ARTIKEL

FROM CONFISCATION TO PREVENTION: ASSET CONFISCATION AND THE IMPOVERISHMENT OF CORRUPTORS IN ISLAMIC JURISPRUDENCE

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PROGRAM STUDI HUKUM PIDANA ISLAM
FAKULTAS SYARIAH DAN HUKUM ISLAM
INSTITUT AGAMA ISLAM NEGERI
PAREPARE

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Artikel sebagai salah satu syarat untuk memperoleh gelar Sarjana Hukum (S.H)
Pada Program Studi Hukum Pidana Islam Fakultas Syariah dan Ilmu Hukum Islam
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KATA PENGANTAR

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From Confiscation to Prevention: Asset Confiscation and the Impoverishment of Corruptors in Islamic Jurisprudence

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Abstract: This research is motivated by the weak deterrent effect on corruption perpetrators in Indonesia, where imprisonment, fines, and compensation have not been able to eliminate economic benefits or recover state losses. The formulation of this research problem involves two key aspects: first, how Islamic jurisprudence views the policy of impoverishing corruptors through asset confiscation; second, how the concept and mechanism of impoverishing corruptors are applied in the Indonesian positive legal system and Islamic jurisprudence. This study employs a normative juridical approach, utilizing statutory guidelines, conceptual designs, case studies, and a comparative analysis of asset forfeiture models in Malaysia, Singapore, the UAE, and Saudi Arabia. Research findings suggest that depriving corruptors of their assets is effective in stripping them of their economic benefits, recovering state losses, and enhancing the deterrent effect. From a fiqh jinayah perspective, this policy is legitimate as a form of *ta'zīr* punishment that is relevant to the *maqāṣid al-sharī'ah*, especially in safeguarding assets (*ḥifẓ al-māl*) and preventing public harm. This study emphasizes the need to strengthen asset confiscation through the ratification of the Asset Confiscation Bill and the implementation of proportional and accountable non-conviction-based asset forfeiture. The novelty of this study lies in the comprehensive integration of positive law, deterrence theory, and the principles of *fiqh al-jinayah* to establish moral, juridical, and Sharia legitimacy for the strategy of impoverishing corruptors.

Keywords: Impoverishment of Corruptors, Asset Forfeiture, Fiqh al-Jinayah

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Abstrak: *Penelitian ini dilatarbelakangi oleh lemahnya efek jera terhadap pelaku korupsi di Indonesia, di mana pidana penjara, denda, dan uang pengganti belum mampu menghilangkan keuntungan ekonomi maupun memulihkan kerugian negara. Rumusan masalah penelitian ini mencakup: pertama, bagaimana pandangan fiqh jinayah terhadap kebijakan pemiskinan koruptor melalui perampasan aset; kedua, bagaimana konsep serta mekanisme pemiskinan koruptor diterapkan dalam sistem hukum positif Indonesia dan fiqh Jinayah. Kajian ini menerapkan pendekatan yuridis normatif melalui pedoman Perundang-Undangan, rancangan konseptual, studi kasus, serta perbandingan model asset forfeiture di Malaysia, Singapura, UEA, dan Arab Saudi. Temuan penelitian menunjukkan bahwa pemiskinan koruptor melalui perampasan aset efektif untuk mencabut keuntungan ekonomi pelaku, memulihkan kerugian negara, dan memperkuat deterrent effect. Dalam perspektif fiqh jinayah, kebijakan ini sah sebagai bentuk hukuman ta'zīr yang relevan dengan maqāṣid al-sharī'ah terutama pengamanan terhadap aset (ḥifẓ al-māl) serta pencegahan kemudaratan publik. Kajian ini menegaskan bahwa pengambilalihan aset perlu diperkuat melalui pengesahan RUU Perampasan Aset dan penerapan non-convictionbased asset forfeiture yang proporsional dan akuntabel. Kebaruan kajian ini berada pada integrasi menyeluruh dalam ranah hukum positif, teori deterrence, dan prinsip fiqh jinayah untuk membangun legitimasi moral, yuridis, dan syar'i bagi strategi pemiskinan koruptor.*

Kata Kunci: *Pemiskinan Koruptor, Perampasan Aset, Fiqh al-Jinayah*

A. Introduction

The Corruption Eradication Commission (KPK) noted that during the 2020–2024 period, the value of assets successfully recovered only reached around Rp2.5 trillion. Although this figure shows progress in efforts to recover state losses, the amount is still far from the total estimated state losses, which in 2024 alone reached around Rp45.7 trillion. This situation highlights a significant gap between the amount of assets recovered from corruption and the funds that can actually be returned to the state treasury. [1]

The judicial system in Indonesia handles cases of abuse of power through the judicial process for corruption cases. The same applies in the context of asset seizure, which aims to recover assets resulting from corruption cases while improving the country's economy. Normatively, Indonesia has legal regulations related to the seizure of assets of corruption perpetrators, as stipulated in the provisions of Law Number 20 of 2001, which is an amendment to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as well as Law No. 46 of 2009 concerning the Corruption Court. Provisions regarding the seizure of assets that do not go through a direct sentencing procedure are contained in Article 38, paragraph (5), and Law Number 20 of 2001.

[1]Andi, "2020-2024, KPK Kembalikan Rp 2,5 Triliun Kerugian Negara," Amnesia.id, 2025, https://amnesia.id/2020-2024-kpk-kembalikan-rp-25-triliun-kerugian-negara/;Bambang Sugeng Rukmono, Pujiyono Suwadi, and Muhammad Saiful Islam, "The Effectiveness of Recovering Losses on State Assets Policy in Dismissing Handling of Corruption," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024); Anne Peters, "Corruption as a Violation of International Human Rights," *European Journal of International Law*, 2018.

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Although the Corruption Crimes Law (UU Tipikor) (6) of Law Number 20 of 2001, as well as Article 38B paragraph (2) of Law Number 31 of 1999, in conjunction with provisions regarding asset forfeiture that do not involve criminal proceedings, in practice, there are still legal loopholes that have not been accommodated by these regulations.[2]

The importance of this issue lies in the urgent need to find strategies to combat corruption that go beyond simply imposing penalties, but also restore state losses and have a deterrent effect. One idea that is beginning to emerge is the impoverishment of corruptors through asset forfeiture. This concept aligns with the drafting of legislation on asset forfeiture, as outlined in several key policies that strengthen efforts to eradicate corruption. First, the bill grants the APH the authority to seize assets related to criminality, particularly in cases that cannot be processed through the standard criminal sanctions mechanism, such as when the alleged perpetrator has died, escaped, is suffering from a long-term illness, or is otherwise unlocatable. Second, law enforcement officials also have the authority to seize a person's assets if the value of their wealth is not commensurate with their source of income, known as unexplained wealth. Third, the asset forfeiture process is carried out through a special mechanism that is faster and simpler, utilizing a reverse burden of proof system with proof standards similar to those in civil procedures. Fourth, this bill grants the Attorney General additional authority to manage confiscated assets.[3]

Recently, there has been discussion about penalizing corruptors as a form of social and economic sanction considered to have a deterrent effect. This idea began to develop rapidly from 2012 to 2022, gaining public attention through various high-profile cases, including those involving Gayus Tambunan, Joko Chandra, PT Timah, and Pertamina.[4]

The idea of impoverishing corruptors stems from several fundamental considerations. *First*, perpetrators of corruption appear undeterred, with the number of corruption cases showing no sign of decline from year to year. *Second*, the sanctions imposed, such as imprisonment, fines, and the obligation to pay compensation, are considered insufficient to deter future offenses. *Third*, the idea of impoverishing

[2]Umi Rozah and Nashriana Nashriana, "Analisa Kebijakan Kriminal Dan Filsafat Pemidanaan Non-Conviction Based Forfeiture of Stolen Assets Dalam Tindak Pidana Korupsi," *Jurnal Pembangunan Hukum Indonesia* 5, no. 3 (2023); Arizon Mega Jaya, "Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi (Implementation of Asset Deprivation of Criminal Act of Corruption)," *Cepalo*, 2022.

