

Sharia and Anti-Corruption Law in Indonesia:

Empowering Legal Culture, Eradicating Social Evil

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Abstract—The article aims at explaining that there is an interconnected link between corruption and culture. For many Muslims in Indonesia, sharia had become religious symbol, justification and source of meaning of life. Nevertheless, practically, as cultural values sharia cannot talk loudly contradicting the practice of everyday corruption. The research is a socio-legal explanation. It tries to describe that the agenda of eradicating corruption can be empowered through cultural values. Sharia as living values should be modified as the backbone spirit to fight harmful behavior. The research indicates that sharia should serve psychological basis for obedience and legal awareness. Moreover, sharia can lead the believers to maintain and secure public interest by promulgating the national anti-corruption law and emphasizing its necessity for the society. The law is not only social contract but also spiritual sign of commitment.

Keywords—*Sharia and Anti-Corruption; Law Enforcement; Legal Culture; Nation-State.*

I. INTRODUCTION

Amid fanfare of economic growth in 2009, it appears that Indonesia is one of the 16 most corrupted countries in Asia Pacific. That was the results of surveys of businessmen released on Monday, March 8, 2010 by the consulting firm "Political & Economic Risk Consultancy" (PERC) based in Hong Kong. The assessment was based on the views of executive businessmen who operated in 16 selected countries. A total of 2,174 respondents were from a variety of middle and upper class executives in Asia, Australia, and the United States.

The recent data informed by International Transparency mentions Indonesia's condition does not change rapidly from the past.

*A. The List of 13 Most Corrupt Countries in Asia Pacific**

- 1) North Korea
- 2) Cambodia
- 3) Bangladesh
- 4) Myanmar
- 5) Papua New Guinea
- 6) Nepal
- 7) Laos

- 8) Pakistan
- 9) Vietnam
- 10) Thailand
- 11) The Philippines
- 12) Timor Leste
- 13) Indonesia

Note * transparency.org, Jan 25, 2017.

B. Substance, Structure and Culture of Law

Law enforcement is believed as one of the effective ways to fight corruption. If this law enforcement has become one of the main options for such purpose, the law enforcement process itself is inseparable from the content of the law that will be enforced (a legal substance), in which system and organization that the law will be tested by the individuals (legal structure) and that cannot be ignored in such a way, in the context of legal culture as to what law enforcement itself runs (legal culture). (Hart, 1972:23-46 Friedman, 1953:12-67 Gijssels, 1982:13-53).

In the study of jurisprudence, the substance of law consists of a set of legal norms, whether they are written legal norms, commonly known as legislation or unwritten rules. It is a product of the legal system itself, such as jurisprudence or decisions with its derivatives or regulations adopted by the agents of the law. All of the rules are commonly referred to as a legal substance (Friedman, 1975:223).

The legal structure is also closely related to the law enforcement. It is directly related to the organization or bureaucracy that sustains the enforcement or – borrowing Hans Kelsen's phrase that is to realize it (Konkretisierung) -- substance of law to achieve an aspired justice. This structure is also usually known as the "administration of justice". Usually, in a country that is revived by a modern conception of modern state administration or the welfare state, the supporting infrastructure of the legal structure of (criminal) is the police (investigator), prosecutor, the court (the judge), lawyer (lawyers / defenders) and prison (rehabilitator/prison) (Kelsen, 1979).

The legal culture can be described as the "software" of substance and structure of the law itself. It is closely associated with the culture of the society in general, the ideal expectation of community, values and beliefs that are behind the visible

legal tradition. Included in the legal culture is also understanding, perception, acceptance, acceptance attitude and practice acceptance, awareness, emotion or obedience and attitudes towards governance (legal structure) and the law itself (the substance of the law) (Radbruch, 1961:12-13 Robert & Seidmann, 1971:12).

In practice, the ideal of legal change actually will not succeed if it is only related to changes in the content or legal structure, but it has to touch on all three changes (content, structure and legal culture) simultaneously (Algra and Janssen, 1981).

II. METHOD

In elaborating the interconnection between law enforcement and culture, empirical approach is used. That is done by showing cases of corruption in daily life relates to the public service provided by the government. The description is followed by explaining the ineffective effort of combating and eradicating corruption. The cause is rooted in cultural barriers. For this purpose, the research offers sharia as living norms and Volksgeist to be modified as effective cultural tools. Therefore, the research is a socio-legal research inspired by Karl von Savigny's theory.

III. DISCUSSION AND RESULT

A. Legal Structure, Politics and Corruption

Among the worst social disease, corruption in Indonesia is that attacking our legal structure (police, prosecutors, courts). Daniel Kaufmann, an observer of the law and legal institutions in developing countries, in a survey of bureaucratic and judicial bribery also states that bribery in the judicial system in Indonesia is the highest when compared to countries prominently controlled by agents and narcotics mafia such as Colombia, Venezuela or the former communist states of Ukraine and Russia or semi-dictatorial countries such as Egypt and Jordan. (LBH-P2i Makasar-Partnership, 2005:50).

