

**TINDAK PIDANA KORUPSI DALAM PERSPEKTIF FIQH JINAYAH
DAN HUKUM POSITIF SINGAPURA**



SKRIPSI

**DIAJUKAN KEPADA FAKULTAS SYARI'AH DAN HUKUM
UNIVERSITAS ISLAM NEGERI SUNAN KALIJAGA YOGYAKARTA
UNTUK MEMENUHI SEBAGIAN SYARAT MENDAPATKAN
GELAR SARJANA HUKUM ISLAM**

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**PERBANDINGAN MAZHAB DAN HUKUM
FAKULTAS SYARI'AH DAN HUKUM
UNIVERSITAS ISLAM NEGERI SUNAN KALIJAGA
YOGYAKARTA**

2013

ABSTRAK

Korupsi merupakan tindak pidana yang selama ini telah menjadi bagian dari masalah kehidupan berbangsa dan bernegara hampir di seluruh muka bumi ini karena tidak ada bangsa di muka bumi yang sepenuhnya bebas dari perbuatan korupsi. Seiring dengan perkembangan masalah tindak pidana korupsi yang semakin menggurita dan masuk dalam golongan *extra ordinary crime*. Indonesia sebagai negara dengan mayoritas penduduknya beragama Islam menempati posisi terendah dalam memberantas korupsi dengan statistik berbanding terbalik dengan Singapura yang minoritas beragama Islam dimana telah berhasil memberantas korupsi.

Islam sebagai agama *ra matallil'âlamîn*, diyakini mempunyai aturan dalam memberantas tindak pidana korupsi. Meskipun hukum Islam tidak secara langsung membahas tindak pidana korupsi baik pengertian, hukum maupun sanksi. Tapi, ada enam istilah tindak pidana dalam hukum Islam sepadan dengan tindak pidana korupsi yaitu *gulûl* (penggelapan), *risywâh* (penyuapan), *hadiyyah*, *khiyânah* (pengkhianatan), *sarîqah* (pencurian) dan *ga'ab* (mengambil secara paksa hak/harta orang lain) dengan pengertian, hukum dan sanksi yang diatur jelas dalam hukum Islam.

Dengan dasar hukum al-Qur'an dan hadits serta perlindungan *maqâ'idus syarî'ah*, hukum Islam mempunyai prinsip hukum yang tegas namun fleksibel. Dalam fiqh jinayah sanksi hukum tindak pidana korupsi terdiri dari sanksi *hudud* dan *ta'zir*, apabila *hudud* tidak diperoleh, maka hukuman tersebut akan dialihkan pada hukuman *ta'zir*. Adanya pilihan dalam pemberlakuan sanksi hukum karena Islam tidak secara spesifik membahas jenis hukuman bagi pelaku tindak pidana korupsi.

Singapura yang merupakan negara dengan luas wilayah dan penduduk beragama Islam lebih kecil dibanding Indonesia serta masuk dalam golongan negara yang makmur, tertib, dan paling kecil korupsinya, tetap saja pemerintah Singapura menciptakan badan anti korupsi yang disebut CPIB (*Corrupt Practices Investigation Bureau*) dengan undang-undang anti korupsinya yaitu *Prevention of Corruption Act* (PCA), yang sudah dibentuk sejak tahun 1960 dan telah berkali-kali dilakukan perubahan pada tahun 1963, 1966, 1972, 1981, 1989, dan 1991 yang secara rinci membahas pengertian, hukum maupun sanksi tindak pidana korupsi. Dalam hukum positif Singapura tindak pidana korupsi merupakan segala perbuatan yang berhubungan dengan suap menyuap dan gratifikasi, dengan dasar hukum yang meliputi KUHP dan undang-undang PCA serta dengan pengaturan sanksi hukuman yang jelas dan pasti yang diatur di dalam Pasal 5 dan Pasal 6 *Prevention of Corruption Act*, yaitu denda \$ 100,000 atau pidana penjara paling lama 7 (tujuh) tahun atau kedua-duanya.



SURAT PERSETUJUAN SKRIPSI

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Assalamu'alaikum Wr. Wb.

Setelah membaca, meneliti, dan mengoreksi serta menyarankan perbaikan seperlunya, maka kami berpendapat bahwa skripsi saudara:

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Dengan ini kami mengharap agar skripsi saudara tersebut dapat segera dimunaqasyahkan. Untuk itu kami ucapkan terimakasih.

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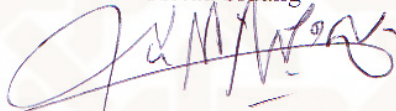
Telah dimunaqosyahkan pada : Rabu, 22 Januari 2014

Nilai Munaqosyah : A-

Dan dinyatakan telah diterima oleh Fakultas Syari'ah Dan Hukum Program Studi Perbandingan Mazhab Dan Hukum Universitas Islam Negeri Sunan Kalijaga Yogyakarta.

TIM MUNAQOSYAH

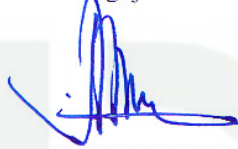
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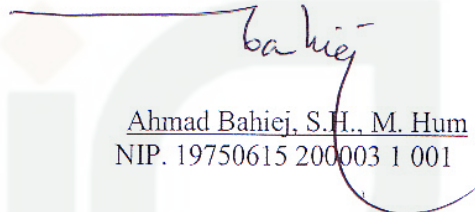
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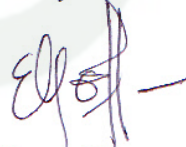
Menyatakan bahwa skripsi yang berjudul "**Tindak Pidana Korupsi dalam Perspektif Fiqh Jinayah dan Hukum Positif Singapura**" adalah benar-benar merupakan hasil karya penyusun sendiri, bukan duplikasi ataupun saduran dari karya orang lain kecuali pada bagian yang telah dirujuk dan disebut dalam *footnote* atau daftar pustaka. Dan apabila di lain waktu terbukti adanya penyimpangan dalam karya ini, maka tanggung jawab sepenuhnya ada pada penyusun.

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Wassalamu'alaikum Wr. Wb.

Yogyakarta, 22 januari 2014

Penyusun



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PERSEMBAHAN

Skripsi ini penulis persembahkan kepada:

- ❖ ***Kedua orang tuaku dan dedek Badriyah
tercinta, yang tidak pernah lelah dalam
melantunkan doa dan kasih sayangnya
kepada penulis***
- ❖ ***Almamaterku UIN Sunan Kalijaga***

MOTTO

أَلَمْ نَشْرَحْ لَكَ صَدْرَكَ ۖ وَوَضَعْنَا عَنكَ وِزْرَكَ ۖ
الَّذِي أَنْقَضَ ظَهْرَكَ ۖ وَالَّذِي أَنْقَضَ ظَهْرَكَ ۖ
وَرَفَعْنَا لَكَ ذِكْرَكَ ۖ فَإِنَّ مَعَ الْعُسْرِ يُسْرًا ۖ إِنَّ مَعَ الْعُسْرِ يُسْرًا ۖ فَإِذَا فَرَغْتَ
فَانصَبْ ۖ وَإِلَىٰ رَبِّكَ فَارْغَبْ ۖ

1. Bukankah Kami telah melapangkan untukmu dadamu?
2. dan Kami telah menghilangkan daripadamu bebanmu,
3. yang memberatkan punggungmu?
4. dan Kami tinggikan bagimu sebutan (nama)mu,
5. karena Sesungguhnya sesudah kesulitan itu ada kemudahan,
6. Sesungguhnya sesudah kesulitan itu ada kemudahan,
7. maka apabila kamu telah selesai, kerjakanlah dengan sungguh-sungguh yang lain,
8. dan hanya kepada Tuhanmulah hendaknya kamu berharap.¹

¹ Al-Insyirah (94): 1-8

KATA PENGANTAR

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العلمين والصلاة والسلام على محمد وعلى آله وصحبه أجمعين أشهد أن لا إله

إلا الله وحده لا شريك له وأشهد أن محمدا عبده ورسوله أما بعد

Puji syukur penulis panjatkan kehadirat Allah SWT yang telah memberikan banyak limpahan rahmat, karunia, iman, Islam serta hidayahNya kepada penulis, sehingga skripsi ini dapat terselesaikan dengan baik. Sholawat serta salam semoga selalu tercurahkan kepada baginda agung Muhammad SAW.

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Penulis

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PEDOMAN TRANSLITERASI ARAB – LATIN

Transliterasi kata-kata Arab yang dipakai dalam penyusunan skripsi ini berpedoman pada Surat Keputusan Bersama Menteri Agama dan Menteri Pendidikan dan Kebudayaan Republik Indonesia Nomor: 158/1987 dan 0543b/U/1987, secara garis besar uraiannya adalah sebagai berikut:

A. Konsonan Tunggal

Huruf Arab	Nama	Huruf Latin	Keterangan
ا	Alif	tidak dilambangkan	Tidak dilambangkan
ب	Ba'	b	be
ت	Ta'	t	te
ث	□a'	ś	es (dengan titik di atas)
ج	Jim	j	je
ح	□a'	□	ha (dengan titik di bawah)
خ	Kha'	kh	ka dan ha
د	Dal	d	de
ذ	Zâ	z	Zet (dengan titik di atas)
ر	Ra'	r	er
ز	zai	z	zet
س	sin	s	es
ش	syin	sy	es dan ye
ص	sad	□	es (dengan titik di bawah)
ض	dad	□	de (dengan titik di bawah)
ط	tâ'	□	te (dengan titik di bawah)
ظ	za'	□	zet (dengan titik di bawah)
ع	'ain	'	koma terbalik di atas
غ	gain	g	ge
ف	fa'	f	ef
ق	qaf	q	qi
ك	kaf	k	ka

ل	lam	l	`el
م	mim	m	`em
ن	nun	n	`en
و	wawu	w	w
هـ	ha'	h	ha
ء	hamzah	'	apostrof
ي	ya'	Y	Ye

B. Konsonan Rangkap Karena Syaddah ditulis rangkap

متعدّد	Ditulis	Muta'addidah
عدّة	Ditulis	'iddah

C. Ta' Marbutah di akhir kata

1. Bila dimatikan ditulis "h"

حكمة	Ditulis	ikmah
علة	Ditulis	'illah

(ketentuan ini tidak diperlukan bagi kata-kata Arab yang sudah terserap dalam bahasa Indonesia, seperti salat, zakat dan sebagainya, kecuali bila dikehendaki lafal aslinya).

2. Bila diikuti dengan kata sandang 'al' serta bacaan kedua itu terpisah, maka ditulis dengan h.

كرامة الأولياء	Ditulis	Karâmah al-auliyâ'
----------------	----------------	--------------------

3. Bila ta' marbutah hidup atau dengan harakat, fathah, kasrah dan dammah ditulis t atau h.

زكاة الفطر	Ditulis	Zakâh al-fiṭri
------------	----------------	----------------

D. Vokal Pendek

فعل	Fathah	Ditulis	A
فعل		Ditulis	fa'ala
ذکر	kasrah	Ditulis	i
ذکر		Ditulis	zükira
يذهب	dammah	Ditulis	u
يذهب		Ditulis	yazhabu

E. Vokal Panjang

1	Fathah + alif جاهلية	Ditulis	Â
		Ditulis	jâhiliyyah
2	fathah + ya' mati تنسى	Ditulis	â
		Ditulis	tansâ
3	kasrah + ya' mati كريم	Ditulis	î
		Ditulis	karîm
4	dammah + wawu mati فروض	Ditulis	û
		Ditulis	furû

F. Vokal Rangkap

1	fathah + ya' mati بينكم	Ditulis	Ai
		Ditulis	bainakum
2	fathah + wawu mati قول	Ditulis	au
		Ditulis	qaul

G. Vokal Pendek yang berurutan dalam satu kata dipisahkan dengan

apostrof

أنتم	Ditulis	a'antum
أعدت	Ditulis	u'iddat
لئن شكرتم	Ditulis	la'in syakartum

H. Kata Sandang Alif + Lam

1. Bila diikuti huruf Qomariyyah ditulis dengan menggunakan huruf “l”.

القرآن	Ditulis	al-Qur’ân
القياس	Ditulis	al-Qiyâs

2. Bila diikuti huruf Syamsiyyah ditulis dengan menggunakan huruf Syamsiyyah yang mengikutinya, dengan menghilangkan huruf l (el) nya.

السماء	Ditulis	as-Samâ’
الشمس	Ditulis	asy-Syams

I. Penyusunan kata-kata dalam rangkaian kalimat

Ditulis menurut penyusunannya.

ذوي الفروض	Ditulis	Žawî al-furû
أهل السنة	Ditulis	ahl as-sunnah

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LAMPIRAN-LAMPIRAN

BAB 1

PENDAHULUAN

A. Latar Belakang Masalah

Tidak ada bangsa di muka bumi yang sepenuhnya bebas dari perbuatan korupsi.¹ Sejarah korupsi bermula sejak awal kehidupan manusia bermasyarakat, yakni pada tahap tatkala munculnya organisasi kemasyarakatan. Catatan kuno mengenai masalah ini menunjuk pada penyuaan terhadap para hakim, dan tingkah laku para pejabat pemerintah. Dalam sejarah Mesir, Babilonia, Ibrani, India, Cina, Yunani dan Romawi Kuno, korupsi seringkali muncul ke permukaan sebagai masalah.²

*Transparency International*³ telah menyebutkan mengenai peringkat kebersihan korupsi negara-negara di Asia, Singapura menempati peringkat pertama sebagai negara terbersih dan Indonesia menempati peringkat 16. Statistik lain, yang dikemukakan *Political and Economic Risk Consultancy* (PERC), menyatakan pada 2010 Indonesia adalah negara paling korup di Asia Pasific, sedangkan hasil *Survey PERC* menyatakan Singapura merupakan negara terbersih dengan skor 1,42.⁴ Lantas, *survey Doing Business*, yang didasarkan

¹ Bambang Susatyo, *Perang-perangan Melawan Korupsi*, (Jakarta: Ufuk Press, 2011), hlm. 1.

² Syed Husain Alatas, *Korupsi Sifat, Sebab dan Fungsi*, (Jakarta: LP3ES, 1987), hlm. 1.

³ Transparency International (TI) adalah sebuah organisasi internasional yang bertujuan memerangi korupsi politik, yaitu organisasi yang didirikan di Jerman sebagai organisasi nirlaba sekarang menjadi organisasi non-pemerintah yang bergerak menuju organisasi yang berstruktur demokratik. Publikasi tahunan terkenal yang diluncurkan TI adalah Laporan Korupsi Global.

⁴ Hasil *Survey PERC* menyatakan skor Indonesia adalah 9,27 (dari skala 0-10, semakin besar skornya, semakin koruplah sebuah negara). Itu artinya, korupsi di Indonesia bahkan lebih buruk dibandingkan Kamboja (9,10), Filipina (9,0), dan Thailand (8,0). Sedangkan Singapura punya poin 1,42 diikuti Australia 2,28 dan Hongkong 2,67.

pengukuran kemudahan berusaha, menempatkan posisi Indonesia berada di peringkat 122 dari 183 negara.

Dalam pada itu, Indonesia sebagai negara dengan mayoritas penduduknya beragama Islam, menjadi negara dengan skala terendah dalam pemberantasan korupsi. Dari waktu ke waktu usaha yang sungguh-sungguh dan keras dilakukan oleh alat-alat negara. Agar usaha serupa itu benar-benar efektif, maka ia harus menjadi bagian perlawanan pemerintah terhadap korupsi secara besar-besaran dan kuat, disertai dengan mobilisasi total dan terus-menerus dalam jangka waktu yang panjang.⁵

Amien Rais mengatakan bahwasanya bangsa Indonesia tidak boleh pasrah melawan korupsi dengan alasan bahwa budaya korupsi telah merajalela sehingga seolah-olah tidak ada lagi sedikitpun optimisme untuk menanggulangi korupsi. Justru kita harus bangkit, harus bangun untuk mengkonstruksi budaya kita agar menjadi budaya yang rasional, budaya yang penuh dengan *accountability* (rasa tanggungjawab) kepada tuhan, publik serta diri sendiri. Karena Islam sebagai agama mayoritas penduduk Indonesia, yang mengatur kehidupan dengan berbagai hukum yang tegas serta menyangkut segala sendi kehidupan. Tindak pidana korupsi mendapat perhatian khusus dalam Islam, karena perlindungan harta sangat ditekankan oleh agama Islam.⁶

Setiap perbuatan yang dapat merugikan harta benda sangat dilarang oleh Islam dan pelakunya ditindak tegas. Selain itu, tindak pidana korupsi termasuk

⁵ Syed Husain Alatas, *Korupsi Sifat....*, hlm. 48.