[3]Yaris Adhial Fajrin and Ach. Faisol Triwijaya, "Punishment Asset Forfeiture for Corruptor in Perspective of Indonesian Community Justice," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 13, no. 3 (2019); Rini Handayani, "Mekanisme Perampasan Aset Dalam Pemberantasan Korupsi: Studi Komparatif," *Jurnal Legislasi Indonesia*, 2023.

[4]Jenny Susmita Susilo, Elwi Danil, and Nani Mulyati, "Pemiskinan Koruptor Sebagai Alternatif Pidana Tambahan Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia Dikaitkan Dengan Rancangan Undang-Undangan Perampasan Aset," *Unes Law Review,2023*.

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corruptors has also been prompted by the prevalence of court rulings that impose excessively lenient sentences on perpetrators of corruption.[5]

Referring to the aforementioned role, this preliminary study focuses on two main issues. First, the view of Jinayah fiqh on the policy of impoverishing corruptors through the seizure of assets obtained from corruption cases. Second, the form and mechanism of impoverishing corruptors through asset seizure, as outlined in criminal law and *fiqh al-jinayah.*

The objective of this study is to identify the perspective of Jinayah fiqh on the policy of impoverishing corruptors through the seizure of assets obtained from corruption cases. It also examines the forms and processes of impoverishing corruptors by seizing their assets in accordance with criminal law and Islamic jurisprudence (*fiqh al-jinayah*).

From the perspective of Islamic criminal law, the seizure of assets obtained through corruption cases has the primary objective of protecting citizens' property rights and promoting the common good. Therefore, efforts to combat corruption must be accompanied by asset forfeiture as a legal mechanism aimed at covering state losses. Corruption is a form of jarīmah (crime) that can be punished with *ta'zīr*, because its impact is very detrimental to the state and all its citizens. Corruptors generally abuse their positions or authority to accumulate illicit assets, resulting in economic losses to the state and disrupting public welfare. Thus, confiscating these assets serves to return the unlawfully obtained wealth to the state or the parties who have suffered losses.[6]

In Islam, wealth should be obtained through proper and lawful means, so that all acts of fraud, manipulation, and abuse of power, including corruption, are strictly prohibited. Corruption is part of *jarīmah ta'zīr*, which is a crime that is not specifically mentioned in Islamic criminal law but causes great harm to society. In this case, Ulil Amri has the authority to impose appropriate penalties, including asset forfeiture, in order to uphold justice, prevent similar crimes, and recover state losses. Referring to the concept of *maqāṣid al-sharī'ah*, asset confiscation aims to protect assets, maintain order and security for citizens, and prevent widespread damage.[7]

By examining the impoverishment of corruptors through asset confiscation from the perspective of *fiqh al-jinayah*, this study makes a significant contribution to the expansion of the concept of Islamic punishment, which is adaptable to modern crimes such as corruption. Furthermore, this study can strengthen the philosophical, juridical, and moral basis for anti-corruption strategies in Indonesia, so that they are not merely based on formal law enforcement, but also rooted in the essential values of justice recognized in the Islamic legal tradition.

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[5]Musa Darwin Pane and Diah Pudjiastuti, "The Legal Aspect of New Normal and the Corruption Eradication in Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 2 (2020).

[6]Muhammad Rustamaji and Bambang Santoso, "The Study Of Mutual Legal Assistance Model And Asset Recovery In Corruption Affair," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019).

[7]Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, II (Beirut: Dar Al-Fikr, n.d.); Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law* (London: International Institute of Islamic Thought, 2022).

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Several previous studies have examined the seizure of assets derived from corruption from various perspectives, but have not yet explored this concept in depth in relation to the concept of impoverishing corruptors in *fiqh al-jinayah*. Hufron and Sultoni (2021) highlight the importance of strict regulations, while Lindasari (2024) emphasizes the effectiveness of asset confiscation. Ayuningsih and Nelson (2022) review the non-conviction-based asset forfeiture system as a legal innovation. Research by Teuku Syarafi and Mahdi Syahbandir (2024) reviews the practice of asset seizure in the national legal system, while Ghina A. Quraeny et al. (2023) and M. Dani Fariz Amrullah et al. (2023) affirm the legitimacy of asset seizure as a ta'zir sanction in Islam. This gap is what makes this research novel, namely linking the strategy of impoverishing corruptors through asset seizure with the principles of Islamic justice.

This study contributes to the integration of positive legal analysis on asset forfeiture and the impoverishment of corruptors with the fiqh jinayah approach in accordance with the concepts of *ta'zīr*, *maqāṣid al-sharī'ah*, and *siyāsah syar'iyyah*, and combines it with deterrence theory and comparative studies of asset forfeiture practices in Malaysia, Singapore, the UAE, and Saudi Arabia. This contribution enriches the literature by providing complementary normative, juridical, and *syar'i* foundations while filling gaps in previous research that only examined one aspect separately. Practically, this research provides an argumentative basis for strengthening the asset forfeiture system, including non-conviction-based asset forfeiture models, and offers moral and Islamic legal justification for policies aimed at impoverishing corruptors, thereby supporting the drafting of the Asset Forfeiture Bill and enhancing the effectiveness of combating corruption in Indonesia.

Deterrence Theory

The theory of deterrence, also known as the theory of prevention, is rooted in classical criminology that developed in the 18th century and was influenced by Cesare Beccaria and Jeremy Bentham. In his work entitled On Crimes and Punishments (1764), Beccaria asserted that punishment must be commensurate with the crime committed, imposed in a timely manner, and have legal certainty in order to function effectively in preventing crime.[8] Bentham expanded on this idea through his concept of utilitarianism, which argues that each individual acts based on a rational consideration of the potential pleasures and pains that may arise.[9]

The theory of deterrence is based on three key principles, namely the severity, certainty, and timeliness of punishment. These three elements play a crucial role in shaping individuals' perceptions of crime and its associated legal consequences. The

[8]Guntur Rahardi dan Intan Pramesti, "Implementasi Teori Deterrence Dalam Penegakan Hukum Pidana Korupsi Di Indonesia," *Jurnal Hukum Dan Pembangunan*, 2021.

[9]Lutfiah Santika dan Arif Nugraha, "Efektivitas Pencegahan Umum Dan Khusus (General & Specific Deterrence) Terhadap Tindak Pidana Di Indonesia," *Jurnal Kriminologi Indonesia*, 2022.

