2018).

With the benchmark that the criminal act of corruption is an extraordinary crime (extra ordinary crime)

because it is systematic, endemic with a very broad impact (systematic and widespread) which not only harms state information but also violates the social and economic rights of the wider community so that the action needs to be taken. comprehensive efforts extraordinary measures so that many regulations, institutions and commissions were formed to overcome (Ifrani, 2018)

Political Rights of Former Corruption Convicts according to Positive Law After the Supreme Court's (MA) Decision.

1. Description of Decision

The Supreme Court, the institution authorized to examine statutory regulations under the law, has granted a request for a judicial review of PKPU Number 20 of 2018 (State Gazette of the Republic of Indonesia of 2018 Number 834) with decision number number 46P/Hum/2018. The main substance of the decision is the annulment of the articles that are being reviewed, including article 4 paragraph (3), article 11 paragraph (1) letter d, and attachments to model B.3 of the Integrity Pact. These articles contain provisions prohibiting ex-convicts of corruption, drug dealers, and sexual crimes against children from running for legislative elections. However, the

applicant in this case is a former member of the DPRD who has been involved in a corruption case and is not related to ex-convicts of drug dealers and sexual crimes against children. Therefore, it is only relevant to question the examination of the phrase "former convicts of corruption", so that the decision 46P/Hum/2018 is a decision which contains the cancellation of the regulation prohibiting former convicts of corruption from participating in the legislative election contestation.

2. Philosophical Foundation

The State of Indonesia is a legal state which certainly demands legal certainty in its implementation. This is a consideration of the Supreme Court's philosophy in deciding related to PKPU No. 20 of 2018. That in the administration of a state of law, the occurrence of legal inconsistencies in a regulation is very contrary to the principle of certainty. The existence of regulations that collide with each other will cause chaos in the law itself (Amaludin, 2019).

The right to vote and be elected as a member of the legislature is a basic right in the political field guaranteed by the constitution, namely Article 28 of the 1945 Constitution of

the Republic of Indonesia. The recognition of this political right is also recognized in the International Covenant on civil and political rights. rights abbreviated as ICCPR) which was established by the General Assembly of the United Nations based on the 22004 revolution (XXI) on December 16, 1966 as ratified through Law Number 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights). civil and political)

3. Juridical Foundation

According to the Supreme Court, the norms regulated in article 4 paragraph (3) of the general election commission regulation Number 20 of 2018 contradicts article 240 paragraph (1) letter g of law number 7 of 2017 concerning general elections, which states: The DPR, Provincial DPRD, and Regency/Municipal DPRD are Indonesian citizens and must meet the following requirements: “never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more. , unless openly and honestly state to the public that the person concerned is a former convict”.

From the provisions of Article 240 paragraph (1) letter g there is no norm or rule prohibiting candidates from running for former corruption convicts as stated in the General Election Commission Regulation Number 20 of 2018. In addition, this regulation also contradicts Article 12 letter d of the Law. Law Number 12 of 2011 which stipulates, “regulations under the law contain material to carry out the law as it should”. The General Election Commission has made provisions that are not considered by the above laws and regulations. Article 4 paragraph (3), article 11 paragraph (1) letter d and attachments to Model B.3 PKPU are not in line, conflict, and do not meet the principles of establishing good laws and regulations, as explained in Law Number 12 Year 2011 concerning the establishment of Legislation (Amaludin, 2019).

The implementation of elections that are fair and with integrity as the spirit of the KPU is a necessity that nominations for legislative members must come from clean figures and have never had a track record of integrity. However, the regulation on limiting the political rights of a citizen of a country must be

included in the law in case of the general election commission regulation.

Analysis of Islamic Law on the Participation of Former Corruption Convicts in a Government

Islam discusses state issues in the Qur'an, although it is not so detailed. But then the *ijtihad* steps carried out by scholars of Islamic state administration in the past, formulated that Islam also has its own order of the state. It's just that these scholars talk more about government than the state (Djazuli, 2013). Even though it discusses more about government, with the thread of the relationship between government and a country, this has a mutually reinforcing correlation. At least the scholars also discussed about the organs of the state.

The main reason for the existence of color in the conception of the state in Islam is because the Quran is general and does not regulate in detail. Until now, there is still a long discussion regarding the position of Islam and its state. Of course, this is seen as reasonable in interpreting general or general guidelines. There will be many interpretations that interpret it according to the background of the interpreter himself.

