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Infaq vs. Bribery in Corruption Criminal Cases

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Abstract

Infaq is an activity that is recommended for every Muslim. Giving Infaq can cause legal problems if the elements of the corruption crime are fulfilled. As happened in Case Number 29/Pid.Sus-TPK/2022/PN Tjk. The Defendant was charged with article 5 paragraph (1) of Law Number 20 of 2001 concerning the eradication of corruption, in conjunction with article 55(1) 1st Criminal Code, for giving infaq money amounting to IDR 250,000,000.00 to enroll his two nephews to the Faculty of Medicine. University of Lampung. An empirical juridical approach supports this research's informative juridical approach. The data are primary and secondary. Data collection is based on literature reviews and field studies. The data analysis method employed is qualitative analysis.

A. Introduction

Corruption is a deviant act to obtain personal wealth and benefits by using state money illegally and abusing the power given.¹ Institutional corruption, also known as institutional corruption, can be defined as the actions of a person who holds an office or because of his capacity as an official to gain benefits.² The higher a person's position, the more opportunities for corruption. With the position and authority possessed by a leader, the leader can benefit from economic, political, and social status, both in formal institutions and society. With this in mind, some leaders seek the benefits inherent in their positions to enrich themselves, their families, friends, and colleagues. This is the basis for the birth of institutional corruption. For

¹ Irfan Setiawan and Christin Pratami Jesaja, "Analisis Perilaku Korupsi Aparatur Pemerintah di Indonesia (Studi pada Pengelolaan Bantuan Sosial di Era Pandemi Covid-19)," *Jurnal Media Birokasi* 4, no. 2, (2022): 33-50

² Kristiadi, 'Demokrasi dan Korupsi Politik' dalam Wijayanto dan Ridwan Zachrie (ed), *Korupsi Mengorupsi Indonesia* (Jakarta: Gramedia, 2009), p. 446



the Indonesian people, corruption has become a serious problem, taking root in every field of life and causing material and immaterial losses.³

As expressed by Maroni, Professor of Criminal Law at the Faculty of Law, University of Lampung, in the National Dialogue entitled "Menyatukan Pandangan, Mensinergikan Langkah, Melawan Korupsi." According to Maroni, Corruption is a multi-problematic crime that has many aspects. Starting from ethical, moral, and cultural aspects to social economic inequality. Corruption in Indonesia has threatened all aspects of society, nation, and state. Corruption has also brought enormous material losses to state finances.⁴ Therefore, corruption is an extraordinary crime committed using various technologies and modes. It is different from conventional crimes that rely on intention and opportunity. However, for extraordinary crimes, the perpetrators can modify the opportunity.⁵ Efforts to eradicate Corruption in Indonesia have been carried out in various ways. Until now, a lot of corruption has been committed by various institutions in various ways.⁶

The practice of corruption in higher education is not taboo today, as evidenced by the number of university ranks or those with a university background involved in corruption.⁷ Forms of Corruption include bribery to get grades, corruption of scholarship funds, bribery to get accreditation, corruption in the election of officials within the internal environment of higher education, and bribery under the guise of "giving infaq". As we know, infaq is spending part of one's wealth or income for a purpose ordered by Islamic teachings.⁸ Infaq can be given to anyone, which means spending money for the sake of something. Meanwhile, according to shari'a terms, infaq is spending some of the wealth ordered in Islam for the public interest, which can also be given to the closest friends, parents, and other closest relatives. Given all this, infaq is a commendable act ordered by religion, so why can infaq be categorized as a form of bribery? As in the case that occurred in 2022, namely the case of the alleged bribery of the Rector of the University of Lampung and Andi Desfiandi, who used infaq in a corruption case involving him.