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rationale behind this theory is that a person will weigh the potential benefits of committing a crime against the possible risks of being caught and punished.[10]

A review of the literature shows that in the context of corruption, the element of severity is not solely related to the length of prison sentences, but is more effective when directed at economic sanctions, namely the removal of profits obtained from crime (crime does not pay). This is in line with modern research, which confirms that corruption is driven by economic incentives, so that punishments that target the perpetrator's assets are more rational and efficient. The concept of general deterrence also supports the argument that impoverishing corruptors can create a deterrent effect for the wider community. Meanwhile, specific deterrence is relevant to ensure that perpetrators do not have the economic capacity or motivation to repeat their crimes. Thus, modern literature confirms that asset forfeiture is an important instrument in strengthening the deterrent effect, which has been weak in the Indonesian legal system.[11]

Fiqh Jinayah

In criminal jurisprudence, the practice of depriving criminals of their economic rights is well known, especially in the category of *ta'zīr*, which is a punishment whose authority lies with ulil amri. Classical fiqh literature, such as *al-Ahkam al-Sultaniyyah* by al-Mawardi, *al-Tasyri' al-Jina'i al-Islami* by Abdul Qadir Audah, as well as the works of fuqaha mazhab (Shafi'i, Hanafi, Maliki, Hanbali), shows that confiscation of property is part of *ta'zir* punishment when the crime causes public harm (mafsadah 'ammah*).*[12]

a. The Shafi'i school of thought recognizes that rulers have broad *ta'zir* authority, including financial penalties, as long as the purpose is to protect the public interest. Imam al-Nawawi states that *ta'zir* can take the form of fines, confiscation, or restriction of rights when a crime threatens social stability.
b. The Hanafi school of thought tends to be more restrictive towards property-based penalties. The literature states that in matters of siyasah and protection of public property, authorities are permitted to impose sanctions in the form of asset confiscation if there is evidence of abuse of power or manipulation of state assets.
c. The Maliki school of thought is known to be the most progressive in allowing financial penalties. Ibn al-Arabi and al-Qarafi stated that fines and asset seizures are valid as long as they prevent harm (daf' al-mafsadah) and maintain social stability.
d. Hanbali, through the opinions of Ibn Taymiyyah and Ibn Qayyim, permits ta'zīr with property when the crime involves public harm. Ibn Qayyim even asserts that the

[10]Helmina Helmina et al., "Compromising and Repositioning the Meaning of Corruptors as Thieves in Applying the Provisions of Shara' into the Modern Era Context," *Al-'Adalah* 21, no. 1 (2024).

[11]Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law," *Samarah* 7, no. 1 (2023).

[12]'Abd al-Qadir 'Awdah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'I*, II (Kairo: Maktabah al-Taufiqiyah, 2013); Syariful Alam et al., "Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future," *Juris: Jurnal Ilmiah Syari'ah*, 2022.

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most appropriate form of punishment is one that deters and restores the losses suffered by society.[13]

This review shows the majority consensus among schools of thought that impoverishing corruptors through asset confiscation is a legitimate part of *ta'zīr* in cases of crimes with systemic impacts, such as corruption.

According to Abdul Qodir Audah, there are several other forms of punishment that can be categorized as *ta'zir*, including:

a. Dismissal of the perpetrator from office
b. Restrictions on certain rights of perpetrators, such as revocation of the right to hold public office or the right to receive a share of war spoils.
c. Confiscation of the perpetrator's property.[14]

Maqāṣid al-Sharīʿah is generally intended as the direction of achievement desired by Islamic law in organizing human life, and classical and contemporary scholars divide this function into several main categories, such as:

1. *Hifẓ al-Dīn*, corruption undermines the moral values, trustworthiness, and integrity that form the foundation of Islamic teachings. Asset forfeiture serves to uphold the value of honesty and restore public trust in state institutions.
2. *Hifẓ al-Nafs*, the impact of corruption can deprive the public of access to basic services such as health care, food, and infrastructure, ultimately endangering people's lives. The confiscation of perpetrators' assets is a form of prevention against widespread social damage.
3. *Hifẓ al-ʿAql*, corruption creates injustice and a loss of rationality in the management of the state. Impoverishing corruptors through the enforcement of justice sends a rational and educational message to the public not to be tempted to use their intellect to commit economic crimes.
4. *Hifẓ al-Nasl*, economic damage caused by corruption affects the future of generations, as it reduces the budget for education and public welfare. Recovering the assets of corruptors ensures that the rights of future generations are not deprived.
5. *Hifẓ al-Māl* is the most relevant maqasid. Corruption is the seizure of public assets, so the seizure of corruptors' assets is an action to restore the rights of the people, prevent the misuse of state assets, and eliminate incentives for crime.

Several contemporary studies also argue that Sharia aims to maintain public interest (*maslahah*) and prevent harm (*mafsadah*) in society. Thus, every policy or legal

[13]Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023); Muhammad Chairul Huda dan Budi Ispriyarso, "Contribution of Islamic Law in The Discretionary Scheme That Ha Implication for Corruption," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 2019.

[14]Dedy Sumardi, "Hudûd Dan HAM: Artikulasi Penggolongan Hudûd Abdullahi Ahmed An-Na'im," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 35, no. 2 (December 2, 2011).

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action taken should be in line with these objectives so as not to cause excessive harm or neglect justice.[15]

3. *Shari'ah Politics*

Sharia politics is a theory of state governance in Islam that gives the government broad authority to establish policies for the common good, even if they are not explicitly stated in written texts. Literature, such as Ibn Taymiyyah's *al-Siyasah al-Shar'iyyah*, asserts that the state is obliged to close loopholes that cause social and economic harm. In the context of modern corruption, asset confiscation is part of *siyāsah* authority because:

1. Safeguarding public assets (*hifz al-mal*).
2. Preventing systemic corruption (*mafsadah mu'tadilah*).
3. Restoring the state's function in protecting the rights of the people.
4. Eliminating incentives for economic crime. [16]

Thus, asset confiscation aligns with the principle of siyāsah, which holds that the government must uphold justice and prevent the accumulation of illicit wealth. A review of the literature reveals a strong relationship between deterrence theory, Indonesian positive law, and the principles of *fiqh al-jinayah*. Asset forfeiture is not only viewed as a technical instrument, but also as an anti-corruption strategy that has normative legitimacy from the perspectives of modern criminology, positive law, and Islamic fiqh. *Ta'zīr, siyāsah syar'iyyah*, provides a theoretical and moral basis that the state must punish corruptors by removing the means and profits they have gained from their crimes.

This study is a normative legal study that utilizes library research. The strategies employed include regulatory references, conceptual designs, case-based designs, and comparative references. The analysis was conducted on the Anti-Corruption Law, the Money Laundering Law, the Corruption Court Law, the Asset Seizure Bill, and related verdicts on the impoverishment of corruptors, such as the cases of Angelina Sondakh and Harvey Moeis. A comparative approach was used to examine the practices of asset forfeiture and non-conviction-based asset forfeiture in Malaysia, Singapore, the United Arab Emirates, and Saudi Arabia. This study also employs the *fiqh al-jinayah* approach to assess sharia legitimacy through the concepts of *ta'zir*, *maqasid al-sharia*, and siyasa syar'iyyah. All legal materials are analyzed qualitatively and descriptively through content analysis and deductive reasoning to harmonize positive law with Islamic legal principles in the implementation of policies aimed at penalizing corruptors.

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[15]Mohammad Al-Tahir, *Ibn 'Asyur, Treatise on Maqasid Asy-Syari'ah* (London-Washington: The International Institute of Islamic Thought (IIIT), 2006); M. Amin Abdullah, "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 46, no. 2 (2012).

[16]Raja Hisyamudin Raja Sulong Salad Ud Din, Sharifah Hayaati Syed Ismail, "Combating Corruption Based on Al-Siyasah Al-Syar'iyyah Perspective: A Literature Review," *International Journal Of Ethics and Systems*, 2023.

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B. The View of Fiqh Jinayah on The Policy of Impoverishing Corruptors Through The Confiscation of Assets Obtained From Criminal Acts of Corruption

When viewed from the perspective of Islamic criminal law, corruption is classified as jināyah or a criminal act that causes harm to the public. This is because the crime of corruption has a widespread negative impact on social justice, the economy, and public prosperity. Such acts are contrary to the values of *amanah* (trust) and *'adālah* (justice) according to the basic principles of Islamic sharia law. From an Islamic legal perspective, corruption is considered mafsadah (corruption) and causes great harm to society. This Islamic view is in line with universal principles in anti-corruption policies. Although the term "corruption" is not directly explained in Islamic law, the essence of the act is clearly prohibited. Islam rejects all forms of deception, fraud, and dishonest means of obtaining personal gain.[17]

Islamic criminal law considers corruption a violation of the trust that has been placed in a person. This is confirmed in the Qur'an, Surah Al-Baqarah, verse 188:

وَلَا تَأْكُلُوٓا اَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوْا بِهَآ اِلَى الْحُكَّامِ لِتَأْكُلُوْا فَرِيْقًا مِّنْ اَمْوَالِ النَّاسِ بِالْاِثْمِ وَاَنْتُمْ تَعْلَمُوْنَ ۧ

Meaning: Do not consume one another's wealth unjustly, nor bring it before the judges with the intention of consuming part of other people's wealth through sin, even though you know it is wrong.