Referring to the time of Rasulullah, *Al-Khulafa 'Al-Rashidun*, things that were applied in running the country were based on the Khilafah which was selected based on deliberation. Even the Khilafah that leads this power is limited by the Qur'an and Sunnah, so that then it cannot run the government according to its own will because the position of the Qur'an and Sunnah becomes the applicable law or law. Basically, in choosing a Caliph through a deliberation process as in the current concept of democracy. This selection process is also based on the verses of the Koran which in solving a problem is carried out by means of deliberation. Therefore Azhary put forward the general principles of Islamic Nomocracy, among others (Thalib, 2014b): 1) The principle of power as a mandate, 2) The principle of deliberation, 3) The principle of justice, 4) The principle of equality, 5) The principle of recognition and protection of human rights, 6) The principle of free justice, 7) The principle of peace, 8) The principle of welfare , 9) The principle of people's obedience.

In the event of the Medina Charter, it was stated that the agreement was also agreed upon by representatives of various groups in the city of Medina. The agreement was agreed by way of deliberation or known in Islam as Shura.

There are at least two discussions in analyzing the concept of representation in Islam, namely Shura and representation itself. The two cannot be separated because they will be interrelated, such as democracy itself and a representative institution (parliament).

The Prophet Muhammad gave an example of deliberation with all the people, some people, and even only a few people (Thalib, 2014a). This was done by the Prophet Muhammad with the consideration of the different problems being faced. There are times when it must be resolved by deliberation with all levels of the people, there are also those that only need to involve a few people or only one or two of the Prophet's companions. So that not all problems are solved by involving many people for deliberation. However, the Prophet Muhammad still taught that every problem was resolved by means of deliberation. The position of the fundamental deliberation to resolve a problem that concerns the interests of the people or the public properly.

The Prophet Muhammad gave an example of deliberation with some elements of the people, not with all the existing people. This deliberation was conducted by the Prophet Muhammad with representatives who have been appointed by the community. For

example, solving the problem of facing Badr that the Prophet Muhammad had to make a quick decision (Ridwan, 2007). This urgent situation causes deliberation to not involve many people or all the people. Prophet Muhammad then did it with his companions. Although it did not involve all levels of society, the Prophet continued to hold deliberation with the representatives of the people to resolve the problem. So that people's participation in solving a problem can be represented and resolved properly.

The habit of the Prophet Muhammad, who often consulted with his companions, did not involve the general public, meaning that not all problems were solved by involving all the people, especially issues concerning the public interest and the state. The companions involved by this prophet came to be known as "*Ahlus Shura*". The existence of *Ahlus Shura* was even up to the time of al Khulafa 'al Rasyidun. The position of this assembly is to become an expert or member of the deliberation held by the Prophet Muhammad. Although not all at the same time, the Prophet Muhammad often held deliberations with *Ahlus Shura* according to the circumstances.

The members of the Shura included Abu Bakr as Siddiq, Umar bin Khattab (two prominent figures from the

beginning of Islamic da'wa), Uthman bin Affan, a figure from the Umayyads, the biggest funder in the Islamic struggle, Ali bin Abi Talib (a figure from the Bani Hasyim, prominent intellectual cleric), Abdurrahman bin Auf (a figure from the Bani Zuhrah environment, a successful fighter and businessman and a brilliant politician), Saad bin Muadz and Saad bin Ubaidah (both prominent figures from the Ansor group, from the Bani Aus and Bani Khazraj circles), Muadz bin Jabal, Ubay bin Ka'ab and Zaid bin Thabit (leading scholars, Al-Quran experts and outstanding preachers), and a few more names (Hasan, 1992).

The peak of this deliberation issue occurred when the Prophet died who would be his successor, so that the election of Sayyidina Abu Bakr ash Siddiq was the result of the consensus that occurred between the ansor and the muhajirin. At the end of his caliphate from Abu Bakr, the succession of ummah leaders was carried out by appointing Umar bin Khattab through a will, at the end of his leadership, Umar formed a formation to elect the next caliph. This formation is a step so that there is a deliberation mechanism in determining the next caliph, this formation is a step so that there is a deliberation mechanism in determining the next caliph, unlike the

impression made by Abu Bakr on Umar. The forum consisted of Ali bin Talib, Uthman bin Affan, Saad bin Abi Waqqash, Abdurrahman bin Auf, Zubair bin Awwam and Talhah bin Ubaidillah, Abdullah bin Umar. The results of these deliberations determined that the successor of Umar bin Khattab was Ustman bin Affan (Sjadzali, 1990).