How can infaq be categorized as a form of corruption? In addition, what kind of infaq giving can be categorized as form of criminal anticorruption? The author focuses on the legal basis that infaq is included in the category of bribery so that it can be said to be a criminal act of corruption. Then, based on the judge's consideration in imposing a sentence on the perpetrator of the crime of corruption of giving infaq as a means of entering college. One of the jurisprudence in this criminal case is the Tanjung Karang District Court Decision Number 29/Pid.Sus-TPK/2022/PN Tjk. Based on the description above, this research will focus on the discussion of Decision Number 29/Pid- Sus-TPK/2022/PN Tjk a decision on a corruption case. The research data is data in 2022-2023 specifically on Decision Number 29/Pid-Sus-TPK/2022/PN Tjk, using a normative approach method in the form of literature study and or doctrinal in the form of collecting such as theories, concepts, and legislation related to the problem. The next approach is an empirical juridical approach, which carried out employing direct research at the research site and related parties conducted through interviews with resource persons.

³ Gusti Kadek Sintia Dewi, "Mencegah dan Memberantas Potensi Adanya Korupsi Melalui Pemberian Pendidikan Anti Korupsi di Lembaga Pendidikan," *Jurnal Ilmu Hukum Sui Generis* 2, no. 4 (2022).

⁴ Nandha Risky Putra and Rosa Linda, "Korupsi di Indonesia: Tantangan Perubahan Sosial," *Integritas: Jurnal Antikorupsi* B, no. 1 (2022): 13-24.

⁵ Ramona, Harry, and Maryadi, "Prof. Maroni: Jangan Andalkan Pidana", (2019). <http://www.harianpilar.com/2019/12/16/prof-maroni-jangan-andalkan-pidana/>

⁶ Wicipto Setiadi, "Korupsi di Indonesia (Penyebab, Bahaya, Hambatan, dan Upaya Pemberantasan Serta Regulasi)," *Jurnal Legislasi Indonesia* 15, no. 3 (2018): 249-262

⁷ Agus Adhari, "Pola Korupsi di Perguruan Tinggi Swasta," *AL-IJTIMA'I-International Journal of Government and Social Science* 2, no. 2 (2017).

⁸ Ibnu Katsir, *Tafsir al Qur'an Al Azhim Juz II, Cetakan III* (Beirut: Darul Ma'rifah, 1989), p. 51.

B. Discussion

1. The Legal Basis That Infaq is Included in the Category of Bribery So That It Can Be Considered as a Case of Corruption

Infaq is a basic price expenditure, which naturally intends to spend a treasure for kindness, donations, or anything that is wasteful but beneficial for many people.⁹ Infaq, in this case, when compared with Islamic law, is very different in meaning. According to Eka Susriyadi, infaq, in the view of Islamic law, differs from the infaq discussed in this case. Infaq, in the view of Islamic law, is the voluntary giving of part of the property or income to people who are entitled to receive it and people in need, accompanied by sincere intentions for the sake of Allah SWT and not expecting a reward. He also explained that those entitled to infaq include orphans, people experiencing poverty, families in need of financial assistance, people who are sick and need medical expenses, people who are displaced due to disasters, and orphanages.¹⁰

Aria Veronica explained that in this case, infaq is just a term as a smoothing word. As we know, infaq in Islam is giving something to someone solely because of Allah SWT by expecting the pleasure and reward of Allah SWT. In contrast, in this case the Defendant gave the infaq to get something from the person to whom he gave the infaq. Because of where he gave the infaq, he had authority or power over something he would do later for his benefit.¹¹

Zahri Kurniawan explained that the Defendant gave infaq other than those entitled to receive infaq. It is known that the Defendant gave the infaq not through a foundation or for an educational institution but directly to someone who has power in the world of education. Then the infaq was used to build a private building owned by the Defendant. There is no defendant whose actions were related to the university, only to the misuse of power in the name of infaq.¹² Therefore, if the Defendant argues that what he did was just to give infaq then this cannot be justified.