Strictly prohibit all forms of wealth acquisition through illegal means, whether through deception, manipulation, or unfair control of public assets. This provision covers corrupt acts that are classified as serious violations, because they not only cause harm to individuals, but also disrupt economic and social stability, and weaken public confidence in the government system. This article conveys a powerful moral message: every individual must maintain integrity, fulfill their duties honestly, and refrain from any form of abuse of power that could compromise justice.

In the Islamic criminal law system, the concept of *taʿzīr* serves as a normative reference for the state in imposing sanctions for criminal acts that are not covered by ḥadd or kafārah punishments. On the other hand, unlike forms of punishment that have been explicitly decided in the al-Qur'an and hadith, *taʿzīr* is flexible in nature, and its determination is left to the discretion of the ruler or ulil amri. The main objectives of *taʿzīr* are to maintain public order, achieve justice, and deter further violations within society. In its implementation, *taʿzīr* is not merely a means of punishment, but also a medium for social education and a preventive measure to deter similar violations from occurring again.[18]

[17]Dedy Sumardi, "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *Ahkam: Jurnal Ilmu Syariah*, 2022.

[18]Masfi Sya'fiatul Ummah, "Pemiskinan Terhadap Koruptor Di Indonesia Perspektif Hukum Positif Dan Hukum Pidana," *Sustainability (Switzerland)*, 2019.

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This view aligns with the primary objectives of Islamic law (*maqāṣid al-sharīʿah*), particularly in preserving wealth (*ḥifẓ al-māl*) and upholding social justice. Therefore, the confiscation of assets obtained through corruption can be seen as a form of *taʿzīr*, the purpose of which is to minimize losses, restore justice, and ensure that confiscated assets can be reused for the benefit of society. Thus, Islam emphasizes the importance of moral and social accountability in managing public wealth while rejecting all forms of misconduct that undermine justice and social balance.

Contemporary scholars have also affirmed the validity of asset confiscation as part of the application of *taʿzīr*, a form of punishment. Yūsūf al-Qarḍāwī, in his works *al-Ḥalāl wa al-Ḥarām fī al-Islām* and *Fiqh al-Dawlah*, explains that the state has the authority to freeze assets derived from corruption, usury, or bribery, because assets derived from unlawful sources have no basis for validity. Meanwhile, Wahbah al-Zuḥaylī, in his work *al-Fiqh al-Islāmī wa Adillatuh*, emphasizes that corruption is a form of *jināyah* (crime) against public property, so it can be punished with *taʿzīr* (punishment) by freezing or confiscating assets. Both opinions emphasize that asset confiscation is not only permissible according to fiqh, but is also a moral and sharʿi requirement for the state in order to protect and maintain *maṣlaḥah ʿāmmah* or the interests of the wider community.[19]

In Islamic law, the concept of impoverishing perpetrators of corruption can be categorized as a form of *ta'zir* punishment, which is a punishment decided by the authorities to provide a deterrent effect, including through the imposition of fines or the return of assets obtained through corruption, as demanded by the public prosecutor. However, the term impoverishment, which is interpreted as an effort to make the perpetrator completely lose all of their wealth to the point of becoming poor, is not in line with the principle of *'uqubah* (imposition of sanctions) in Islamic criminal law. In Islam, punishment must aim to educate and uphold justice without exceeding the limits to the extent of depriving a person of their basic right to live properly.[20]

Conceptually, the policy of asset forfeiture in corruption cases has a strong basis in the principles of *maqāṣid al-sharīʿah*, particularly in relation to *ḥifẓ al-māl* or the protection of wealth. This objective emphasizes the importance of protecting public wealth and economic resources from misuse, seizure, or illegal control. In this context, the seizure of corruptors' assets is understood not only as a form of criminal sanction but also as an instrument of economic and social justice. This measure aims to restore the rights of individuals and the state that have been harmed by corruption, and to strengthen the value of trust in public financial management.

[19]Wahbah al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, IV, vol. VIII (Damaskus: Dar al-Fikr, 2014); M. Imdad Al-Kavafi, Ja'far Baehaqi, and Maskur Rosyid, "Urgensi Perampasan Aset Dalam Pemberantasan Korupsi : Dalam Perspektif Hukum Pidana Islam The Urgency of Implementing Asset Forfeiture in Anti-Corruption Efforts : A Study of Islamic Criminal Law Perspectives," *Jurnal USM Law Review* 2025.

[20]Alfitra Alfitra, "Pemiskinan Terhadap Pelaku Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam," *MIQOT: Jurnal Ilmu-Ilmu Keislaman*, 2020.

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In addition to serving as an instrument of law enforcement, this policy also plays a crucial role in strengthening public trust in the legal system and the government. The return of assets obtained through corruption is clear evidence that the state is present to uphold justice and restore public rights that have been taken away. Therefore, the seizure of assets is not merely a punishment for the perpetrators, but also a tangible manifestation of the principle of social justice (*al-'adl al-ijtimā'ī*), which is the foundation of Islamic law.[21]

C. The form and mechanism of impoverishing corruptors through asset confiscation from the perspective of criminal law and fiqh jinayah

Impoverishment of perpetrators of corruption is one of the progressive measures to eradicate corruption in Indonesia. In practice, many convicted corruptors still have access to various infrastructures even after being sentenced to prison. This situation suggests that prison sentences alone are insufficient to deter corruptors, so a new breakthrough is needed through the application of impoverishment sanctions as an additional form of punishment, which is expected to have a deterrent effect and strengthen law enforcement efforts against corruption.[22]

Efforts to impoverish perpetrators of corruption in Indonesia can be clearly seen in the case involving Angelina Sondakh. She was accused of involvement in corrupt acts related to the management of funds at the Ministry of Youth and Sports and the Ministry of Education and Culture, amounting to three billion rupiah. At the first level of the Corruption Court in Jakarta, Angelina Sondakh was sentenced to 4 years and 6 months in prison, which was considered lighter than the Public Prosecutor's (JPU) demand for 12 years in prison. After filing an appeal, Angelina Sondakh's sentence was increased from 4 years and 6 months to 12 years in prison. In addition to imprisonment, as part of efforts to eradicate the assets of corruptors, she was also required to pay compensation amounting to Rp 12.58 billion and USD 2.35 million. The final verdict handed down by Supreme Court Justice Artidjo Alkostar was essentially in line with the JPU's previous demands.

The decision to pay compensation amounting to Rp 12.58 billion and USD 2.35 million in the Angelina Sondakh case is clearly disproportionate to the amount of funds she embezzled. Angelina Sondakh was found guilty of corruption amounting to three billion rupiah, despite the penalty of paying compensation far exceeding the amount of money she embezzled. The case involving Angelina Sondakh demonstrates the seriousness and commitment of law enforcement officials in combating corruption by imposing the heaviest possible penalties on perpetrators and depriving corruptors

[21]Dwi Camila et al., "Crude Palm Oil Corruption: A Discourse on the Imposition of Capital Punishment," *Indonesian Comparative Law Review* 5, no. 1 (2022).