The description of the journey of Islamic civilization in deliberation indicates that a representative institution is known. The principle of deliberation exemplified by the Prophet Muhammad provides a gap for ijtihad on the role of representative institutions in the administration of the state. There is no standard standard in deliberation by the Prophet Muhammad, but it is very clear that deliberation is an important instrument in running the country. The concept of *Ahlus Shura* used by the Prophet Muhammad in considering all aspects of the state was imitated by Umar bin Khattab with the formation of a representative body or institution, or according to Al-Mawardi called *Ahlul Halli wal Aqdi* according to the principles exemplified by the Prophet Muhammad.

There are several commentators who identify *Ahl al-Halli wa al-Aqdi* with *ulil amri* such as Muhammad Abduh and also his student Muhammad Rasyid Rida

explaining that ulil amri is Ahl al-Halli wa al-Aqdi as a collection of people from various professions and expertise that exist in community or people who have the trust of the people whose provisions are followed. They are a collection of emirs, judges, scholars, military leaders, and all rulers and leaders who are used as references by the people in matters of public need and benefit. Al-Razi also equates the understanding between ahl al-halli wa al-aqd and Ulil Amri, namely leaders and rulers. Likewise Al-Maraghi, the formula is the same as that put forward by Muhammad Abduh and Rashid Ridha (Pulungan, 1994). This is in accordance with the word of Allah SWT in the letter An-Nisa verse 59 “,

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا
الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي
شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ
تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ
وَأَحْسَنُ تَأْوِيلًا

O you who believe! Obey Allah and obey the Messenger (Muhammad), and Ulil Amri (the holder of power) among you. Then, if you disagree about something, then return it to Allah (the Qur'an) and the Messenger (his Sunnah), if you believe in Allah and the Last Day. That is more important (for you) and better as a result

(Translation of the Ministry of Religion 2002).

The basic idea that was described by the fiqh scholars about a special institution, namely Ahlul Halli Wal Aqdi, the fiqh scholars made this institution important in the procession of selecting or determining a caliph or head of state in the Islamic conception. such as Al-Mawardi and Ibn Khaldun, view this institution as a constitutional organ or institution in a country. Even not only for the election and determination of the caliph, but this institution can be adjusted to the needs of the times. As in the making of laws and regulations or legislative functions (Mazdan Maftukha Assyayuti, 2018).

The Siyasa Fiqh experts understand Ahlu Halli Wal Aqdi as a person who has the authority to decide and determine something on behalf of the people (citizens). In other words, Ahlu Halli Wal Aqdi is a representative institution that accommodates and channels the aspirations of the community. They are a group of people from among the Muslims who are considered the best in their religion, their morals, the accuracy of their ideas and arrangements, they consist of the Caliph scholars and guides of the people, while the Ahlu Halli Wal Aqdi language consists of three sentences, Ahlu which means the person who has the right (which means

the rightful person). have), Al-Halli which means releasing, adjusting, breaking, and breaking, Al-Aqdi which means binding, entering into transactions, forming (Iqbal, 2014).

From the descriptions of the scholars about Ahlu Halli Wal Aqdi, it appears the following things: (Djazuli, 2013); *First*, Ahlu Halli Wal Aqdi is the highest authority holder who has the authority to elect and take the oath of allegiance to the Imam. The members of Ahl al-Halli Wa al-'Aqdi are authorized to elect and inaugurate heads of state. Assist the head of state in managing various state affairs and solving various problems of the people in general. The various general issues referred to here are declaring war, entering into agreements, making ijtihadiyah legislation and explaining how to apply syara' law.

Second, Ahlu Halli Wal Aqdi has the authority to direct people's lives that are beneficial. Ahlu Halli Wal Aqdi is a representative institution that accommodates and channels the aspirations of the community. They are a group of people from among the Muslims who are considered the best in their religion, morals, the accuracy of their ideas and arrangements, they consist of scholars, Caliphs and guides of the people.

Third, Ahlu Halli Wal Aqdi has the authority to make laws that are binding on all people in matters that are not explicitly regulated by the Qur'an and Hadith. Decide on one interpretation of the Shari'a regulations which have multiple interpretations, so as not to confuse the people. Formulating the law of a problem that is not regulated in the Shari'a, as long as it does not conflict with *the spirit and spirit of the Shari'a*.