⁶ Makhrus Munajat, *Hukum Pidana Islam di Indonesia*, (Yogyakarta: Teras, 2009), hlm. 7.

perbuatan yang menyalahi etika Islam serta bertentangan dengan ayat al-Quran sebagaimana firman Allah SWT:

ولا تأكلوا أموالكم بينكم بالباطل وتدلوا بها إلى الحكام لتأكلوا فريقاً من أموال الناس بالإثم وأنتم تعلمون⁷

Seorang ulama' mengatakan bahwasanya seseorang yang beriman, tetapi melakukan korupsi maka sesungguhnya dia tidak ada bedanya dengan seorang kafir, karena al-Quran banyak menyebutkan definisi kafir bukan sebagai orang yang menyekutukan Allah maupun alam ghaib, tetapi kafir juga bermakna orang yang menjadikan agama sebagai permainan atau topeng dalam menjalankan tindakan-tindakan yang koruptif, dalam konteks ini para agamawan atau mereka yang memegang teguh ajaran-ajaran agama seharusnya memiliki keberanian yang jauh di atas rata-rata kerana memberantas korupsi merupakan bagian dari keimanan seseorang.

Islam adalah agama mayoritas penduduk Indonesia, tetapi dengan mayoritas beragama Islam, Indonesia masih tergolong negara dengan peringkat terendah dalam kebersihan korupsi. Penting dan logis kiranya untuk meneliti postulat hukum Islam kaitannya dengan korupsi, karena peran syari'at Islam sendiri merupakan moralisasi dan juga agen pencegahan (*preventive agent*).⁸

Keberhasilan Singapura dalam memberantas tindak pidana korupsi menjadi alasan penting dalam penulisan penelitian ini. Selain itu, keberadaan Islam sebagai agama yang datang untuk membebaskan dan memerangi sistem ketidakadilan, pastinya tidak akan melegalkan praktik-praktik yang melahirkan eksploitasi dan ketidakadilan. Tindak pidana korupsi tentu termasuk hal yang

⁷ Al Baqarah (2): 188.

⁸ Makhrus Munajat, *Hukum Pidana....*, hlm. 358.

harus diperangi Islam karena dapat menimbulkan masalah besar. Dengan kata lain, Islam harus ikut pula bertanggungjawab memikirkan dan memberikan solusi terhadap perilaku korupsi yang sudah menjadi epidemis ini.

Tentunya Islam tidak bisa berbicara sendiri, harus ada usaha-usaha untuk menyuarakan konsep-konsep Islam, salah satunya dengan membongkar dogma hukum Islam. Sejauh pengetahuan penulis, kata korupsi secara literer memang tidak ditemukan dalam khazanah hukum Islam, tetapi substansi dan persamaannya bisa dicari dan ditelusuri dalam hukum Islam.

Analogi tindak pidana korupsi bisa ke arah *gulûl* (penggelapan), *risywâh* (penyuapan), *hadiyyah*, *khiyânah* (pengkhianatan), *sarîqah* (pencurian) dan *gaṣab* (mengambil secara paksa hak/harta orang lain), tetapi terma-terma tersebut masih perlu dikaji lebih lanjut. Terlebih lagi kalau menelusuri konsep hukum Islam untuk ikut memberantas tindak pidana korupsi.

Singapura adalah sebuah negara dengan luas wilayah 239 mil persegi dengan jumlah penduduk Singapura pada tahun 2010 ialah sekitar 3.567.000 jiwa.⁹ Walaupun Singapura tergolong negara yang makmur, tertib, dan paling kecil korupsinya, tetap saja pemerintah Singapura menciptakan badan anti korupsi yang disebut CPIB (*Corrupt Practices Investigation Bureau*).¹⁰

Dengan undang-undang anti korupsinya yaitu *Prevention of Corruption Act* (PCA), yang sudah dibentuk sejak tahun 1960 dan telah berkali-kali dilakukan perubahan pada tahun 1963, 1966, 1972, 1981, 1989, dan 1991.

⁹ <http://id.wikipedia.org/wiki/Singapura> diakses 17 Desember 2012 pukul 16:18

¹⁰ Badan independen yang bertanggung jawab atas penyelidikan dan pencegahan korupsi di Singapura

Pada awal pembentukan, CPIB merupakan lembaga yang terpisah dari POLRI dalam menyelidiki kasus-kasus korupsi, dan merupakan lembaga independen yang terdiri dari penyidik sipil dengan diperbantukan petugas polisi senior yang dipimpin oleh Middleston Smith.

Pada bulan Oktober 1952, staf CPIB terdiri dari 13 anggota. Seperti kebanyakan organisasi yang baru didirikan, perekrutan staf dan reorganisasi periodik lembaga tersebut berlanjut selama beberapa tahun.¹¹ Dalam hal ini, memang terlihat keseriusan Singapura dalam memberantas tindak pidana korupsi. Maka dari itu, penelitian ini penting dilakukan dan perlu kiranya penulis membandingkan perbedaan maupun persamaan tindak pidana korupsi dalam dua terma yang berbeda. Penulis melakukan penelitian ini dengan memberi judul penelitian **“Tindak Pidana Korupsi dalam Perspektif Fiqh Jinayah dan Hukum Positif Singapura”**.

B. Rumusan Masalah

Berdasarkan latar belakang yang telah dipaparkan di atas, dapat dikembangkan pokok permasalahan yang relevan dengan tema penelitian ini, maka dapat penulis angkat beberapa pokok masalah dalam penelitian ini antara lain:

1. Bagaimana perumusan tindak pidana korupsi menurut fiqh jinayah dan hukum positif Singapura?

¹¹ http://app.cpib.gov.sg/cpib_new/user/default.aspx?pgID=125 diakses 22 November 2012 pukul 11:00

2. Dimana letak persamaan dan perbedaan tindak pidana korupsi dalam perspektif fiqh jinayah dan hukum positif Singapura?

C. Tujuan dan Kegunaan

Berangkat dari rumusan masalah yang telah dikemukakan, pada hakikatnya penelitian ini memiliki tujuan dan kegunaan, tujuan penelitian ini adalah sebagai berikut:

1. Mengkaji hukum tindak pidana korupsi menurut fiqh jinayah dan hukum positif Singapura.
2. Menganalisis persamaan dan perbedaan hukum tindak pidana korupsi dalam perspektif fiqh jinayah dan hukum positif Singapura.

Adapun kegunaan penelitian antara lain:

1. Penelitian ini akan memberikan kontribusi yang cukup signifikan terhadap khazanah keilmuan terutama dalam bidang hukum.
2. Dapat memberikan pemahaman yang lebih jelas sistem fiqh jinayah maupun hukum positif Singapura tentang tindak pidana korupsi.
3. Dapat mengetahui letak persamaan dan perbedaan persepsi dan upaya integritas hukum baik menurut fiqh jinayah maupun hukum positif Singapura.

D. Telaah Pustaka

Pembahasan mengenai korupsi dapat ditemukan dalam bentuk skripsi, seperti *Penerapan Hukuman Mati bagi Pelaku Tindak Pidana Korupsi dalam*

Perspektif Hukum Islam yang ditulis Ahmad Diaudin Anwar.¹² Penjelasan dalam skripsi ini hanya sebatas pengertian serta efektifitas hukuman mati bagi pelaku tindak pidana korupsi dalam perspektif hukum Islam.

Sedangkan skripsi yang secara khusus membandingkan tindak pidana korupsi dapat ditemukan dalam beberapa judul skripsi yaitu skripsi yang berjudul *Studi atas Tindak Pidana Korupsi Menurut Hukum Pidana Islam dan Hukum Pidana Positif* oleh Mafrukhin,¹³ Penelitian ini menguraikan tentang tindak pidana korupsi menurut hukum pidana Islam dibandingkan dengan hukum positif Indonesia, serta menjelaskan sanksi hukum tindak pidana korupsi menurut hukum pidana Islam maupun menurut hukum positif yang berlaku di Indonesia. Selain itu, skripsi yang ditulis oleh MR. Narong Mat-Adam yang berjudul *Tindak Pidana Korupsi dalam Perspektif Fiqh Jinayah dan Hukum Positif Thailand*,¹⁴ Penelitian ini menguraikan tentang tindak pidana korupsi dalam perspektif fiqh jinayah dan hukum positif Thailand, serta menjelaskan persamaan dan perbedaan tindak pidana korupsi dalam perspektif fiqh jinayah dan hukum positif Thailand.

Sebuah skripsi yang berjudul *Tindak Pidana Korupsi (Studi Komparasi Hukum Positif Indonesia dan Hukum Positif Malaysia)* yang ditulis oleh Ade Ahmad Hanif,¹⁵ Juga fokus pada perbandingan tindak pidana korupsi tetapi penelitian ini hanya sebatas menguraikan tentang tindak pidana korupsi dalam

¹²Ahmad Diaudin Anwar, *Penerapan Hukuman Mati bagi Pelaku Tindak Pidana Korupsi dalam Perspektif Hukum Islam*, Yogyakarta, tahun 2006.

¹³Mafrukhin, *Studi atas Tindak Pidana Korupsi Menurut Hukum Pidana Islam dan Hukum Pidana Positif*, Yogyakarta, tahun 2004.

¹⁴ MR.Narong Mat-Adam, *Tindak Pidana Korupsi dalam Perspektif Fiqh Jinayah dan Hukum Positif Thailand*, Yogyakarta, tahun 2008.

¹⁵ Ade Ahmad Hanif, *Tindak Pidana Korupsi (Studi Komparasi Hukum Positif Indonesia dan Hukum Positif Malaysia)*, Yogyakarta, tahun 2006.

perspektif hukum positif Indonesia dan hukum positif Malaysia, serta menjelaskan persamaan dan perbedaan tindak pidana korupsi dalam perspektif hukum positif Indonesia dan hukum positif Malaysia.

Berbagai penelitian penulisan tersebut berbeda dengan penulisan penelitian ini, yang mana sepenuhnya fokus pada pembahasan tindak pidana korupsi perspektif fiqh jinayah dan hukum positif Singapura.

Selain itu, terdapat kitab karangan *al-Sayyid Sâbiq* berjudul *Fiqhus Sunnah* yang diterbitkan di Beirut oleh Dâr al-Fikr, dalam kitab tersebut membahas macam-macam *jarîmah*, pembagian delik, pertanggungjawaban hukuman, serta pembahasan tentang *gulûl* maupun *sarîqoh* yang identik dengan tindak pidana korupsi.¹⁶

Kitab karangan *Imam Taqiyuddin Abi Bakr Ibn Muhammad al-Husayn*, yang berjudul *Kifâyatul Akhyar fi Hal gâyatul ikhtisar*, membahas seputar *jarîmah hudûd* secara spesifik beserta ancaman hukumnya, serta membahas seputar konsepsi teoritik fiqh jinayah.¹⁷

Adapun kitab *Bidayatul Mujtahid* karangan *Imam al-Qodhi Abu Walid*, yang ditulis *Ibnu Rusd al-Hafid* dengan editor Besus Hidayat Amin, menerangkan secara spesifik berkenaan mengambil barang bukan miliknya, jenis dan hukuman *sarîqoh*, serta pembahasan macam-macam *jarîmah*.¹⁸

Beberapa karya atau penelitian yang membahas perbandingan tindak pidana korupsi perspektif fiqh jinayah dan hukum positif Singapura secara khusus

¹⁶ Al Sayyid Sabiq, *Fiqhus Sunnah*, (Beirut: Dâr al-Fikr, 1977)

¹⁷ Imam Taqiyuddin Abi Bakr Ibn Muhammad al-Husayn, *Kifâyatul Akhyar fi Hal gâyatul ikhtisar*, (Semarang: Toha Putra, sa)

¹⁸ Ibnu Rusd al-Hafid, *Bidayatul Mujtahid*, (Jakarta: Pustaka Azzam, 2006)

sepanjang pengamatan penulis belum ditemukan, ada satu buku yang ditulis Andi Hamzah yang berisi pembahasan perbandingan pemberantasan korupsi di berbagai negara, dimana Singapura masuk dalam pembahasannya, buku tersebut berjudul *Perbandingan Pemberantasan Korupsi di Berbagai Negara*.¹⁹

Selain itu, terdapat sebuah buku yang membahas tentang gambaran umum mengenai sistem hukum Singapura dengan judul *Konstitusi Singapura*²⁰ yang disusun oleh Prajudi Atmosudirdjo dalam buku ini menyangkut pembahasan mengenai keseluruhan ketentuan dalam konstitusi yang berlaku di Singapura.

Demikianlah beberapa karya dan hasil penelitian yang telah penulis telaah dan masih ada beberapa karya tulis lagi yang belum terjangkau dari pengamatan baik yang berupa buku, jurnal maupun skripsi, terutama karya yang pembahasannya seputar masalah korupsi ini sendiri.

E. Kerangka Teoretik

Dilihat dari sejarahnya, korupsi berasal dari bahasa Latin: *corruptio* dari kata kerja *corrumpere* yang bermakna busuk, rusak, menggoyahkan, memutarbalik maupun menyogok, hal tersebut tergantung dari negaranya atau wilayah hukumnya, ada perbedaan antara yang dianggap korupsi atau tidak.²¹

Korupsi yang merupakan bagian dari tindak pidana, dalam Islam sering disebut *jinâyah* atau *jarîmah*. *Jinâyah* merupakan bentuk *verbal noun* (masdar)

¹⁹ Andi Hamzah, *Perbandingan Pemberantasan Korupsi di Berbagai Negara*, (Jakarta: Sinar Grafika, 2005)

²⁰ Prajudi Atmosudirdjo, *Konstitusi Singapura*, (Jakarta: Ghalia Indonesia, 1986)

²¹ <http://en.wikipedia.org/wiki/Corruption>, diakses 22 september 2012 pukul 07:00

dari kata *janâ*. Secara etimologi *janâ* berarti berbuat dosa atau salah, sedangkan *jinâyah* diartikan perbuatan dosa atau perbuatan salah.

Secara terminologi kata *jinâyah* diartikan perbuatan yang dilarang syara' baik perbuatan itu mengenai jiwa, harta benda, atau lainnya. Jadi, *jinâyah* merupakan suatu tindakan yang dilarang oleh syara', karena dapat menimbulkan bahaya bagi jiwa, harta, keturunan dan akal.²²

Pernyataan korupsi terdapat pula dalam al-Quran sebagaimana yang diungkapkan Hanna Kassis dalam bukunya *The Concordance of The Quran* (1983), menafsirkan pengertian korupsi dalam beberapa kata yakni *bûr*, *dakhal*, *dassâ*, *afsâda*, *fasâd*, *fasâda*, *khâbâ'ith* serta *khubutta*, arti semua kata itu memang berkaitan dengan rusak, kerusakan, merusak. Sebagaimana firman Allah SWT:

وإذا تولى سعى فى الأرض ليفسد فيها ويهلك الحرث والنسل والله لا يحب الفساد.²³

Demikian pula, firman Allah SWT berkenaan larangan untuk berbuat korupsi, perusakan maupun pelanggaran:

ان قرون كان من قوم موسى فبغى عليهم وءاتيناه من الكنوز ما ان مفاتحه لتتو يا لعصابة أولى القوة اذ قال له قومه لا تفرح ان الله لا يحب الفرحين.²⁴

Sebelum ayat ini disebut nama Qarun seorang kaum Nabi Musa a.s yang kaya raya dan korup ketika itu, yang disertai perbendaharaan harta yang kunci-kuncinya sungguh berat dipikul oleh sejumlah orang yang kuat “kamu menjadikan sumpahmu sebagai alat untuk saling menipu diantara kamu”.

Pengertian korupsi berdasarkan konteks tersebut berkaitan dengan penyalahgunaan kesepakatan (yang mengandung kekuatan hukum) sebagai alat

²² Riyanta, Jurnal Penelitian Agama, Vol. XV, No. 2 Mei-Agustus 2006, hlm. 251.

²³ Al-Baqarah (2): 205.