On the corruption in the judiciary or commonly known as the legal mafia, it has plagued the judicial process from upstream to downstream, at all stages, starting from the inquiry and investigation by police in a criminal case, investigation, filing and transfer of cases to the court by prosecutor to the case and court sessions and judge's verdict in the court. Even until after the verdict is given to the defendant/suspect that he is convicted, there is still a chance to make a transaction of legal execution with the prosecution or prison authorities. (P3M-Partnership, 2004:115-120 ICW: 2003).

Police efforts who have ever claimed to be the protectors and servants of the people seem to have not been fully realized in practice. Those who have interacted with the police must have felt how the legal transaction model is always done in completing each case.

When raiding a motorcycle, a motorist who do not have documents or less complete equipment of his motorcycle in accordance with standard procedures required, with various modes a police will be able to understand and do not impose

any fine as long as there is effort from the rider to catch 'the clue' of transactional law.

When carrying out duties as an investigator who is preparing Official Investigation Report (*Berita Acara Pemeriksaan*), the police do not hesitate to give a similar gesture. Sometimes by way of asking for gas money to the victim of a crime by stating that operational funds to go to the incident place (*Tempat Kejadian Perkara*) is not enough. Even when the case is already handed over to the Public Prosecutor for the trial, the police still demand 'service money' as he has helped the victim. Briefly, in order that prosecutors and judges can also be designed in accordance with the plot, then a lawyer strengthens and fully supports these actions, the chronology and sequence of cases from the early start have been prepared by the police have started to be aimed at the target with such technical modifications and technicalities in the existing legal formal and material. Even it is not impossible for a real defendant / suspect, in the process of investigation by the police can be set free as long as he understands the case 'charge' that should be 'paid' (Rahardjo, 2002).

What is more apprehensive about, there has been revealed that a high-ranking police officer who is supposed to reveal the white-collar economic crimes such as money laundering crime or bank fraud crime, tax manipulation with super sophisticated modus operandi so that in a short time he is able to inflict financial loss of the state up to trillions of rupiahs, is powerless to process the suspect candidate. The potential suspect who has painstakingly been captured with the help of Interpol and the extra efforts of the police as well, just because a bribe has already happened, the suspect almost escapes from the criminal sanctions. Indeed, it does not make sense; such a thing has been committed by a high-ranking police officer!

The condition of judges and lawyers is also not much different from the reality in the ranks of police and prosecutors. Nets and snares of money, power intervention, lobby, case transactions and case brokers (*makelar kasus/markus*) is everyday vocabularies as if they have been institutionalized that exceed their formal institutions themselves. Thus, not surprisingly, in the ranks of the Supreme Court (*Mahkamah Agung*) is seen very clearly how a legal case and in particular concerning the corruption, circulates and is 'circulated' among the networks. In short, as the condition of the police and prosecutors, judges, lawyers and the judicial system themselves, from the first level to the highest one (Supreme Court) still fails to eliminate a lot of dark and mysterious things that perpetuate mistrust spaces.

This condition is aggravated by the acts of some politicians and political institutions. The politicians and main institutions of democracy have been entangled in the mud and enjoyment of corruption. Directly supporting Regional Head Election (Election), the recruitment of candidates for state officials through a fit and proper test, specific discussion of the Legal Draft (*Rancangan Undang Undang*), even the recruitment of candidates for the internal legislative members of political party become a golden opportunity to the flourishing of political transactions drawing no little amount of money.

Unfortunately, day by day, the situation is not getting better. It is not hard to find data telling us that those institutions are remaining almost the same. Anyone can search and prove

easily by accessing daily news concerning the issue. Moreover, the situation is getting worst. Because, the Commission for Eradicating Corruption (*Komisi Pemberantasan Antikorupsi/KPK*) is infiltrated and trapped in proxy-war: it is decontaminated by negative opinion building through parliamentary session and voices and at the same time marginalized, threatened, isolated by the act of internal splitting and external destruction (Republika, 2017).

In short, the same thing happens with the law enforcement process, the political processes are difficult to be considered running normally according to political market mechanism. The invisible hands in any recruitment of cadres, leaders, succession of central board are full of money politics. The recruitment and the political processes themselves have become gold mine and industry of very promising corruption.