Fourth, Ahlu Halli Wal Aqdi is a place of consultation for imams in determining their policies. Input to the Caliph related to activities and practical issues, such as issues of government, education, economy, health, religion, industry and trade. In this case his opinion is binding (mandatory to be implemented by the Caliph). Regarding issues of thought that require research and analysis as well as military and foreign policy issues. The opinion of Ahl al-Halli Wa al-'Aqdi to the Caliph in this matter is not binding.

Fifth, Ahlu Halli Wal Aqdi oversees the administration. Ahl al-Halli Wa al-'Aqdi has the authority to control the Caliph, over all actions that occur in real terms in the state. The opinion of Ahl al-Halli Wa al-'Aqdi is binding if the majority of Ahl al-Halli Wa al-'Aqdi members want to bind, and vice versa. If

Ahl al-Halli Wa al-'Aqdi differs from the Caliph regarding actions that have actually been carried out, based on sharia law, this matter must be submitted to the Mazalim Court.

Thus, ahl halli wal aqdi consists of various social groups that have different skills, both government bureaucrats and non-government bureaucrats who are commonly called formal and informal leaders. Automatically become ahl halli wal aqdi. Because every member of this institution must meet the qualifications, Al-Mawardi argues, to become a member of ahl halli wal aqdi one must meet three criteria, as a condition, namely, (Al-mawardi, n.d.): *First*, fair with all the conditions. Justice is the most important character. If a person is not of this nature, then his power is invalid and his testimony cannot be accepted. Ar-Rida in defining the nature of justice in his *Al-mabsuth*, fair (*adl*) and *istiqamah* (firm conviction) and perfection is endless. Fair also means violating what is believed to be haram in religion, or in other words; "That a person always leaves all major sins and does not commit minor sins. His guilt is more than his pleasure, and the truth is more wrong."

Islam commands that in establishing law among humans it must be fair, because the position of being fair is as a constitutional principle and as the axis of

religious politics, as stated in Surah An-Nisa: 58,

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Indeed, Allah has commanded you to convey the message to those who are entitled to receive it, and when you set a law between people, you should judge it justly. Indeed, Allah is the best who teaches you. Indeed, Allah is All-Hearing, All-Seeing (Translation of the Ministry of Religion 2002).

Fair in this case, a person who becomes an ahl halli wal aqdi is someone who holds fast to the mandate of Allah, as well as credibility and balance that meets all the criteria, namely the public's belief in him that he really has the ability and in general and has good character which includes the nature of and attitudes in everyday life, corruption is an act of taking the rights of others so that this can be categorized as theft, and Allah does not like people who take the rights of others for the benefit of themselves or their groups, and this action can no longer be said to be something that credibility, and has made people have no trust anymore.

Public trust in the House of Representatives (DPR) is still the lowest

among other institutions, this is based on data from the Indonesian survey circle (LSI) on June 18-5 July 2018 the number of responses reached 1200 Indonesians and only 65 percent of the responses believed in The DPR while 25.5 percent did not believe it and 9.5 percent did not answer. And one of the causes of people's distrust of the DPR is the frequent practice of corruption in parliament (Sukmana, n.d.).

Second. Have Knowledge. To become an expert halli wal-aqdi, one must know who has the right to be a leader, and know about the legislation and know enough about the benefit of the people.

Third, insight and wise attitude. What is meant by insight and wisdom in this case is having strong opinions and wisdom that enables him to choose who is most worthy to be given the mandate to assume the position of head of state and who is the most capable and clever in making policies that can realize the benefit of the people.

On the other hand, Ibn Khaldun provides 4 conditions, namely (Djazuli, 2013); 1) Have knowledge; 2) Fair; 3) Able to carry out tasks, including wisdom; 4) Physically healthy in the sense of his five senses and other members.

Based on the explanation above, it is clear that the conditions regarding the

membership of *abl halli wal-aqdi*, as for the relationship with former corruption convicts, are very contrary to the requirements of *abl halli wal-aqdi*, whether it is a matter of fair conditions or also with the attitude of wisdom, and it is contrary to the function or authority. *abl halli wal-aqdi*, namely directing people's lives that are beneficial, by committing acts of corruption it no longer shows the goal of the welfare of society or benefit, this actually makes people miserable and down as well as bad effects to the state.