²⁴ Al-Qashash (28): 77.

penipuan. Dengan demikian, korupsi berarti perbuatan melanggar hukum yang berakibat merusak tatanan yang sudah disepakati. Tatanan tersebut bisa berwujud pemerintahan, administrasi atau manajemen. Hal tersebut sesuai dengan pendapat Imam khomaini yang mengutip firman Allah SWT:

قالت ان الملوك اذا دخلوا قرية افسدوها و جعلوا اعزة اهلهما اذلة وكذلك يفعلون.²⁵

Dalam kisah al-Quran pengertian korupsi berkaitan dengan kekuasaan, yang mana dikisahkan didalamnya bahwa kekuasaan itu bisa ditaklukkan dengan pemberian materi kepada seseorang yang memegang suatu kekuasaan.²⁶

Seseorang yang tersangkut korupsi adalah seseorang yang berbuat sesuatu yang melanggar hukum, kesepakatan atau perjanjian yang bernilai sosial. Melanggar hukum berarti merusak ikatan seseorang dengan kekuasaan yang diamanatkan kepadanya.²⁷

Mengingat korupsi merupakan bagian dari tindak pidana, maka penulis akan memaparkan klasifikasi tindak pidana dalam Islam, para ulama sependapat bahwa jenis-jenis tindak pidana (*jarîmah*) bila dilihat dari berat ringannya hukuman dalam Islam ada tiga jenis, yaitu *hudûd*, *ta'zir* dan *qisas diyat*.²⁸

1. *Jarîmah hudud*, yaitu perbuatan melanggar hukum yang jenis dan ancaman hukumnya ditentukan oleh *nash*, yakni hukuman *had* (hak Allah) jama' dari

²⁵ QS al-Naml (27): 34.

²⁶ Maksud kisah tersebut yaitu kisah Ratu Bilqis (*Queen sheba*) dengan Raja Sulaiman. Dimana untuk mencegah masuknya Raja Sulaiman ke negerinya, ia memberikan suatu hadiah yang sebenarnya dapat di kategorikan sebagai suap yang merupakan suatu perbuatan korupsi. Sebagaimana di ketahui kemudian dalam kisah Al-Quran, Raja Sulaiman yang juga Nabi pada saat itu tidak bisa disuap, karena hadiah walaupun merupakan karya seni yang indah itu ditolak.

²⁷ Adnan Buyung Nasution, *Menyingkap Korupsi, Kolusi dan Nepotisme di Indonesia*, (Yogyakarta: Aditya Medika, 1999), hlm. 20.

²⁸ Makhrus Munajat, *Hukum Pidana....*, hlm. 12.

kata *hudud*.²⁹ Hukuman *had* yang dimaksud tidak mempunyai batas terendah dan tertinggi dan tak bisa dihapuskan oleh perorangan (si korban atau walinya) atau masyarakat yang mewakili (*ulil Amri*).

2. *Jarîmah ta'zir*, yakni memberi pelajaran, artinya suatu *jarîmah* yang diancam dengan hukum *ta'zir* yaitu hukuman selain *had* dan *qisas diyat*. Selain itu, *jarimah ta'zir* juga disebut ketentuan hukuman yang dibuat oleh hakim melalui putusnya.³⁰
3. *Jarîmah qisas diyat*, adalah perbuatan yang diancam dengan hukuman *qisas* dan *diyat*. Baik *qisas* maupun *diyat* merupakan hukuman yang telah ditentukan batasnya, tidak ada batas terendah dan tertinggi, tetapi menjadi hak perorangan, ini berbeda dengan hukuman *had* yang menjadi hak Allah semata.³¹

Di dalam Islam, konsep dan istilah yang sering dikaitkan dengan korupsi ditinjau dari perspektif sebagai pengkhiantan atas amanah yang semestinya dipelihara ialah *gulûl*. *Gulûl* secara leksikal dimaknai "*akhdzu al-sya'i wa dassahu fi matha'tihi*" yang artinya "mengambil sesuatu dan menyembunyikanya dalam hartanya." Dalam sejarah Islam konsep *gulûl* muncul karena adanya penggelapan harta rampasan perang sebelum dibagikan.³² Oleh karena itu, Allah telah berfirman:

²⁹ Imam Taqiyuddin abi bakr Ibn muhammad al- husayn, *Kifayatul Akhyar fi Hal Ghayatul Ikhtisar*, (Semarang: Toha Putra, sa), hlm. 178.

³⁰ Zainuddin Ali, *Hukum Pidana...*, hlm. 11.

³¹ Makhrus Munajat, *Dekonstruksi Hukum Pidana Islam*, (Yogyakarta: Logung Pustaka, 2004), hlm. 13

³² Wijayanto dan Ridwan Zachri, *Korupsi Mengorupsi Indonesia*, (Jakarta: Gramedia Pustaka Utama, 2009), hlm. 819.

وما كان لنبي أن يغفل ومن يغفل يأت بما غل يوم القيامة ثم توفى كل نفس ما كسبت وهم لا يظلمون³³

Di dalam ayat tersebut mengandung maksud bahwasanya tindakan *gulûl* dijerat dengan sanksi akhirat tanpa memberikan sanksi yang jelas dalam kehidupan di dunia.

Hadiyyah yaitu suatu pemberian atau hadiah, yang pada dasarnya merupakan tindakan terpuji dan diperbolehkan, menjadi bagian istilah dalam kejahatan korupsi. Hal tersebut dikarenakan *hadiyyah* tersebut ditujukan kepada seorang pejabat, maka bilamana hadiah itu dimaksudkan untuk memperoleh sesuatu melalui atau dari pejabat itu dari suatu hak, maka haram atas pejabat bersangkutan untuk menerima hadiah tersebut.³⁴

Selain itu, di dalam Islam dikenal juga istilah *risywâh* yang secara leksikal mengacu pada kata *rasya-yarsyu-risywatan* yang bermakna *al-ju'l* yang artinya upah, hadiah, pemberian atau komisi. Sedangkan *risywâh* secara terminologis adalah tindakan memberikan harta dan yang sejenis untuk membatalkan hak milik pihak lain. Sesuai dengan firman Allah SWT sebagai berikut:

يا أيها الذين آمنوا لا تخونوا الله والرسول وتخونوا أماناتكم وأنتم تعلمون³⁵

Dikemukakan jenis korupsi lain yaitu *khiyânah*. Di dalamnya dijelaskan tentang larangan mengkhianati amanah sesama manusia beriringan dengan larangan mengkhianati Allah dan RasulNya. Amanah sesama manusia disini dapat meliputi banyak hal, mulai dari amanah politik, ekonomi, bisnis, sosial, dan pergaulan.

³³ Ali Imran (3):161.

³⁴ Imam Syafi'i, *Ringkasan Kitab al-Umm*, (Jakarta: Pustaka Azzam, 2004), hlm. 205.

³⁵ Al Anfal (8): 27.

Selain keempat istilah tersebut, di dalam Islam juga terdapat istilah *gâsab* yang artinya “mengambil sesuatu dari tangan seseorang dengan jalan paksaan” dan *sarîqoh* yaitu “tindakan mengambil harta pihak lain secara sembunyi-sembunyi tanpa ada pemberian amanat atasnya.”³⁶ Kedua kejahatan ini wajib dikenai hukuman *had*³⁷ yang telah disinggung dalam firman Allah sebagai berikut:

والسارق والسارقة فاقطعوا أيديهما جزاء بما كسبا نكالا من الله والله عزيز حكيم³⁸

Islam tidak secara spesifik membahas jenis hukuman bagi para koruptor, setidaknya terdapat beberapa model hukuman yang dapat diberlakukan kepada pelaku korupsi seperti pertama, sanksi di dunia berupa hukuman sebagaimana pencuri, kemudian diusir atau diasingkan ketika dalam kondisi dikhawatirkan mengancam kehidupan atau keselamatan orang lain.³⁹

Kedua, sanksi sosial saat masyarakat secara sadar akan merendahkan orang-orang yang mendapatkan harta yang diraih dengan jalur tidak halal dan koruptif. Sanksi tersebut dapat berupa:

1. Dijauhi oleh masyarakat karena memakan harta korupsi identik dengan memakan harta haram (*al-suht*);
2. Pelaku korupsi tidak akan diterima kesaksiannya seperti dalam kesaksian di pengadilan, kesaksian dalam penetapan ketentuan-ketentuan syari’at Islam, kesaksian pernikahan dan lain sebagainya.

³⁶ Zainuddin Ali, *Hukum Pidana Islam*, (Jakarta, Sinar Grafika, 2007), hlm. 62.

³⁷ Al Sayyid Sabiq, *Fiqhus Sunnah...*, hlm. 414.

³⁸ Al Maidah (5): 38.

³⁹ Misalnya mengorupsi dana reboisasi yang dapat mengancam keselamatan orang lain dengan timbulnya banjir dan bencana alam lainnya.

Ketiga, sanksi moral ketika meninggal dunia, pelaku korupsi jenazahnya haram untuk disholati, karena bagaimanapun juga seorang koruptor adalah orang tercela dan celaka. Selain ketiga hukuman di atas, masih ada sanksi lain yang cukup berat, yaitu hukuman kelak di akhirat. Perbuatan koruptif dapat menghalangi pelakunya masuk surga, selain itu harta yang didapatkannya juga akan membebaninya kelak di hari kiamat.

Singapura adalah negara pulau terkecil di ASEAN, tetapi yang paling kaya dan paling makmur, aman, dan tertib. Walaupun Singapura tergolong negara yang makmur, tertib, dan paling kecil korupsinya, tetap saja pemerintah Singapura menciptakan badan anti korupsi yang disebut CPIB (*Corrupt Practices Investigation Bureau*).

Pembentukan CPIB Singapura dipicu dengan kenyataan ekonominya yang bertumpu sebagai perantara dagang antara negara tetangganya dengan negara-negara luar. Di samping itu, karena ada usaha keras para pemimpinnya yang dipelopori oleh *lee Kuan Yew*⁴⁰ untuk menciptakan pemerintah dan masyarakat yang taat hukum sebagai dasar untuk menuju kemakmuran.

Undang-undang anti korupsinya yaitu *Prevention of Corruption Act* yang sudah dibentuk sejak tahun 1960 dan telah berkali-kali dilakukan perubahan, yaitu tahun 1963, 1966, 1972, 1981, 1989 dan 1991.

⁴⁰ Lee Kuan Yew (lahir di Singapura, 16 September 1923; umur 89 tahun) (bahasa Mandarin: Pinyin: Lǐ Guāngyào) adalah Perdana Menteri Singapura dari tahun 1959 – 1990. Ia tetap menjadi tokoh politik yang berpengaruh di Singapura sejak pengunduran dirinya sebagai perdana menteri. Semasa pemerintahan Goh Chok Tong, Lee menjabat sebagai Menteri Senior. Saat ini jabatan beliau ialah Menteri Mentor, sebuah jabatan baru yang dibentuk di bawah kepemimpinan anaknya, Lee Hsien Loong, yang menjadi PM ketiga pada 12 Agustus 2004.

Struktur organisasi CPIB Singapura, pada posisi puncak dijabat oleh seorang direktur, deputy direktur, dan asisten direktur. Bagian di bawahnya terdiri dari bagian operasi (*operation*), bagian bantuan operasi (*operation support*) serta bagian pencegahan (*prevention*).

Bagian operasi dalam organisasi CPIB membawahi tim penyidik khusus (*special investigation team*), Unit I, Unit II, Unit III. Bagian bantuan operasi membawahi intelijen dan penelitian lapangan serta bantuan teknik. Bagian administrasi membawahi keuangan, *records*⁴¹ dan *screeening*,⁴² SDM serta *Computer Info Systems Unit*. Bagian perwira staf dan bagian pencegahan tidak membawahi subbagian seperti halnya dengan bagian-bagian lain.

Pembahasan delik korupsi di Singapura yang substantif adalah dari KUHP dan undang-undang PCA (*Prevention of Corruption Act*). Adapun yang berasal dari KUHP membahas delik korupsi yang umumnya menyangkut suap-menyuap. Sedangkan yang terdapat dalam undang-undang PCA hanya 2 (dua) yang substantif, yaitu Pasal 5 dan Pasal 6 PCA.⁴³ Selain itu pembahasan delik yang memperberat pidana menjadi 7 (tujuh) tahun dari maksimal 5 (lima) tahun,

⁴¹ Records adalah kumpulan elemen-elemen data yang digabungkan menjadi satu kesatuan, masing-masing elemen data tersebut dikenal dengan sebutan field. Field data tersebut dapat memiliki tipe data yang sama ataupun berbeda, walaupun field-field tersebut berada dalam satu kesatuan namun masing-masing field dapat diakses secara individual.

⁴² Screeening adalah cara untuk mengidentifikasi penyakit yang belum tampak melalui suatu tes atau pemeriksaan atau prosedur lain yang dapat dengan cepat memisahkan antara orang yang mungkin menderita penyakit dengan orang yang mungkin tidak menderita.

⁴³ http://app.cpiib.gov.sg/cpiib_new/user/default.aspx?pgID=204 diakses 2 Februari 2013 pukul 04:18.

ditambah lagi dengan dugaan korupsi dalam hal tertentu (*Prevention of Corruption in certain cases*).⁴⁴

Masih ada tiga pasal lagi, yaitu Pasal 10 sampai dengan Pasal 12 PCA, yang menyangkut penyuaipan dalam hal tender pekerjaan, pelayanan, melakukan atau pemasokan sesuatu, material atau benda, yang merupakan kontrak dengan Pemerintah atau departemen atau badan publik. Delik yang lainnya, menyangkut delik korupsi yang tidak substantif, seperti tidak bersedia memberi informasi, menghalangi jalannya peradilan korupsi, dan lain-lain.⁴⁵

Perkara korupsi di Singapura diadili oleh pengadilan biasa yang disebut *District Court*. Dalam mengadili kasus korupsi di Singapura dikenal *self incrimination*,⁴⁶ dan hal tersebut diperbolehkan menurut Pasal 35 PCA :

"Whenever two or more person are charged with any offence under this act, or under section 161 to 165 or 213 to 215 of the Penal Code or with a conspiracy to commit, or an attempt to commit or an abetment of any such offence, the court may require one or more of them to give evidence as a witness or witnesses for the prosecution.

1. *Any person who refuses to be sworn or to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may be law be dealt with by Magistrate's Court as the case may be*
2. *Every person so required to give evidence, who in the opinion of the court makes true and full discovery of all things as to wich he is lawfully examined, shall be entitled to receive a certificate of indemnity under the of the Magistrate or Judge, as the case may be, stating that he has made a true and full discovery of all things as to which he was examined, and that certificate*

⁴⁴ Didalamnya diatur tentang pembalikan beban pembuktian, yang tercantumnya di dalam Pasal 8 *Prevention of Corruption Act*. Yaitu: "Di mana dalam setiap proses terhadap orang untuk pelanggaran berdasarkan pasal 5 atau 6 terbukti bahwa gratifikasi setiap telah ben dibayar atau diberikan kepada atau diterima oleh orang dalam pekerjaan pemerintah atau departement ada dari badan publik atau oleh atau dari seseorang atau agen dari orang yang memiliki atau berusaha untuk memiliki berurusan dengan pemerintah atau departemen ada dari atau badan publik, gratifikasi yang dianggap telah dibayar atau diberikan dan diterima korupsi sebagai bujukan atau hadiah seperti di sini sebelum disebutkan kecuali sebaliknya dibuktikan. "

⁴⁵ Andi Hamzah, *Perbandingan Pemberantasan.....*, hlm. 64.

⁴⁶ Maksud dari *self incrimination* yaitu terdakwa yang ketika dipisah berkas perkaranya berganti posisi menjadi saksi

shall be a bar to all legal proceedings against him in respect of all those things.

Di dalam *Prevention of Corruption Act* juga terdapat rumusan delik korupsi dikalangan bisnis, hal ini tidak dikenal dalam undang-undang pemberantasan korupsi di Indonesia, Malaysia, Australia, dan Thailand. Hal ini disebabkan karena Singapura adalah sebuah negara bisnis atau dagang.⁴⁷

F. Metode Penelitian

Dalam melakukan suatu penelitian terhadap masalah sebagaimana diuraikan diatas, sesuai dengan kode etik penulisan ilmiah, maka penulis menggunakan metode penelitian sebagai berikut:

1. Jenis penelitian

Jenis penelitian yang digunakan dalam penyusunan skripsi ini adalah *library research* (penelitian pustaka), dimana sumber utamanya diperoleh dari sumber-sumber tertulis, yaitu melalui telaah data yang diperoleh dalam peraturan perundang-undangan, buku, jurnal, hasil penelitian, ensiklopedi, bibliografi, indeks kumulatif, dan lain-lain melalui inventarisasi data secara sistematis dan terarah, sehingga diperoleh gambaran apakah yang terdapat dalam suatu penelitian, apakah satu aturan bertentangan dengan aturan yang lain atau tidak, sehingga data yang akan diperoleh lebih akurat.

2. Sifat Penelitian

⁴⁷ <http://niamaryam.multiply.com/journal/item/8> diakses 13 February 2012 pukul 04:43

Sifat penelitian ini adalah kualitatif, dengan menggunakan metode deskriptif analisis serta komparatif. Deskriptif analisis yaitu suatu metode penulisan yang bertujuan untuk menggambarkan keadaan daripada objek yang diteliti dengan menggunakan data atau mengklasifikasinya, menganalisa aspek pengertian, dasar hukum maupun perumusan hukumnya dalam perspektif fiqh jinayah dan hukum positif Singapura.

