

The Concept of Structural Legal Aid in Handling and Corruption Eradication

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Abstract

Corruption is a structural crime that is very dangerous for social life. Because this crime will destroy the social order system in various sectors. Starting from education, economics, law and others. Therefore, it is necessary to immediately resolve this problem using the right concept. Namely using the concept of Structural Legal Assistance which prioritizes community participation (non-litigation) to be fully involved in corruption eradication activities. Another thing that can be said is that this concept also does not rule out the concept (litigation) of taking action against corruption crimes. Apart from that, the use of the concept of Structural Legal Assistance in eradicating corruption often faces the risk of obstacles or obstacles in its implementation. So this is where the existence of maqashid sharia as a knife edge for analyzing the concept of structural legal assistance in eradicating corruption. This research uses a type of juridical-empirical research with a legislative approach, a case approach and a conceptual approach. Furthermore, to enrich the content of this research the author conducted interviews and observations at the YLBHI institution. Then supported by legal materials, journals and data documents related to this research. The results of this research are that maqashid sharia views the concept of structural legal assistance as highly recommended as a concept for eradicating corruption. Because this concept prioritizes recovery and development of the impact of corruption crimes.

Keywords: *Maqashid Sharia; Structural Legal Assistance; Handling Corruption.*

Abstrak

Korupsi merupakan kejahatan struktural yang sangat berbahaya bagi kehidupan masyarakat sosial. Sebab kejahatan tersebut akan menghancurkan sistem tatanan masyarakat di berbagai sektor. Mulai dari pendidikan, ekonomi, hukum dan lainnya. Oleh karena itu, perlu kiranya permasalahan ini untuk segera diselesaikan dengan menggunakan konsep yang tepat. Yaitu menggunakan konsep Bantuan Hukum Struktural yang mengedepankan peran serta masyarakat (non-litigasi) untuk terlibat penuh dalam kegiatan pemberantasan korupsi. Hal lain dapat dikatakan konsep ini juga tidak menyampingkan konsep (litigasi) untuk melakukan penindakan kejahatan korupsi. Selain itu, penggunaan konsep Bantuan Hukum Struktural dalam memberantas korupsi sering mengalami resiko hambatan ataupun rintangan dalam pelaksanaannya. Maka disinilah keberadaan maqashid syariah sebagai mata pisau untuk menganalisis konsep bantuan hukum struktural dalam

memberantas korupsi. Penelitian ini menggunakan jenis penelitian yuridis-empiris dengan pendekatan Perundang-undangan, pendekatan kasus dan pendekatan konseptual. Selanjutnya, untuk memperkaya isi dari penelitian ini penulis melakukan wawancara dan observasi ke lembaga YLBHI. Kemudian didukung dengan bahan hukum, jurnal dan dokumen data yang berkaitan dengan penelitian ini. Hasil penelitian ini adalah maqashid syariah memandang Konsep Bantuan Hukum Struktural sangat direkomendasi sebagai konsep untuk memberantas korupsi. Sebab konsep ini mengedepankan pemulihan dan pengembangan terhadap dampak dari kejahatan yang dikorupsi.

Kata kunci: *Penerapan, Sistem Pembuktian Terbalik, Indonesia, Satu Kaijian Perbandingan.*

Istinbath: Jurnal Hukum

Website : <http://e-journal.metrouniv.ac.id/index.php/istinbath/index>

Received: 2024-08-15 | Revised: 2024-09-25 | Accepted: 2024-11-10 | Published: 2024-11-22.



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Introduction

The crime of corruption has been agreed to be called an extraordinary crime (*extraordinary crime*). This is because this crime is organised in a systematic, well-patterned way so that the perpetrators of corruption can smoothly carry out their rotten actions. Furthermore, the crime of corruption will damage the system of society that causes social inequality, such as poverty, obstruction of access to education, obstruction of infrastructure and economic development and so on.