Nikmah Rosidah explained that the term infaq used by the Defendant was just a refinement of meaning. This is done to make it appear as if giving money from the Defendant to the Rector of the University of Lampung was a legitimate gift and was not prohibited by law. But in reality, the giving of this money was done because the Defendant knew that the Rector of the University of Lampung had the authority to admit new students on behalf of Zalfa Aditya Putra and Zaki Alghifari into the Faculty of Medicine of the University of Lampung through the Independent Selection Pathway.¹³

To reveal the guilt in the crime of corruption committed by a defendant brought before the court, the public Prosecutor must be able to prove this guilt. The public Prosecutor is burdened with carrying out proof where the evidence submitted makes it clear the truth of a criminal act that has occurred committed by the Defendant brought before the court.¹⁴ In criminal law, intention (*voornemen*) is defined as a deliberate goal that leads a person to commit a crime, is prohibited by law, or can lead to unlawful results. According to Nikmah Rosidah, that intention describes a person's will or plan. When an act is done intentionally,

⁹ Eni Devi Anjelina, et. al., "Peranan Zakat, Infaq, dan Sedekah dalam Meningkatkan Kesejahteraan Ekonomi Masyarakat," *JIHBIZ: Jurnal Ekonomi, Keuangan, dan Perbankan Syariah* 4, no. 2 (2020).

¹⁰ The results of the interview with Eka Susriyadi as Ustadz Jabal Nur Mosque Bandar Lampung, October 25, 2023

¹¹ The results of the interview with Aria Veronica as Judge of Tanjungkarang District Court Class 1A on November 09, 2023

¹² The results of the interview with Zahri Kurniawan as the Public Prosecutor of the Lampung High Prosecutor's Office, on November 02, 2023

¹³ The results of the interview with Nikmah Rosidah as a Lecturer in the Criminal Law Section of the Faculty of Law, University of Lampung, on October 24, 2023

¹⁴ Kukun Abdul Syakur Munawar, Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens Rea Dalam Tindak Pidana Korupsi, *Jurnal Ilmiah Galuh Justisi* Vol. 3 No. 2, (2015)

it implies a person's will or purpose to do so and not an accident or mistake./Where they fully know the act's consequences, so intention is the main element for attaching guilt.¹⁵

It is not enough to be convicted simply because he has committed an act contrary to the law. Although the act fulfills the formulation of the offense in the legislation and is not justified, this does not yet fulfill the requirements for imposing punishment. This must be seen from the perpetrator's intention or purpose to commit acts contrary to or against the law. To answer the existence of intention, an investigation process is carried out following Article 1 number 5 the Criminal Code. In the investigation process, the investigation results are completed again with files and evidence, including describing the elements of the criminal offense and looking at the perpetrator's intention. From this description, it can be understood that intention is a determining factor in determining whether or not a person commits a criminal act. Intention determines whether the Defendant committed the crime intentionally not while motive answers question of why the Defendant committed the crime.

Regarding the legal basis in this case, namely based on Article 5 (1) (b) of Law Number 31 of 1999 concerning eradication of corruption as amended by Law Number 20 of 2001 concerning eradication of corruption in conjunction with Article 55 (1) of the Criminal Code. This is in accordance with the indictment of the Public Prosecutor handling this case. After further processing, the Defendant considered to have violated the provisions in the article. Of course, in making an indictment the Public Prosecutors is not careless and considers various things making charges. When examining a Defendant in an criminal court, the judge starts with the indictment of the public Prosecutor (JPU) which is based on evidence as referred to in Article 184 of the Criminal procedure Code, followed by proof of at least two pieces of evidence and the judge's confidence.¹⁶

The Panel of judgement its considerations stated that the Defendant had been proven legally and convincingly guilty of participating in the Crime of Corruption as in the second charge of the public Prosecutor and sentenced the defendant to imprisonment for 1 (one) year and 4 (four) months and a fine of Rp100,000,000.00 (one hundred million rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months. Aria Veronica explained that criminal responsibility in this case is divided into 3 (three), namely imprisonment, fines, and restitution, which will be described as follows:

a. imprisonment

Imprisonment is a form of punishment known as deprivation of liberty or loss of liberty also known as pemasyarakatan punishment. In KUHP, this type of punishment is classified as the main punishment. In general, imprisonment is served in a certain room. In the past, imprisonment was questioned in the Western world, whether the convicted person was placed separately, i.e., isolated from other convicted persons in a room or not, because the prison was made of concrete which stood firm, so that the convicted person was isolated from the wider community. In this case, the defendant was sentenced to 1 (one) year and 4 (four) months imprisonment, which is lighter than the charges of the public Prosecutor. According to Nikmah Rosidah, the punishment imposed by the Panel of Judges against the Defendant was nappropriate and insufficient to deter the Defendant. Because in practice the decision of the Panel of judges is 2/3 of the charges of the Public Prosecutor.