Adapun komparatif adalah usaha untuk membandingkan hakikat dalam objek penelitian, mengenai konsepsi-konsepsi intelektual yang ada dalam obyek penelitian sehingga dapat menjadi lebih jelas.⁴⁸

Penelitian ini diupayakan adanya perbandingan yang jelas dari undang-undang yang digunakan serta sistem penanganan dalam tindak pidana korupsi perspektif fiqh jinayah dan hukum positif Singapura.

3. Teknik Pengumpulan Data

Penelitian ini merupakan kajian literatur dengan pendekatan normatif yang bertujuan untuk merumuskan sebuah teori tentang tindak pidana korupsi baik dalam perspektif fiqh jinayah maupun hukum positif Singapura. Untuk pembahasan lebih mendalam sehingga dapat mencapai tujuan yang dimaksud, penulis berusaha mengumpulkan data-data baik primer maupun sekunder.

Data primer (data utama) merupakan data yang diperoleh melalui bahan kepustakaan yakni kitab *fiqhus sunnah* karangan *al-Sayyid Sabiq*, maupun KUHP Singapura serta *Prevention of Corruption Act* yang merupakan kitab undang-undang khusus yang mengatur tindak pidana

⁴⁸ Arief Barda Nawawi, *Perbandingan hukum pidana*, (Jakarta: Rajawali Pers, 1990), hlm. 23.

korupsi di Singapura. Sedangkan data sekundernya adalah buku-buku atau teks-teks lain yang berkaitan dengan pokok masalah penelitian ini.

4. Pendekatan masalah

Secara metodologis penelitian ini menggunakan dua pendekatan yaitu pendekatan normatif yuridis dan pendekatan sosio-historis. Normatif adalah peraturan yang mengatur tentang baik buruknya perbuatan berdasarkan norma yang berlaku. Pendekatan normatif disebut juga pendekatan hukum doktriner.⁴⁹

Kemudian dalam penelitian ini juga membahas seputar sistem hukum di Singapura yang berkaitan dengan sistem peraturan perundang-undangan tentang tindak pidana korupsi. Penulis juga menggunakan pendekatan sosio-historis dengan harapan untuk dapat menganalisa dan memberikan interpretasi atas fenomena sosial yang mempunyai hubungan dengan tema penelitian ini.⁵⁰

Pada aspek historisnya yaitu membuat suatu konstruksi teori pada cara berfikir yang sistematis dan objektif pada kajian atau peristiwa dimasa lalu dengan mengumpulkan, mengevaluasi, memveritifikasi sumber data menuju kesimpulan yang akurat.

5. Analisis Data

Setelah bahan kepustakaan telah terkumpul lengkap, kemudian dianalisa dengan menggunakan cara berfikir induksi (*induktive methode*) agar

⁴⁹ Bambang Waluyo, *Penelitian Hukum dalam Praktek*, (Jakarta: Sinar Grafika, 1996), hlm. 13.

⁵⁰Bambang Senggono, *Metodologi Penelitian Hukum*, (Jakarta: Pt Rajawali Press, 1999), hlm.10.

memperoleh pengertian yang utuh tentang konsep tema yang diteliti, sehingga dapat ditarik kesimpulan yang bersifat komprehensif sebagai solusi dan pemahaman umum terhadap pertanyaan dari seputar permasalahan yang diangkat.⁵¹

Selanjutnya penelitian ini menggunakan metode deduksi (*deduktive methode*) yang merupakan langkah analisis dari hal yang bersifat umum ke hal yang bersifat khusus untuk menarik suatu kesimpulan. Metode ini digunakan untuk mengetahui secara lengkap dan terperinci (*detailed*) pada pokok permasalahan yang didapati dari sumber data. Agar analisa yang disampaikan lebih mendalam, penulis melanjutkan analisisnya dengan menggunakan teknik analisis deskriptif (*deskription method*).

Metode terakhir dalam penelitian ini adalah metode komparatif (*comparative method*), yang merupakan metode untuk menganalisa dan membandingkan data-data yang diperoleh untuk mencari persamaan dan perbedaan tentang tema yang dibahas.

G. Sistematika Pembahasan

Untuk mengetahui keseluruhan isi dari penulisan skripsi ini, maka perlu dibuat suatu sistematika pembahasannya. Dalam pembahasan skripsi ini, secara garis besar terdiri dari 5 (lima) bab antara lain sebagai berikut:

⁵¹ Sutrisno Hadi, *Metodologi Penelitian*, (Yogyakarta: Fakultas Psikologi UGM, 1980), hlm. 36.

Bab pertama ini, merupakan bab pendahuluan yang membahas mengenai latar belakang penelitian, identifikasi masalah, tujuan dan kegunaan penelitian diadakanya penelitian ini, lalu telaah pustaka yang menguraikan beberapa kajian yang telah ada dan berkaitan dengan permasalahan yang dibahas, kemudian kerangka teoritik yang membahas teori yang berkaitan dengan tindak pidana korupsi perspektif fiqh jinayah dan hukum positif Singapura, selain itu juga terdapat metode penelitian yang digunakan dalam penelitian ini, dan pada bagian terakhir bab ini ada sistematika pembahasan.

Pada bab kedua penelitian ini, penulis akan menjelaskan dan menguraikan mengenai pengertian tindak pidana korupsi perspektif fiqh jinayah serta mendeskripsikan sejarah, dasar hukum serta sanksi hukum tindak pidana korupsi perspektif fiqh jinayah.

Selanjutnya pada bab ketiga, yaitu berisi penjelasan pengertian tindak pidana korupsi perspektif hukum positif Singapura. Selain itu dalam bab ini penulis mendeskripsikan sejarah, dasar hukum serta sanksi hukum tindak pidana korupsi perspektif hukum positif Singapura.

Kemudian pada bab keempat, merupakan bab analisis perbandingan tindak pidana korupsi yang di dalamnya terdapat persamaan dan perbedaan perspektif fiqh jinayah dan hukum positif Singapura baik dari segi pengertian maupun perumusan hukum tindak pidana korupsi itu sendiri. Penjelasan bab ini merupakan perbandingan berdasarkan data.

Sebagai penutup, berakhir pada bab kelima, yang berisi kesimpulan dan ditutup dengan saran yang merupakan jawaban terhadap identifikasi masalah penulisan skripsi ini.



BAB V

PENUTUP

A. KESIMPULAN

Setelah melakukan analisis sebagaimana yang telah diuraikan pada bab sebelumnya, maka penulis dapat menarik kesimpulan terhadap tindak pidana korupsi dalam perspektif fiqh jinayah dan hukum positif Singapura meliputi:

1. Tindak pidana korupsi dalam perspektif fiqh jinayah merupakan tindak pidana yang sepadan dengan tindak pidana dalam konteks *gulûl* (penggelapan), *risywâh* (penyuapan), *hadiyyah*, *khiyânah* (pengkhianatan), *sariqah* (pencurian) dan *ghab* (mengambil secara paksa hak/harta orang lain). Adanya pengadopsian istilah dalam memberi pengertian tindak pidana korupsi, karena dalam hukum Islam belum terdapat pengertian yang pasti terhadap tindak pidana korupsi. Tetapi, pada hakikatnya menurut hukum Islam korupsi merupakan perbuatan yang bertentangan dengan *maqasidus syari'ah* serta berhubungan dengan harta dan kekuasaan. Sedangkan, dalam hukum positif singapura tindak pidana korupsi merupakan segala perbuatan yang berhubungan dengan suap menyuap dan gratifikasi.
2. Tindak pidana korupsi dari perspektif Islam (fiqh jinayah) maupun hukum positif Singapura memiliki persamaan dari segi maksud yaitu bentuk tindak pidana yang merugikan. Sedangkan tentang perbedaan antara kedua hukum tersebut meliputi perbedaan dalam aspek sejarah, dasar hukum serta sanksi terhadap pelaku tindak pidana korupsi.

3. Dalam perspektif fiqh jinayah tindak pidana korupsi terjadi ketika masa Rasulullah sedangkan dalam hukum positif Singapura tindak pidana korupsi berawal pada tahun 1940-an. Dasar hukum yang terdapat dalam kedua perspektif hukum tersebut juga berbeda, dasar hukum tindak pidana korupsi dalam fiqh jinayah meliputi al-Qur'an dan Hadits sedangkan dalam hukum positif Singapura meliputi KUHP dan undang-undang PCA. Karena perbedaan dasar hukum antara kedua perspektif tersebut mengakibatkan perbedaan sanksi terhadap pelaku tindak pidana korupsi, dalam fiqh jinayah sanksi hukum tindak pidana korupsi terdiri dari sanksi *hudûd* dan *ta'zir*, apabila *hudûd* tidak diperoleh, maka hukuman tersebut akan dialihkan pada hukuman *ta'zir*. Adanya pilihan dalam pemberlakuan sanksi hukum karena Islam tidak secara spesifik membahas jenis hukuman bagi pelaku tindak pidana korupsi. Sedangkan dalam hukum positif Singapura diatur di dalam Pasal 5 dan Pasal 6 *Prevention of Corruption Act*, yaitu denda \$ 100,000 atau pidana penjara paling lama 7 (tujuh) tahun atau kedua-duanya.

B. SARAN-SARAN

1. Menghadapi persoalan korupsi yang telah menggurita dalam setiap perbuatan masyarakat, dibutuhkan solusi yang cerdas dan tepat. Melihat kesuksesan Singapura dalam memberantas korupsi terdapat faktor krusial dalam keberhasilannya yaitu ekonomi yang tinggi serta konsekuensi penegak hukum. Maka dari itu, seharusnya pemerintah harus lebih menggiatkan dalam

peningkatan perekonomian dan mengoreksi kembali sistem penegak hukum yang selama ini berlaku dan terjadi.

2. Pemberlakuan hukuman bagi pelaku tindak pidana korupsi harus diberlakukan seadil-adilnya. Dalam pemberlakuan hukuman dapat berpijak pada pemberlakuan hukum menurut fiqh jinyah yaitu dalam memberlakukan hukum selain melihat aturan hukum yang berlaku juga melihat konteks dari perbuatan yang dilakukan tetapi, penetapan hukuman tetap harus mencerminkan maksud adanya pemberian hukuman yaitu memberikan efek jera bagi pelaku serta memberikan pemberian pelajaran bagi masyarakat agar tidak melakukan perbuatan tersebut.
3. Adanya program dalam memberikan kesadaran kepada masyarakat untuk ikut memikul tanggung jawab guna melakukan partisipasi politik dan kontrol sosial, mengingat masyarakat juga mempunyai peran penting dalam memberantas korupsi selain para penegak hukum.
4. Sistem hukuman tegas bagi pelaku tindak pidana korupsi, jika memang dana yang dikorupsi menyebabkan kemiskinan maka koruptor harus dimiskinkan dan jika karena perbuatannya menyebabkan kematian meskipun secara tidak langsung maka koruptor harus dihukum mati. Jadi, konteks hukuman disesuaikan akibat dari perbuatan tersebut.
5. Menumbuhkan “*sense of belongingness*” dikalangan pejabat dan pegawai, sehingga mereka merasa jabatan yang mereka miliki adalah amanah serta tanggung jawab miliknya jadi tidak perlu dikorupsi karena sudah menjadi miliknya.

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LAMPIRAN



KUMPULAN TERJEMAH

hlm	Dalil	Terjemah
10	Al-Baqarah 188	Dan janganlah sebahagian kamu memakan harta sebahagian yang lain di antara kamu dengan jalan yang bathil dan (janganlah) kamu membawa (urusan) harta itu kepada hakim, supaya kamu dapat memakan sebahagian daripada harta benda orang lain itu dengan (jalan berbuat) dosa, Padahal kamu mengetahui.
10	Al-Baqarah 205	Dan apabila ia berpaling (dari kamu), ia berjalan di bumi untuk Mengadakan kerusakan padanya, dan merusak tanam-tanaman dan binatang ternak, dan Allah tidak menyukai kebinasaan.
10	Al-Qashash 77	Dan carilah pada apa yang telah dianugerahkan Allah kepadamu (kebahagiaan) negeri akhirat, dan janganlah kamu melupakan bahagianmu dari (kenikmatan) duniawi dan berbuat baiklah (kepada orang lain) sebagaimana Allah telah berbuat baik, kepadamu, dan janganlah kamu berbuat kerusakan di (muka) bumi. Sesungguhnya Allah tidak menyukai orang-orang yang berbuat kerusakan.
11	Al-Naml 34	Dia berkata: "Sesungguhnya raja-raja apabila memasuki suatu negeri, niscaya mereka membinasakannya, dan menjadikan penduduknya yang mulia jadi hina; dan demikian pulalah yang akan mereka perbuat.
13	Ali Imran 161	Sesungguhnya orang-orang kafir dan mereka mati dalam Keadaan kafir, mereka itu mendapat la'nat Allah, Para Malaikat dan manusia seluruhnya.
13 dan 38	Al-Anfal 27	Hai orang-orang yang beriman, janganlah kamu mengkhianati Allah dan Rasul (Muhammad) dan (juga) janganlah kamu mengkhianati amanat-amanat yang dipercayakan kepadamu, sedang kamu mengetahui.
	Al-Maidah 38	Laki-laki yang mencuri dan perempuan yang mencuri, potonglah tangan keduanya

14 dan 40		(sebagai) pembalasan bagi apa yang mereka kerjakan dan sebagai siksaan dari Allah. dan Allah Maha Perkasa lagi Maha Bijaksana.
29 dan 40	An-Nisa' 29	Hai orang-orang yang beriman, janganlah kamu saling memakan harta sesamamu dengan jalan yang batil, kecuali dengan jalan perniagaan yang Berlaku dengan suka sama-suka di antara kamu. dan janganlah kamu membunuh dirimu, Sesungguhnya Allah adalah Maha Penyayang kepadamu.
30	Al-Qashash 77	Dan carilah pada apa yang telah dianugerahkan Allah kepadamu (kebahagiaan) negeri akhirat, dan janganlah kamu melupakan bahagianmu dari (kenikmatan) duniawi dan berbuat baiklah (kepada orang lain) sebagaimana Allah telah berbuat baik, kepadamu, dan janganlah kamu berbuat kerusakan di (muka) bumi. Sesungguhnya Allah tidak menyukai orang-orang yang berbuat kerusakan.
30	Al-Naml 34	Dia berkata: "Sesungguhnya raja-raja apabila memasuki suatu negeri, niscaya mereka membinasakannya, dan menjadikan penduduknya yang mulia jadi hina; dan demikian pulalah yang akan mereka perbuat.
37	Ali Imran 161	Tidak mungkin seorang Nabi berkhianat dalam urusan harta rampasan perang. Barangsiapa yang berkhianat dalam urusan rampasan perang itu, Maka pada hari kiamat ia akan datang membawa apa yang dikhianatkannya itu, kemudian tiap-tiap diri akan diberi pembalasan tentang apa yang ia kerjakan dengan (pembalasan) setimpal, sedang mereka tidak dianiaya.
37	Al-Baqarah 188	Dan janganlah sebahagian kamu memakan harta sebahagian yang lain di antara kamu dengan jalan yang bathil dan (janganlah) kamu membawa (urusan) harta itu kepada hakim, supaya kamu dapat memakan sebahagian daripada harta benda orang lain itu dengan (jalan berbuat) dosa, Padahal kamu mengetahui.
	An Nisa 58	Sesungguhnya Allah menyuruh kamu menyampaikan amanat kepada yang berhak menerimanya, dan (menyuruh kamu) apabila