This is in line with the views of the former Indonesian Supreme Court Justice for the period 02 September 2000 to 01 June 2018, Artidjo Alkostar, who stated that the widespread and systematic corruption is also a violation of the social and economic rights of the community. Therefore, corruption is no longer said to be an ordinary crime but must be leveled up to an extraordinary crime.¹

Therefore, it is necessary that the crime of corruption must be resolved in a way that is complex, well organised, concrete and has a widespread impact. Moreover, the

¹ “THE ERADICATION OF CORRUPTION AND THE ENFORCEMENT OF THE LAW IN INDONESIA AS SEEN THROUGH THE LENS OF LEGAL PHILOSOPHY,” diakses 22 November 2024,

https://www.researchgate.net/publication/358328534_THE_ERADICATION_OF_CORRUPTION_AND_THE_ENFORCEMENT_OF_THE_LAW_IN_INDONESIA_AS_SEEN_THROUGH_THE_LENS_OF_LEGAL_PHILOSOPHY.

crime of corruption is not only about state finances that are scorched or lost by corruptors. Rather, speaking of corruption must use the perspective of restoring the object that has been corrupted. For example, when there is a case of corruption of school buildings, the perpetrators of corruption must be punished to return the state money that has been corrupted, pay compensation and restore the building so that students can benefit perfectly.

When this is corrupted, there are human rights in the education sector that are not fulfilled, students cannot develop the quality of human resources, teachers cannot carry out teaching and learning activities to the fullest. This means that corruption is not only about the object that is corrupted, but when corruption occurs, it involves all parties, both directly and indirectly.

Therefore, the crime of corruption must be eradicated and scorched. Of course, this statement will be realised when using the correct concept or method. That is, using the concept of Structural Legal Aid. This concept, on the face of it, means the provision of legal aid to people who need legal assistance. If understood simply, this is indeed the concept, but the concept of Structural Legal Aid is far more than just legal assistance. Rather, this concept involves the community to actively carry out social action activities, legal assistance to achieve unfulfilled rights.

Furthermore, the concept of Structural Legal Aid encourages justice to be provided evenly without favouritism. Then, when a legal event occurs, the community is required to be active in making breakthroughs so that the law enforcement process can run based on the established corridors. In relation to corruption crimes, Structural Legal Aid involves the community to actively carry out anti-corruption social movements in order to take action against corruption cases through investigative reports, anti-corruption counselling or assistance on issues surrounding corruption crimes.

Moreover, there is an order to eradicate the crime of corruption, which is an abominable act. This is done not only based on the regulations that have been passed through the Corruption Act. However, the order is also regulated in religious teachings. One of them is the religion of Islam. As Allah SWT has ordered to call to goodness and prevent evil, one of which is the crime of corruption. The command is stated by Allah Swt in Q.S Ali Imran verse 104:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكْمِ لَتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ
النَّاسِ بِإِلْمِهِمْ وَأَنْتُمْ تَعْلَمُونَ

Meaning: And do not eat of the wealth between you by way of falsehood, and (do not) bribe with it the judges, that you may eat of the wealth of others by way of sin, when you know.

The verse regarding the prohibition against corruption is limited to the text only. So humans who have been given by Allah Swt reason and mind to try to find concepts to solve this problem. Of course, the concept used is Structural Legal Aid. The true concept

is applied for the good (*mashlahat*) of many people for the sake of justice, expediency and legal certainty.²

The crime of corruption is seen as not just an ordinary case. In fact, this case has a great risk impact both in the context of the perpetrator himself, the victim, and even those who advocate / assist in this case. Therefore, it is not uncommon for corruption crimes to be handled with the concept of Structural Legal Aid, which often results in great risks and challenges, even the emergence of (*Mafsadat*). However, without using the concept of Structural Legal Aid, corruption crimes will continue to occur.

Therefore, in its application, it is necessary to carefully analyse the use of Structural Legal Aid from the perspective of *maqashid sharia*. This is used to measure and weigh this concept can be used at times with conditions based on the analysis that has been done in order to realise the common good and avoid various possible harms. Furthermore, the purpose is only for efforts to eradicate the crime of corruption.

Method

The method used in this research is *juridical-empirical* type.³ Clearly, this research is based on data from the field, namely interviews and observations. Then, the object of research that has been observed will be associated with norms, theories and regulations relating to the theme of this research. Furthermore, this research also uses the *statute approach*, *case approach*, and *conceptual approach* as the foundation of the research in order to be sturdy.⁴ The types and sources of data obtained come from sources as primary data and data information that comes from laws and regulations, law books, law journals, legal dissertations and others relevant to the research topic as secondary data. Based on the existing methods, researchers use data analysis techniques with qualitative data analysis patterns and describe them in detail and in depth to get maximum research results.