¹⁵The results of the interview with Nikmah Rosidah as a Lecturer in the Criminal Law Section of the Faculty of Law, University of Lampung, on October 24, 2023

¹⁶Maya Shafira et al, *Sistem Peradilan Pidana*, Bandar Lampung: Pusaka Media, (2022), p.68

b. Fine Penalty

The fine is a punishment in the form of a person's obligation to restore the balance of the law or to atone for their sin by paying a certain amount of money. The minimum fine is Rp0.25 (twenty five cents) x 15. However, it is not generally determined, but the articles on criminal offenses are in Book I and Book II of the Criminal Code. Outside the criminal Code, it is sometimes determined in one or two articles of the last part of the law, the norms of criminal offenses determined in the preceding article. Fines are regulated in Articles 30-31 of the Criminal Code. Based on these provisions, it can be said that a fine is an alternative punishment, and it is conceded to be the lightest form of basic punishment. In this case, the Defendant was sentenced to a fine of Rp100,000,000.00 (one hundred million rupiahs), which is lower than the recommendation by the Public Prosecutor as Rp200,000,000.00 (two hundred million rupiahs).

c. Substitute money

In corruption cases, additional punishment in the form of restitution must be calculated or compensated for the money or goods that have been confiscated or deposited and returned by the Defendant the investigator / Public Prosecutor / State / Regional reasury. Article 18 Paragraph (1) (b) Law Number 31 of 1999 concerning eradication of the Criminal acts of corruption as amended by law Number 20 of 2001 concerning Eradication of the Criminal Acts of Corruption states that the payment of restitution in the maximum amount is equal to the property obtained from the criminal act of corruption. Restitution is money that must be paid by the person who enjoys it and is only a reimbursement for what he has used. The restitution in this case if the Defendant is unable to pay it will be replaced with a subsidiary punishment, regarding criminal liability and the legal basis for giving infaq in this case. Nikmah Rosidah explained that this was appropriate and the relationship between the provision of infaq and the Corruption Law was appropriate. Because the Defendant has also fulfilled the elements in Article 5(1)(b) of Law Number 20 the Year 1999 on the eradication of corruption as amended by Law Number 20 Year 2001 on the Eradication of orruption in conjunction with Article 55 paragraph (1) Ke-1 of the Criminal code. Therefore, the Defendant is sentenced to imprisonment for 1 (one) year and 4 (four) months and a fine of Rp100,000,000.00 (one hundred million rupias) with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.¹⁷ If the Defendant is unable to pay then it will be replaced with a subsidiary punishment.¹⁸ Based on the description above, the author analyzes that the legal basis that infaq is included in the category of bribery so that it can be said to be a criminal act of corruption is found under Article 5(1)(b) of law number 31 of 1999 concerning the eradication of the criminal act of corruption as amended by Law Number 20 of 2001 concerning the eradication of the criminal act of corruption in conjunction with article 55(1) ist Criminal Code is correct. Because the Defendant has been proven legally and convincingly guilty of participating in the crime of corruption. The actions of the Defendant have also fulfilled the elements in the article. In this case, why is infaq categorized as bribery rather than gratuity? Infaq is a form of intention to influence public officials in making policies and decisions. Infaq is given directly to state officials or organizers with the achievement they want to achieve at that time.

Namely, the Defendant wants to enter his two nephews into the aculty of Medicine at the University of Lampung. It is different with gratuities that do not directly get the

¹⁷The results of the interview with Nikmah Rosidah as a Lecturer in the Criminal Law Section of the Faculty of Law, University of Lampung, on October 24, 2023.

