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Islamic Law Analysis of the Prosecutor's Authority in Asset Forfeiture from Corruption

Budi Utama,[1*] Angkasa Angkasa,[1] Kuat Puji Prayitno,[1] Tedi Sudrajat,[1] Muhammad Ainun Najib[2]

[1]Universitas Jenderal Soedirman, Purwokerto – Indonesia; [2]The University of Western Australia, Perth – Australia
*Corresponding author. Email: budi.utama@mhs.unsoed.ac.id

Abstract:

Efforts to recover assets resulting from corruption remain hindered by legal loopholes and concealment strategies, especially when offenders register illicit assets under the names of third parties. This study explores how prosecutors perceive the legitimacy of such assets and their views on the necessity of reforming Indonesia's asset forfeiture framework. Using a qualitative empirical design, the research is based on semi-structured interviews with four prosecutors who have handled corruption cases involving complex asset ownership. The findings reveal that prosecutors consistently view these assets as materially and morally illegitimate, even if formally registered under others' names. They also support introducing a non-conviction-based asset forfeiture (NCBAF) model to overcome the limitations of conviction-dependent mechanisms, especially in cases where suspects die or flee. Islamic legal principles, such as the *ḥifẓ al-māl* (preservation of wealth) and *ta'zīr bi al-māl* or discretionary penalties targeting unlawfully acquired assets, offer a moral and doctrinal basis for such reforms. These insights contribute to ongoing legal debates and support the development of a more effective and ethically grounded policy for asset recovery in corruption cases.

Keywords:

asset forfeiture; corruption; crime; illegitimate ownership; Islamic law

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Introduction

Comparative studies show that jurisdictions strengthen remedies by complementing criminal forfeiture with civil or non-punitive mechanisms so as to address cases where the suspect absconds, dies, or the trial stalls.[1] In the Indonesian context, legal analyses propose the use of non-conviction-based tools and unexplained-wealth orders to close enforcement gaps and reach illicit corporate holdings that evade traditional procedures.[2] More broadly, empirical and doctrinal work on forfeiture underscores both the promise and design challenges of non-conviction-based recovery—especially around standards of proof, third-party rights, and cross-border execution—which are directly relevant to Indonesia's ongoing reform debate.[3]

Comparative scholarship shows two dominant asset-forfeiture models: conviction-based forfeiture and non-conviction-based (often *in-rem*) regimes. Italy's long-standing "preventive" and "extended" forfeiture illustrates how courts balance crime-control aims with fundamental rights, using proportionality and evidentiary thresholds; European Court of Human Rights case law has shaped this balance without dismantling the tool.[4] Across Europe, analysis of European Union (EU) Directive 2014/42/EU and national practice (e.g., Lithuania) underscores due-process safeguards (judicial oversight, rights of bona fide owners) as prerequisites for Non-Conviction Based Asset Forfeiture (NCBAF) legitimacy.[5] In the United Kingdom, civil recovery under the Proceeds

[1] Michele Simonato, "Forfeiture and Fundamental Rights across Criminal and Non-Criminal Domains," *ERA Forum* 18, no. 3 (September 1, 2017): 365–79, https://doi.org/10.1007/S12027-017-0485-0/METRICS.

[2] Anastasia Suhartati Lukito, "Revealing the Unexplained Wealth in Indonesian Corporation: A Revolutionary Pattern in Non-Conviction-Based Asset Forfeiture," *Journal of Financial Crime* 27, no. 1 (January 15, 2020): 29–42, https://doi.org/10.1108/JFC-11-2018-0116.

[3] Todor Kolarov, "Challenges in Settling Non-Conviction Based Civil Forfeiture of Unexplained Wealth," *Journal of Money Laundering Control* 24, no. 3 (July 31, 2021): 483–90, https://doi.org/10.1108/JMLC-07-2020-0076.

[4] Fabian Teichmann, "Non-Conviction-Based Forfeiture (NCBC) – A Reform Option for German Asset Recovery Law," *Eucrim*, 2025, https://doi.org/10.30709/eucrim-2025-007.

[5] Skirmantas Bikelis, "Forfeiture Beyond the All-Crime Approach and the Proportionality Principle—A Case of the Lithuanian Illicit Enrichment Offence Concept," *Laws 2025, Vol. 14, Page 1* 14, no. 1 (December 24, 2024): 1, https://doi.org/10.3390/LAWS14010001.

of Crime Act 2002 operationalizes non-conviction pathways while embedding judicial control to target illicit wealth.[6]

Existing scholarship on asset forfeiture and non-conviction mechanisms in jurisdictions relevant to Indonesia is largely doctrinal or comparative, mapping frameworks and safeguards without generating field-based evidence. A structured scoping search of Scopus and Web of Science databases (23 September 2025) using combinations of terms for "asset forfeiture/confiscation," "prosecutor," and "Islamic law/Muslim" identified zero peer-reviewed interview studies with prosecutors in Muslim-majority jurisdictions (0 eligible after title–abstract screening). By contrast, the dominant literature examines NCBAF from normative or comparative perspectives, such as its proportionality, evidentiary thresholds, and compatibility with due process in Europe and the United States[7][8]. Doctrinal analyses of civil forfeiture in Malaysia and the United Kingdom, normative proposals on unexplained-wealth and NCBAF for Indonesia, and theoretical rule-of-law appraisals of civil recovery in Europe.[9] This absence of empirical insight is particularly significant given Indonesia's pressing context: civil society reports estimate Rp234.8 trillion in state losses from corruption between 2019 and 2023, but only ~Rp32.8 trillion recovered—about 13.9% of the total.[10]

Islamic jurisprudence frames public-wealth protection through *maqāṣid al-sharīʿa*, particularly *ḥifẓ al-māl* (preservation of wealth), and through discretionary sanctions (*taʿzīr*) that can include financial measures against ill-gotten property when required for justice and the public interest.

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[6] Anthony Kennedy, "Civil Recovery Proceedings under the Proceeds of Crime Act 2002: The Experience so Far," *Journal of Money Laundering Control* 9, no. 3 (July 1, 2006): 245–64, https://doi.org/10.1108/13685200610681779.

[7] Jennifer Hendry and Colin King, "How Far Is Too Far? Theorising Non-Conviction-Based Asset Forfeiture," *International Journal of Law in Context* 11, no. 4 (2015): 398–411, https://doi.org/10.1017/S1744552315000269.

[8] Stefan D Cassella, "The Case for Civil Forfeiture: Why *in-rem* Proceedings Are an Essential Tool for Recovering The Proceeds of Crime," *Journal of Money Laundering Control* 11, no. 1 (January 4, 2008): 8–14, https://doi.org/10.1108/13685200810844451.

[9] Jennifer Hendry and Colin King, "Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids," *Criminal Law and Philosophy* 11, no. 4 (2017): 733–57, https://doi.org/10.1007/s11572-016-9405-6.

[10] Aria. Ananda, "ICW Sebut RUU Perampasan Aset Krusial Kembalikan Kerugian Negara," Antara News, 2025, https://www.antaranews.com/berita/5120993/icw-sebut-ruu-perampasan-aset-krusial-kembalikan-kerugian-negara.

Contemporary jurists develop a *maqāṣid*-based method to legitimate such discretionary tools within modern legal systems, emphasizing due process and accountability.[11] Detailed treatments of punishment theory likewise affirm the ruler's discretion to tailor non-fixed sanctions to deter wrongdoing and restore right order—an approach compatible with targeting corruption-tainted assets. [12] Complementary doctrinal and regional studies on bribery and corruption further ground the prohibition of unjust enrichment and support robust anti-corruption enforcement in Muslim-majority contexts, so long as procedural fairness and third-party rights are preserved.[13]

In the Islamic-law stream, most writings treat *ḥifẓ al-māl* and the status of illicit wealth through normative, text-based analysis that builds *maqāṣid*-grounded frameworks for protecting public wealth but rarely incorporates practitioner evidence; for example, conceptual studies systematize wealth-preservation within *maqāṣid* and propose ethical-governance measurements for Islamic institutions while doctrinal analysis assesses anti-corruption norms primarily through reasoning from legal texts and not field data. [14] Where empirical work exists, it tends to quantify enforcement outputs (e.g., money-laundering investigations) rather than elicit prosecutors' reasoning about illegitimate ownership or the design of asset-recovery tools in Muslim-majority legal settings. [15] This study fills this gap by offering an empirical investigation based on Islamic law. It conducts qualitative interviews with Indonesian public prosecutors to elicit a practice-based understanding of illegal possession and to

[11] Mohammad Hashim Kamali, "Maqasid al-Shari'ah and Ijtihad as Instrument s of Civilisational Renewal: A Methodological Perspective," *ICR Journal* 2, no. 2 (2011): 245–71, https://doi.org/10.52282/icr.v2i2.647.