38		menetapkan hukum di antara manusia supaya kamu menetapkan dengan adil. Sesungguhnya Allah memberi pengajaran yang sebaik-baiknya kepadamu. Sesungguhnya Allah adalah Maha mendengar lagi Maha melihat.
32	Kitab an-Nawawi, Syarh Sahih Muslim	<p>“Dari Abi Humaid al-Sa’idi (diriwayatkan bahwa) ia berkata: Rasulullah SAW mengangkat seorang lelaki dari suku al-Azd bernama Ibnu Al-Atbiyyah untuk menjadi pejabat pemungut zakat di Bani Sulaim. Ketika ia datang (menghadap Rasulullah untuk melaporkan hasil pemungutan zakat), beliau memeriksanya. Ia berkata: Ini harta zakatmu (Rasulullah/Negara) dan yang ini adalah hadiah (yang diberikan kepadaku). Lalu Rasulullah bersabda: jika memang kamu benar maka apakah kalau kamu duduk di rumah ayahmu atau di rumah ibumu hadiah itu datang kepadamu? Kemudian Rasulullah berpidato mengucapkan tahmid dan memuji Allah, lalu berkata: selanjutnya saya mengangkat seseorang di antara kamu untuk melakukan suatu tugas yang merupakan bagian dari apa yang telah dibebankan Allah kepadaku. Lalu orang tersebut datang dan berkata: Ini hartamu (Rasulullah/Negara) dan ini adalah hadiah yang di berikan kepadaku. Jika ia memang benar maka apakah kalau ia duduk saja di rumah ayah dan ibunya hadiah itu juga datang kepadanya? Demi Allah, begitu seseorang mengambil sesuatu dari hadiah tanpa hak maka nanti di kiamat ia akan menemui Allah dengan membawa hadiah (yang diambilnya itu), lalu saya akan mengenali seseorang dari kamu ketika menemui Allah itu, ia memikul diatas pundaknya unta (yang dahulu di ambilnya) melengkik atau sapi mengeluh atau kambing mengembik.</p>
33	Shahih Bukhari, jilid IV	<p>Dari Ali dia berkata: Rasulullah mengutus saya, Zubair bin Awwam, dan Abu Marsad al-Ghanawi, kami semua naik kuda, beliau bersabda: bergegaslah kalian menuju kebun khah, sungguh! Disitu ada seorang perempuan musyrik yang membawa selembar surat berasal dari Hatib bin abi Balta’ah untuk orang-orang musyrik (di Mekah). Ali berkata: Kami menemukan seorang perempuan itu sedang berjalan di atas unta kendaraanya, sebagaimana yang disabdakan Rasulullah, kami katakan dimana surat yang kau bawa? Perempuan itu menjawab, saya tidak membawa surat. Maka kami derumkan untanya dan kami geledah surat tersebut, tetapi kami tidak mendapatkannya, ketika itu dua teman kami (Zubair dan Abu Marsad) berkata: kami tidak melihat surat, Ali berkata sungguh saya tahu persis bahwa Rasulullah sama sekali tidak berbohong. Lalu Ali dengan tegas berkata kepada wanita tersebut: Demi Allah mau kamu keluarkan surat itu atau saya telanjangi kamu, Ali</p>

		<p>berkata pada saat perempuan itu melihat keseriusan saya maka dia turunkan tanganya ke arah ikat pinggangnya, ketika itu dia memakai ikat pinggang dari kain dan mengeluarkan surat dimaksud. Ali berkata, kami segera kembali kepada Rasulullah. Maka beliau pun bersabda: hai hatib, apa yang membuat kamu melakukan semua ini? Hatib menjawab, tidaklah saya lakukan semua itu kecuali bahwa saya adalah orang yang beriman kepada Allah dan Rasulullah, Saya tidak sedang berubah pikiran, saya tidak mengganti agama, saya tidak murtad, saya berharap mudah-mudahan emgkau menjadi pelindung keluarga, dengan begitu Allah akan menghindarkan dari bahaya yang akan menimpa keluarga dan hartaku, tidak seorangpun dari sahabat-sahabat engkau kecuali mempunyai penjamin yang dengan penjamin itu Allah akan menghindarkan malapetaka yang akan menimpa keluarga dan hartanya. Rasulullah bersabda, Hatib bin Abi Balta'ah telah bersikap jujur, janganlah kalian berkata tentang dia kecuali perkataan yang baik, Umar bin Khatab berkata: Sungguh dia telah mengkhianati Allah, Rasul-Nya dan orang-orang mukmin , berikan kesempatan kepada saya untuk memenggal kepalanya, Ali berkata: Saat itu Rasulullah bersabda, wahai umar, tahukah kamu bahwa Allah akan melimpahkan (ampunnya) kepada orang yang pernah mengikuti perang badar? Beliau terus bersabda, lakukanlah apapun yang kalian inginkan, sungguh surga pasti terbuka lebar utuk kalian, Ali berkata: kedua mata umar bercucuran air mata, lalu ia berkata Allah dan Rasulnya lebih mengetahui.</p>
39	<p>Al-Imam Abi Abdillah Muhammad Ibn Isma'il Al-Bukhari, Sahih Al-Bukhari,</p>	<p>Diriwayatkan dari Umar bin khafsin bin ghiyas, dari bapakku (Imam Bukhari). Diriwayatkan A'masy bahwasanya beliau mendengar dari Abi Sholikh, diriwayatkan oleh abu Hurairah bahwasanya Rasulullah bersabda tentang pelaknatan pelaku pencurian.</p>

THE PREVENTION OF CORRUPTION ACT

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An Act

To provide for the prevention and punishment of corruption and fraud and for the establishment of an Independent Commission Against Corruption

ENACTED by the Parliament of Mauritius, as follows –

PART I-PRELIMINARY**1. Short title**

This Act may be cited as the **Prevention of Corruption Act 2002**.

2. Interpretation

In this Act -

"act of corruption" -

- (a) means an act which constitutes a corruption offence; and
- (b) includes -
 - (i) any conduct whereby, in return for a gratification, a person does or neglects from doing an act in contravention of his public duties;
 - (ii) the offer, promise, soliciting or receipt of a gratification as an inducement or reward to a person to do or not to do any act, with a corrupt intention;
 - (iii) the abuse of a public or private office for private gain;
 - (iv) an agreement between 2 or more persons to act or refrain from acting in violation of a person's duties in the private or public sector for profit or gain;
 - (v) any conduct whereby a person accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification for inducing a public official, by corrupt or

illegal means, or by the exercise of personal influence, to do or abstain from doing an act in the exercise of his duties to show favour or disfavour to any person;

"agent" -

- (a) means any person employed by or acting for another person;
- (b) includes a member or an officer of a public body, a trustee, a sub-contractor, and any person employed by or acting for such trustee or sub-contractor;

"associate", in relation to a person, means –

- (a) a person who is a nominee or an employee of that person;
- (b) a person who manages the affairs of that person;
- (c) a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs;
- (d) a company in which that person, or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 per cent of the total issued share capital; or
- (e) the trustee of a trust, where -
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust;

"bank" -

- (a) has the same meaning as in the Banking Act 2004; and
- (b) includes any person licensed under the Banking Act 2004 to carry on deposit taking business;

Amended by [Act No. 14 of 2005]

"Board" means the Board referred to in section 19(3);

"cash dealer" has the same meaning as in the Banking Act 2004;

"Commission" means the Independent Commission Against Corruption established under section 19;

"corruption offence" means an offence under Part II or under such other enactment as the Prime Minister may prescribe;

"Corruption Investigation Division" means the Corruption Investigation Division set up under section 28;

"Corruption Prevention and Education Division" means the Corruption Prevention and Education Division set up under section 28;

"crime" -

- (a) has the same meaning as in the Criminal Code;
- (b) includes an activity carried out outside Mauritius and which, had it taken place in Mauritius, would have constituted a crime;
- (c) includes any act or omission occurring outside Mauritius, but which, had it taken place in Mauritius would have constituted a crime;

"Director of the Corruption Investigation Division" means the person appointed as such under section 29;

"Director of the Corruption, Prevention and Education Division" means the person appointed as such under section 30;

"Director-General" means the person appointed under section 19(4);

"financial institution" means an institution or person regulated by-

(a) the Financial Services Act 2007;

Amended by [Act No. 14 of 2007]

(b) the Immigration Act insofar as it relates to section 5A;

(c) the Insurance Act;

(d) the Securities (Central Depository, Clearing and Settlement) Act;

(e) the securities Act 2005

Amended by [Act No. 22 of 2005]

(f) the Trusts Act 2001; and

(g) the Unit Trusts Act;

"financial year" means the period of 12 months ending on 30 June in any year;

"FIU" means the Financial Intelligence Unit established under the Financial Intelligence and Anti-Money Laundering Act 2002;

"Government company" means a company registered under the Companies Act and in which the Government of Mauritius -

(a) directly or indirectly or through any other corporate body, owns or controls not less than 50 per cent of the entire share capital; or

(b) by reason of its financial input through loans, debentures or otherwise, or by reason of the presence of its representatives on the Board of Directors, is in a position to influence its policy or decisions;

"gratification" -

(a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and

(b) includes -

(i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(ii) the offer of an office, employment or other contract;

(iii) the payment, release or discharge of a loan, obligation or other liability; and

(iv) the payment of inadequate consideration for goods or services;

(c) the offer or promise, whether conditional or unconditional, of a gratification;

"Legal Division" means the Legal Division set up under section 28;

"member of relevant profession or occupation" -

(a) means an accountant, an attorney, a barrister, a chartered secretary, a notary; and

(b) includes a person carrying on the business of a casino, a bookmaker or totalisator under the Gaming Act;

"Minister" means the Minister to whom responsibility for the subject of corruption is assigned;

"money laundering offence" means an offence under Part II of the Financial Intelligence and Anti-Money Laundering Act 2002;

"officer" -

(a) means an officer appointed under section 24; and

(b) includes the Director of the Corruption Investigation Division, the Director of the Corruption Prevention and Education Division, and the Chief Legal Adviser;

"Parliamentary Committee" means the Parliamentary Committee set up under section 59;

"principal" includes an employer, a beneficiary under a trust, a person beneficially interested in the succession of a person, and, in the case of a person serving in or under a public body, the public body;

"public body" -

(a) means a Ministry or Government department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and

(b) includes a Government company;

"public official" -

(a) means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company; and

(b) includes a Judge, an arbitrator, an assessor or a member of a jury;

"relative", in relation to a person, means –

(a) a spouse or conjugal partner of that person;

(b) a brother or sister of that person;

(c) a brother or sister of the spouse of that person; or

(d) any lineal ascendant or descendant of that person;

"suspicious transaction" means a transaction which –

(a) gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime including any offence concerning the financing of any activities or transaction related to terrorism as specified in Part III of the Prevention of Terrorism Act 2002;

(b) is made in circumstances of unusual or unjustified complexity;

(c) appears to have no economic justification or lawful objective;

(d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or

(e) gives rise to suspicion for any other reason.

Amended by [Act No. 14 of 2005]; [Act No. 22 of 2005]; [Act No. 24 of 2005]; [Act No. 14 of 2007]

3. Application of Act

A person shall commit an offence under this Act where -

- (a) the act or omission constituting the offence occurs in Mauritius or outside Mauritius; or
- (b) the act constituting the offence is done by that person, or for him, by another person.

Amended by [Act No. 1 of 2006]

PART II - CORRUPTION OFFENCES

4. Bribery by public official

(1) Any public official who solicits, accepts or obtains from another person, for himself or for any other person, a gratification for -

- (a) doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;
- (b) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties;
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties;
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official, in the execution of the latter's functions or duties;
- (e) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, another person in the transaction of a business with a public body,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 83, where in any proceedings against any person for an offence, it is proved that the public official solicited, accepted or obtained a gratification, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes set out in subsection (1)(a) to (e).

5. Bribery of public official

(1) Any person who gives, agrees to give, or offers a gratification to a public official for -

- (a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;
- (b) doing or abstaining from doing, or for having done or abstained from doing, an act which is facilitated by his functions or duties;
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties;
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official in the execution of the latter's functions or duties;

(e) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed another person in the transaction of a business with a public body,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 83, where in any proceedings against any person for an offence under subsection (1) it is proved that the accused gave, agreed to give or offered gratification, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1)(a) to (e).

6. Taking gratification to screen offender from punishment

(1) Subject to section (2), any person who accepts or obtains, or agrees to accept or attempts to obtain, a gratification for himself or for any other person, in consideration of his concealing an offence, or his screening any other person from legal proceedings for an offence, or his not proceeding against any other person in relation to an alleged offence, or his abandoning or withdrawing, or his obtaining or endeavouring to obtain the withdrawal of, a prosecution against any other person, shall commit an offence and shall, on conviction -

(a) where the offence is a crime, be liable to imprisonment for a term not exceeding 5 years;

(b) where the offence is a misdemeanour, be liable to imprisonment for a term not exceeding one year;

(c) where the offence is a contravention, be liable to imprisonment for a term not exceeding 6 months.

(2) This section shall not extend to any lawful compromise as to the civil interests resulting from the offence, but any such compromise shall not be a bar to any criminal proceedings which may be instituted by the State in respect of the offence.

7. Public official using his office for gratification

(1) Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) For the purposes of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.

(3) This section shall not apply to a public official who -

(a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and

(b) acts in that capacity in the interest of that body corporate.

8. Bribery of or by public official to influence the decision of a public body

- (1) Any person who gives, or agrees to give, or offers, to a public official, a gratification for-
- (a) voting or abstaining from voting, or having voted or abstained from voting, at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure, resolution or question submitted to the public body;
 - (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, or having performed or abstained from performing, or having aided in procuring, expediting, delaying, hindering or preventing, the performance of an act of a public body of which he is a member, director or employee;
 - (c) aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any other person,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

- (2) Any public official who solicits or accepts a gratification for -

- (a) voting or abstaining from voting, or having voted or abstained from voting at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, the performance of, an act of a public body of which he is a member, director or employee;
- (c) aiding in procuring or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any person,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

9. Influencing public official

Any person who exercises any form of violence, or pressure by means of threat, upon a public official, with a view to the performance, by that public official, of any act in the execution of his functions or duties, or the non-performance, by that public official, of any such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

10. 'Traffic d'influence'

- (1) Any person who gives or agrees to give or offers a gratification to another person, to cause a public official to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (2) Any person who gives or agrees to give or offers a gratification to another person to use his influence, real or fictitious, to obtain work, employment,

contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

- (3) Any person who gives or agrees to give or offers a gratification to public official to cause that public official to use his influence, real or fictitious, to obtain work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (4) Any person who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (5) Any public official who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

11. Public official taking gratification

Any public official who accepts or receives a gratification, for himself or for any other person -

- (a) for doing or having done an act which he alleges, or induces any person to believe, he is empowered to do in the exercise of his functions or duties, although as a fact such act does not form part of his functions or duties; or
 - (b) for abstaining from doing or having abstained from doing an act which he alleges, or induces any person to believe, he is empowered not to do or bound to do in the ordinary course of his function or duty, although as a fact such act does not form part of his functions or duties,
- shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

12. Bribery for procuring contracts

- (1) Any person who gives or agrees to give or offers a gratification to a public official in consideration of that public official giving assistance or using influence in -
 - (a) promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
 - (b) the payment of the price provided for in a contract with a public body;
 - (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,
 shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

- (2) Any public official who solicits, accepts or obtains from any other person, for himself or for any other person, a gratification for giving assistance or using influence in -
- (a) promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
 - (b) the payment of the price provided for in a contract with a public body;
 - (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,
- shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

13. Conflict of interests

- (1) Where-
- (a) a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest; and
 - (b) that public official and/or his relative or associate hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,
- that public official shall forthwith disclose, in writing, to that public body the nature of such interest.
- (2) Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.
- (3) Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

Amended by [Act No. 1 of 2006]

14. Treating of public official

Any person who, while having dealings with a public body, offers a gratification to a public official who is a member, director or employee of that public body shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

15. Receiving gift for a corrupt purpose

Any public official who solicits, accepts or obtains a gratification for himself or for any other person -

- (a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior; or

(b) from a person whom he knows to be interested in or related to the person so concerned,
shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

16. Corruption of agent

- (1) Any agent who, without the consent of his principal, solicits, accepts or obtains from any other person for himself or for any other person, a gratification for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business, or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (2) Any person who gives or agrees to give or offers, a gratification to an agent for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

17. Corruption to provoke a serious offence

Where a person has committed an offence under this Part with the object of committing or facilitating the commission of a crime, that person shall, on conviction, be sentenced to penal servitude.

PART III - THE INDEPENDENT COMMISSION AGAINST CORRUPTION

18. Repealed by [Act No. 24 of 2005]

19. Establishment of the Commission

- (1) There is established for the purposes of this Act a Commission which shall be known as the Independent Commission Against Corruption.
- (2) The Commission shall be a body corporate.
 - (a) The Commission shall be administered and managed by a Board which shall consist of a Chairperson and 2 other members.
 - (b) The Chairperson of the Board shall be the Director-General of the Commission
- (4) The Director-General shall be appointed by the Prime Minister after consultation with the Leader of the Opposition and shall be a person who -
 - (a) has served as a Judge of the Supreme Court;
 - (b) has served as a Magistrate in Mauritius for not less than 10 years;
 - (c) is, or has been, a practising barrister or law officer for not less than 10 years;
 - (ca) for an aggregate period of not less than 10 years, has served as a Magistrate in Mauritius and been either a practising barrister or a law officer, or both a practising barrister and a law officer; or

(d) has served in an anti-corruption agency in another country at an acceptable level of seniority.