NU also supports the prohibition against corruptors from occupying public positions, in the book Jihad Nu against corruption it is explained that, the prohibition is for people who are proven to often deviate from office, ignore the public interest for personal gain, and are corrupt, to run for office or be nominated for a position. certain areas, such as regional heads, governors, and members of the DPR. Therefore, it is forbidden to support or vote for him, because the corruptors are not worthy to occupy these positions (Wahid, 2016).

This is stated by NU as it is forbidden to appoint people who are not worthy to occupy the position of judges. Likewise, it is forbidden for him to occupy that position or nominate himself.

مَنْ لَا يَصْلُحُ لِلْقَضَاءِ تَحْرُمُ تَوَلِيَّتُهُ وَيَحْرُمُ
عَلَيْهِ التَّوَلَّى وَالطَّلَبُ

“Anyone who is not worthy to decide a case (in court / occupies the position of a judge), then it is forbidden to appoint him and it is also forbidden for him to occupy that position and ask for it.” (An-Nawawi, 1405).

Corruption is an act that harms the state and becomes a boomerang for the failure of legal ideals to realize justice and welfare for the community, so real efforts are needed to eradicate this one crime. In principle and practice, the punishment for perpetrators of corruption in Indonesia is still less significant, given the increasing number of corruption cases in Indonesia. As if rooted in the culture of life, behavior, and people’s way of thinking, this crime has succeeded in infecting the bureaucracy from the top to the bottom. Almost all state institutions, be it people’s representative institutions, military institutions, executive institutions in this case the central and regional governments, judicial institutions, education, religious affairs, community organizations, the business world, banking, and even institutions formed to eradicate and resolve the problems that are increasingly happening are also unmitigated.

Thus the law is made in the context of running the state government, while the purpose of establishing a state government is to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public health, educate the nation’s life, and participate in carrying out world order based on independence, eternal peace and social justice. . This description can be interpreted as the goal of the Indonesian nation towards a just and prosperous society. The spirit of law is moral and justice (Husni, 2006). Without a law that is able to respond to community justice (responsive law) then the law itself has lost its spirit, for this reason an awareness is needed for law enforcers.

As for the *maqashid al-syariah*, it has been stated that the main purpose of sharia is benefit/benefit and preventing and eliminating anything that brings harm/damage. In order to realize the benefit of the world and the hereafter, Usul Fiqh scholars formulate the objectives of Islamic law into five missions (*Maqashid al-Khamsah*) namely preserving religion, soul, mind, lineage and property. (al-Rasyid, 2016). One of the main things to be realized with Islamic law is the maintenance of property from the transfer of property rights that are not in line with the law and from use that is not in

accordance with the will of Allah. Corruption is one of the transfers as well as the use of property rights that are not in line with the main principle in question. In the *maqashid al-Syariah* perspective, corruption is a violation of the protection of property, so that the permitting of former corruption convicts to run for legislative elections is less relevant to the vision of protecting property.

Al-Syatibi divides *maslahah* into three important parts, namely *Dharuriyat* (primary), *hajiyyat* (secondary) and *tahsiniyyat* (complementary). (Djalaluddin, 2015). *First*, the needs of *Dharuriyat*, namely the level of needs that must exist, if this level of need is not met then the safety of mankind will be threatened both in this world and in the hereafter. *Second*, the needs of *al-Hajiyyat*, also called secondary needs. If this need is not met human safety is not threatened but he will experience difficulties. *Third*, the need for *al-Tahsiniyyat*, which is a need that does not threaten the existence of any of the five points above and does not cause difficulties if it is not fulfilled. In terms of scope, the scholars of *ushul fiqh* divide *maslahah* into two namely; a) *al-Maslahah al-Ammah* (general benefit), namely the benefit related to the interests of the people, b) *al-Maslahah al-Khossob* (special

benefit), namely *maslahah* relating to certain people (Auda, 2015).

The legal classification is that it is permissible for ex-corruptors to become legislative candidates if viewed from the level of their need is *al-Hajiyyat* but based on its scope it is of special interest (*al-Maslahah al-Khossob*) which is oriented to the benefit of the corruptors whose political rights are taken away, while what needs to be underlined is the rights of the wider community. who are deprived of their social and economic rights so as to further distance them from justice and welfare as it is the essence of the purpose of the law itself. Because corruption is an act that is detrimental to the state and becomes a boomerang for the failure of legal ideals to realize justice and welfare for the community. Thus, allowing corruption convicts to run for legislative members is a form of policy that is not problematic. *Jumhur* argues that the more general benefit takes precedence over the benefit below it.