[12] Mohammad Hashim Kamali, "Principles and Philosophy of Punishment in Islamic Law with Special Reference to Malaysia," *ICR Journal* 10, no. 1 (2019): 9–20, https://doi.org/10.52282/icr.v10i1.69.

[13] Meyer-Reumann, "Measures Against Corruptibility, Gifts and Gratification – ``Bribery" in the Middle East," *Arab Law Quarterly* 15, no. 4 (2000): 363–67, https://doi.org/10.1163/A:1017362831111.

[14] Ameen Ahmed Abdullah Qasem Al-Nahari et al., "Common Conceptual Flaws in Realizing Maqāṣid al-Sharī'ah Vis-à-Vis Islamic Finance," *ISRA International Journal of Islamic Finance* 14, no. 2 (April 22, 2022): 190–205, https://doi.org/10.1108/IJIF-12-2020-0259.

[15] Zakiah Muhammaddun Mohamed and Khalijah Ahmad, "Investigation and Prosecution of Money Laundering Cases in Malaysia," *Journal of Money Laundering Control* 15, no. 4 (October 5, 2012): 421–29, https://doi.org/10.1108/13685201211266006.

examine how principles such as wealth preservation and discretionary financial sanctions can inform a context-sensitive NCBAF model.

This study pursues three objectives: (1) to document prosecutors' practice-based insights on how illicit assets are concealed and contested in corruption cases; (2) to examine the compatibility of non-conviction-based asset forfeiture with Islamic legal principles—especially preservation of wealth (*ḥifẓ al-māl*) and discretionary financial sanctions (*taʿzīr bi al-māl*); and (3) to recommend context-sensitive reforms that balance effectiveness with due-process safeguards. These aims respond to comparative findings that non-conviction mechanisms can close enforcement gaps but require tight judicial controls, standards of proof, and protection of *bona fide* third parties, lessons drawn from European and United Kingdom (UK) practice.[16] On the Islamic law side, contemporary scholarship develops *maqāṣid*-based frameworks validating discretionary measures against ill-gotten wealth where necessary for justice and public interest, providing a normative lens for evaluating Indonesia's reform options.[17]

This study employs a qualitative, empirical socio-legal approach to elicit practice-based reasoning from prosecutors about corruption-linked assets. Primary data derive from semi-structured interviews with four prosecutors, namely Muhammad Irham, Budi Setyawan, Hangrengga Berlian, and Zulkarnaen—conducted on 1-30 April 2025. As well as the author's experience as a prosecutor in handling related cases. Interview themes covered concealment patterns (third-party titling), evidentiary hurdles, views on non-conviction forfeiture, and alignment with Islamic legal principles. Transcripts were coded using thematic analysis to identify recurrent concepts and contrasts, following established qualitative procedures for rigorous, transparent theme development; Islamic legal doctrines (e.g., preservation of wealth and

[16] Michele Simonato, "Directive 2014/42/EU and Non-Conviction Based Forfeiture: A Step Forward on Asset Recovery?," *New Journal of European Criminal Law* 6, no. 2 (June 2015): 213–28, https://doi.org/10.1177/203228441500600205.

[17] Mohamed Azam Mohamed Adil, "Mahkamah Syariah di Malaysia: Kemajuan dan Pencapaian," *Islam and Civilisational Renewal* 7, no. 2 (April 2016): 243–63, https://doi.org/10.12816/0035200.

discretionary financial sanctions) were then used as an interpretive lens for the emergent themes.[18]

Islamic and Legal Conceptions of Illegitimate Ownership in Asset Forfeiture

From the standpoint of Islamic criminal law, corruption is classified as a *jarīma ta'zīr*, which refers to offenses for which the punishment is not explicitly fixed in the Qur'an or Ḥadīth. As such, it falls under the discretionary power of the state (*ulī al-amr*) to impose appropriate sanctions that ensure justice and social welfare. [19] *Ta'zīr* sanctions may include corporal punishment, imprisonment, or financial penalties, such as the forfeiture of unlawfully obtained assets. This concept provides the normative basis for asset forfeiture within an Islamic framework.[20]

The framework is further strengthened by the Islamic legal objective of *ḥifẓ al-māl*, which is one of the five essential goals (*maqāṣid al-sharīʿa*) of Islamic law. This principle mandates the protection of both public and private wealth from misuse, abuse, and illegitimate acquisition. In this context, policies that facilitate the return of illicit assets to rightful parties—whether the state or affected individuals—are not only administratively prudent but also ethically mandated in Islamic legal tradition.

Islamic legal thought regards the objective of *ḥifẓ al-māl* not only as a personal moral duty but as a collective obligation of the state to ensure that wealth circulates lawfully and equitably. In this regard, asset recovery mechanisms, particularly those targeting wealth obtained through corruption, are fully consistent with the *ghulūl* imperative to prevent financial injustice. The act of restoring illicit wealth to the public treasury or rightful owners is seen as a realization of justice and a corrective measure to rebalance societal equity.

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[18] Melissa DeJonckheere and Lisa M Vaughn, "Semistructured Interviewing in Primary Care Research: A Balance of Relationship and Rigour," *Family Medicine and Community Health* 7, no. 2 (March 8, 2019): e000057, https://doi.org/10.1136/fmch-2018-000057.

[19] Abdul Qader. Nael, "The Criteria for Determination of Tazeeri Punishments in Islamic Jurisprudence," *Addaiyan Journal of Arts, Humanities and Social Sciences* 7, no. 5 (2025): 23–41, https://doi.org/10.36099/ajahss.7.5.3.

[20] Ja'afar Agaji Abdullahi and Isah Abubakar Idris, "Ta'zir Punishment in Islam and Its Implication in Our Society," *Middle East Journal of Islamic Studies and Culture* 3, no. 04 (2023): 43–46, https://doi.org/10.36348/mejisc.2023.v03i04.003.

This interpretation of *maqāṣid al-sharīʿa* strengthens the legal and moral basis for the forfeiture of corruption assets within both positive and Islamic law frameworks. [21]

In addition, Islamic principles emphasize the importance of transparency and integrity among public officials as a safeguard against systemic abuse. The duty to disclose wealth and ensure accountability in its acquisition is an operationalization of *ḥifẓ al-māl* at the institutional level. By promoting asset disclosure, Islamic governance supports not only deterrence against corruption but also the ethical foundation for legitimizing state actions in seizing unlawfully acquired property. Thus, asset forfeiture in this sense is not merely punitive—it is restorative and essential to upholding the trust (*amāna*) placed in public office.[22]

Taʿzīr bi al-māl refers to a form of discretionary punishment (taʿzīr) in Islamic criminal law in which the sanction targets the offender's wealth.[23] This may take the form of fines, asset forfeiture, or even the destruction of unlawfully held property. [24] Unlike corporal or custodial penalties, *taʿzīr bi al-māl* operates through financial measures. It is applied to offenses that do not fall under the fixed punishments of *ḥudūd*—such as theft or adultery—or *qiṣāṣ/diyāt*, which relate to retaliation and compensation.[25] In these cases, judges or rulers (*ḥākim*)

[21] Ahmad Dwi Nuryanto and Abdul Kadir Jaelani, "The Role of State Official Wealth Report in Realizing the Principles of Maqashid Sharia," *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (April 1, 2024): 155–81, https://doi.org/10.22219/ljih.v32i1.32879.

[22] Muhammad Nazmul Hoque, Jamaliah Said, and Prof (Assoc) Abu Umar Faruq Ahmad, "Money Laundering from Maqāsid Al-Sharī'Ah Perspective with Particular Reference to Preservation of Wealth (Hifz al-Mal)," *SSRN Electronic Journal*, September 2021, https://doi.org/10.2139/SSRN.3209775.

[23] Faisal Husen Ismail et al., "Vigilantism among the Community in Aceh Against the Accused of Violating the Shariah Criminal Law," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 531–53, https://doi.org/10.19105/al-Ihkam.v17i2.6751.