¹⁸Kristwan Genova Damanik, *Antara Uang Pengganti dan Kerugian Negara dalam Tindak Pidana Korupsi, Masalah Hukum Jilid 45 No. 1*, Pengadilan Tinggi Maluku Utara, (2016), p. 5

achievement to be achieved, but have other purposes and objectives in the sense that the achievement is not immediately received but in the future.¹⁹

Infaq, in this case, is used as a term to soften the meaning. It was to make it appear as if giving money from the Defendant to the Rector of the University of Lampung was a legitimate gift and was not prohibited by law. Infaq here is a mode commonly used by the perpetrators of corruption crimes to legalize the criminal acts committed by the perpetrators of corruption crimes. What distinguishes infaq is that it is truly infaq and infaq has its purpose based on intention. Not all infaq is corruption, so we as Muslims do not need to be afraid or concerned if we want to make an infaq. Because of this case, we need to ensure that the foundation or institution is a trusted foundation institution so that our infaq can be channeled appropriately to those in need. Infaq, in this case, is only used as a scapegoat by the perpetrators of corruption to make it appear that it is not corruption. Suppose the infaq is made to get something in return. In that case, the infaq is categorized as a bribe and can be processed further by the authorities and investigated further. Is this infaq considered to have fulfilled the elements of as in the article in the Anti-Corruption Law or not, and is it just pure infaq giving?

2. The Basis for Judges' Considerations in Passing Sentences Against Perpetrators of Corruption in Providing Infaq as a Means of Entering Higher Education

A judge is obliged to uphold impartial law and justice. In providing justice, the judge must examine the truth of the events. Then, he assesses the event and relates it to the applicable law. After that, the judge can only give his verdict on the event.²⁰ In carrying out their obligations, judges must manage their skills and thoroughness as professionals, good and trusted enforcers of justice. This is the most important prerequisite.²¹ The role of judges in deciding criminal cases that fulfill the community's sense of justice. In deciding a case, the judge has the freedom to follow one of the elements of the rule of law, which states that there is a free and impartial judiciary. Therefore, in addition to paying attention to the provisions written in the law, the judge also uses conscience, namely based on the judge's belief and sense of justice for the community.²²

Judges, when giving their verdict, have considerations. These considerations are regulated in Article 197, letter, and letter of the criminal procedure Code. Article 197 letter d reads that the considerations are compiled in summary regarding the facts and circumstances along with the evidence obtained from the trial in the trial, which is the basis for determining the Defendant's guilt. Meanwhile, article 197 letter reads the article of legislation that is the basis punishment or action and the legislation that is the legal basis the decision along with the aggravating and mitigating circumstances of the Defendant.²³ These considerations are seen from two categories. First, in terms of juridical considerations. Second, in terms of non-juridical considerations.

1. Juridical Considerations

Juridical considerations are considerations of judges based on juridical facts revealed in the trial and, by law, that have been determined as things that must be contained in the decision.

The juridical consideration, in this case, is that the Panel of Judges considers that the

¹⁹Explanation from Maroni as Professor of Criminal Law Section, Faculty of Law, University of Lampung

²⁰LH. Permana, Analisis Pertimbangan Hukum Hakim Dalam Penjatuhan Pidana Di Bawah Minimum Terhadap Pelaku Tindak Pidana Kesusilaan, *Jurnal Fakultas Hukum Universitas Lampung*. Lampung, (2016)

²¹Wira Paskah Withyanti, Politik Hukum Kekuasaan Kehakiman di Indonesia, *Jurnal Ilmu Sosial dan Pendidikan Vol. 4 No. 2*, (2020)

²²Hasanal Mulkan, Peranan Hakim dalam Persidangan Perkara Pidana Sebagai Pengubah dan Pembaharu Hukum Pidana, *Jurnal Hukum Samudra Keadilan Vol. 16 No. 2*, (2021)

²³Nurhafifah and Rahmiati, Pertimbangan Hakim Dalam Menjatuhkan Pidana Terkait Hal Yang Memberatkan dan Meringankan Putusan, *Kanun Jurnal Ilmu Hukum, No. 66, Thal. XVII*, Universitas Syiah Kuala, (2015), p. 4

Defendant has been proven legally and convincingly, according to the law, guilty of committing the crime of corruption and is considered to have violated Article 5 Paragraph letter b of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Eradication of Corruption in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code. The Defendant was proven to have given money in the amount of Rp250,000,000 (two hundred and fifty million rupiah) to Karomani as the Rector of the University of Lampung with the intention that Karomani could admit two of his nephews to the Faculty of Medicine of the University of Lampung.