[22]Fahmi Rahmatullah and Hudi Yusuf, "Memiskinkan Koruptor Sebagai Hukum Alternatif Dalam Penegakan Hukum Kasus Korupsi Di Indonesia Impoverishing Corruptors As an Alternative Law in Law Enforcement of Corruption Cases in Indonesia," *Jurnal Intelek Dan Cendikiawan Nusantara*, 2024.

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who have stolen and drained the people's money of their wealth. This effort to impoverish corruptors is very clearly evident in the Angelina Sondakh case.

Harvey Moeis dijatuhi hukuman uang pengganti yang sangat besar. Dalam tingkatan awal, Harvey diwajibkan melunasi uang ganti sejumlah Rp 210 miliar, namun pada tingkat banding majelis hakim memperberat hukuman tersebut menjadi Rp 420 miliar. The case against Harvey Moeis relates to allegations of corruption in the management of tin trading in the PT Timah IUP area from 2015 to 2022, resulting in significant financial losses to the state and environmental damage. In the initial ruling at the Jakarta Corruption Court, Harvey Moeis was sentenced to 6 years and 6 months in prison. The panel of judges' verdict was considered lighter than the Public Prosecutor's (JPU) demand, which had previously requested that Harvey Moeis be imprisoned for 12 years. Harvey Moeis was also ordered to pay a substantial fine. In the initial ruling, Harvey was required to pay Rp 210 billion, but in the appeal, the panel of judges increased the fine to Rp 420 billion.[23]

However, the amount of compensation poses a serious problem because it is not commensurate with the losses suffered by the state, which amount to hundreds of trillions of rupiah, including environmental damage projected to be worth more than Rp 271 trillion. This highlights the limitations of the compensation mechanism in Indonesian criminal law, where the amount charged to the defendant only reflects the direct profits obtained by the perpetrator, rather than all the losses incurred by the state as a result of the corruption case. As a result, even though the compensation appears to be large, the amount is proportionally a small part of the total losses incurred.

The concept of impoverishing perpetrators of corruption in Indonesia is fundamentally realized through the mechanism of asset forfeiture, namely the freezing of assets derived from acts of corruption. This mechanism is one of the state's strategic measures to recover public financial losses and deter perpetrators. In this context, impoverishment is not merely interpreted as a form of moral sanction, but also as a legal means to prevent perpetrators from obtaining or utilizing the proceeds of their crimes.[24]

The deterrent effect theory provides a strong philosophical foundation because it emphasizes the deterrent effect on perpetrators and potential perpetrators of corruption. Punishment in the form of impoverishment, which is realized through the confiscation of assets obtained through corruption, not only provides a fitting response to the act but also conveys a moral and social message that corruption does not bring any benefits. When individuals know that every rupiah obtained through corruption will be confiscated by the state, even to the extent of damaging their families' social and

[23]Tim Detikcom, "Negara Terbukti Rugi Rp 300 T, Kenapa Vonis Harvey Moeis Cuma 6,5 Tahun Bui," detikNews, 2024.

[24]Muhammad Nurul Huda, Safira Ila Mardhatillah, and Qurota Ayunisa, "Non-Conviction-Based Asset Forfeiture: . Presumption Of Innocence And Principle Of Legality Perspective," *Universitas Islam Negeri Walisongo Semarang*, 2025.

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economic status, their motivation to commit corruption will decrease significantly. Thus, this theory emphasizes the importance of general deterrence through the application of strict and comprehensive penalties.[25]

The implementation of policies to impoverish corruptors through asset confiscation also serves as a means of strengthening the integrity of the legal system as a deterrent. Punishment in the form of asset confiscation not only has a deterrent effect on perpetrators (special deterrence), but also fosters a sense of public justice because the community sees that the proceeds of crime cannot be enjoyed. With this approach, asset confiscation is not merely a legal instrument, but also a moral and social strategy to shape an anti-corruption culture. The effectiveness of deterrence theory is highly dependent on the certainty and consistency of law enforcement. When the public sees that every act of corruption is inevitably followed by the consequences of loss of wealth, position, and reputation, the legal system will gain stronger legitimacy.[26]

Efforts to recover state losses resulting from criminal acts of corruption can be pursued through two parallel legal channels: criminal and civil proceedings. In the criminal sphere, the state relies on the authority of investigators to freeze the assets of suspects, which can then be seized based on a court decision imposing a penalty in the form of financial compensation. Recovering state losses through civil mechanisms follows formal procedures that require strict adherence to evidence, making the process often longer as judges must carefully assess the accuracy of both procedures and evidence. Unlike criminal evidence, which emphasizes the search for material truth, civil evidence requires a more rigorous evaluation.

The basis for the confiscation of assets as part of corruption punishment can be found in Article 39 paragraph (1) of the Criminal Code and Article 18 paragraph (1) letters a and b of the Anti-Corruption Law. These two provisions give the state legitimacy to recover assets derived from corrupt practices. In addition, the Anti-Money Laundering Law, specifically Article 7 paragraph (2) letter e, expands the scope of additional penalties in the form of asset forfeiture of corporate entities involved in laundering the proceeds of corruption cases.[27]

From this legal construct, the idea of impoverishing corruptors developed, namely a repressive approach that aims to completely eliminate the economic benefits of criminal acts. Impoverishment in this context does not merely render the suspect economically incapable; it also ensures that all assets derived from corruption, including legitimate assets used to conceal illegal wealth, can be confiscated to recover

[25]Eny Suastuti et al., "Inconsistency in the Formulation of Article 2 and Article 3 of Law No. 31 of Corrupt Practices Eradication Law and Disparity in Criminal Penalty for Mining Corruption in the Practice of Law Enforcement," *Journal of Law and Legal Reform* 6, no. 3 (2025).

[26]Ade Mahmud et al., "Confiscation of Assets Resulting from Corruption in Criminal Law and Islamic Law," *Proceedings of the 4th Social and Humanities Research Symposium (SoRes 2021)* 658, no. SoRes 2021 (2022): 362–66.

[27]Yoserwan Yoserwan and Fausto Soares Dias, "Implementing The Anti-Money Laundering Law: Optimizing Asset Recovery in Corruption Cases in Indonesia," *Jurnal Hukum Dan Peradilan* 13, no. 2 (2024).

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state losses. In other words, impoverishment is interpreted as a coercive instrument to make corruption no longer profitable.

If the convicted person fails to return the state's losses in the amount of the compensation, the law provides a final option in the form of imprisonment as a substitute, with a term that may not exceed the principal sentence, ensuring legal certainty. Thus, the impoverishment of corruptors is not a new form of punishment, but a consequence of the state loss recovery system that emphasizes full restitution. For asset forfeiture to be truly effective, the seizure of assets in money laundering cases must always be linked to articles related to criminal acts of corruption. The aim is for judges to be able to impose additional penalties, including asset forfeiture, on individuals and legal entities, so that the state can recover as much as possible of the profits generated from the series of criminal acts.