[24] Abdullah Masum and S M Shariful Islam, "Sharīʿah Scrutiny of Islamic Banks' Financial Compensation Fund in Bangladesh: Governance Principles in the COVID-19 Perspective," *Islamic Economic Studies* 29, no. 2 (October 1, 2021): 139–58, https://doi.org/10.1108/IES-08-2021-0025.

[25] Ahamed Sarjoon Razick Putri Rahmah Nur Hakim, Irwan Abdullah, Mayadina Rohmi Musfiroh, Suraya Sintang, "Contesting Sharia and Human Rights in the Digital Sphere: Media Representations of the Caning Controversy under the Qanun Jinayat in Aceh," *Journal of Islamic Law* 6, no. 2 (2025): 206–35.

are granted flexibility to impose appropriate sanctions. The underlying objective is to uphold justice in alignment with the public interest (*al-maṣlaḥa*).[26]

Classical scholars hold differing views on the permissibility of wealth-based *taʿzīr*. Abū Ḥanīfa, for example, rejected the use of financial penalties as a legitimate form of discretionary punishment. However, many other jurists took a different position. Scholars from the Mālikī, al-Shāfiʿī, and Ḥanbalī schools generally allow *taʿzīr bi al-māl*, particularly when the sanction functions as a deterrent or a means of restitution.[27] Their reasoning is grounded in the broader objectives of justice and public welfare. In addition, prominent jurists such as Ibn Taymiyya and Ibn al-Qayyim explicitly endorsed financial-based *taʿzīr* as a valid tool of governance. They considered it especially relevant in cases involving corruption, public betrayal, or the misappropriation of wealth (*ghulūl*).[28]

According to Ibn al-Qayyim in *al-Ṭuruq al-Ḥukmiyya*, the ruler possesses the authority to impose financial penalties as a means of disciplining offenders. This authority is not merely punitive but is intended to prevent broader harm to society. Ibn al-Qayyim explains that such measures fall within the scope of discretionary governance when the offense does not fall under fixed punishments. He also points out that the use of financial sanctions has historical precedent. The Prophet Muhammad and the Rightly Guided Caliphs applied this form of punishment in situations where the protection of public interest required a financial remedy.[29]

Islamic law offers a parallel normative framework in which ownership is fundamentally conditioned on legitimacy and justice. In *ghulūl* law, all wealth belongs ultimately to God, and humans are trustees (*amāna*) of their property;

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[26] Karimuddin Abdullah Lawang et al., "Kontribusi Dinas Syariat Islam terhadap Penerapan Qanun Tentang Khalwat di Aceh," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 24, no. 1 (June 29, 2024): 49–60, https://doi.org/10.30631/alrisalah.v24i1.1427.

[27] Nasimah Hussin, "Revisiting Islamic Punishment and Its Implementation in the Contemporary World," in *Internasional Conference on Humanity, Law and Sharia*, 2018, 1–10, https://core.ac.uk/outputs/328166701/?source=oai.

[28] Mohamed Arafa, "Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?," *Annual Survey of International & Comparative Law* 18, no. 1 (2012): 170–242, http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/9.

[29] Anis Farida and Priyo Handoko, "Normative and Islamic Theology on the Enforcement of COVID-19 Health Protocol in Indonesia," *HTS Teologiese Studies/Theological Studies* 77, no. 3 (September 9, 2021), https://doi.org/10.4102/hts.v77i3.6531.

therefore, only wealth acquired through lawful (*ḥalāl*) means is blessed and recognized as a protected right. Conversely, wealth obtained through illegitimate means – such as theft, bribery (*rishwa*), or embezzlement (*ghulūl*) – is considered tainted (*ḥarām*) and void of sanctity in the eyes of the law. The incorporation of *siyāsa shar'iyya* into anti-corruption legal frameworks aligns with the sociological context of Indonesian society, where religious values serve as fundamental drivers for law enforcement reforms.[30]

A key concept in Islamic legal theory is the *maqāṣid al-sharīʿa*, the higher objectives of Islamic law, one of which is the preservation of wealth. Preservation of wealth does not simply mean safeguarding private property, but also ensuring wealth is acquired and distributed justly within society. [31] Contemporary Islamic jurists and thinkers have expanded *ḥifẓ al-māl* to encompass economic justice and anti-corruption measures. [32] Corruption directly undermines this *maqāṣid* objective by misappropriating resources that should serve the public good. Indeed, Islamic governance principles historically empowered the state (through *ḥisba* or other institutions) to confiscate wealth unjustly accumulated by officials and to restore it to the public treasury (*bayt al-māl*). This aligns with the doctrine of public interest (*maṣlaḥa*): removing harm and securing benefit for the community. Applying *maqāṣid al-sharīʿa* to anti-corruption measures, including asset forfeiture, reinforces the objective of preserving wealth and preventing harm to public interest, especially in cases of severe social and economic crises.[33]

Modern analyses affirm that forfeiture of corruption proceeds is consistent with Sharīa principles of justice and welfare. Since corruption has no fixed *ḥadd* (prescribed) punishment under Islamic law, it falls under *taʿzīr* (discretionary

[30] Edi Rosman, Aidil Alfin, and Bustamar, "Politik Hukum Pidana Indonesia: Analisis Korelasi Siyasah Syar'iyah dan Pencegahan Korupsi," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (June 2019): 15–31, https://doi.org/10.24090/MNH.V0I1.1797.

[31] 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 Syariah)* 21, no. 2 (December 30, 2022): 143, https://doi.org/10.31958/juris.v21i2.6722.

[32] Mariah Darus Mat Junus et al., "Ethical Governance through Maqasid Shariah Perspective: A Conceptual Framework," *International Journal of Academic Research in Business and Social Sciences* 14, no. 10 (October 7, 2024), https://doi.org/10.6007/IJARBSS/v14-i10/23148.

[33] Asa'ari Asa'ari et al., "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāṣid al-Syarī'ah," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (May 2023): 920–36, https://doi.org/10.22373/SJHK.V7I2.14944.

punishment by the judge or state).[34] This grant Muslim authorities' latitude to impose penalties that achieve deterrence and restitution – notably including the seizure of illicit assets – as a means to uphold equity and prevent the criminal from enjoying the fruits of sin. In Islamic jurisprudence, the ruler is obliged to act against *sulūl amwāl* (misappropriation of wealth) to vindicate the rights of the wronged party or the public.[35]

In essence, both legal frameworks – Islamic and national – converge on the principle that assets derived from corruption lack legitimate ownership. They are considered usurped wealth that rightfully belongs either to the victims (in many cases, the state or public) or must be returned to the public coffers. This principle justifies and indeed necessitates asset forfeiture: it is not an arbitrary punishment, but a restoration of justice, stripping away illegitimate ownership and reaffirming that corrupt wealth has no lawful protector. The criminal law reform through the integration of corruption articles into Indonesia's National Criminal Code raises concerns about maintaining the proportionality and effectiveness of corruption eradication strategies, including asset forfeiture.[36]

By integrating these two perspectives, the theoretical framework underscores a comprehensive view: any wealth obtained by corruption stands on precarious ground, vulnerable to seizure and reversion to its rightful collective owners. The conventional international law theory supplies the legal mechanisms and safeguards for such forfeiture, while the Islamic perspective furnishes moral legitimacy and an additional layer of normative urgency to deprive corrupt actors of ill-gotten property. This combined understanding will inform the subsequent analysis, highlighting that illegitimate ownership due to corruption is universally repudiated – legally, morally, and in the Islamic

[34] Faishal Agil Al Munawar, "The Legal Sanctions of Corruption Criminal Acts in Indonesia from the Perspective of Abdul Majid An-Najjar's Islamic Legal Philosophy," *Journal of Modern Islamic Studies and Civilization* 3, no. 01 (January 29, 2025): 111–28, https://doi.org/10.59653/jmisc.v3i01.1416.

[35] A A Owoade, "An Expository Discourse on Discretionary Punishment and Its Application in Theft Cases Under the Islamic Law," *KIU Journal of Humanities* 2, no. 1 (October 10, 2017): 89–96.