If there are two things as well as benefits and harm, then rejecting munkar must take precedence. As the fiqh rules say;

درو المفاسد مقدم علي جلب المصالح

“Rejecting evil should be prioritized over getting benefits”

The holding of elections that are fair and with integrity is a first step or a necessity for the creation of a good political system. This includes strictly selecting the candidates that the community wants to carry out to carry out the government's mandate. The revocation of the political rights of former corruptors will have a major impact on the people at large. In addition, it is hoped that the regulation will be able to bridge the implementation of clean elections, so that clean elections will produce clean leaders and representatives, and finally, a clean government will also be created. Nominations for executive and legislative members must come from clean figures and have never had a track record of integrity defects. This is important to be able to select candidates for people's representatives who are indeed worthy of being elected for the people's mandate in the government. The law should not provide as much space and opportunity as possible to ex-convicts, when there are still many people who are clean and free from criminal track records of corruption. Revocation of the political rights of corruptors as an effort to restore the community's rights to be able to enjoy state facilities fairly, so that the main goal of law formation or even the goal of

forming a state, namely welfare, can be achieved.

The poor performance records of the Corruption Eradication Commission (KPK) in 2017, there were at least twenty out of one hundred and two corruption cases involving central and local government bureaucratic officials whose perpetrators were members of the DPR and DPRD. , collusion and nepotism have been firmly rooted in the social life of the Indonesian people, especially among officials, including members of the legislature who are none other than representative institutions of the people (Amaludin, 2019).

According to Abraham Samad, Chairman of the Eradication Commission (KPK) for the period 2011 to 2015, corruption has a tendency to repeat patterns and even metamorphose. From data compiled by Indonesian Corruption Watch (ICW), the phenomenon of recidivist corruption or people who have been sentenced in corruption cases and then return to corruption after completing their sentence several times has occurred and recorded (ICW, n.d.), for example, Aidil Fitri/Chairman of KONI Samarinda, in East Java by Mochammad Basuk/Chairman of DPRD East Java, and in Hulu Sungai Tengah by Abdul Latif/Regent. Therefore, taking decisive

anticipatory steps by taking preventive measures through the KPU Regulation becomes very socially grounded and even the people are important for the implementation of the State in the future.

The limitation of political rights against former corruption convicts will greatly affect efforts to eradicate corruption in Indonesia, so that the law will become more progressive in realizing justice and the interests of the community involved in the same case. In addition, corruption is a type of crime that is extraordinary in nature so that its enforcement is also extraordinary (extraordinary enforcement). If the death penalty is reluctant to be applied, then the revocation of the right to vote and be elected is the implementation of an extraordinary enforcement of criminal law (Anjari, 2015). It is fitting for those who cause a lot of chaos to be given restrictions on the right to sit back on the trust they have betrayed.

It would be nice if the provisions prohibiting former corruption convicts from running for representatives of the people were contained in the Act so that there was legal certainty, and high enthusiasm for eradicating corruption through the strict selection of legislative candidates could be implemented, because the quality or not of a statutory regulation

is influenced by human resources in this case the House of Representatives (DPR) and the government. As is widely known to the public, the quality of DPR members is still very low, and they are mentally corrupt. The news about corruption and bribery carried out by the DPR and DPRD seems to never subside. The DPR is a public official in Indonesia who should devote himself to the public interest, so that the community is prosperous, just and prosperous as mandated by the preamble and the body of the 1945 Constitution.

CONCLUSION

Islam views corruption as a heinous act. Corruption in the context of Islam is the same as facade, namely an act that destroys the order of life whose perpetrators are categorized as committing Jinayaat al-kubra (major sin). Corruption in Islam is an act that violates the Shari'a. Islamic law aims to realize the benefit of mankind with what is called maqashidussy shari'ah. Among the benefits to be addressed is the maintenance of property (*hifdzul maal*) from various forms of violations and fraud. Islam regulates and values wealth from its acquisition to its expenditure.

Therefore, the revocation of the right to vote and be elected (participation in the election) is the implementation of an extraordinary enforcement of criminal

law. The legal classification is that it is permissible for ex-corruptors to become legislative candidates if viewed from the level of their need is *al-Hajiyat* but based on its scope it is of special interest (*al-Maslahah al-Khossob*) which is oriented to the benefit of the corruptors whose political rights are taken away, while what needs to be underlined is the rights of the wider community. who are deprived of their social and economic rights so as to further distance them from justice and welfare as it is the essence of the purpose of the law itself.

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