From a behavioral economics perspective, Romli Atmasasmita, in his scientific work "Microeconomic Analysis of Indonesian Criminal Law," presents the theory of criminal rationality, which posits that the motive for crime arises when the calculation of gains and losses indicates that the material rewards outweigh the potential legal risks. Essentially, this theory posits that perpetrators of criminal acts are careful calculators; they will continue to commit illegal acts as long as the economic benefits obtained are considered to outweigh the potential legal sanctions that may be imposed. The consequences of this theory require law enforcement officials to devise a mechanism whereby the legal sanctions imposed must be proportionate to the profits gained from criminal acts. In this context, the mechanism of asset forfeiture without criminal conviction (in rem) serves as an effective economic disincentive. When perpetrators know that assets derived from crime can be frozen through civil proceedings even without going through criminal proceedings, their economic calculations will change significantly. This mechanism has a psychological effect of providing multiple layers of deterrence: first, through the threat of conventional criminal punishment, and second, through the certainty of losing assets obtained illegally.[28]

Not all assets are subject to confiscation. Article 2 of the Asset Confiscation Bill explains that assets that can be confiscated under this Bill are:

a. Assets obtained directly or through intermediaries from a criminal act, whether transferred to personal property, owned by another party, or a business entity, in the form of capital, income, or other economic benefits derived from such property;
b. Assets that are used or have been used as a means to commit a crime. This also includes other legitimate assets that serve as a substitute for Criminal Assets
c. Assets in the form of found items that are presumed to originate from a criminal act. Furthermore, assets that can be confiscated include assets with a minimum value of IDR 100,000,000.00 (one hundred million rupiah), or assets originating

[28]Sugeng Wahyudi, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia," *Journal of Indonesian Legal Studies* 4, no. 1 (2019); Alam et al., "Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future."

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from criminal acts punishable by imprisonment of 4 (four) years or more. If there is a change to the minimum asset value limit, the adjustment shall be determined through a Government Regulation.[29]

The idea of impoverishing corruptors aligns with Feuerbach's theory of psychological coercion, which posits that criminal penalties should be formulated in a manner that makes potential perpetrators aware of the risks they may face. In the context of corruption crimes motivated by self-enrichment, the threat of losing all assets is believed to be a significant deterrent factor. The impoverishment of corruptors is not only focused on compensating the state for its losses but also on creating a sense of social justice that extends to the broader community. When the perpetrator's assets have fully covered the state's losses, impoverishment can still be applied by confiscating the perpetrator's legal assets in an amount commensurate with the state's losses. If the convicted person is unable to repay this amount, then imprisonment becomes the last resort, which remains in line with the principle of proportionality. [30]

The concept of impoverishing corruptors must also be understood differently from the term "poverty" in common language terminology and the Civil Code. Impoverishment in this context refers to a law enforcement strategy that aims to eliminate the economic incentives for crime, rather than forcing convicts to live in absolute poverty. The measure is considered fulfilled if the state succeeds in recovering its losses, plus an additional amount equivalent to those losses. To ensure implementation that does not deviate from the legality of Article 1 paragraph (1) of the Criminal Code, the impoverishment of corruptors must be limited through specific regulations. Several parameters that can be established include:

1. Significant financial losses to the state (at least Rp1 billion),
2. The convict's inability to repay the state's losses,
3. The failure of the convicted person to prove the origin of his wealth,
4. The seizure was carried out to ensure full recovery of state losses. [31]

First, the seizure and forced withdrawal of assets derived from corruption involve revoking the wealth obtained from corrupt acts, so that the perpetrators can no longer enjoy it. Second, the confiscation of substitute assets involves seizing the

[29]Elwi Danil and Iwan Kurniawan, "Optimizing Confiscation of Assets in Accelerating the Eradication of Corruption," *Hasanuddin Law Review* 3, no. 1 (2017).

[30]Sebastián Rioseco, "Conferences of the Parties beyond International Environmental Law: How COPs Influence the Content and Implementation of Their Parent Treaties," *Leiden Journal of International Law* 36, no. 3 (2023), https://doi.org/10.1017/S0922156523000110; Olusola Joshua Olujobi, "Recouping Proceeds of Coruption: Is There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeri," *Journal of Money Laundering Control*, 2021.

[31]Muhyi Mohas Mohas et al., "The Indonesia Government's Strategy in Arrest and Confiscation of Criminal Corruption (Corruptor) Assets Abroad," *Jurnal Dinamika Hukum* 21, no. 3 (2022); Rita Komalasari dan Cecep Mustafa, "Strengthening Asset Recovery Efforts: A Path to Mitigating Corruption in The Public Sector," *Jurnal Anti Korupsi*, 2024.

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legitimate property of the perpetrators and replacing its value as a form of compensation for the losses. Third, the obligation to pay compensation, which is the imposition of additional penalties so that the perpetrator returns the value of the state's losses. Fourth, imprisonment if the confiscated assets are insufficient to cover the losses, meaning that the perpetrator can be jailed as an option if material impoverishment is not complete.

The mechanism for impoverishing corruptors is also comprehensively regulated. It begins with the tracking and seizure of assets from the investigation stage, so that assets that are potentially subject to confiscation can be identified early on. Next, formal and material evidence is presented at trial to ensure that the link between the assets and corruption is legally proven. After the verdict, the judge imposes an additional penalty in the form of asset confiscation as part of the verdict. Then, the execution is carried out by the prosecutor through permanent seizure or auction of the confiscated assets, so that the state can realize recovery. Finally, there is full recovery of state losses and the implementation of additional penalties to ensure that the state not only imposes punishment but also reclaims assets lost due to corruption.

Thus, the impoverishment of corruptors is not merely an abstract concept, but a practical and systematic legal instrument designed to have a deterrent effect and eliminate the economic incentives for corruption. This strategy is expected to support the achievement of the state's objectives, specifically public welfare and the implementation of social justice, as outlined in the Preamble to the 1945 Constitution.

For asset seizure to have Sharia legitimacy and not deviate from the principles of Islamic justice, the legal procedures carried out must be based on a comprehensive mechanism of proof (*ithbāt al-ḥaqq*). According to Islamic provisions, proof (*al-bayyinah*) has a central position in ensuring that every legal action is based on verifiable truth. The rule of *al-bayyinah 'alā al-mudda'ī* emphasizes that the party filing the claim is obliged to present valid and convincing evidence.[32]

The forms of evidence in Islamic law comprise four components: confession (*iqrār*), witness testimony (*shahādah*), oath (*yamīn*), and circumstantial evidence or strong indications (*qarā'in*). In modern times, the concept of qarā'in is highly relevant because it includes digital evidence, financial audits, and forensic data that can link assets to criminal acts of corruption, even if not directly admitted by the perpetrator. Thus, the legal process remains objective and fair, without neglecting the principle of caution when imposing punishment (*al-iḥtiyāṭ fī al-'uqūbah*).[33]

The principles of *al-'adl* (substantive justice) and *al-iḥtiyāṭ* (prudence) must be the basis for every asset seizure process. The state has an obligation to ensure that these legal actions do not cause harm to innocent parties. Thus, the court must provide

[32]Ade Mahmud et al., "Confiscation of Assets Resulting from Corruption in Criminal Law and Islamic Law," *Proceedings of the 4th Social and Humanities Research Symposium 2021.*

[33]Muhammad Abu Zahrah, *Al-Jarimah Wa Al-'Uqubah Fi Al-Fiqh Al-Islami*, ed. Muhammad Rafiki, V, vol. V (Kairo: Maktabah Tawfiqiyah, 2014).

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asset owners with the opportunity to defend themselves and assess the evidence objectively, transparently, and proportionally.

Although the concept of non-conviction-based asset forfeiture (NCB) is not clearly found in classical fiqh literature, its principles can be examined through the concepts of *ta'zīr*, *ḥisbah*, and *ḥifẓ al-māl al-'ām*. In the doctrine of *ta'zīr*, the ruler has the authority to impose punishments that are not specified in the text, as long as they are intended to prevent harm (*dar' al-mafsadah*) and maintain the public interest. The concept of *ḥisbah* underscores the state's responsibility to oversee and rectify irregularities in the management of public assets.

Both concepts can serve as a basis for legitimizing asset forfeiture without a criminal conviction (NCB), provided the process meets fair and accountable standards of proof. Thus, the application of NCB does not conflict with Sharia principles, as long as it upholds the values of justice, transparency, and protection of individual rights.