[36] Moh Fadhil et al., "Bridging Corruption Articles" through the National Criminal Code: The Perspective of Corruption Eradication and Ta'zir," *Al-'Adl* 17, no. 2 (July 2024), https://doi.org/10.31332/ALADL.V17I2.8436.

worldview – thereby warranting the forfeiture of such assets as both a justice-restoring and morally necessary act.[37]

Islamic law does not have a codified "asset forfeiture act" per se, but its principles strongly endorse the forfeiture of unlawfully acquired wealth as part of ensuring justice (*'adl*) and public interest (*maṣlaḥa*). The *ghulūl* entrusts authorities (the ruler or court) with the mandate to eradicate wrongdoing and restore rights. In cases of financial corruption or bribery, classical jurists allow the imposition of *ta'zīr bi al-māl*, a discretionary punishment involving property, which can include fines or forfeiture of illegal gains. As noted earlier, Islamic jurisprudence treats wealth from corruption as having no legal protection for the corrupt taker. This means that an Islamic tribunal or ruler can order the wealth returned to its source — for instance, returning stolen public funds to the public treasury (*bayt al-māl*). The alignment with modern *in-rem* forfeiture is clear: both remove illicit property from the control of the wrongdoer to uphold justice. Community leaders, particularly ulama, play a strategic role in instilling anti-corruption values, emphasizing the need for societal-based preemptive measures alongside formal asset forfeiture mechanisms.[38]

In practice, Muslim-majority countries have implemented such measures in line with *ghulūl*, for example, several jurisdictions use *ḥisba* (public accountability) institutions to investigate officials' wealth and reclaim any unexplained portions for the state. Thus, the mechanism of asset forfeiture as envisaged in national law reforms does not clash with Islamic law – on the contrary, it realizes the Qur'anic injunction that "*do not consume one another's wealth unjustly*" (2:188) and the Prophetic saying that "*whoever cheats (others) is not of us*." Both systems ultimately seek to ensure that corruption is not rewarded and that justice is served by the recovery of ill-gotten gains. The doctrine of *ta'zīr* within Islamic criminal law offers flexibility in imposing discretionary sanctions, including asset forfeiture, to address complex and evolving forms of financial crimes such as corruption.[39]

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[37] Mat. Tromme, "Waging War Against Corruption in Developing Countries: How Asset Recovery Can Be Compliant with The Rule of Law," *Duke Journal of Comparative & International Law* 29 (2019): 140, www.binghamcentre.biicl.org.

[38] Bukhari. Ali et al., "The Preemptive Approach of Ulama in Aceh to Eradicating Corruption," *El-Mashlahah* 14, no. 2 (2024): 361–80, https://doi.org/10.23971/el-mashlahah.v14i2.8885.

[39] Azhari Akmal. Tarigan, "Ta'zīr dan Kewenangan Pemerintah dalam Penerapannya," *Ahkam* 17, no. 1 (2017), https://doi.org/10.15408/ajis.v17i1.6223; Yusna Zaidah, "Judicial Discretion in

While pursuing asset forfeiture aggressively is crucial to anti-corruption efforts, a just legal system must also safeguard the rights of innocent third parties. The question of third-party rights arises when confiscated assets are claimed by or linked to persons other than the perpetrator – for example, a family member who co-owns property, a business partner, or a bona fide purchaser of an asset later found to be tainted. Both Islamic law and modern legal frameworks emphasize fairness in this regard, ensuring that punitive measures do not inadvertently punish those who are not culpable. In Islamic legal theory, the concept of justice (‘*adl*) demands that no person bear the burden of another’s sin (35: 18). This implies that if an asset obtained through corruption has since come into the hands of an innocent party by legitimate means, the resolution should be handled with equity: the corrupt taker should be divested of the wealth, but the innocent party’s own rights should be preserved as far as possible (for instance, through compensation or restoration of equivalent value). Despite high levels of religiosity, Islamic countries still face endemic corruption, suggesting that religious teachings must be complemented by robust institutional frameworks, such as transparent asset forfeiture mechanisms. [40]

Draft Law of Asset Forfeiture: Context and Overview

NCBAF has gained traction as a tool to recover assets in cases where the wrongdoer flees, dies, or enjoys immunity, thereby preventing impunity by targeting the “illegitimate” asset rather than the person. The underlying theory is that property derived from corruption is per se tainted and belongs in justice to the public or victims, not the corrupt individual.[41] By legally designating such assets as forfeitable, jurisdictions signal that corruption erodes any lawful ownership claims. [42] In essence, ill-gotten gains are viewed as having no

Inheritance Case Resolution: Towards Progressive Legal Justice in Indonesia,” *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (2024): 136–47, https://doi.org/10.18592/sjhp.v24i1.13012.

[40] Ahmad Khoirul Umam, “Islam, Korupsi dan Good Governance di Negara-Negara Islam,” *Al-Ahkam* 24, no. 2 (October 2014): 195–224, https://doi.org/10.21580/AHKAM.2014.24.2.146.

[41] Ivan Najjar Alavi, Watni Marpaung, and Arifuddin Muda Harahap, “Reconstruction of Forfeiture of Corruption Convicts’ Assets in Restitution of State Financial Losses Islamic Law Analysis,” *Jurnal Akta* 12, no. 1 (February 7, 2025): 72–84, https://doi.org/10.30659/AKTA.V12I1.43729.

[42] Ni Wayan Gita Pratisthita and Pieter E. Latumeten, “Implementation Implications Non-Conviction Based Asset Forfeiture on Notaries Whose Authentic Deeds Are Indicated as Means of Money Laundering,” *International Journal of Social Service and Research* 3, no. 11 (November 15, 2023): 2768–82, https://doi.org/10.46799/ijssr.v3i11.578.

legitimate title – the state or rightful owner can claim them back on the theory that the corrupt party never rightfully owned them. Ethical considerations, as explored in the interpretation of misconduct acts, highlight the breaches of dignity and morality, even beyond criminal definitions, can justify legal action against public officials, including through asset forfeiture.[43]

At the same time, international law emphasizes safeguards to ensure that asset forfeiture is implemented consistent with due process and property rights. Without proper checks, aggressive forfeiture can encroach on individual rights, so legal systems seek to balance the public interest in asset recovery with the protection of legitimate owners. For example, most frameworks allow innocent third parties (bona fide purchasers or family members with legitimate interests) to contest forfeiture of assets, preserving their property rights if they were not complicit in the corruption. [44] Additionally, courts in various jurisdictions (including Europe and Commonwealth countries) have developed proportionality tests and judicial oversight to ensure that forfeiture targets only illicit wealth and not bona fide property. [45] In sum, the international law perspective provides that while corruption should cost perpetrators their ill-gotten property, such measures must operate under legal standards that distinguish illegitimate ownership from legitimate property interests.[46]

Indonesia's Draft Law on Asset Forfeiture represents a legal reform aimed at strengthening the recovery of assets derived from corruption and other crimes. This draft bill was introduced to address the gap in existing laws, which traditionally require a criminal conviction before stolen assets can be confiscated. Under the current system, asset recovery relies on in-personam (conviction-based) procedures and has faced numerous obstacles – for example, offenders absconding or hiding assets, and lengthy court processes that hinder timely recovery. The Draft Law on Asset Forfeiture proposes a breakthrough by

[43] Putu Eva Ditayani Antari, "The Interpretation of Misconduct Act as a Reason to Dismiss President: an Ethical Approach," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (July 2021): 14–31, https://doi.org/10.18860/J-FSH.V13I1.12122.

[44] Zaiton Hamin et al., "The Legal Framework of Asset Forfeiture for Money Laundering in the United Kingdom and Malaysia," *International Journal of Research and Innovation in Social Science* IX, no. II (2025): 4404–14, https://doi.org/10.47772/IJRISS.2025.9020345.

[45] Virgílio Afonso da Silva, "Balancing May Be Everywhere, but the Proportionality Test Is Not," *Global Constitutionalism* 13, no. 3 (November 20, 2024): 519–34, https://doi.org/10.1017/S2045381723000187.