B. Legal Efforts to Eradicate Corruption

A survey on legal important products related to efforts to eradicate corruption in all the reformation era, indicates that there are many laws, Presidential Instruction, Presidential decrees and government regulation/PP even MPR's regulation are directly related to the efforts to combat corruption. Not long after the fall of the New Order regime, MPR Decree No. XI / MPR / 1998 was issued, followed by Presidential Decree No. 30 1998 on Eradication of Corruption, Collusion and Nepotism (KKN), Law No. 28, 1999 on State Implementation that is Clean and free from corruption, Presidential Decree No. 127, 1999 on the Establishment of State Officials' Wealth Audit Commission (KPKPN), PP 65 of 1999 on Procedures for Government Regulation of Social Participation in State Organization, Government Regulation (PP) no. 97/1999 on Procedures for Monitoring and Evaluation of Duties and Powers KPKPN, Government Regulation (PP) No. 68/1999 on Procedures for Social Participation in State Organization, Government Regulation (PP) No.71/2000 on the Procedures of Social Participation and Appreciation Award in the Prevention and Combating Corruption, PP no. 19, 2000 on Joint Team on the Eradication of Corruption (TGPTPK), Law No. 30/2002 on Eradication Corruption Commission (KPK), Presidential Decree No. 5/2004 on the Acceleration of Corruption Eradication, Presidential Decree No. 59/2004 on the Corruption Court (Corruption), Presidential Decree No. 11 / 2005 on Corruption Eradication Coordination Team and Government Regulation in Lieu of Law (regulation), 2005. (Hartanti, 1-71).

Lastly, government regulation to replace certain law (*Peraturan Pemerintah Pengganti Undang-undang/Perppu*) is designed to overcome deadlocks of formal and material laws relating to the eradication of corruption that previously is still wedged. For example, government officials must obtain permission first before they are investigated, the absence of necessity for a law enforcer to hold the perpetrators of corruption, witness' protection, sanction to the law enforcer who trades in corruption cases, the reinforcement of implementing the reverse proving principle of and some other rules (Isra, 2005).

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D. Culture, Law Enforcement and Morality of Justice: In Search of Sharia's Role

The reality of the law enforcers as mentioned above can lead us closer to the point of frustration (hopeless). Before total frustration really comes, in fact, a hope still remains to strengthen the cultural movement of the law in the broad sense.

In order to strengthen such a model, a few steps can be started as follows; it starts sharia and public responsibilities, the relation between religion-law-state. Pancasila in the past has filled the space between religion and state. Thus, Pancasila has been turned into a pseudo-religion. However, the present situation implies that religion is getting dragged to enter the doors of power. The main problem is not the existence of political parties based on religion, but religion is always called to be a legitimate tool to gain power even justification of corruption. As a result, religion is more often absent to present a reference framework and morality which are not rhetorical but workable. More tragic and much further, there are certain

circles that present religion merely in abstract legal slogans and indicate it as 'salt' for the ongoing process of radicalization. What is infecting among politicians from various parties that base their organizations directly or indirectly on religion is a concrete parameter for explaining this. In my opinion, in the framework of building a healthy legal culture (no exception to uphold the law corruption), it is fully fitting that we distinguish where religion's jurisdiction is and where legal sphere is, although it is impossible to separate them. (Jassas, 1325; al-Qurtubi 1413; Musa, 1961; None & Seiznik, 1978).

On the other hand, it cannot be denied that the effort to build and strengthen the principles of good governance and combating corruption can be done through awareness movements based on religions, such as issuing a *fatwa* that it is not mandatory to perform prayer for deceased corruptors. But to the point of issuing just a normative *fatwa* if it is not coupled with details of who should properly be called corruptor, what is his characteristic, what are the criteria and indicators of corruptor and may his donations be accepted and what is normative reference to make distinction (or separation?) between public office and clerics, teachers or preachers, then the effectiveness of the *fatwa* was still in doubt.

In such a context, the need is to make sharia more functional and culturally effective. The keys for doing so are: (*Rechtstheorie*, 1972, 527-528 Muir, 1967) A. Solving sharia and problem of state legitimacy and trust; it is to accept a nation-state as a final solution instead of Islamic state. B. Sharia and civic obedience and mindedness; It is to obey 'secular' law as the continuation of religious obedience; C. Sharia and cultural Islamization; D. Sharia and legal education: the last two steps is to promote cultural Islam instead of political Islam.

Sharia education needs to be reconstructed in accordance with social need and relevance. Anti-corruption is the issue of social evil, extraordinary and serious threat toward principles of justice. Sharia education can empower sensitive feeling of justice through some steps as follow:

1) *Stages of Cognitive Development*

Knowing justice is the soul of law, educational institution should introduce the principles of justice from the early steps of learning sharia. In order to understand the principles properly, the teachers begin teaching sharia with some introductory courses on sharia and its principles of justice. The materials are further equipped by getting to the deeper substance of specific issues in specified materials of law, such as Anti-corruption Law. The teaching of specified materials is grounded by analytical process of "General Concept of Sharia and Its principles". In this stage (for example) the *Stufenbau Theorie* of Hans Kelsen and *Volksgeist Theorie* of Karl Friedrich von Savigny are blended, introduced and it plays a role as a tool of building analyses.