1. The integration of Islamic legal principles into asset forfeiture policies needs to be realized through mechanisms that are harmonious with national positive law. The concept of *ta'zīr bi al-māl*, or sanctions involving the seizure of assets, can serve as a legal basis for confiscating wealth obtained through corruption. However, its implementation must be regulated through transparent administrative and financial evidence mechanisms to prevent arbitrariness.
2. The principle of ḥisbah can be adapted in the form of supervision by state institutions such as the Corruption Eradication Commission (KPK), the Financial Transaction Reports and Analysis Center (PPATK), and the Attorney General's Office, which play a role in investigating and requesting the return of property suspected of being related to criminal acts. Third, the application of *al-qarā'in al-qaṭ'iyyah* or clear signs that can be used as preliminary evidence, accompanied by a reverse burden of proof mechanism in cases of serious fund misappropriation that cause losses to the state.
3. The moral and social legitimacy of asset seizure regulations can be strengthened through the role of an ethics council or institutional mufti who provides religious guidance on their implementation, especially in areas with a strong community base that upholds Islamic values. Such efforts not only strengthen public acceptance but also ensure that policies remain within the corridor of Sharia ethics.

Conceptually, Islamic criminal law has formed a strong basis for moral legitimacy in confiscating assets obtained through corruption. The principle of *maqāṣid al-sharī'ah* emphasizes the supervision of public assets and the application of social justice as the main objectives of the law. Thus, the seizure of assets is not merely seen as a punitive measure against suspects, but also as a joint effort by the people to guard against the effects of corruption that can disrupt the social and economic order.

The combination of the principle of *ithbāt al-ḥaqq*, monitoring of institutions that carry out *ḥisbah* functions, and the application of *ta'zīr bi al-māl* within the framework of national law is a strategic step to support moral legitimacy and increase operational effectiveness related to asset seizure regulations. Through balanced

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efforts, accountability, and prioritizing the public interest, Islamic criminal law can serve as a reference in developing a fair, transparent, and constitutional mechanism for asset recovery in Indonesia.[34]

Table 1: Comparison of Impoverishing Corruptors Through Asset Seizure from the Perspectives of Criminal Law and Fiqh al-Jinayah

Aspect	**Criminal Law (Indonesian Positive Law)**	**Fiqh al- Jinayah (Islamic Criminal Law)**
Legitimacy Base	Anti-Corruption Law, Anti-Money Laundering Law, Criminal Code, Asset Seizure Bill	The Qur'an, Surah al-Baqarah, verse 188, Hadith, *ta'zir*, *maqasid al-shari'ah*
The Concept of Impoverishment	Impoverishment is carried out through additional penalties, including confiscation, seizure of assets, compensation payments, and substitution of assets.	Impoverishment is carried out through *ta'zīr bi al-māl*, namely the confiscation of the perpetrator's property in order to prevent *mafsadah* and protect public property.
Primary Objective	Recovering state losses and revoking the economic benefits of corruption	Maintaining public welfare, hifẓ al-māl, closing the door to corruption
Asset Seizure Model	Conviction-based and non-conviction based asset forfeiture (NCB)	Confiscation through the authority of ulil amri based on *ta'zīr, ḥisbah*, and the principle of *maslahah*
Proof	Formal and material evidence, rebuttal evidence, and a forensic audit	*Bayyinah*: confession, testimony, *qarinah* (strong indication), principle of substantive justice
Authority	Conducted by the Corruption Eradication Commission, the Attorney General's Office, the National Police, the Financial Transaction Reports and Analysis Center, and judges	Carried out by Ulil Amri through *siyāsah syar'iyyah*
Asset Targets	Assets derived from corruption, substitute assets, and unexplained wealth	Illicit wealth, wealth obtained through the misuse of public trust, and wealth that harms society
Principle of Justice	Legal certainty, proportionality, deterrence	Public welfare, substantive justice (*'adl*), protection of public rights
Poverty Threshold	May not exceed the state's losses plus criminal penalties if unable to pay	Basic rights to life cannot be revoked; actions must be proportional and not unjust.
Desired Effects	Deterrent effect, recovery of state assets	Prevention of damage, restoration of public rights, moral and social deterrent effects

[34]Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021): 426–49; Ratno Lukito, "Leveling the Unleveled? Syariah Advocates' Struggle for Equality in Indonesian Legal Pluralism," *Al-Jami'ah: Journal of Islamic Studies* 49, no. 1 (2011).

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In comparative law studies, the application of asset seizure mechanisms prior to a criminal verdict is not a new concept. Various jurisdictions have already implemented this model in response to the complexity of modern, transnational, and structured economic crimes. For example, Malaysia, through its Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act (AMLA) 2001, has established the asset recovery regime as the primary foundation of its strategy to combat economic crime. This regulation enables law enforcement officials to immediately freeze, seize, and confiscate assets suspected of being related to criminal activity, without requiring a conviction-based ruling.

This approach employs the principle of the reversal of the burden of proof, requiring the party claiming ownership of the assets to demonstrate the legitimacy and origin of the wealth. Therefore, the state has a stronger position when dealing with asset concealment schemes carried out through complex transactions, the use of nominees, or cross-jurisdictional transfers. This model directly limits the maneuvering room of corrupt actors and makes asset forfeiture an effective instrument of impoverishment.

A similar experience can be found in Singapore through the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA). Under this regulation, courts are given the authority to apply confiscation based on administrative evaluations and financial evidence, without first requiring proof of individual criminal wrongdoing. The focus of this policy is no longer on the status of the perpetrator, but on whether an asset has a causal or indicative relationship with the crime. This model has proven to provide procedural flexibility for authorities in dealing with criminal networks that deliberately break up transaction flows, making them difficult to prosecute using conventional methods of proof.[35]

In the United Arab Emirates, Article 83 of Federal Law by Decree No. (31) of 2021 governing Crimes and Penalties Law gives courts the right to seize assets proven to be related to criminal acts, even if the perpetrator has not yet been convicted. This provision also applies when the identity of the suspect is unknown or cannot be established or verified legally. On the other hand, in Saudi Arabia, a similar procedure is applied through regulations issued by the Saudi Arabian Monetary Authority (SAMA), specifically Articles 33-35. These rules underpin the law of freedom regarding the freezing and seizure of assets obtained from administrative investigations and financial evidence, which do not require a prior criminal court decision.[36]

The state is seen as having both moral and legal authority to protect public wealth from corruption and misconduct that threaten *maṣlaḥah ʻāmmah* (the public interest). This theological basis provides a dual justification for asset seizure

[35]United Nations Office on Drugs and Crime, "The Implementation of Non-Conviction-Based Forfeitue in ASEAN, Mongoliand Timor Leste," *Track.Unodc.Org*, 2024.

[36]Muhammad Farhani dan Saleh Al-Mutairi, "Asset Forfeiture and Public Wealth Protection in Islamic Law: Comparative Analysis between UAE and Saudi Arabia," *International Journal of Islamic Law Studies*, 2021.

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regulations, namely juridical and ethical-religious, as a manifestation of the state's responsibility to maintain public welfare and social justice.

D. Conclusion

The implementation of a strategy to impoverish corruptors through asset forfeiture has proven to be a key factor in increasing the effectiveness of eradicating corruption in Indonesia. This mechanism not only recovers state losses but also removes the economic incentives that encourage corruption. Based on the perspective of fiqh jinayah, asset forfeiture can be interpreted as a valid *ta'zīr* punishment, as it is in line with *maqāṣid al-sharī'ah*, especially the protection of wealth (*ḥifẓ al-māl*) and the prevention of broader social harm. Both Indonesian positive law and Islamic principles show a common ground that corruption needs to be tackled through a firm, proportional, and deterrent approach.