[46] Theodore S. Greenberg et al, "Stolen Asset Recovery ," 2009.

adopting an *in-rem* approach, allowing the state to target and seize illicit assets directly, regardless of whether the perpetrator is convicted. [47] Legal interpretations across Association of Southeast Asian Nations (ASEAN) suggest that contextual socio-religious factors significantly shape regulatory frameworks, which is equally crucial when designing asset forfeiture regimes sensitive to Islamic values.[48]

Modern anti-corruption law holds that "crime should not benefit the perpetrator," encapsulating the idea that no one should be allowed to profit from their wrongful acts. [49] National laws against corruption, including Indonesia's, embody this by empowering courts to order forfeiture of bribe money, embezzled funds, and other proceeds of corruption. Indonesian Anti-Corruption Law (Law No. 31 of 1999 jo. Law No. 20 of 2001) explicitly provides that a key purpose of sentencing in corruption cases is recovering assets for the state. Article 18 of that law authorizes judges to add penalties such as the seizure of assets obtained from corruption and payment of replacement money, reinforcing the notion that corrupt gains are never legally earned by the offender.[50]

The mechanisms for confiscating corrupt assets can be understood by comparing national law procedures with their alignment to Islamic legal principles. In Indonesia's national law, asset forfeiture historically operates as part of the criminal justice process (*in personam*), whereas Islamic law provides moral and legal backing for forfeiture (*in-rem in spirit*) as a tool of justice. The evolving practice, exemplified by the draft Draft Law on Asset Forfeiture, shows a move toward integrating these approaches. The concept of unlawful gains,

[47] Desi Fitriyani and Muthi'ah Maizaroh, "Possibility of Implementing *In-rem* Asset Forfeiture as an Asset Recovery Effort in Indonesia," *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 1, no. 2 (June 14, 2023): 205–19, https://doi.org/10.59593/amlcft.2023.v1i2.62.

[48] M. Ardiansyah, Ibnu Qizam, and Abdul Qoyum, "Telaah Kritis Model Screening Saham Syariah Menuju Pasar Tunggal ASEAN," *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan* 16, no. 2 (January 24, 2017): 197, https://doi.org/10.18326/ijtihad.v16i2.197-216.

[49] Gumilang Fuadi, Windy Virdinia Putri, and Trisno Raharjo, "Tinjauan Perampasan Aset dalam Tindak Pidana Pencucian Uang dari Perspektif Keadilan," *Jurnal Penegakan Hukum dan Keadilan* 5, no. 1 (March 30, 2024): 53–68, https://doi.org/10.18196/jphk.v5i1.19163.

[50] Sry Karina Br. Sinuhaji and Mar'ie Mahfudz Harahap, "Problems of the Formulation of Asset Forfeiture Resulting from Corruption Crimes: A Comparative and Conceptual Study," *Istinbath : Jurnal Hukum* 21, no. 01 (August 10, 2024): 139–54, https://doi.org/10.32332/istinbath.v21i01.9695.

including those arising from gratification and corruption, necessitates legal interventions rooted both in positive law and *fiqh jināya* to ensure justice.[51]

Under existing Indonesian law, corrupt assets are typically recovered through criminal proceedings. The court may impose asset seizure as an additional penalty upon conviction of a corruption offense.[52] This *in-personam* approach ties the forfeiture to the perpetrator's guilt; only after a final guilty verdict can assets be permanently confiscated by the state. While this mechanism upholds due process for the accused, it has limitations. Corrupt actors often exploit legal delays or abscond to avoid conviction, effectively putting their ill-gotten assets beyond reach. Indeed, scholars observe that relying solely on conviction-based forfeiture allows some criminals to retain their wealth – a scenario where offenders might even accept imprisonment as a trade-off for preserving stolen riches for themselves or their family. Such outcomes undermine the deterrent effect of anti-corruption efforts.[53]

To overcome the above limitations, many jurisdictions (and the Indonesian draft bill) employ *in-rem* forfeiture, which targets the asset itself as the offender. This mechanism does not require a criminal conviction; authorities initiate a separate proceeding to prove that the property is the proceeds or instrumentality of corruption. If proven, the property can be forfeited to the state even if the individual suspect is unavailable or acquitted (for procedural reasons). The *in-rem* approach is powerful: it deprives wrongdoers and their associates of the illicit gains regardless of criminal conviction, ensuring that corrupt actors cannot enjoy the fruits of their crimes. Comparative experience shows its effectiveness.[54] For example, *in-rem* forfeiture has been used in countries like Italy and the United States for decades to combat organized crime and corruption by swiftly seizing criminal assets. In Indonesia, experts have

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[51] Nadea Lathifah Nugraheni, "Criminal Act of Sexual Gratification: Fiqh Jināyah and Positive Law Perspective," *Al-Ahkam* 18, no. 1 (April 2018): 97–118, https://doi.org/10.21580/AHKAM.2018.18.1.2358.

[52] Sry Karina Br. Sinuhaji and Mar'ie Mahfudz Harahap, "Problems of the Formulation of Asset Forfeiture Resulting from Corruption Crimes: A Comparative and Conceptual Study."

[53] 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 (May 27, 2024): 299–330, https://doi.org/10.53955/jhcls.v4i2.259.

[54] Fatima Waziri Azi, "The Scope of '*in-rem*' Forfeiture under Nigerian Law: Issues Arising," *World Journal of Social Science* 7, no. 1 (November 11, 2019): 1, https://doi.org/10.5430/wjss.v7n1p1.

argued that implementing *in-rem* forfeiture is an urgent "breakthrough" needed to optimize asset recovery.[55]

To operationalize this, the burden typically falls on the third party to prove their lack of involvement in the crime and their legitimate claim to the asset. Indonesian law (and Islamic law by analogy) would then exempt that portion of the asset from forfeiture or provide compensation. For example, if a bribery convict's family home is seized, an innocent co-owner could claim the value of their share so that only the corrupt share is effectively forfeited. Similarly, bona fide purchasers who unknowingly bought stolen assets may be allowed to keep the asset if they paid fair value (with the state seeking the equivalent value from the perpetrator instead), or they may return the asset and receive a refund. The underlying principle is equilibrium: the state's interest in recovering corrupt assets must be balanced with the individual rights of non-offending parties. [56]

Prosecutors' Practical Understanding of Illegitimate Ownership

All four prosecutors interviewed in this study—Muhammad Irham, Budi Setyawan, Hangrengga Berlian, and Zulkarnaen—were engaged between 1 and 30 April 2025. They shared a consistent view regarding the status of assets derived from corruption. According to them, such assets are considered both materially and morally illegitimate, regardless of how they are concealed. This position remains firm even when the property is formally registered under the names of third parties, including spouses, children, or other close associates.

The author's experience as a prosecutor in handling related cases highlighted that such practices are not incidental but are in fact deliberate legal manoeuvres. He stated that corrupt actors commonly transfer ownership of assets to family members to obstruct the asset recovery process. This, he argued, is part of a broader strategy to exploit the rigidity of formal ownership laws and make it more difficult for prosecutors to secure forfeiture.

Muhammad Irham expanded on this point by emphasizing the deceptive nature of such transfers. According to him, while assets may appear legitimate

[55] Lily Solichul Mukminah et al., "The Importance of Regulating Non-Conviction Based Asset Forfeiture in Corruption Cases in Indonesia," *Iblam Law Review* 3, no. 2 (May 2023): 31–45, https://doi.org/10.52249/ILR.V3I2.125.

[56] Shri Hardjuno Wiwoho, "Acceleration of Legal Reformulation Regarding Non-Conviction Based Asset Forfeiture in Indonesia," *Pena Justisia* 23, no. 3 (December 2024), https://doi.org/10.31941/pj.v23i3.4783.

on paper, in substance they are tools used to conceal the origin and movement of illicit wealth. These third-party arrangements often create layers of legal protection that frustrate the goals of justice and asset restitution.[57]

Zulkarnaen supported these observations by stressing that such ownership patterns are easily recognized during investigations, even if they remain legally protected. He remarked, "The law often sees only the name on the certificate, but we know from our investigations that the assets were funded through bribes or embezzlement." His statement underscores the critical disjunction between formal legal structures and the practical realities of corruption.[58]

Prosecutors' Support for NCBAF

All prosecutors interviewed in this study expressed strong support for the adoption of NCBAF within Indonesia's legal system. They viewed NCBAF not merely as an alternative mechanism but as an urgent legal innovation needed to respond to real-world complexities in corruption cases.