2. Non-Juridical Considerations

The non-juridical values emphasize the benefits for the community. In deciding a case and considering whether or not a person should be sentenced, a judge is based on the judge's belief and not only based on existing evidence. Circumstances that can be classified as non-juridical considerations, namely the background of the Defendant's actions, the consequences of the Defendant's actions, the condition of the Defendant's itself the Defendant, the socio-economic situation of the Defendant, and religious factors of the Defendant.²⁴ Aria Veronica explained, order to impose punishment on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant.²⁵ The aggravating circumstances of the Defendant, namely:

- a) The actions of the Defendant do not support the Government's program to eradicate the crime of corruption;
- b) The Defendant's actions have harmed prospective students of the University of Lampung (UNILA) who have seriously gone through the selection process honestly. The mitigating circumstances of the Defendant, namely:
 - a) The Defendant has never been convicted;
 - b) The Defendant regretted his actions and promised not to re-offend;
 - c) The Defendant was polite during the trial;
 - d) The Defendant plays a role in social activities in the community through the foundation that the Defendant leads.

After the panel of judges considered the aggravating and mitigating circumstances and with due observance of article 5 paragraph (1) letter b of Law Number 31 of 1999 on the eradication of the Crime of corruption as amended by Law Number 20 of 2001 on the Eradication of the crime of Corruption in conjunction with article 55 Paragraph (1) 1st of the Criminal Code and Law Number 8 of 1981 on criminal Procedure and other relevant laws and regulations. Therefore, the panel of judges stated that the Defendant had been proven legally and convincingly guilty of Participating in the crime of corruption as in the second alternative charge of the Public prosecutor and sentenced the Defendant to imprisonment for 1 (one) year and four (four) months and a fine of Rp100,000,000.00 (one hundred million rupiahs), provided that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months. The judge's consideration in sentencing the Defendant Andi Desfiandi to 1 (one) year 4 (four) months imprisonment and a fine of Rp100,000,000.00 (one hundred million rupiahs) is related to the judge's duty in adjudicating the case submitted to him. The judge's decision is carried out through the process of proving whether or not the Defendant has committed the charged act, which is the most important part of criminal procedure. This is why criminal procedure material truth. Evidence is the central point of criminal procedure law. Evidence is a provision that contains outlines and guidelines on the ways that are justified by law to prove the guilt charged to the Defendant.

²⁴Rusli Muhammad, *Potret Lembaga Pengadilan Indonesia*, Yogyakarta: PT. Grafindo Persada, (2006), p. 142-143

²⁵The results of the interview with Aria Veronica as Judge of Tanjung Karang District Court Class 1A on November 09, 2023

Aria Veronica explained that the judge's decision must be accompanied by confidence obtained from witness testimony that is interrelated and follows each other and existing evidence. Before making a decision, the judge must pay attention to various aspects, both iuridical and non-juridical. The juridical aspect is based on assessing the results of the proof of the articles charged by the Public Prosecutor. At the same time, the non-juridical aspects are aggravating and mitigating circumstances. The judge in finding the act revealed at trial must reflect legal justice in the judicial process and consider various matters relating to the interests of the perpetrator, victim, family, and the general public. In this case, justice is fair treatment, not one-sided, impartial, and in favor of the right.²⁶

In every examination, whether is an examination with ordinary events, short events, or fast events, every piece of evidence is needed to help the judge make his decision. These means of evidence are necessary because the judge may not impose a sentence on someone unless with at least two valid means of evidence. The judge obtains the conviction that a criminal offense occurred, and the accused is the one who committed the criminal offense. Thus, evidence is crucial in finding the truth about who committed the act. The judge's decision results from the authority to adjudicate each case handled on the indictment and the facts revealed in trial. It is linked to applying a clear legal basis, including the severity of the application of imprisonment or deprivation of liberty.