Amended by [Act No. 1 of 2006]

(5) The members of the Board, other than the Director-General, shall be persons having sufficient knowledge and experience in the field of law, banking, accountancy, finance, financial services, economics or fraud detection to be appointed by the Prime Minister.

(6) The members of the Board, other than the Director-General, shall be paid such fees or allowances as the Prime Minister may determine.

Amended by [Act No. 24 of 2005]

20. Functions of the Commission

(1) The functions of the Commission shall be to –

- (a) educate the public against corruption;
- (b) enlist and foster public support in combating corruption;
- (c) receive and consider any allegation that a corruption offence has been committed;
- (d) detect or investigate any act of corruption;
- (e) investigate the conduct of any public official which, in its opinion, is connected with or conducive to, corruption;
- (f) monitor, in such manner as it considers appropriate, the implementation of any contract awarded by a public body, with a view to ensuring that no irregularity or impropriety is involved therein;
- (g) examine the practices and procedures of any public body in order to facilitate the discovery of acts of corruption and to secure the revision of methods of work or procedures which, in its opinion, may be conducive to corruption;
- (h) advise and assist any public body on ways and means in which acts of corruption may be eliminated;
- (i) undertake and assist in research projects in order to identify the causes of corruption and its consequences on, inter alia, the social and economic structure of Mauritius;
- (j) cooperate with all other statutory corporations which have as object the betterment of the social and economic life of Mauritius;
- (k) draft model codes of conduct and advise public bodies as to the adoption of such code of conduct as may be suited to such bodies; .
- (l) co-operate and collaborate with international institutions, agencies or organisations in the fight against money laundering and corruption;
- (m) monitor current legislative and administrative practices;
- (n) advise the Parliamentary Committee on such legislative reform as it considers necessary to foster the elimination of acts of corruption;
- (o) detect and investigate any matter that may involve the laundering of money or suspicious transaction that is referred to it by the FIU;
- (p) execute any request for assistance referred to it by the FIU;
- (q) take such measures as may be necessary to counteract money-laundering in consultation with the FIU;

- (r) co-operate and collaborate with the FIU in fulfilling common objectives.
- (2) The Commission shall act independently, impartially, fairly and in the public interest.
- (3) Subject to this Act, the Director-General shall not be under the control, direction of any other person or authority.
- (4) The Prime Minister may appoint such committee as he may deem necessary for advising the Commission -
- (a) on any matter pertaining to the functions of the Commission;
 - (b) on strategies to reduce corruption;
 - (c) on educational programs to be implemented so as to involve the community in anti-corruption strategies;
 - (d) on the staffing policies of the Commission;
 - (e) on the annual estimates of the Commission; and
 - (f) such other matters as he may deem fit.
- (5) The Prime Minister may appoint such committee as he may deem necessary for advising the Commission -
- (a) on any matter pertaining to the functions of the Commission;
 - (b) on strategies to reduce corruption;
 - (c) on educational programs to be implemented so as to involve the community in anti-corruption strategies;
 - (d) on the staffing policies of the Commission;
 - (e) on the annual estimates of the Commission; and
 - (f) on such other matters as he may deem fit.

Amended by [Act No. 24 of 2005]

21. Terms and conditions of appointment of Director-General

- (1) Subject to this section, the Director-General shall hold office on such terms and conditions as may be determined by the Prime Minister.
- (2) The Director-General shall be appointed for a term of not less than 3 years and not more than 5 years and shall be eligible for re-appointment.
- (3) The Director-General shall occupy his office in a full time capacity and shall not engage in any other activity for which he is remunerated in whatever form.

Amended by [Act No. 24 of 2005]

22. Vacancy in office of Director-General

- (1) Where-
- (a) the office of the Director-General is vacant; or
 - (b) the Director-General is absent from duty or is, for any other reason, unable to perform the duties of his office,
- the Prime Minister may appoint the Director of any of the Divisions referred to in section 28 to act as Director-General.
- (2) An appointment made under subsection (1) shall not exceed 9 months.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

23. Termination of appointment

- (1) Where-

- (a) the Parliamentary Committee has reason to believe that the Director-General has been guilty of such gross negligence, irregularity or misconduct that his appointment ought to be terminated; or
- (b) the Director-General is unable to discharge the functions of his office, whether such inability arises from infirmity of body or mind or any other cause,

the Parliamentary Committee may, by the majority decision of its members, suspend the Director-General from office.

- (2) Where the Parliamentary Committee suspends the Director-General under subsection (1), it shall forthwith refer the matter to the Attorney-General.
- (3) Where a matter is referred to the Attorney-General under subsection (2), the Attorney-General shall advise the Parliamentary Committee whether disciplinary proceedings or such other action as he thinks fit should be taken against the Director-General under this section.
- (4) Where the Attorney-General does not, within 7 days of the date on which the Director-General was suspended, advise that proceedings be taken against the Director-General, the suspension shall be lifted and the Director-General reinstated forthwith in his office.
- (5) Where the Attorney-General advises that proceedings be taken against the Director-General -
 - (a) the Attorney-General shall forward to the Parliamentary Committee the charge which the Director-General will be required to answer, and designate a law officer to sustain the charge;
 - (b) the Attorney-General shall, on such terms and conditions as he may determine, appoint any person who holds or has held judicial office to hear and determine, without delay, whether the charge has been established.
- (6) The person appointed to hear and determine the charge under subsection (5)(b) shall, within 7 working days of the date on which the hearing is completed, forward his findings and the record of all his proceedings and evidence adduced before him to the Parliamentary Committee.
- (7) Where the charge has been found established, the Parliamentary Committee shall, within 7 working days of the receipt of the findings and record referred to in subsection (6), examine the findings and record and decide whether the appointment of the Director-General ought to be terminated.
- (8) Where the Parliamentary Committee decides that the appointment of the Director-General ought to be terminated, it shall communicate its decision to the Director-General forthwith.

Amended by [Act No. 24 of 2005]

24. Officers of the Commission

- (1) Subject to subsection (2), the Commission shall employ such officers it considers necessary to discharge its functions on such terms and conditions as it thinks fit.
- (2) The Commission shall not select a person for employment unless-

- (a) it has advertised its intention to do so in the *Gazette* and in at least 3 daily newspapers having a wide circulation in Mauritius;
 - (b) it has considered all applications received;
 - (c) it has interviewed the best qualified candidates; and
 - (d) it is satisfied that, on the basis of qualifications, experience and merit, the candidate who has been selected is of a standard which qualifies him to be appointed as an officer in the grade for which he has been selected.
- (3) The Commission shall, with the approval of the Parliamentary Committee, establish the salaries, wages, allowances and conditions of employment of officers.
- (4) Employment by the Commission under subsection (1) shall not be deemed to be employment in a public office.
- (5) Notwithstanding subsection (1), the Commission may-
- (a) with the approval of the relevant Service Commission, recruit a public officer or an officer of a local authority on contract; or
 - (b) for the purpose of this Act, make use of the services of a police officer or other public officer designated for that purpose by the Commissioner of Police or the Head of the Civil Service, as the case may be.
- (6) Where the Commission recruits an officer under subsection (5)(a), that officer shall be granted leave without pay from his service for the duration of his contract of employment with the Commission but shall not be granted any further leave, with or without pay, for the purposes of any extension or renewal of such contract of employment.
- (7) Notwithstanding any condition contained in the contract of employment of an officer employed under subsections (1) and (5)(a), the Commission may, where it is satisfied that it is in the interests of the Commission to do so, but subject to subsection (8), terminate the employment of an officer.
- (8) The Commission shall not terminate the employment of an officer unless -
- (a) it has provided the officer with a complete statement of the reasons why it is contemplated that his employment be terminated;
 - (b) it has given the officer a full and fair opportunity to show cause why his employment should not be terminated.
- (9) Where the Commission terminates the employment of an officer who was employed under subsection (5)(a)-
- (a) that officer shall be reinstated to the office which he held immediately prior to his appointment as an officer;
 - (b) the Commission may, where the officer's employment was terminated on grounds of fraud, corruption or dishonesty, recommend to the relevant Service Commission that disciplinary proceedings be taken against that officer.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

25. Disclosure of assets and liabilities

A Member of the Board or an officer shall -

- (a) not later than 30 days after the date of his appointment;

- (b) not later than 30 June in every year until he ceases to be a member of the Board; and
- (c) upon the termination of his appointment, deposit with the Parliamentary Committee a declaration of his assets and liabilities in relation to himself, his spouse, children and grand children in the form specified in the First Schedule.

Amended by [Act No. 24 of 2005]

26. Use of independent professionals

The Commission may, where it considers it expedient to do so, retain the services of an independent professional or specialized agency from Mauritius or overseas for such specific purpose as the Commission may require.

27. Meetings of the Board

- (1) The Board shall meet at least once a month.
- (2) Every meeting shall be convened by the Director-General.
- (3) The Director-General shall chair every meeting of the Board.
- (4) Where the Director-General does not attend a meeting of the Board, he shall designate one of the Directors of the Divisions referred to in section 28 to chair the meeting.
- (5) All matters shall be decided by majority of the votes and the Chairperson of the meeting shall have a second and casting vote.

Amended by [Act No. 24 of 2005]

27A. Disclosure of interest by Board member

Any member of the Board, including a person appointed to act as Director-General, who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge, disclose in writing the nature of his interest to the Board and shall not –

- (a) be present during any deliberation of the Board with respect to that matter; and
- (b) take part in any decision of the Board with respect to that matter.

Added by [Act No. 24 of 2005]

28. Divisions of the Commission

- (1) There shall be within the Commission -
 - (a) A Corruption Investigation Division;
 - (b) a Corruption Prevention and Education Division;
 - (c) a Legal Division;
 - (d) such other Divisions as the Commission may set up.
- (2) Subject to sections 29 and 35, every Division shall be under the direct responsibility of a Director.

29. Director of the Corruption Investigation Division

The Director of the Corruption Investigation Division shall-

- (a) be appointed by the Commission, after consultation with the Prime Minister;
- (b) be responsible for any investigation relating to corruption which the Commission may refer to him;
- (c) be responsible *for* any investigation relating to money laundering which the FIU may refer to the Commission;
- (d) subject to any condition set, exercise such powers of the Commission as are entrusted to him by the Commission in relation to corruption;
- (e) report to the Commission on any investigation referred to him; and
- (f) comply with all directives of the Commission in relation to his functions.

30. Director of the Corruption Prevention and Education Division

(1) The Director of the Corruption Prevention and Education Division shall -

- (a) be appointed by the Commission after consultation with the Prime Minister;
- (b) in respect of such public body as the Commission may direct -
 - (i) exercise vigilance and superintendence over its integrity systems;
 - (ii) enquire into the manner in which contracts for the procurement of goods or for the performance of works is being carried out and performed;
 - (iii) enquire into possibilities of acts of corruption within that public body;
 - (iv) report to the Commission on the manner in which integrity systems should be improved;
- (c) under the directions of the Commission-
 - (i) conduct public campaigns to alert the public on the dangers of corruption;
 - (ii) assist in enhancing the school curriculum so as to educate children on the dangers of corruption;
 - (iii) inform the general public on the manner in which complaints of acts of corruption should be made;
 - (iv) conduct campaigns to encourage the formation and strengthening of non- governmental organisations to fight corruption;
 - (v) liaise with private sector organisations and trade-unions for the setting up of anti-corruption practices;
 - (vi) conduct workshops and other activities to promote campaigns for the prevention and elimination of corruption;
 - (vii) promote links between the Commission and international organisations so as to foster international co-operation in the fight against corruption;
 - (viii) encourage links between the Commission and similar agencies in other countries; and
 - (ix) enhance education on the dangers of corruption.

(2) The Director of the Corruption Prevention and Education Division shall -

- (a) subject to any directive given by the Commission, exercise such powers of the Commission as are entrusted to him.
- (b) report to the Commission; and
- (c) comply with every directive of the Commission in relation to his functions.

31. The Chief Legal Adviser

- (1) The Legal Division shall be under the responsibility of a Chief Legal Adviser, who shall be a barrister with at least 5 years standing at the Bar, appointed by the Commission.
- (2) The Legal Division shall in addition to the powers conferred under section 82 be responsible for tendering legal advice to the Commission.

32. General Fund

- (1) The Commission shall establish a General Fund comprising funds derived from the Consolidated Fund, or derived by or accruing to it, from any other source.
- (2) The Commission may accept donations, grants and sponsorship after the approval of the Parliamentary Committee and all funds received under this subsection shall be credited to the General Fund.

33. Funds of the Commission

- (1) Subject to subsection (2), the funds of the Commission shall be applied only -
 - (a) in payment or discharge of any cost, expense and other obligation of the Commission; and
 - (b) in payment of any remuneration or allowance payable to any person under this Act.
- (2) Funds of the Commission not immediately required for the purposes of the Commission shall be paid into the Consolidated Fund if so directed by the Parliamentary Committee.

34. Commission accounts

The Commission shall open and maintain any account as it thinks fit, with any bank, in the name of the Commission.

35. Estimates

- (1) The Commission shall, not less than 3 months before the commencement of every financial year, submit for approval, to the Minister responsible for finance, an estimate of the income and expenditure of the Commission.
- (2) Notwithstanding any review of such estimates or any consideration given to them by the Parliamentary Committee prior to their submission to the Minister, the final decision shall rest with the Minister.
- (3) Subsection (1) shall not apply to the first financial year of the Commission.

36. Audit and annual reports

- (1) The Commission shall, not later than 6 months after the close of every financial year, issue an annual report on the activities, and furnish audited accounts, of the Commission for that financial year, to the Parliamentary Committee.
- (2) The Chairperson of the Parliamentary Committee shall, at the earliest available opportunity, but not later than one month after receiving a report under subsection (1), lay a copy of the report and audited accounts of the Commission before the National Assembly.

Amended by [Act No. 24 of 2005]

37. Exemptions

- (1) The Commission shall be exempt from payment of any duty, levy, rate, charge, fee or tax.
- (2) No registration fee shall be payable in respect of any document signed or executed by the Commission under which the Commission is a beneficiary.

38. Protection of Members and officers

Any member of the Board or an officer acting in the exercise of his duties under this Act shall, for the purposes of sections 1, 2, 3 and 4(1) and (2) of the Public Officers' Protection Act, be deemed to be a public officer.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

38A. Protection from liability of Commission, Board and officers

No action shall lie against the Commission, the Board, any member of the Board or any officer of the Commission, as the case may be, in respect of any act done or omission made by it or him in good faith, in the performance of its or his functions under this Act or any other enactment.

Added by [Act No. 1 of 2006]

PART IV – Section 39- 42 - Repealed by [Act No. 24 of 2005]

PART V - PROCEEDINGS OF THE COMMISSION

43. Notification of corruption offence

- (1) Any person may-
 - (a) without disclosing his identity; and
 - (b) orally or in writing,
 notify the Commission or an officer of the existence or possible existence of a corruption offence.
- (2) The Commission shall take all steps that may be necessary to facilitate the notification to the Commission of the possible existence of an act of corruption.

44. Duty to report acts of corruption offences

- (1) Where an officer of a public body suspects that an act of corruption has been committed within or in relation to that public body, he shall forthwith make a written report to the Commission.
- (2) The Commission shall issue such guidelines as it considers appropriate to ensure compliance with subsection (1).

45. Referrals to the Commission

- (1) Notwithstanding sections 43 and 44, where in the exercise of his functions-
 - (a) a Judge or Magistrate;
 - (b) the Ombudsman;
 - (c) the Director of Public Prosecutions;
 - (d) the Director of Audit; or
 - (e) the chief executive of a public body,
 is of the opinion that an act of corruption or a money laundering offence may have occurred, he may refer the matter to the Commission for investigation.
- (2) Where in the course of a Police enquiry -
 - (a) it is suspected that an act of corruption or a money laundering offence has been committed; and
 - (b) the Commissioner of Police is of the opinion that the matter ought to be investigated by the Commission,
 the Commissioner of Police may notwithstanding the Financial Intelligence and Anti-Money Laundering Act 2002 and subject to subsection (3) refer the matter to the Commission for investigation.
- (3) The Commissioner of Police shall forthwith notify the FIU of the nature of the money laundering offence referred to in subsection (2)(a).

Amended by [Act No. 1 of 2006]

46. Investigation by the Commission

- (1) (a) Where, under sections 43, 44 or 45 or on its own initiative, the Commission becomes aware that a corruption offence or a money laundering offence may have been committed, it shall notwithstanding the Financial Intelligence and Anti-Money Laundering Act 2002 and subject to subsection (4), refer the matter to the Director of the Corruption Investigation Division who shall forthwith make a preliminary investigation of the matter. (b) The Director of the Corruption Investigation Division shall, within 21 days of a referral under paragraph (a) or within such other period as the Commission may direct, report to the Commission on the matter.
- (2) The Director of the Investigation Division shall, within 14 days of a referral to him of an information referred to the Commission by the FIU under section 13 of the Financial Intelligence and Anti-Money Laundering Act 2002, investigate and report to the Commission on the matter.
- (3) Upon receipt of a report under subsection (1)(b) or 2, the Commission shall -
 - (a) proceed with further investigations; or

(b)discontinue the investigation.