Hangrengga Berlian emphasized that NCBAF is essential in circumstances where suspects deliberately exploit procedural gaps. He pointed out that many corrupt actors use legal tactics to prolong trials, file repeated appeals, or even flee the country to avoid final conviction. In such cases, waiting for a definitive court ruling before initiating asset seizure often results in the dissipation or concealment of the corrupt proceeds.[59]

Furthermore, Budi Setyawan highlighted that NCBAF offers prosecutorial flexibility, allowing legal authorities to act more proactively. In his experience, delays in asset recovery frequently led to the rapid transfer, liquidation, or laundering of assets. Without the ability to intervene early—before conviction—prosecutors risk losing the opportunity to recover significant portions of state losses.[60]

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[57] Interview with Muhammad Irham, Special Criminal Prosecutor at the Attorney General's Office, Jakarta, April 01, 2025

[58] Interview with Zulkarnaen, Administrative Prosecutor at the Attorney General's Office, Semarang, April 30, 2025

[59] Interview with Hangrengga Berlian, Criminal Prosecutor at the Attorney General's Office, Semarang, April 20, 2025

[60] Interview with Budi Setyawan, Special Criminal Prosecutor at the Attorney General's Office, Jakarta, April 10, 2025

Collectively, the prosecutors' support for NCBAF reflects a shared, practice-based conclusion that Indonesia's conviction-based confiscation is not sufficient on its own. First, evidentiary hurdles: assets are frequently parked under spouses, relatives, nominees, shell companies, or layered transactions, making beneficial ownership hard to prove under criminal standards. Second, procedural delay: multi-tier appeals, adjournments, and narrow interim-freeze tools allow asset dissipation or re-transfer before a final judgment. Third, case attrition: proceedings collapse when defendants die, abscond, or secure prolonged medical deferrals, leaving seizures legally unsupported. Fourth, political sensitivity and witness vulnerability: high-profile cases face pressure and intimidation, raising the practical bar for conviction despite strong financial trails. Fifth, cross-border frictions: slow mutual legal assistance and uneven recognition of foreign orders impede timely freezing of offshore assets. In light of these recurring frictions, prosecutors view NCBAF as a complementary pathway that targets the asset itself, enables earlier restraint to preserve value, and embeds judicial review and third-party claim mechanisms—thereby reducing impunity while safeguarding bona fide interests. Their views suggest that an effective anti-corruption strategy must include tools that allow the legal system to outpace the evasive maneuvers employed by sophisticated offenders. In this context, NCBAF is seen not as a threat to due process, but as a necessary complement that preserves the integrity of the justice system.

Comparative literature supports this prosecutorial view. As Wardhani et al., argue,[61] NCBAF is essential to close enforcement gaps in corruption cases. Islamic legal reasoning also supports this, provided the process includes clear standards of proof, transparency, and avenues for contesting the forfeiture by third parties.

Prosecutors' Ethical Reflections and Islamic Values

Ethical considerations emerged as a strong theme during interviews. Collectively, the prosecutors' support for NCBAF reflects a shared, practice-based conclusion that Indonesia's conviction-based model is no longer adequate on its own. First, evidentiary challenges: illicit assets are often held under spouses', relatives', or nominees' names, or through shell companies and

[61] Maudyna Setyo Wardhani et al., "Seizure of Corruption Proceeds Through Non-Conviction-Based Asset Forfeiture as a Means of Recovering State Losses From Corruption Crimes," *Path of Science* 10, no. 10 (October 2024): 7001–7, https://doi.org/10.22178/POS.109-21.

layered transactions, making beneficial ownership difficult to prove under criminal standards. Second, lengthy procedures: multi-tier appeals, frequent adjournments, and limited interim-freezing powers allow asset dissipation or re-transfer before a final judgment. Third, case attrition: proceedings collapse when defendants die, flee, or secure prolonged medical deferrals, leaving confiscation legally unsupported. Fourth, political sensitivity and witness vulnerability: high-profile matters face pressure or intimidation, raising the practical bar for conviction despite strong financial trails. Fifth, cross-border frictions: slow mutual legal assistance and uneven recognition of foreign orders delay timely freezing of offshore assets. Given these recurrent frictions, prosecutors view NCBAF as a complementary pathway that targets the asset itself, enables earlier restraint to preserve value, and embeds judicial review plus third-party claim mechanisms—reducing impunity while safeguarding bona fide interests.

Zulkarnaen remarked that prosecutors must act not only based on legal text but also in accordance with conscience and societal values.[62] Muhammad Irham emphasized that Islamic legal ethics offer a broader framework for justice, especially in cases where positive law may be silent.[63] Hangrengga Berlian noted that the principle of *ḥisba*—public accountability—is deeply embedded in Islamic governance and can serve as a basis for more morally robust asset forfeiture.[64]

This dimension is supported in literature emphasizing the integration of *ghulūl* principles in state legal systems to address corruption.[65] The goal of *ḥifẓ al-māl* (protection of wealth) under *maqāṣid al-sharīʿa* reinforces the prosecutor's role not only as legal enforcer but also as a guardian of public trust.

From an Islamic law perspective, this aligns with the concept that property acquired through haram means lacks *milk al-sharʿī* (lawful ownership). The

[62] Interview with Zulkarnaen, Administrative Prosecutor at the Attorney General's Office, Semarang, April 30, 2025

[63] Interview with Muhammad Irham, Special Criminal Prosecutor at the Attorney General's Office, Jakarta, April 01, 2025

[64] Interview with Hangrengga Berlian, Criminal Prosecutor at the Attorney General's Office, Semarang, April 20, 2025

[65] Chaudhry Ghafran and Sofia Yasmin, "Ethical Governance: Insight from the Islamic Perspective and an Empirical Enquiry," *Journal of Business Ethics* 167, no. 3 (December 1, 2020): 513–33, https://doi.org/10.1007/s10551-019-04170-3.

Qur'an explicitly warns against consuming wealth unjustly (2: 188), and Islamic legal tradition recognizes *ghulūl* (embezzlement) as a breach of both moral and legal obligations.

In Islamic legal theory, such tactics fall under *ḥiyāl* (legal stratagems) that are morally condemned, especially when they undermine public interest (*maṣlaḥa*). The concept of *ta'zīr bi al-māl*—a discretionary financial penalty—justifies asset seizure where strong circumstantial evidence exists, even without a criminal conviction.[66] Thus, Islamic law offers a parallel justification for NCBAF systems, while ensuring safeguards for innocent third parties.

Prosecutors consistently identified two primary legal obstacles in the process of recovering assets derived from corruption. Hangrengga Berlian explained that suspects often employ a legal defence strategy by distancing themselves from the ownership of the assets. In many cases, suspects claim that properties, bank accounts, or business shares are registered under the names of spouses, children, or other relatives. Although the evidence may indicate that the assets were acquired using proceeds of corruption, such third-party claims create significant procedural hurdles that delay or derail forfeiture efforts.[67]

Budi Setyawan further noted another common challenge: the death of a suspect before a final court ruling can be issued. In such cases, the legal basis for pursuing asset forfeiture becomes unclear or entirely void, particularly under a system that relies exclusively on conviction-based mechanisms. As a result, assets suspected to originate from corruption remain unrecovered and can even be passed on to heirs without legal consequence.[68]

Bridging Prosecutorial Insights and Islamic Legal Theory

The prosecutors interviewed in this study consistently emphasized that assets obtained through corruption—even when registered under the names of third parties—lack legitimacy and should be subject to forfeiture. This empirical insight resonates strongly with Islamic legal doctrines that prohibit the unjust consumption of wealth and classify corrupt gains as *ḥarām* property without

[66] Ade Mahmud et al., "Confiscation of Assets Resulting from Corruption in Criminal Law and Islamic Law," 2022, https://doi.org/10.2991/assehr.k.220407.073.

[67] Interview with Hangrengga Berlian, Criminal Prosecutor at the Attorney General's Office, Semarang, April 20, 2025

[68] Interview with Budi Setyawan, Special Criminal Prosecutor at the Attorney General's Office, Jakarta, April 10, 2025

lawful ownership. The principle of *ḥifẓ al-māl* (preservation of wealth) within the objectives of Islamic law (*maqāṣid al-sharīʿa*) requires that public resources be safeguarded against misappropriation and restored to their rightful collective owner, namely the state or society. Recent scholarship affirms that *maqāṣid*-based reasoning can validate discretionary sanctions, such as *taʿzīr bi al-māl*, to ensure justice and deter financial wrongdoing.[69]

By juxtaposing prosecutors' practical experiences with these Islamic legal principles, this study contributes a novel perspective: it demonstrates that empirical prosecutorial reasoning and doctrinal Islamic concepts converge in legitimizing asset forfeiture. Previous research has largely examined either doctrinal aspects of Islamic criminal law or comparative models of non-conviction-based asset forfeiture in Western jurisdictions, but rarely integrated empirical insights from Muslim prosecutors themselves. This bridging of empirical and normative domains marks the study's originality, offering a grounded Islamic legal analysis of corruption-related asset recovery in Indonesia.