After introducing the preliminary understanding of sharia and anti-corruption principles, the specification and basic general philosophy and theories, the students are given the opportunity to have a deep understanding of how can the sharia blended with the law enforced. Then they begin learning the law of procedure, its principles and problems. Before ending

their study, every student has to do a general test called "comprehensive test". The test tries to resume and summarize that studying sharia and anti-corruption law must be in a comprehensive manner: from its basic theories as fundamental foundation to the materials, process and procedure and its practice as a legal solution, analyses and social commitment.

2) *Stages of Justice Reasoning and Moral Judgement*

Sharia and Anti-corruption Law are not only a set of materials and lessons to be remembered and reproduced. But it is a set of moral messages, norms and values. Knowing and understanding this postulate, the educational institution try to teach sharia and the law by creating innovative approach: strengthening cognition but empowering it by building case study method. Case study method enables students to have an opportunity for seeing the cases in its multidimensional perspectives.

To keep the students enthusiastic in learning and sharpening their legal skills by case study method, the facilitators select the cases to be always actual, relevant and attracting public attention. The actual case will lead the students to find a new dimension and variety of cases. Whereas the relevant cases cause the students to think correlatively with the material law and law of procedure, attractive cases which take public attention will drive students to think carefully. The students feel bounded to the cases because their solution of cases can influence public awareness, support as well as protest. Unless they find valid and strong legal logic and argument, their legal opinion will be tested publicly as weak, invalid, illogic and unjust.

3) *Justice Ideals, Anti-corruption, Practical Involvement and Moral Responsibility*

In the stages of practical involvement and moral responsibility, the students are simulating themselves in the mid of society. They are not only challenged by logical thinking but also questioned by their moral commitment to anti-corruption and justice. At this level, students see, think, involve in activities to use the law as a tool of social engineering, social cohesion, social harmony and social control.

Automatically, at this level, the students try to think about the law and its enforcement from 'out of box' side: how to make law effective socially, how to integrate legal skills in empowering society within the framework of local wisdom, how to reform cultural basis of society to cope with many models and practices of corruption without neglecting people's cultural roots.

In short, by the students' direct involvement in society, they feel moral responsibility to contribute their legal skills. They can see also that justice ideals are contextual. But sense of anti-corruption and justice has to be in every legal solution. Students' justice sensitivity must be kept and improved. It is immaterial and moral commitment for everyone. It cannot be bartered by anything. It is a moment of balancing between cognition and moral responsibility.

Stages of cognitive development, justice reasoning and moral judgement are strengthened by stages of anti-corruption, justice ideals, practical involvement and moral responsibility.

By such a process, students will conclude that learning law is actual and empiric. Anti-corruption and justice ideals are living, coloring and existing in everyone's life. The obstruction of justice by lawyers is immoral act. Sharia can be a vehicle to reconstruct anti-corruption community (Duster, 1970:12-67 Bodenheimer, 1974; Watson, 1985:45-65).

IV. CONCLUSION

Sharia can serve a substance of potential value to provide the roots for the growth of pure devotion (pure legal obedience) and being loyal to the constitution and existing legislation. It comes to give meaning that the life of nation and state requires a spirit, the spirit of sincerity, a sense of belonging and commitment to consensus and legal decisions together, as a continuation of their depth of full comprehension and willingness to sacrifice that grow and develop from providing religious meaning of life and original dimension of divinity.

On the relationship of such meaning, the tools and products of existing legislation are not merely a profane rule which is only eligible to be used as a cognitive reference and to play semantic understanding of legislation (*Begriff und Normwissenschaft*) in dispute and formal technical-juridical debate, but was born to be obeyed and used as manual based on sincerity and purity principles of obedience. Thus, through sharia, Indonesian basically can be taught to "respect the constitution and obey the scriptures" (al-Quran, al-Nisa 58-59).

To conclude, in the Indonesian context, sharia should serve psychological basis for obedience and legal awareness. Moreover, sharia can lead the believers to maintain and secure public interest (*mashlahah*) by promulgating the law and emphasize its necessity for the society. The law is not only social contract but also spiritual sign of commitment.

As a recommendation, the agenda for the application of Sharia in Indonesia is often understood as the application of Sharia criminal law perceived as the antithesis of the principles of Human Rights. Sharia in this context has not been understood yet as the noble values extracted from divine principle (transcendental) which contains the teachings of liberation and humanity (humanistic values); a tenet which contains a blend of the divine vision and real human experience throughout history to find the formula of conflict resolution (values and law formulas) for continuous existence outwardly or inwardly (al-Quran, Al-Imran 110; al-Jatsiyah 18). Hence, in such a context, further researches should be done.

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