Result and Discussion

The Birth of the Structural Legal Aid Concept

² Wael. B. Hallaq, *Sejarah Teori Islam*, (Jakarta : Rajagrafindo Persada, 2001), h. 248

³ Eka N.A.M Sihombing dan Cynthia Hadita, *Penelitian Hukum*, (Malang : Setara Press, 2022), h. 43.

⁴ Peter Mahmud Marzukui, *Penelitian Hukum*, (Jakarta : Kencana, 2021), h. 177.

Back in 1976, Adnan Buyung Nasution was visited in the Netherlands by Novib, a Dutch donor organisation that marks LBH. At that time, he was asked to give a speech explaining LBH and its programmes to the Dutch community. Also present was Prof Dr Paul Moedikdo Muliono, a criminologist and sociologist and founder of the Institute of Criminology at the University of Indonesia who lives and is a citizen of the Netherlands. He was there to listen to Adnan Buyung Nasution's ideas through his speech. As it turned out, they were both old friends and Adnan Buyung Nasution mentioned that Prof Moedikdo was an academic expert who understood structural inequality.⁵

Moedikdo explained that the process of resolving legal cases must be seen from various aspects ranging from social, economic, cultural and so on or called structural case handling.

*"Buyung, I noticed earlier your story about the limping social, economic and cultural conditions in Indonesia and the legal struggle should be directed there to lift the dignity of the oppressed. That's what Structural Legal Aid is all about. You were already doing it when theories about structuralism were just being thought up. I don't know how to do it myself, but you did."*⁶

Therefore, Adnan Buyung Nasution, a former prosecutor who chose the advocate profession, established LBH-YLBHI as a forum to devote himself to the legal field and initiated the concept of BHS in handling legal cases.

*"Structural legal aid was born as a consequence of our understanding of the law. The legal realities that we now face are the product of social processes that occur on top of certain patterns of relationships between the existing infra structures of society. ..., then, the law is actually an ever-changing superstructure that is the result of the interaction between the infra-structures of society. Therefore, as long as the pattern of relations between the infra-structures shows symptoms of unequal 70 then such a thing will further complicate the realisation of a just law".*⁷

Adnan Buyung Nasution, conveyed his ideas through a piece of paper in which he outlined the purpose of BHS as a method of handling legal cases. In particular, it is intended for the poor, marginalised, and legally illiterate whose rights in the political and legal fields are not maximally fulfilled.⁸

⁵ Hidayat Hidayat, Dhiauddin Tanjung, dan Mhd Yadi Harahap, "The Concept of Structural Legal Aid in Combating Corruption from the Maqashid Shariah Perspective," *AT-TURAS: Jurnal Studi Keislaman* 11, no. 1 (6 April 2024): 25–37, <https://doi.org/10.33650/at-turas.v11i1.7616>.

⁶ Abdul Rahman Saleh dalam Santosa, Mas Achmad dan Henny Supolo, *Verboden Voor Honden En Inlanders dan Lahirnya LBH Jakarta*, (Jakarta : YLBHI, 2012), h. XIV.

⁷ Adnan Buyung Nasution, *Bantuan Hukum di Indonesia*, (Jakarta : LP3ES, 1982), h. 126.

⁸ Arif Maulana, Wakil Ketua Bidang Advokasi & Jaringan Yayasan Lembaga Bantuan Hukum Indonesia, wawancara melalui telekomunikasi, tanggal 14 September 2023.

Structural Legal Aid in Corruption Eradication

From the beginning, the concept of Structural Legal Aid (hereinafter referred to as BHS) was created and intended to deal with legal cases or legal issues. Then at the practical level, the use of BHS is strongly recommended not to be too rigid. Because BHS has a dynamic nature. The vision and mission of the BHS is guided by the main values of the struggle which sees a condition of the legal system that stands upright when it is in an unequal, unfair situation and sees the condition of the community's socio-legal problems as a common problem.⁹

The purpose of applying the BHS concept is to conscientise or raise the critical awareness of citizens to move to change the unfair legal structure to a more just direction consistently. Not only that, when opening the critical awareness of citizens, a new power or *community* power will emerge.¹⁰ It aims to confront power that tends to have unjust or oppressive structures.