The prosecutors interviewed in this study reported recurring patterns in corruption cases where illicit assets were deliberately registered under the names of spouses, children, or business associates in order to frustrate forfeiture efforts. They emphasized that such concealment strategies, combined with procedural delays and the requirement of a final criminal conviction, often prevent the state from recovering stolen wealth when suspects abscond, die during trial, or exploit legal loopholes. These experiences underscore the structural weaknesses of conviction-based forfeiture, which remains overly dependent on the successful completion of lengthy criminal proceedings. Prosecutors therefore expressed strong support for introducing non-conviction-based asset forfeiture as a complementary tool, noting its potential to act directly against the asset rather than the offender, thereby closing enforcement gaps. Comparative studies affirm that reliance solely on conviction-based regimes leaves illicit wealth beyond reach, while jurisdictions that employ non-conviction models—such as the United Kingdom and several

[69] Houssem Eddine Bedoui and Walid Mansour, "Performance and Maqasid al-Shari'ah's Pentagon-Shaped Ethical Measurement," *Science and Engineering Ethics* 21, no. 3 (2015): 555–76, https://doi.org/10.1007/s11948-014-9561-9.

European Union (EU) member states—demonstrate greater effectiveness in preventing asset dissipation and restoring public funds.[70]

The prosecutors' insistence that corruption-derived assets are inherently illegitimate closely aligns with Islamic legal doctrines on the treatment of wealth. The principle of *ḥifẓ al-māl* (protection of wealth), one of the core objectives of Islamic law, requires that public resources be safeguarded from misappropriation and restored to rightful ownership when unlawfully taken. Doctrinally, such illegitimate assets are treated as *ghulūl* (embezzlement of public property) or *rishwa* (bribery), both of which strip the perpetrator of lawful ownership and oblige restitution to the community. In this regard, the discretionary sanction of *taʿzīr bi al-māl*—financial penalties or asset forfeiture imposed to serve justice—provides a clear juristic basis for prosecutors' calls to seize hidden or third-party registered assets.[71] Recent scholarship on *maqāṣid*-based ethical governance affirms that such discretionary measures are legitimate when they prevent unjust enrichment and protect collective welfare. By situating prosecutorial practice within these Islamic principles, asset forfeiture gains not only legal but also moral legitimacy, reinforcing that corruption-tainted wealth cannot enjoy protection under either positive law or *ghulūl*.

While non-conviction-based asset forfeiture offers prosecutors a powerful tool against corruption, its application raises potential tensions with Islamic legal commitments to justice. A central concern is the protection of bona fide third parties who may hold an interest in property without knowledge of its corrupt origins. If such assets are seized indiscriminately, innocent parties' risk being unjustly deprived of their rights, contradicting the Qur'anic principle of avoiding harm to those not implicated in wrongdoing. Procedural safeguards are therefore essential,[72] particularly in evidentiary standards: unlike criminal trials that require proof beyond reasonable doubt, NCBAF regimes often rely on lower thresholds such as the balance of probabilities. Comparative scholarship

[70] Hendry and King, "How Far Is Too Far? Theorising Non-Conviction-Based Asset Forfeiture."

[71] 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 (June 17, 2024): 25, https://doi.org/10.24042/adalah.v21i1.21251.

[72] Mukhammad Nur Hadi, Latifatul Islamiyah, and Cecep Soleh Kurniawan, "Conservatism on Islamic Legal Maxims: Judicial Interpretation of Polygamous Marriage at the Religious Courts of Mojokerto, Indonesia," *JIL: Journal of Islamic Law* 4, no. 2 (August 21, 2023): 172–96, https://doi.org/10.24260/jil.v4i2.1637.

highlights that while this approach expedites asset recovery, it also raises due-process questions regarding fairness and proportionality. From an Islamic legal perspective, the principle of *ʿadl* (justice) mandates that any forfeiture mechanism be carefully designed to distinguish between the guilty and the innocent, ensuring that forfeiture targets only unlawfully acquired wealth while preserving legitimate property rights.

In Islamic jurisprudence, the principle of *ʿadl* (justice) constitutes a foundational value that governs not only individual conduct but also state authority in enforcing laws. Justice requires that coercive measures, such as asset forfeiture, be exercised in a manner that prevents arbitrariness and protects the rights of all parties involved. This insistence on proportionality and fairness parallels broader concerns in comparative asset forfeiture scholarship, where courts stress that forfeiture must be carefully circumscribed to avoid becoming an instrument of abuse. In the Islamic legal tradition, the ruler's discretion is recognized in applying *taʿzīr* punishments, yet such discretion is bounded by the requirement of *ʿadl*—ensuring that punitive measures restore equity without unjustly harming innocents. Contemporary studies on *maqāṣid*-based governance frameworks further underline that preserving justice is inseparable from protecting wealth and rights, reinforcing that asset forfeiture must target only unlawfully acquired property and avoid transgressing into legitimate holdings. Thus, embedding *ʿadl* into asset forfeiture practice not only ensures compliance with Islamic legal principles but also provides a moral safeguard against potential misuse of NCBAF powers.

Recommendations for Integrating Islamic Values in Asset Forfeiture Law

Based on interviews and doctrinal analysis, the study recommends that Indonesia's future asset forfeiture framework integrates Islamic legal values. Budi Utama proposed a dual-track model: procedural fairness anchored in positive law, combined with moral accountability rooted in *ghulūl*. Muhammad Irham suggested judicial training on Islamic ethical jurisprudence to aid interpretation in ambiguous cases.[73] The implementation of *maqāṣid al-sharīʿa*

[73] Interview with Muhammad Irham, Special Criminal Prosecutor at the Attorney General's Office, Jakarta, April 01, 2025

in anti-corruption policy would ensure that not only is justice done—but that it is seen to be done, both legally and morally.[74]

For asset forfeiture laws to achieve both legal efficacy and social legitimacy, they must be grounded not only in positive law but also in the ethical framework of justice emphasized in Islamic jurisprudence. The philosophy of *ʿadl* (justice) requires that measures targeting corruption-derived wealth be exercised fairly, restoring resources to the public without encroaching upon the rights of innocents. Embedding such values ensures that asset forfeiture is seen not merely as a coercive state instrument but as a moral imperative aligned with the objectives of *ghulūl*, particularly the protection of wealth (*ḥifẓ al-māl*).[75] Contemporary scholarship on Islamic governance highlights that aligning regulatory frameworks with *maqāṣid*-based principles strengthens institutional trust and enhances compliance, since citizens perceive enforcement as serving collective welfare rather than punitive expediency.[76] Thus, incorporating Islamic justice into asset forfeiture law provides it with moral legitimacy, complementing the statutory basis and ensuring that anti-corruption measures resonate with the ethical commitments of a Muslim-majority society.[77]

Equipping prosecutors with professional ethics training grounded in *maqāṣid al-sharīʿa* is essential for strengthening integrity in the handling of corruption cases.[78] Equipping prosecutors with professional-ethics training grounded in *maqāṣid al-sharīʿa* is most effective when it follows proven integrity-training practices: combine values-based (integrity) content with compliance modules, and evaluate learning beyond "smile sheets" using behavioral and organizational outcomes. Comparative studies of public-sector integrity education find that many anti-corruption agencies still rely on

[74] Nur Azizah, "Pandangan Hukum Islam terhadap Implementasi Penegakan Hukum Korupsi di Indonesia," *Jurnal Thengkyang* 8, no. 1 (2023): 64–79, https://jurnal.unisti.ac.id/thengkyang/article/view/250.

[75] Teichmann, "Non-Conviction-Based Forfeiture (NCBC) – A Reform Option for German Asset Recovery Law."

[76] Simonato, "Forfeiture and Fundamental Rights across Criminal and Non-Criminal Domains."

[77] Michele Simonato, "Directive 2014/42/EU and Non-Conviction Based Forfeiture: A Step Forward on Asset Recovery?," *New Journal of European Criminal Law* 6, no. 2 (June 1, 2015): 213–28, https://doi.org/10.1177/203228441500600205.