- (4) The Commission shall forthwith notify the FIU of the nature of every case relating to a money laundering offence investigated on its own initiative.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

47. Further investigation by the Commission

- (1) Where the Commission proceeds with any further investigation under section 46(3), the investigation shall be carried out under the responsibility of the Director-General.
- (2) For the purposes of such investigation, the Director-General may delegate such of his powers as he thinks fit to the Director of Corruption Investigation Division or to any other officer.
- (3) In carrying out an investigation under this section, the Commission may conduct such hearings as it considers appropriate and, for that purpose –
- (a)the hearing shall be conducted by the Director-General or such officer as the Director-General thinks fit;
- (b)the Chief Legal Adviser, or a member of the Legal Division deputed by the Chief Legal Adviser, shall be in attendance and shall provide legal advice to the Commission;
- (c)the hearing may be conducted in public or in private as the Director-General may, in his discretion, determine;
- (d)where the Director-General decides that the hearing shall not be conducted in public, no person shall make any report of the hearing unless he has obtained the prior permission of the Director-General in writing;
- (e) any person who is required by the Commission to attend the hearing shall be entitled to be represented by the law practitioner of his choice;
- (f) where the hearing is conducted by the Director-General, the Director-General may take a deposition on oath or solemn affirmation and may administer the oath or solemn affirmation to any person attending the hearing.
- (4) Any person who, in the course of a hearing under subsection (3), knowingly makes a statement which is false or misleading in a material particular, shall commit an offence and shall, on conviction, be liable to a fine of not more than 500,000 rupees and imprisonment for a term not exceeding 5 years.
- (5) After conclusion of an investigation under this section, the Director-General shall submit the matter to the Commission for its opinion.
- (6) After receipt of the opinion of the Commission, the Director-General shall submit a report to the Director of Public Prosecutions which shall include -
- (a) all the material, information, statements and other documents obtained in the course of the investigation;
- (b) a description of the articles of evidence which have remained in the custody of the Commission;
- (c) the recommendations of the Commission.

- (7) After consideration of the report submitted under subsection (6), the Director of Public Prosecutions may, where he does not advise prosecution or any other action, require the Commission to conduct such further inquiries as the Director of Public Prosecutions considers fit to advise.

Amended by [Act No. 24 of 2005]

48. Protection of informers

- (1) Where the Commission receives information in confidence to the effect that an act of corruption has occurred, that information and the identity of the informer shall be secret between the Commission and the informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceedings before any court, tribunal or other authority.
- (2) Where any record, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains an entry relating to the informer or the information given by the informer, the Director-General shall cause all parts relating to the informer or the information given to be concealed from view so as to protect the identity of the informer.

Amended by [Act No. 24 of 2005]

49. Protection of witnesses

- (1) Subject to subsection (6), where a person-
- (a) discloses to a member of the Board or an officer that a person, public official, body corporate or public body is or has been involved in an act of corruption; and
- (b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act,
- he shall incur no civil or criminal liability as a result of such disclosure.
- (2) Subject to subsection (6), where a public official-
- (a) discloses to his responsible officer or to the Director-General that an act of corruption may have occurred within the public body in which he is employed; and
- (b) believes on reasonable grounds that the information is true,
- he shall incur no civil or criminal liability as a result of such disclosure and no disciplinary action shall be started against him by reason only of such disclosure.
- (3) A person who makes a disclosure under subsection (1) or (2) shall assist the Commission in any investigation which the Commission may make in relation to the matters disclosed by him.
- (4) A person to whom a disclosure is made under subsection (1) or (2) shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.
- (5) A person who commits an act of victimisation against a person who has made a disclosure under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.

- (6) A person who makes a false disclosure under subsection (1) or (2) knowing it to be false shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.
- (7) In this section, "victimisation" means an act -
 - (a) which causes injury, damage or loss;
 - (b) of intimidation or harassment;
 - (c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or
 - (d) amounting to threats of reprisals.

Amended by [Act No. 24 of 2005]

50. Powers of the Commission to examine person

- (1) Where the Commission decides to proceed with further investigations under section 46 or 47, the Director-General may -
 - (a) order any person to attend before him for the purpose of being examined orally in relation to any matter;
 - (b) order any person to produce before him any book, document, record or article;
 - (c) order that information which is stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, be communicated in a form in which it can be taken away and which is visible and legible;
 - (d) by written notice, order a person to furnish a statement in writing made on oath or affirmation setting out all information which may be required under the notice.
- (2) A person on whom an order under subsection (1) has been served shall -
 - (a) comply with the order;
 - (b) attend before the Director-General in accordance with the terms of the order;
 - (c) continue to attend on such other days as the Director-General may direct until the examination is completed; and
 - (d) subject to subsection (3), answer questions and furnish all information, documents, records or statements, including certified copies thereof as ordered by the Director-General.
- (2A) Where the Director-General has reasonable grounds to believe that any book, document, record or article produced under subsection (1)(b) may provide evidence relevant to an investigation being conducted by the Commission, he may:
 - (a) where the book, document, record or article is not reasonably required for the purpose of performing any duty under any enactment, retain the book, document, record or article, as the case may be, until its production in Court or until such earlier time as may be required; or
 - (b) make certified copies of, or take records from, the book, document or record.

- (3) A person may refuse to answer a question put to him or refuse to furnish information, documents, records or statements where the answer to the question or the production of the document or class of documents might tend to incriminate him.
- (4) Subsection (3) shall not apply where the Director-General, after consultation with the Director of Public Prosecutions, gives an undertaking in writing to a person that any answer given or document or class of document produced will not be used in evidence in any criminal proceedings against him for an offence other than proceedings for perjury.
- (5) Where an undertaking has been given under subsection (4), no court of law shall admit the answer or document or class of documents referred to in the undertaking in any criminal proceedings against the person to whom the undertaking was given, except in proceedings for perjury.
- (6) A person who after having been served with an order under subsection (1)
 -
 - (a) fails, without reasonable excuse, to comply with any of the terms of the order;
 - (b) conceals, destroys, alters, tampers with, removes from the place where it is habitually kept, or otherwise disposes of, a book, document, record or article referred to in the order,
 shall commit an offence and shall, on conviction, be liable to a term of imprisonment not exceeding 5 years.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

51. Orders to search certain premises

- (1) Subject to subsections (3) and (4), where, upon notification or after consultation with the FIU, the Commission has reasonable grounds to believe that -
 - (a) a bank, financial institution or cash dealer has failed to keep a business transaction record as required under section 17 of the Financial Intelligence and Anti-Money Laundering Act 2002;
 - (b) a bank, financial institution, cash dealer or a member of a relevant profession or occupation, has failed to report any suspicious transaction as required under section 14 of the Financial Intelligence and Anti-Money Laundering Act 2002; or
 - (c) a bank, financial institution, cash dealer or a member of a relevant profession or occupation is in possession of documents, books or records or other information which may assist the Commission in an investigation,

The Commission may apply to a Judge in Chambers for an order allowing the Commission, or any officer delegated by it, to enter premises belonging to, or in the possession or control of, the bank, financial institution, cash dealer or member of a relevant profession or occupation and to search the premises and remove therefrom any document or material.

- (2) An application under subsection (1) shall be supported by an affidavit by the Director-General disclosing the reason why an order is sought under this section.
- (3) No order shall issue under subsection (1) with respect to a law practitioner unless the Judge is satisfied that, having regard to the need to protect legal professional privilege, it is in the public interest that the order be made without requiring the law practitioner to show cause why the order should not be made.

Amended by [Act No. 24 of 2005]

52. Power of entry and search

- (1) Where the Commission has reasonable ground to believe that there is, on specified premises or in any place of business, evidence which may assist it in its investigation, it may issue a warrant to an officer authorising him to enter and search, at all reasonable times, the said premises or place of business and remove therefrom any document or material which may provide evidence relevant to an investigation being conducted by the Commission.
- (2) A search under subsection (1) shall, so far as is practicable, be conducted in the presence of the occupier of the premises or his duly authorised agent.
- (3) Prior to a search under subsection (1), the Officer shall deliver a photocopy of the warrant to the occupier of the premises or his duly authorised agent against receipt acknowledged by a signature on the original of the warrant.
- (4) Where a search is effected under subsection (1), the officer effecting the search may -
 - (a) seize and take possession of any book, document, computer disk or other article;
 - (b) inspect, make copies of, or take extracts from, any book, record or document;
 - (c) search any person who is on the premises, detain him for the purpose of the search, and seize any article found on such person;
 - (d) break open, examine, and search any article, safe, container or receptacle.

53. Powers of arrest

- (1) Where the Director-General is satisfied that a person who may assist him in his investigation -
 - (a) is about to leave Mauritius;
 - (b) has interfered with a potential witness; or
 - (c) intends to destroy documentary evidence which is in his possession and which he has refused to give to the Commission,
 the Commission may, in writing, direct an officer to arrest that person.
- (2) Where a person is arrested under subsection (1), he shall-
 - (a) forthwith be brought to the office of the Commission;

- (b) be explained his constitutional rights and given the right to contact his lawyer;
- (c) be allowed prompt access to his lawyer;
- (d) not be questioned unless a video recording is made of the proceedings;
- (e) unless the Commission is satisfied that it is necessary that his detention be prolonged, be released immediately upon furnishing such surety in a reasonable amount as the Director-General may determine; and
- (f) be brought before a Magistrate, who may impose such conditions as he considers necessary for his release.

Amended by [Act No. 24 of 2005]

54. Property tracking and monitoring order

- (1) Where, for the purposes of an investigation under section 46, the Commission -
- (a) needs to determine whether any property belongs to, is in the possession or under the control of, a person; or
 - (b) has reasonable ground for suspecting that a person has committed, is committing, or is about to commit an offence which the Commission has power to investigate,

the Commission may issue a directive under subsection (2) to the Director of the Corruption Investigation Division.

- (1) (2) A directive under subsection (1) may direct-
- (a) that any document relevant to the -
 - (i) identification, location or quantification of any property; or
 - (ii) identification or location of any document necessary for the transfer of any property,
 belonging to, or in the possession or under the control of, the person named in the directive be delivered forthwith to the Director of the Corruption Investigation Division;
 - (b) that a bank, financial institution, cash dealer or member of a relevant profession or occupation forthwith produces to the Director of the Corruption Investigation Division, all information obtained by it about any business transaction conducted by or for that person with it during such period before or after the date of the order as the Judge may direct.

55. Enforcement of property tracking and monitoring order

A Judge in Chambers may, on good cause shown by the Commission that any person is failing to comply with, is delaying or is otherwise obstructing a directive made in accordance with section 54, order that the Commission or any officer authorised by it may enter any premises of the bank, financial institution, cash dealer or member of a relevant profession or occupation, search the premises and remove any document, material or other thing therein for the purposes of executing such order.

56. Application for attachment order

- (1) Notwithstanding any other enactment, where a Judge in Chambers, on an application by the Commission, is satisfied that the Commission has reasonable ground to suspect that a person has committed an offence under this Act or the Financial Intelligence and Anti-Money Laundering Act 2002, he may make an attachment order under this section.
- (2) An order under this section shall-
 - (a) attach in the hands of any person named in the order, whether that person is himself the suspect or not, all money and other property due or owing or belonging to or held on behalf of the suspect;
 - (b) require the person named in the order to declare in writing to the Commission, within 48 hours of service of the order, the nature and source of all moneys and other property so attached;
 - (c) prohibit the person from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order.
- (3) Where an order is made under this section, the Commission shall -
 - (a) cause notice of the order to be published in the next issue of the *Gazette* and in at least 2 daily newspapers published and circulated in Mauritius; and
 - (b) give notice of the order to -
 - (i) all notaries;
 - (ii) all banks, financial institutions and cash dealers; and
 - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

Amended by [Act No. 1 of 2006]

57. Features of attachment order

- (1) An attachment order shall be served on each of the persons named in the order and on the suspect by an usher of the Supreme Court.
- (2) Subject to subsection (3), an attachment order shall, unless revoked by a Judge in Chambers, remain in force for 60 days from the date on which it is made.
- (3) An attachment order may be renewed for successive periods of 60 days on application made by the Commission, where the Judge in Chambers is satisfied that the Commission has obtained or is likely to obtain substantial new information relating to an offence under this Act.
- (4) Any period of time during which the suspect is absent from Mauritius, as certified to the Judge in Chambers by the Commission, shall not be reckoned as part of any period of validity of an attachment order.

58. Seizure of movable property

- (1) Where in the course of an investigation under this act, the Director-General is satisfied that movable property is the subject-matter of or relates to an offence under this Act, the Director-General may seize that property.

- (2) The Director-General shall keep a record of property seized under subsection (1) and shall cause a copy of that record to be served on the person from whom the property was seized.
- (3) A seizure effected under subsection (1) shall be effected by placing the property seized under the custody of such person and at such place as the Director-General may determine.
- (4) Notwithstanding subsection (3), where the Director-General considers that it is not practicable to remove the property, he may leave it at the premises on which it is found under the custody of such person as he may direct for that purpose.
- (5) Where movable property seized under subsection (1) is under the custody of a third party, the Director-General may direct that third party not to dispose of the property without his consent in writing.

Amended by [Act No. 24 of 2005]

PART VI - THE PARLIAMENTARY COMMITTEE

59. The Parliamentary Committee

- (1) There shall, for the purposes of this Act, be a Parliamentary Committee for the monitoring of the Independent Commission Against Corruption.
- (2) The Parliamentary Committee shall be composed of 9 members, 5 of whom shall be designated by the Prime Minister and 4 of whom shall be designated by the Leader of the Opposition.
- (3) The Prime Minister shall designate one of the members to be Chairperson of the Parliamentary Committee.
- (4) A member of the Parliamentary Committee may, at any time, be removed as member of the Committee -
 - (a) by the Prime Minister, in the case of a member designated by him;
 - (b) by the Leader of the Opposition, in the case of a member designated by him.
- (5) The Clerk of the Assembly shall be the Secretary of the Parliamentary Committee.
- (6) Subject to subsection (7), the Commissioner and the Financial Secretary shall, and the Director of Audit, if so requested, may, attend every meeting of the Parliamentary Committee.
- (7) The Chairperson of the Parliamentary Committee may excuse the Financial Secretary from attending a meeting of the Parliamentary Committee.

Amended by [Act No. 24 of 2005]

60. Proceedings of the Parliamentary Committee

- (1) The Parliamentary Committee shall meet at least once every month and on such other date as the Chairperson of the Parliamentary Committee may determine.
- (2) Subject to subsection (3), the proceedings of the Parliamentary Committee shall be governed by the Standing Orders of the Assembly relating to

Select Committees of the Assembly and by such other Orders as the Speaker may make.

- (3) (a) Five members shall constitute the quorum of the Parliamentary Committee. (b) Everything authorised or required to be done by the Parliamentary Committee shall be decided by a simple majority of the members present and voting and in the event of an equality of vote, the Chairperson shall have a casting vote.