Especially the problem of corruption that often occurs in the power sector so that it becomes one of the common enemies and for BHS users certainly does not agree with corruptive behaviour. Both corruption in the judicial sector, sector, education, health, government administration, banking, infrastructure development and so on. Not infrequently, the use of BHS is intended to save state money for the survival of a brighter society in the future. The general public, which has different social stratifications, certainly does not like it when their rights are not fulfilled due to corruption. Moreover, when the public picks up their rights through the judiciary, they must be willing to deal with elements of the "judicial mafia" who easily corrupt this noble institution. It is not uncommon for people to have to deal with people who have large capital, power and easily get access to justice only with money.

Implementation of the Use of Structural Legal Aid in Corruption Eradication

Translating Structural Legal Aid in practice is not just limited to providing legal aid services, conducting court hearings. Rather, it agendas programmes to create a new power, a new way, a new order that is better, more just. In the context of eradicating

⁹ Ketut Sukawati Lanang Putra Perbawa dan Maheswara Perbawa Sukawati, "Legal Assistance For The Poor," *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 3, no. 1 (17 Maret 2020): 146–62, <https://doi.org/10.37329/ganaya.v3i1.430>.

¹⁰ Zubedi, *Pengembangan Masyarakat Wacana & Praktik*, (Jakarta : Kencana Prenada Media Group, 2013), h. 83.

corruption, BHS certainly plays a role in strengthening the issue of eradicating corruption. If we use non-structural legal aid, we will not be able to do this.

Like the role of BHS when establishing the KPK institution and strengthening and protecting the KPK institution, especially seeing from the historical story of the initial establishment of the KPK until now there are efforts to weaken this anti-rasuah institution. It can be seen from several cases reported by the media, one of which was the criminalisation of Novel Baswedan, the unprocedural dismissal of 57 KPK employees, and the revision of the KPK Law as a form of weakening the KPK through regulation.¹¹

So seeing the problem of this issue, BHS was used to solve it. It requires the involvement of academics, civil society, LBH-YLBHI, public figures, religious leaders, students, and various paths are taken both in litigation and non-litigation. This was done to keep the KPK from being destroyed. So the use of BHS is actually dynamic, not only in the context of a case, but also advocating for outstanding issues, especially corruption issues.

In addition to its role in establishing the Institute, BHS also played a role in giving birth to the corruption law and the KPK, one of which came from BHS thinkers. Moreover, in each of these articles there are BHS souls inserted. Moreover, seeing that corruption continues to spread, it requires a social movement of the community, which is a shared responsibility to eradicate corruption. Then, BHS functions to encourage citizens to be critical, so in the trident of eradicating corruption, it is called education. This means that through BHS the community will be empowered as much as possible both in terms of knowledge and practice in combating corruption. Because the community in particular has an interest in the problem of corruption, as the impact of corruption is that many people's rights are not fulfilled. Thus, community education and empowerment is needed.

The use of the BHS concept is very comprehensive, especially when used when handling legal cases related to corruption. Issues of injustice, issues of law enforcement and human rights are acts of injustice against society and violations of human rights. Therefore, one of the prioritised patterns to solve this problem can certainly use the approach of the concept of Structural Legal Aid. However, an important note when using BHS is that, based on its typology, it is more inclined to legal aid in terms of assisting

¹¹ Arif Maulana, Wakil Ketua Bidang Advokasi & Jaringan Yayasan Lembaga Bantuan Hukum Indonesia, wawancara melalui telekomunikasi, tanggal 14 September 2023.

victims rather than perpetrators. Therefore, the use of BHS must prioritise the interests of victims (the general public) who have been harmed by acts of corruption.¹²

Furthermore, the government must ensure a just legal order for victims in terms of providing their rights or recovering the consequences of corruption. For example, if there is an act of corruption of social assistance, of course the community is a victim. As a result of this act, the community does not get their rights in the form of social assistance, nor can the community directly recover from someone's corruption. This means that the community does not benefit from the purpose of the law at all. This should be encouraged, so that remedies for corruption offences can be applied.