[78] Zakiah Muhammaddun Mohamed and Khalijah Ahmad, "Investigation and Prosecution of Money Laundering Cases in Malaysia," *Journal of Money Laundering Control* 15, no. 4 (October 2012): 421–29, https://doi.org/10.1108/13685201211266006.

attendance counts and satisfaction surveys, and call for more robust assessment tied to behavior change—guidance that prosecutorial training can adopt (e.g., pre/post-tests, ethics dilemmas, longitudinal follow-ups).[79] Evidence from integrity-training evaluations shows short-term gains are common but decay without reinforcement, underscoring the need for recurring refreshers, case-based exercises, and leadership modeling.[80] Case-study work on large civil-service ethics programs demonstrates that structured curricula with pre/post measures produce measurable improvements in knowledge and attitudes, offering a template for prosecutors' courses.[81] Systematic reviews likewise recommend aligning training design with clear criteria and multi-level evaluation to improve real-world impact.[82] Complementary evidence from U.S. city governments links ethics training to positive shifts in organizational culture, supporting routine, institution-wide delivery rather than ad-hoc sessions.[83] To embed an Islamic legal foundation, modules should explicitly map prosecutorial duties to *maqāṣid* (especially *ḥifẓ al-māl*) and use applied scenarios on *taʿzīr bi al-māl* and third-party rights; scholarship shows *maqāṣid*-based governance frameworks can systematize ethical performance and accountability, offering a normative anchor for integrity practice.[84]

The objective of preserving wealth (*ḥifẓ al-māl*) requires prosecutors not only to recover illicit assets but also to act as moral agents entrusted with

[79] Catherine Cochrane, "Teaching Integrity in The Public Sector: Evaluating and Reporting Anti-Corruption Commissions' Education Function," *Teaching Public Administration* 38, no. 1 (May 23, 2019): 78–94, https://doi.org/10.1177/0144739419851147.

[80] André van Montfort, Laura Beck, and Anneke Twijnstra, "Can Integrity Be Taught in Public Organizations?," *Public Integrity* 15, no. 2 (April 1, 2013): 117–32, https://doi.org/10.2753/PIN1099-9922150201.

[81] Katalin Pallai and Aniko Gregor, "Assessment of Effectiveness of Public Integrity Training Workshops for Civil Servants – A Case Study," *Teaching Public Administration* 34, no. 3 (October 31, 2016): 247–69, https://doi.org/10.1177/0144739416650431.

[82] Logan M Steele et al., "How Do We Know What Works? A Review and Critique of Current Practices in Ethics Training Evaluation," *Accountability in Research* 23, no. 6 (November 1, 2016): 319–50, https://doi.org/10.1080/08989621.2016.1186547.

[83] Jonathan P West and Evan M Berman, "Ethics Training in U.S. Cities : Content, Pedagogy, and Impact," *Public Integrity* 6, no. 3 (July 1, 2004): 189–206, https://doi.org/10.1080/10999922.2004.11051253.

[84] Arman Mergaliyev et al., "Higher Ethical Objective (Maqasid al-Shari'ah) Augmented Framework for Islamic Banks: Assessing Ethical Performance and Exploring Its Determinants," *Journal of Business Ethics* 170, no. 4 (2021): 797–834, https://doi.org/10.1007/s10551-019-04331-4.

safeguarding public resources.[85] Training that integrates *ghulūl*-based ethical frameworks can enhance prosecutors' ability to balance strict legal mandates with broader societal expectations of fairness, accountability, and transparency. [86] Studies on Islamic governance and ethical performance measurement demonstrate that embedding *maqāṣid* principles into institutional practices fosters a culture of responsibility and aligns professional conduct with collective welfare. [87] Such training would not only reinforce compliance with legal standards but also provide prosecutors with a normative compass rooted in justice and public trust, thereby strengthening the legitimacy of asset forfeiture as an anti-corruption strategy in a Muslim-majority context.[88]

To ensure fairness in asset forfeiture regimes, adopting mechanisms that allow third parties to file claims and receive compensation when unjustly affected is essential.[89] Such safeguards not only prevent wrongful deprivation of property but also uphold the principle of justice (*ʿadl*), a cornerstone of Islamic legal thought.[90] Islamic jurisprudence stresses that punitive measures must target only the guilty, while protecting the rights of innocent stakeholders, which resonates with comparative legal scholarship emphasizing proportionality and procedural fairness in non-conviction-based asset forfeiture. [91] Embedding claim proceedings into asset forfeiture frameworks ensures that the process remains legitimate in the eyes of both the law and the community, while compensation schemes guarantee restitution when errors occur. This approach reflects *maqāṣid al-sharīʿah*'s objective of preserving wealth (*ḥifẓ al-māl*)

[85] Meyer-Reumann, "Measures Against Corruptibility, Gifts and Gratification – ``Bribery" in the Middle East."

[86] Lukito, "Revealing the Unexplained Wealth in Indonesian Corporation: A Revolutionary Pattern in Non-Conviction-Based Asset Forfeiture."

[87] Kolarov, "Challenges in Settling Non-Conviction Based Civil Forfeiture of Unexplained Wealth."

[88] Kennedy, "Civil Recovery Proceedings under the Proceeds of Crime Act 2002: The Experience so Far."

[89] Kamali, "Principles and Philosophy of Punishment in Islamic Law with Special Reference to Malaysia."

[90] Kamali, "Maqasid al-Shari'ah and Ijtihad as Instrument s of Civilisational Renewal: A Methodological Perspective."

[91] Hendry and King, "How Far Is Too Far? Theorising Non-Conviction-Based Asset Forfeiture."

without inflicting collateral harm, thereby enhancing public trust in anti-corruption enforcement.[92]

Integrating *maqāṣid al-sharīʿah*–based ethical guidelines into the standard operating procedures (SOPs) of investigation and prosecution would strengthen the moral foundation of anti-corruption enforcement. [93] By embedding principles such as *ḥifẓ al-māl* (preservation of wealth) and *ʿadl* (justice) within procedural rules, prosecutors are guided not only by legal mandates but also by ethical imperatives to protect public resources and uphold fairness.[94] Institutionalizing such guidelines ensures that asset forfeiture and related prosecutorial actions are consistently aligned with collective welfare and accountability. [95] Research on Islamic governance demonstrates that operationalizing *maqāṣid* principles within organizational frameworks fosters ethical decision-making, mitigates risks of misconduct, and enhances public trust in legal institutions.[96] Therefore, integrating these values into SOPs can provide prosecutors with a dual compass—legal and moral—thereby reinforcing both the legitimacy and credibility of asset forfeiture practices in corruption cases.[97]

Conclusion

Indonesian prosecutors consistently regard assets derived from corruption as materially and morally illegitimate, even when concealed under third-party names. Their practice reveals persistent barriers within conviction-based forfeiture—concealment strategies, procedural delays, and cases where suspects abscond or die—that enable illicit wealth to evade recovery through legal technicalities. In response, prosecutors strongly endorse Non-Conviction-Based Asset Forfeiture (NCBAF) as a necessary complement to existing

[92] Hendry and King, "Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids."

[93] DeJonckheere and Vaughn, "Semistructured Interviewing in Primary Care Research: A Balance of Relationship and Rigour."

[94] Bikelis, "Forfeiture Beyond the All-Crime Approach and the Proportionality Principle—A Case of the Lithuanian Illicit Enrichment Offence Concept."

[95] Al-Nahari et al., "Common Conceptual Flaws in Realizing Maqāṣid al-Sharīʿah Vis-à-Vis Islamic Finance."

[96] Bedoui and Mansour, "Performance and Maqasid al-Shari'ah's Pentagon-Shaped Ethical Measurement."

[97] Mohamed Azam Mohamed Adil, "Mahkamah Syariah di Malaysia: Kemajuan dan Pencapaian."

mechanisms, allowing the state to act directly against tainted assets and close enforcement gaps.

From an Islamic legal perspective, NCBAF's aim of recovering unlawfully acquired wealth aligns with *taʿzīr bi al-māl* (discretionary financial sanctions), *ḥifẓ al-māl* (preservation of wealth), and the prohibitions of *ghulūl* (embezzlement) and *rishwa* (bribery). These doctrines affirm that property obtained through unjust means lacks lawful protection and must be restored to rightful stakeholders or the public treasury. Integrating these values into Indonesia's asset-forfeiture framework would strengthen coherence between positive law and *sharīʿa*, enhance moral legitimacy and public trust, and reinforce the rule of law—affirming asset recovery as both a legal necessity and an ethical imperative grounded in justice and accountability.[a]

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Angkasa Angkasa: Conceptualization; Data Curation; Formal Analysis; Methodology; Validation; Writing Original Draft.

Kuat Puji Prayitno: Conceptualization; Data Curation; Formal Analysis; Methodology; Validation; Writing Original Draft.

Tedi Sudrajat: Conceptualization; Data Curation; Formal Analysis; Methodology; Validation; Writing Original Draft.

Muhammad Ainun Najib: Validation; Review & Editing.

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