Amended by [Act No. 24 of 2005]

61. Functions and powers of the Parliamentary Committee

- (1) Subject to subsection (3), the Parliamentary Committee shall-
- (a) monitor and review the manner in which the Commission fulfils its functions under this Act;
 - (b) review the budgetary estimates of the Commission;
 - (c) issue such instructions as it considers appropriate with regard to -
 - (i) the financial management of the Commission;
 - (ii) the staffing requirements of the Commission; and
 - (iii) the allocation of resources to the various operations of the Commission;
 - (d) subject to subsection (4), issue guidelines and give general directives to the Commission with regard to the manner in which the Commission is to perform its functions and exercise its powers;
 - (e) receive reports from the Commission at such intervals as the Parliamentary Committee may require;
 - (f) make a report to the Assembly where the Committee considers that it is expedient that the attention of the Assembly be directed to-
 - (i) the manner in which the Commission is discharging its functions and exercising its powers;
 - (ii) the financial situation of the Commission;
 - (iii) the need for further legislative reforms; or
 - (iv) any other matter relating to this Act;
 - (g) consider the annual report and other reports of the Commission and report to the Assembly on any matter appearing in or arising out of such report;
 - (h) report to the Prime Minister on any matter relating to this Act; and
 - (i) have such other powers as are conferred upon it by this Act.
- (2) In the exercise of its functions under this Act, but subject to subsection (3), the Parliamentary Committee may -
- (a) examine a member of the Board or an officer;
 - (b) summon a public official to answer questions and produce documents; and
 - (c) require the Director-General or any officer to furnish any accounting or other records relating directly or indirectly to all financial transactions of the Commission and to answer any question in relation to such financial transactions.
- (3) Notwithstanding this Act-

- (a) the Parliamentary Committee shall not -
 - (i) exercise its powers or discharge its functions in relation to a specific case under investigation by the Commission;
 - (ii) require the Commission to reconsider a decision to investigate or not to investigate or to discontinue the investigation of a particular complaint;
 - (iii) reconsider the findings of the Commission in relation to a particular investigation or complaint;
 - (iv) question a member, an officer or a public official concerning, or otherwise enquire into, a matter which is under investigation by the Commission;
- (b) A member of the Board , an officer or a public official may refuse to answer a question which -
 - (i) is in relation to a specific matter which is the subject of an investigation by the Commission;
 - (ii) in his opinion, would tend to disclose facts relating to a matter which is the subject of an investigation by the Commission.
- (4) Where the Parliamentary Committee issues a guideline under subsection (1)(d) -
 - (a) the Chairperson of the Parliamentary Committee shall lay the guideline on the table of the Assembly within 14 days from the date on which such guideline was issued;
 - (b) a Member of the Assembly may, within 30 days of the date on which the guideline has been tabled, move the Assembly that the guideline be disallowed and, on such motion being tabled, it shall be debated and put to a vote at the next sitting of the Assembly.
- (5) Where -
 - (a) a guideline under subsection (1)(d) has not been laid on the table of the Assembly under subsection (4) (a); or
 - (b) a motion of disallowance under subsection (4)(b) has been voted by the Assembly,
 the guideline shall cease to have effect.
- (6) Where, as the result of the dissolution of Parliament or for any other reason, the Parliamentary Committee is not constituted, or is unable to perform its functions or exercise its powers under this Act -
 - (a) its functions under section 24(3) may be performed by the Commission itself;
 - (b) its functions under subsection (1)(b) and (c) and section 36 may be performed by, and its powers under subsection (2)(c), section 32 or section 35(2), may be exercised by the Financial Secretary.
- (7) The powers exercised by the Commission under section 24(3) pursuant to subsection (6)(a) shall be subject to approval or review by the Parliamentary Committee, once it is constituted.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

**PART VII - RESTRAINT AND FORFEITURE OF PROCEEDS OF
CORRUPTION AND MONEY LAUNDERING**

62. Freezing of assets

- (1) Where a person is charged or is about to be charged in any Court with a corruption offence or a money laundering offence, the Supreme Court may, on an application by the Director of Public Prosecutions, order, subject to such conditions as to the duration of the order or otherwise as the Court deems fit -
 - (a) the attachment in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the accused; and
 - (b) the prohibition of the accused or any person acting on his behalf or any other person named in the order from transferring, pledging or otherwise disposing of any money or other property so attached.
- (2) The Supreme Court may, in respect of any order under subsection (1), specify moneys or salaries, wages, pensions or other benefits that shall be paid to or received by the accused indicating the source, manner and circumstance of payment or receipt.
- (3) In making an order under subsection (1), the Supreme Court may authorise -
 - (a) the payment of debts incurred in good faith and due to creditors of the accused, before the request for the order was made by the Director of Public Prosecutions;
 - (b) the sale, transfer or disposal of any property by the accused where the Supreme Court is satisfied that such sale, transfer or disposal is necessary' in order to safeguard the property rights of any other person claiming an interest in the property.
- (4) The Supreme Court may appoint the Official Receiver or any suitable person to manage the assets of the accused under the supervision of the Supreme Court.
- (5) An order under this section shall take effect forthwith and the Director of Public Prosecutions shall -
 - (a) cause notice of the order to be published in the next issue of the *Gazette* and in at least 2 daily newspapers published and circulated in Mauritius; and
 - (b) give notice of the order to -
 - (i) all notaries;
 - (ii) banks, financial institutions and cash dealers; and
 - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the accused.
- (6) An order under this section shall, subject to any condition to the contrary imposed under subsection (1), remain in force -
 - (a) until the Director of Public Prosecutions decides not to proceed with a charge or intended charge under subsection (1);
 - (b) until the final determination of the charge under subsection (1); or

- (c) in the event of a conviction, until an order for forfeiture is made by the Court under section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002 or any proceedings relating thereto are concluded.
- (7) Where an order under this section ceases to have effect or is revoked, the Director of Public Prosecutions shall cause notice to be published in the *Gazette* and in at least 2 daily newspapers published and circulated in Mauritius.
- (8) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section shall be void.
- (9) In this section, "accused" means a person who is charged or is about to be charged with a corruption offence or a money laundering offence.

63. Proceedings consequent on forfeiture

- (1) Where an order for forfeiture of property has been made pursuant to section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002, or as a result of an application made under section 70, the convicted person or any other person claiming an interest in the property may apply by way of motion to the Supreme Court for a declaration that the property subject of the order is not the proceeds of a corruption offence or a money laundering offence nor otherwise involved in such an offence, nor acquired nor obtained directly or indirectly from, by, or through, any such proceeds.
- (2) An application under subsection (1) shall be filed in the Registry of the Supreme Court not later than 3 months after the date of the order for forfeiture, in default of which the order shall become final.
- (3) The Supreme Court, after hearing the application, may-
 - (a) if the applicant has satisfied it, on the balance of probabilities, that the property is not the profits or proceeds of a corruption offence or a money laundering offence, grant the application and annul the order of forfeiture or any part of such order; or
 - (b) if not so satisfied, dismiss the application, and confirm the order of forfeiture which shall thereupon become final.
- (4) Where the Supreme Court grants an application under subsection (3)(a) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment, and the applicant shall thereupon be entitled to the recovery of any income received by the Government from such property during the period of its forfeiture.

64. Payment in lieu of forfeiture

Where the Supreme Court is satisfied that the order for forfeiture under section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002, or pursuant to an application made under section 70, cannot be enforced and, in particular that the property -

- (a) cannot, with due diligence, be located;

- (b) has been transferred to a third party in circumstances which give rise to a reasonable inference that the property has been transferred for the purpose of avoiding the forfeiture of that property;
- (c) is located outside Mauritius;
- (d) has been substantially diminished in value and rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Supreme Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay an amount equal to the value of the property, part or interest.

PART VIII- Repealed by [Act No. 35 of 2003]

PART IX – MISCELLANEOUS

81. Confidentiality

- (1) Every Member of the Board and every officer shall take the oath specified in the Second Schedule.
- (2) No member of the Board or officer shall, except in accordance with this Act, or as otherwise authorised by law-
 - (a) divulge any information obtained in the exercise of a power, or in the performance of a duty, under this Act;
 - (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Director of the Corruption Investigation Division.
- (3) Every Member of the Board and every officer shall maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.
- (4) Notwithstanding subsections (2) and (3), the Director-General may disclose, for the purposes of publication in the press, such information as he considers necessary in the public interest.
- (5) For the purpose of an investigation in respect of an offence committed in Mauritius under this Act and the Financial Intelligence and Anti-Money Laundering Act 2002, the Director-General may, with the express written concurrence of the Director of Public Prosecutions, impart to an agency in Mauritius or abroad, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into money laundering or any other offence.
- (6) Any person who, without lawful excuse, contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

Amended by [Act No. 24 of 2005]

82. Prosecution, conviction and forfeiture

- (1) Subject to subsection (2), no prosecution for an offence under this Act or Part II of the Financial Intelligence and Anti-Money Laundering Act 2002.

shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

- (2) The Director-General, the Director of the Corruption Investigation Division, or any other officer designated by the Commission, may swear an information and conduct the prosecution in respect of any offence under this Act or Part II of the Financial Intelligence and Anti-Money Laundering Act 2002.
- (3) Subsection (2) shall be without prejudice to the Chief Legal Adviser, or any officer of the Legal Division designated by him conducting any prosecution as specified in that subsection.
- (4) Where a person is convicted of an offence under this Act or Part II of the Financial Intelligence and Anti-Money Laundering Act 2002, the Court may, in addition to any penalty imposed, order the forfeiture of the property the subject-matter of the offence.

Amended by [Act No. 24 of 2005]; [Act No. 1 of 2006]

82A. Jurisdiction

- (1) Where the act alleged to constitute an offence under this Act, or a money laundering offence, occurred outside Mauritius, a court in Mauritius shall, regardless of whether or not the act constitutes an offence at the place of its commission, have jurisdiction in respect of that offence if the person to be charged –
- (a) is a citizen of Mauritius;
 - (b) is ordinarily resident in Mauritius;
 - (c) was arrested in Mauritius or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offence was committed;
 - (d) is a company incorporated, or registered as such under any law, in Mauritius;
 - (e) is a body of persons incorporated in Mauritius, or an unincorporated body operating in Mauritius.
- (2) Any act alleged to constitute an offence under this Act or a money laundering offence and which is committed outside Mauritius by a person, other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in Mauritius if that –
- (a) act affects or is intended to affect a public body, a business or any other person in Mauritius;
 - (b) person is found to be in Mauritius;
 - (c) person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

- (3) Any offence committed in a country outside Mauritius as contemplated in subsection (1) or (2) is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed –
 - (a) at the place where the accused is ordinarily resident; or
 - (b) at the accused person's principal place of business.
- (4) Where a person is charged with conspiracy or giving instructions to commit an offence, the offence shall be deemed to have been committed not only at a place where the act was committed, but also at every place where the conspirator or the person giving instructions acted or, in case of an omission, should have acted.

Added by [Act No. 1 of 2006]

83. Burden of proof

In the course of a trial of an accused for a corruption offence, it shall be presumed that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose.

84. Possession of unexplained wealth

- (1) The Commission may -
 - (a) order any public official or any person suspected of having committed a corruption offence to make a statement under oath of all his assets and liabilities and of those of his relatives and associates;
 - (b) investigate whether any public official or any person suspected of having committed a corruption offence -
 - (i) has a standard of living which is commensurate with his emoluments or other income;
 - (ii) owns, or is in control of, property to an extent which is disproportionate to his emoluments or other income; or
 - (iii) is able to give a satisfactory account as to how he came into ownership, possession, custody or control of any property.
- (2) Where, in proceedings for an offence under this Act, it is established that the accused -
 - (a) was maintaining a standard of living which was not commensurate with his emoluments or other income;
 - (b) was in control of property to an extent which is disproportionate to his emoluments or other income;
 - (c) held property for which he, his relative or associate, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control,

that evidence shall be admissible to corroborate other evidence relating to the commission of the offence.

85. Civil proceedings

Where the Commission is satisfied that a person has been a party to corruption and has benefited from it, the Commission shall refer the matter to the

Attorney-General who may enter civil proceedings for damages for any prejudice caused to the State.

86. Donations and legacies

Article 910 of the Code Napoleon shall not apply to the Commission.

87. Regulations

- (1) The Prime Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Regulations made under this Act may provide for-
 - (a) the levying of fees by the Commission;
 - (b) rules of procedure governing the exercise of its functions by the Commission;
 - (c) rules governing the communication of information to the press;
 - (d) rules governing the interrogation of persons in the course of hearings held by the Commission.

88. Consequential amendments

- (1) The Banking Act is amended in section 39-
 - (a) in subsection (2), by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and replaced by a semi-colon - (g) the bank has been directed to produce any information pursuant to a directive issued by the Independent Commission Against Corruption under the Prevention of Corruption Act 2002.
 - (b) in subsection (5), by deleting the words "the Director or";
 - (c) in subsection (12), by deleting the definition of "Director".
- (2) The **Declarations of Assets Act** is amended-
 - (a) by deleting the word "Clerk" wherever it appears and replacing it by the word "Commission";
 - (b) in section 2-
 - (i) by deleting the definition of "Clerk";
 - (ii) by inserting in its appropriate alphabetical place, the following new definition - "Commission" means the Independent Commission Against Corruption established under the Prevention of Corruption Act 2002.
- (3) The **Trusts Act 2001** is amended by repealing sections 53 and 54, and replacing them by the following sections -

53. Constructive trust

- (1) A person holding any fiduciary obligations who -
 - (a) derives a profit from a breach of his fiduciary duties; or
 - (b) obtains property as a result of such a breach,
 shall be deemed to be a trustee of the profit or property for the person to whom the duties are owed.
- (2) A trustee who-
 - (a) derives a profit from a breach of trust; or

- (b) obtains property as a result of such a breach, shall be deemed to be a trustee of the profit or property for the beneficiary of the trust.
- (3) Without prejudice to any other remedy provided by law, the person referred to in subsection (1) to whom fiduciary duty is owed, or the beneficiary referred to in subsection (2), may apply to the Court for an order that the profit or property obtained from the breach of fiduciary duties or of trust be traced and recovered to him.
- (4) A person shall not be liable for breach of trust or of fiduciary duty under this section where he established that the profit or property was obtained in good faith.
- (5) This section does not exclude any other circumstances in which a constructive trust may arise.

54. Tracing

Without prejudice to the personal liability of a trustee, or a person in breach of his fiduciary duty, trust property which has been charged or dealt with in breach of trust or fiduciary duty, or the property into which it has been converted, may be followed and recovered unless -

- (a) it is no longer identifiable;
- (b) it is in the hands of a bona fide purchaser for value without notice of the breach of trust, or of any other defect in the title;
- (c) it has been charged in favour of a person who bona fide acquired his rights therein for value and without notice of the breach of trust or any other defect in the title;
- (d) a person, other than the trustee, derived his title through a bona fide purchaser or charge holder for value without notice of the breach of trust or defect.

89. Repeal

The following enactments are repealed -

- (a) the Economic Crime and Anti Money Laundering Act; and
- (b) sections 125 to 133A of the Criminal Code.

90. Savings and transitional provisions

- (1) Notwithstanding section 89, any judicial proceedings to which the Economic Crime Office or its Director, or the Revenue Authority or its Director-General by virtue of the Economic Crime and Anti Money Laundering (Temporary Provisions) Act 2001, was a party shall continue as if the Commission established under this Act, or the Commissioner referred to under section 19, were a party to the proceedings.
- (2) The Commissioner of Police may -
- (a) commence any investigation, swear any information or conduct any prosecution in respect of an offence committed or alleged to be committed against an enactment repealed by section 89 of this Act as if this Act had not come into operation;

- (b) continue or do any act, thing or investigation commenced by him and which was pending before the coming into operation of this Act.
- (3) Subject to subsection (4), the Commission shall take over and continue any investigation commenced under the Economic Crime and Anti-Money Laundering Act or commenced or taken over, pursuant to the Economic Crime and Anti-Money Laundering (Temporary Provisions) Act 2001, and any prosecution, in respect of any Act, or allegation, so investigated may be instituted under an enactment repealed by section 89 of this Act as if this Act had not come into operation.
- (4) No investigation in respect of a money laundering offence shall be proceeded with under this section, unless the prior approval of the FIU is obtained.
- (5) The Court shall, in respect of any proceedings instituted following any investigation under subsections (2) and (3), have all the powers that it could exercise pursuant to the enactments repealed by section 89.

91. Commencement

Proclaimed by [Proclamation No. 18 of 2002] w. e. f. 1st April 2002

Passed by the National Assembly on the fourth day of February two thousand and two.

ANDRE POMPON,

Clerk of the National Assembly

CURRICULUM VITAE

Nama : Chusnul Chasanah
 Tempat, Tanggal Lahir : Rembang, 27 Maret 1994
 Alamat Asal : Desa Gonggang RT 04 RW 01, Sarang,
 Rembang, Jawa Tengah 59274
 Alamat Jogja : PP. Wahid Hasyim.
 Jl Wahid Hasyim No 03 RT/RW 06/28 Gatun
 Condongcatur Depok Sleman Yogyakarta
 55285
 Telp : 0812255489949

Orang Tua

Ayah : Maskuri
 Agama : Islam
 Pekerjaan : Petani
 Ibu : Siti Rohmah
 Agama : Islam
 Pekerjaan : Pedagang

Riwayat Pendidikan

A. Pendidikan Formal

SDN Gonggang	: Gonggang	1998 – 2004
MTs Al-Anwar	: Sarang, Rembang	2004 – 2007
MAN Lasem	: Lasem, Rembang	2007- 2010
UIN Sunan Kalijaga	: Yogyakarta	2010 - 2014
	:	

B. Pendidikan Non Formal

PP. Al-Anwar	: Sarang, Rembang	2007
PP. Nailunnajah	: Lasem, Rembang	2007 – 2010
PP. Wahid Hasyim	: Yogyakarta	2010 – 2013