It should be mentioned that, in addition to the importance of using BHS in handling cases. Then to get happiness from the results of the use of BHS itself, it is not uncommon to often get risks. Both the risks experienced by the BHS users themselves, the community, or others. Because this has become a consequence of the choice of work method or work ideology. The implementation of BHS is not easy. Firstly, the aim is to create and encourage changes in an unjust order to become just. Secondly, it encourages critical perceptions of change, which means education and community empowerment. Finally, it encourages social movements as a tangible manifestation of social change. So these three things, the BHS concept requires a lot of resources and time. Moreover, when solving cases using the BHS concept, it definitely takes a long time.¹³

Then another risk is that there may be risks that have an adverse impact, this happens as part of the risk of struggle. Because what is faced is parties who have neatly arranged power relations. Of course, it is not uncommon to face challenges such as threats, terror, criminalisation, slander, and it must be faced. Therefore, the use of BHS must prepare regeneration as a successor to the BHS movement itself. Because BHS aims to change social, economic, cultural and political conditions. Then, to achieve the success of the BHS concept in practice, a joint movement of various parties who are pro-change, strengthening ideology and argumentation, media movement is needed.

¹² Kemilau Mutik dkk., "Legal Assistance for Corruption Crimes in Procurement of Goods in Government Agencies," *Revista de Gestão Social e Ambiental* 18, no. 9 (21 Juni 2024): e06557, <https://doi.org/10.24857/rgsa.v18n9-150>.

¹³ admin, "LEGAL AID IN THE CONFLICT AREA Lesson Learned on Co Nflict and the Concept of Structural Legal Aid," *LBH Jakarta* (blog), 19 Juli 2024, <https://bantuanhukum.or.id/legal-aid-in-the-conflict-area-lesson-learned-on-co-nflict-and-the-concept-of-structural-legal-aid/>.

A *maqashid sharia* view of the concept of Structural Legal Aid in Combating Corruption

The meaning of *maqashid sharia* is actually the goal, target or final result in the form of the ultimate welfare by the enactment of law to humans. Another definition of *maqashid sharia* is the ultimate goal and secret even the values or norms and meanings of the establishment of a law.¹⁴ Or further interpreted as the purpose of sharia. In relation to the concept of Structural Legal Aid to eradicate corruption, this concept is a means of struggle to prevent the evil of corruption. So that indirectly the concept of Structural Legal Aid was born from the command of Allah SWT.

Then the use of Structural Legal Aid in handling corruption crimes can be said to be beneficial if the indicators are fulfilled, namely for the public interest, have intersections with violations of law and human rights, can restore the original state. In addition, it is not uncommon for the use of Structural Legal Aid in handling corruption offences to be said to cause harm or mafsadat, namely with indicators such as getting harm to oneself and many people, there is often friction or intersection with the process of handling cases / issues so as not to get certainty over benefits.¹⁵

In essence, the mechanism of eradicating corruption through Structural Legal Aid is an activity as commanded by Allah Swt and the Messenger of Allah Saw related to preventing evil. Corruption is clearly an evil act and harms many people. This means that the command of Allah Swt contains *mashlahat*. Therefore, Structural Legal Aid is the result of *ijtihad* in the modern era as a form of the main way in handling corruption cases, but if the concept of Structural Legal Aid is contrary to *maqashid sharia*, which does not bring *mashlahat*, it is obligatory to abandon the concept. This was said by Al-Syaithibi as quoted by Al Yasa' Abu Bakar that the consideration of *mashlahat* in a topic must be considered through reasoning.¹⁶

¹⁴ Galuh Nashrullah Kartika Mayangsari R dan Hasni Noor Hasni Noor, "KONSEP MAQASHID AL-SYARIAH DALAM MENENTUKAN HUKUM ISLAM (Perspektif Al-Syatibi dan Jasser Auda)," *Al IQTHISADIAH* 1, no. 1 (2014), <https://idr.uin-antasari.ac.id/17439/>.

¹⁵ Hidayat Hidayat, "Efforts to Eradicate Corruption through the Concept of Structural Legal Aid," *Jurnal Penegakan Hukum Dan Keadilan* 5, no. 2 (27 September 2024): 107–16, <https://doi.org/10.18196/jphk.v5i2.20916>.