As a recommendation, this study emphasizes the need to accelerate the ratification of the Asset Forfeiture Bill to strengthen the legal framework for asset recovery and support the more comprehensive implementation of non-conviction-based asset forfeiture. Further studies are recommended to examine NCB implementation models in other relevant countries and to develop a more in-depth concept of integration between positive law and fiqh jinayah in asset forfeiture. Additionally, it is essential to examine the mechanisms for managing and utilizing confiscated assets to ensure they truly benefit the community and promote social justice. This integrative approach is expected to strengthen the moral, social, and juridical legitimacy of the national strategy to eradicate corruption.

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Review Artikel Jurnal



Fatimah Fatim... 23/11/2025
kepada saya

Sepertinya pesan ini ditulis dalam Inggris
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Norfazilah, Andi Marlina, Rasna , Wahidin :

We have reached a decision regarding your submission to (ScontextName), "Anti-Corruption Strategy: Impoverishing Corruptors Through Asset Confiscation and the Perspective of Fiqh Jinayah from Malay".

Our decision is to: Revisions Required

Reviewer A

1. The article's title is appropriate, informative, and reflects the research's content. It describes two important aspects: the anti-corruption strategy (impoverishing corruptors through asset confiscation) and the Islamic legal perspective (jurisprudence).

2. The abstract is written in two languages (English and Indonesian) with a complete structure: background, problem formulation, methods, results, and conclusions.

3. The novelty lies in the argument that asset confiscation as a strategy to impoverish corruptors is legitimate under Islamic law because it aligns with the principle of hifz al-māl (protection of property).

4. This article also addresses a gap in previous research that only addressed the positive legal aspects without the Islamic dimension.

5. There is no conceptual map that systematically compares positive law and Islamic law. References must be from Scopus-indexed journal articles from the last 10 years.

6. This research finds that confiscation of assets is effective in recovering state losses and providing a deterrent effect. Under Islamic law, this policy is legitimate as a form of ta'zir punishment. The impoverishment of corruptors must not exceed the point of violating basic human rights.

7. The implications of this research are to broaden the discourse on Islamic criminal law and positive law, provide a moral and philosophical basis for the ratification of the Asset Confiscation Bill, and strengthen social awareness that corruption is a betrayal of trust.

8. Perform final editing (proofreading) to improve spelling and layout.

Reviewer B

1. The title of this article is contextual

2) The abstract is good

3) In paragraphs 1 or 2, there needs to be additional references to Scopus articles related to the discussion

4) Explain the results of research that has been done by previous research, and find its novelty

5) The problematization of research problems needs to be explained critically

6) Why is it important to discuss this theme again and contribute to the development of Islamic criminal law

7) The literature review is still simple; there is no visible review process

8) The discussion is explained deeply and sharply according to data and facts

9) Please connect the research result with the field data

10) Articles must follow the surrounding style and journal template

11) It can be accepted if there is an improvement in the paper

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Dear Author(s),
Norfazilah, Institut Agama Islam Pare-Pare, Selawesi Selatan
Andi Marlina, Institut Agama Islam Pare-Pare, Selawesi Selatan
Rasna, Institut Agama Islam Pare-Pare, Selawesi Selatan
Wahidin, *Institut Agama Islam Pare-Pare, Selawesi Selatan*

Greetings from the Editorial Board of *Legitimasi: Journal of Criminal Law and Political Law*. We would like to thank you for submitting your manuscript for review by the Legitimasi Reviewer Team.

We hereby confirm the **provisional acceptance** of your manuscript with ID 32508, entitled: **"From Confiscation to Prevention: Asset Confiscation and the Impoverishment of Corruptors in Islamic Jurisprudence"** for publication in Legitimasi: Jurnal Hukum Pidana and Politik Hukum, Volume 14, Issue 2, July–December 2025 (Sinta 3 Accredited). Your manuscript has now been forwarded for editorial processing, peer review, copy-editing, and publication.

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Thank you.
Banda Aceh, December 10, 2025
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SURAT REKOMENDASI

No. B-094/In.39/LP2M.07/PP.00.9/03/2026

Yang bertanda tangan dibawah ini :

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Fakultas	:	Syariah dan Ilmu Hukum Islam

Benar telah menyelesaikan artikel ilmiah dengan judul: “From Confiscation to Prevention: Asset Confiscation and the Impoverishment of Corruptors in Islamic Jurisprudence” yang telah diterbitkan pada jurnal Legitimasi: Jurnal Hukum Pidana dan Politik Hukum, Volume 14, Nomor 2, Tahun 2025 dan telah terakreditasi **SINTA 3.** Maka dengan ini yang bersangkutan diberikan rekomendasi untuk dapat mengikuti ujian akhir.

Demikian surat rekomendasi ini di sampaikan, atas partisipasi dan kerja samanya diucapkan terima kasih.

Parepare, 3 Maret 2026
an. Ketua LP2M IAIN Parepare
Kepala Pusat Penerbitan & Publikasi

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BIODATA PENULIS



Nama penulis Norfazilah, lahir di Desa Sopa, Kecamatan Kindang Kabupaten Bulukumba pada tanggal 16 Januari 2005. Penulis merupakan anak ke 2 dari 2 bersaudara dari pasangan Muh Yusuf dan Nurbayani. Penulis memulai pendidikan formal di TK PGRI Mattirowalie (2009-2010). SD Negeri 43 Bulukumba pada tahun (2010-2016). SMP Negeri Satap 9 Bulukumba pada tahun (2016-2019). Penulis melanjutkan pendidikan kejenjang yang lebih tinggi yaitu di SMA Negeri 12 Bulukumba pada tahun (2019-2022). Hingga pada tahun 2022, penulis melanjutkan pendidikan ke Perguruan Tinggi Negeri yaitu institut Negeri Parepare melalui jalur Seleksi Prestasi Akademik Nasional Perguruan Tinggi Keagamaan Islam Negeri (SPAN PTKIN) dan lulus di Prodi Hukum Pidana Islam Fakultas Syariah dan Ilmu Hukum Islam dengan mendapatkan beasiswa KIP-Kuliah. Selain itu, penulis juga aktif mengikuti berbagai perlombaan tingkat internasional, nasional dan mendapatkan penghargaan. Pada tahun 2024, penulis meraih penghargaan Best Essay dalam ajang International Islamic Capital Market Essay Competition. Selain itu, Pada tahun 2024, penulis berhasil meraih dua Medali Perunggu (Bronze Medal) tingkat nasional dalam Lomba Gebyar Nasional Essay Siswa dan Mahasiswa (GENESIS) pada kategori tema Hukum dan Lingkungan. Di tahun yang sama, penulis juga berhasil meraih predikat sebagai Pemenang Favorite dalam Lomba Melukis Berbantuan Artificial Intelligence tingkat nasional. Selanjutnya pada tahun 2025, penulis berhasil lolos sebagai Finalis Kategori Poster Presentation tingkat nasional dan melaju ke babak presentasi offline dalam ajang Mandalika Essay Competition (MEC) 6. Pada tahun yang sama, penulis juga sukses menyabet predikat sebagai Juara 1 Nasional dalam Event Menulis Nasional bertema "Catatan Baru". Atas pencapaian tersebut, penulis juga dianugerahi piagam penghargaan resmi sebagai Penulis Buku Nasional dari Penerbit Nasional Antero Literasi Indonesia. Semoga Tugas Akhir Artikel Ilmiah ini mampu memberikan kontribusi bagi pihak yang membutuhkan. Akhir kata penulis mengucapkan rasa syukur atas terseleseikannya Tugas Akhir Artikel Ilmiah yang berjudul "*From Confiscation to Prevention: Asset Confiscation and the Impoverishment of Corruptors in Islamic Jurisprudence*"

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