Following the description above, the author analyzes the basis of the judge's consideration in imposing a sentence on Andi Desfiandi as a defendant in a corruption case of giving infaq as a means of entering university with a prison sentence of 1 (one) year four (four) months and a fine of Rp100,000,000.00 (one hundred million rupiahs) in Decision Number:29/Pid.Sus-TPK/2022/PN TJK based on juridical and non-juridical considerations, namely:

1. Juridical considerations, namely based on the actions of the Defendant, who was legally and convincingly proven to have violated Article 5(1)(b) of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Eradication of Corruption in conjunction with Article 55 (1) 1st of the criminal code. Juridically, the judge also considered the provisions of Article 183 of the Criminal Procedure Code regarding valid evidence so that the judge had confidence that the defendant was proven to have committed the crime charged by the Public Prosecutor. The valid evidence includes witness testimony, expert testimony, letters, instructions, and testimony of the Defendant.
2. Non-juridical considerations, namely the judge considered that the punishment was not only intended to have a deterrent effect on the perpetrator but, more importantly, as an effort to punish the Defendant so that he would become a better person after serving the period of punishment. The judge in this case considers that the punishment against the Defendant Andi Desfiandi as the Defendant in the case of corruption in the provision of infaq as a means of entering university with an imprisonment of 1 (one) year 4 (four) months and a fine of Rp100,000,000.00 (one hundred million rupiah) aims to foster the Defendant to realize the mistakes he has made and not to commit similar crimes or other crimes in the future. The judge also considered the aggravating and mitigating circumstances for the Defendant. In addition, the judge also considers the interests and protection of society in general from various criminal acts that can harm society and the state. Regarding criminal responsibility, the author analyzes that the responsibility is following the theory of individual liability, namely criminal responsibility imposed on individuals who have committed a criminal act in this case is the Defendant himself. The punishments imposed following the crime committed by Defendant as a consequence of his actions. Individual

²⁶The results of the interview with Aria Veronica as Judge of Tanjungkarang District Court Class I A on November 09, 2023

responsibility does not recognize the transfer of responsibility to other individuals due to the imposition of sanctions following the capacity of the perpetrator in the the criminal act Individuals who can be held accountable for criminal acts included those who planned, instigated, ordered, committed, or aided and who contributed to the planning, preparation, or execution of a criminal act.

C. Conclusion

Based on the results of the research and discussion described above, the author can draw several conclusions, namely as follows:

1. The legal basis that infaq falls under the bribery category is not officially regulated in any legislation. Infaq itself is a very noble act in the view of Islamic law. However, what happened here was that the Defendant made infaq intending to obtain an achievement, namely infaq to the Rector of the University of Lampung, to enter his nephew into the Faculty of Medicine, University of Lampung, through the Independent Selection Pathway. Thus, in this case, the legal basis that infaq is intended in the category of bribery refers to the Corruption Law with the provision that if all the elements have been fulfilled, then it can be ascertained that infaq is only a refinement of meaning to launch the actions of irresponsible individuals.
2. The basis of the judge's consideration in imposing a sentence on the perpetrator of the Corruption Crime of giving infaq to enter university in Decision Number: 29/Pid.Sus-TPK/2022/Pn Tjk is based on juridical and nonjuridical aspects. The juridical aspect is based on assessing the results of the proof of the articles charged by the Public Prosecutor. In this case, the Defendant has been proven to have violated and fulfilled the elements in Article 5 (1)(b) of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Eradication of Corruption in conjunction with Article 55 1st Criminal Code. At the same time, the non-juridical aspects aggravate and mitigate the Defendant. Therefore, the Panel of Judges sentenced the Defendant to imprisonment for 1 year and 4 (four) months and a fine of Rp100,000,000.00 (one hundred million rupiahs) provided that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.

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