¹⁶ Al Yasa' Abu Bakar, *Metode Istislahiah Pemanfaatan Ilmu Pengetahuan dalam Ushul Fiqh*, (Jakarta : Prenadamedia Group, 2016), h. 65-66.

Maqashid sharia does not only talk about *mashlahat* and *mudharat* or maintaining *ushul khamsah*, namely maintaining life, property, offspring, reason, property, environment, order. Rather, it must be developed and fulfilled. Especially when the concept of Structural Legal Aid is used when handling corruption cases.¹⁷

As it is based on the reform of Jasser Auda's thinking.¹⁸ The reform he offers is *maqasid sharia* in a contemporary perspective, namely *maqasid sharia* which used to be only nuanced *protection* (Keeping) and *preservation* (Maintenance / Preservation), this time he encourages that *maqasid sharia* must change to *development* (Development) and glorification of *human rights* (Human Rights). Jasser Auda even suggests that the development of Human Resources (HR) should be one of the main themes for today's public welfare.¹⁹

Or for example, corruption in the education funding sector, then the maintenance and development of the mind is disrupted. The corrupted budget should have been utilised for the development of science but was hampered due to corruption. In addition, it has an impact on the maintenance and development of offspring. The education fund should have been used for the purpose of giving the child a bright future, but in the end it was destroyed because of corruption. As a result of corruption, the quality improvement of teachers is not fulfilled, and the training should be replaced by counselling. So the issue of corruption is not just a matter of guarding wealth but is much broader.²⁰

Furthermore, the consideration of risk when using the concept of Structural Legal Aid should be in the interests of the public good. However, based on existing religious guidance it is not justified even though it is for the sake of *mashlah*.²¹ Or for

¹⁷ Khalil Al Farahidy, "KONSEP MAQĀSHID SYARIA THE CONCEPT OF MAQĀSHID SYARIAH AS-SYĀṬIBY. in The Book Al Muwāfaqāth As-Syāṭiby," *Dusturiyah: Jurnal Hukum Islam, Perundang-undangan dan Pranata Sosial* 12, no. 2 (8 Desember 2022): 111–26, <https://doi.org/10.22373/dusturiyah.v12i2.13028>.

¹⁸ Ah. Soni Irawan, "MaqāShid al-Sharīah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporean," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (26 April 2022): 39–55, <https://doi.org/10.51675/jaksya.v3i1.192>.

¹⁹ Hasan Matsum, Ketua MUI Kota Medan, Wawancara di Medan, Kamis, 13 September 2023.

²⁰ Abdullah Abdullah dan Otom Mustomi, "LAW ENFORCEMENT AGAINST CORRUPTION ERADICATION COMMISSION BASED ON LAW NO 19/2019," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 2, no. 5 (23 Oktober 2023): 495–502, <https://doi.org/10.55681/seikat.v2i5.957>.

²¹ "TEORI MAQASHID SYARI'AH PERSPEKTIF IBNU ASHUR," diakses 22 November 2024, https://www.researchgate.anet/publication/284641955_TEORI_MAQASHID_SYARI'AH_PERSPEKTIF_IBNU_ASHUR.

the sake of obtaining justice, certainty and legal benefits for the community towards law enforcement of corruption through the concept of Structural Legal Aid. In essence, the measure is public interest. If the interest is not clear, then the *mashlahat* is also not clear and the *mudharat* is also not clear. If the *mashlahat* is clear for the public interest, then it is certain that the *mudharat* is also clear.

Conclusions

The use of the concept of Structural Legal Aid in combating corruption can actually be used. This is because this concept is more inclined to involve the community to play an active role in anti-corruption activities. As the concept was originally established to fight injustice that was centralised to one point of power. So it is not uncommon for people to become victims of an unfair legal system. Therefore, this concept continues to undergo changes that can be dynamically used in various sectors of legal settlement. One of them is the crime of corruption. When corruption crimes occur, the community is at the forefront to ensure that the legal process runs according to the rules, then the fulfilment and restoration of community rights must also be provided. However, the use of this concept certainly has serious challenges, various risks will occur. This is where the role of *maqashid sharia* as a measuring tool to consider the steps to be taken when using the concept of Structural Legal Aid in combating corruption.

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