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Reconstruction Of Asset Confiscation Through the Non-Conviction-Based Asset Forfeiture Reviewed In Maslahah Mursalah[1]

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Abstract:
Efforts to eradicate corruption in Indonesia have so far been less than optimal because they have focused solely on prosecuting perpetrators and have paid insufficient attention to recovering losses to the state. The Non-Conviction-Based Asset Forfeiture (NCB) mechanism, as outlined in the draft asset forfeiture law, is a regulatory framework designed to facilitate the recovery of state funds and the eradication of corruption. The objectives of this study are, first, to explain the draft asset forfeiture law and its Non-Conviction-Based Asset Forfeiture mechanism. Second, to examine the public interest from the perspective of Islamic law regarding asset recovery through the Non-Conviction-Based Asset Forfeiture (NCB) mechanism and to analyze the implementation of NCB in countries that have adopted it, so that regulations in Indonesia do not focus solely on punishing perpetrators but also on recovering state financial losses, assess their public interest, and ensure they do not conflict with the values of Islamic law. The results of this study indicate that the application of NCB in the Asset Forfeiture Bill does not conflict with the concept of *al-bara'ah al-ashliyyah* (the presumption of innocence), does not pose a risk of violating human rights, and does not violate the principle of *hifz mal*.

Keywords: Corruption; Non-Conviction Based Asset Forfeiture* (NCB); *benefit

A. INTRODUCTION

Corruption remains one of the most significant problems in Indonesia, one that has yet to be fully addressed from the past to the present. According to Transparency International's 2024 Corruption Perceptions Index (CPI), Indonesia ranks 99th out of 180 countries. This data indicates that Indonesia falls in the middle range in terms of the number of corruption cases. Article 18 of Law No. 31 of 1999 on Corruption Crimes regulates the direct forfeiture of assets from perpetrators of corruption; furthermore,

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Articles 77–78 of the Anti-Money Laundering Law expand the mechanisms for asset forfeiture, while the penal code of Indonesia and the Criminal Procedure Code serve as the general legal framework for the forfeiture of evidence. Regulations on asset forfeiture are already stipulated in the laws mentioned above, but they have yet to have a significant impact on the recovery of state finances and the eradication of corruption. The following are the state losses and asset recovery figures for the past four years resulting from corruption (Dani Prabowo t.t. 2021; Kurnia Ramadhana, 2024; CNN Indonesia, 2025). State losses in Indonesia in 2021 amounted to Rp 29.483 trillion, with asset recovery totaling Rp 374.4 billion. State losses in 2022 amounted to Rp 42.7 trillion, with asset recovery totaling Rp 575.54 billion. State losses in 2023 amounted to Rp 28.4 trillion. State losses in 2024 are Rp 279.9 trillion, with asset recovery of Rp 28.5 billion. Based on this data, the amounts of state losses and asset recovery are far from sufficient to cover the state losses resulting from corruption. The data indicates that asset recovery has not yet had a significant impact on state finances in the wake of corruption-related crimes.

The draft asset forfeiture law currently being proposed in Indonesia employs a mechanism known as Non-Conviction-Based Asset Forfeiture (NCB). According to Fletcher N. Baldwin, Jr., NCB involves a reversal of the burden of proof, allowing for faster seizure once there is a suspected link between the assets and a criminal offense (Husein dkk. 2019, 15–19). Asset recovery through the Non-Conviction-Based Asset Forfeiture (NCB) mechanism is a method of recovering assets derived from criminal offenses under a burden-of-proof reversal, whereby the suspect must prove that the assets seized by the state are not the proceeds of a criminal offense. The Asset Forfeiture Bill employs a mechanism distinct from Indonesia's current anti-corruption regulations. The current anti-corruption mechanism focuses on the perpetrator (in personam), requiring a criminal conviction against the perpetrator before assets can be forfeited, whereas the mechanism of the Asset Forfeiture Bill focuses on the assets (in rem) if there is a suspicion that assets owned by an individual do not correspond to their income or if there is a suspected link between the assets and a criminal offense, then those assets can be forfeited without first imposing a criminal sentence on the perpetrator.

On average, countries that have implemented the NCB have a low Corruption Perceptions Index (CPI), according to Transparency International's global ranking of 180th countries in 2024. Singapore ranks 3rd, New Zealand ranked 4th, Switzerland ranked 5th, Ireland ranked 10th, Australia ranked 10th, Hong Kong ranked 17th, the United Kingdom ranked 20th, the United States ranked 28th, Malaysia ranked 57th, Kuwait ranked 65th, Thailand ranked 107th, the Philippines ranked 114th, Nigeria ranked 140th, and so on. This data demonstrates that the NCB has successfully reduced corruption rates in every country that has implemented it.

Current anti-corruption regulations are still far from achieving their goals of deterring corrupt officials and recovering state funds. Can imposing severe prison sentences solve the problem of corruption in Indonesia? Based on Indonesia Corruption Watch (ICW)'s monitoring of 898 corruption cases disclosed at the first-instance trial level throughout 2023, the average criminal sentence sought was 4 years and 11 months in prison. When classified into three categories—mild (under 4 years), moderate (4 to 10 years), and severe (over 10 years)—the average prosecution demands against corruption

defendants throughout 2023 fall into the moderate category. Consequently, sentencing for corruption offenses does not meet expectations, as it remains in the moderate range.

Based on the data above, current anti-corruption laws have not been effective in combating corruption and recovering state funds; therefore, a new mechanism with updated regulations is needed to combat corruption in Indonesia. One alternative mechanism is found in the draft law on asset forfeiture, specifically the Non-Conviction Based Asset Forfeiture (NCB) mechanism, which is not contingent on the perpetrator's guilt and focuses on assets suspected of being illicit. This mechanism could serve as an alternative in the fight against corruption and in the enforcement of criminal law.

However, every policy has its drawbacks. The implementation of the draft asset forfeiture using the NCB method also has its drawbacks; for instance, asset forfeiture is susceptible to abuse by law enforcement officials, so it is necessary to ensure checks and balances are in place both before and after the process, and the NCB process has the potential to harm third parties if not carried out with due care (Ramelan 2012). Since this is a new regulation to be implemented in Indonesia, it is necessary to conduct a more in-depth study of its implications and challenges, so that the regulation can effectively combat corruption without violating human rights.

There has been much debate regarding the asset forfeiture bill, particularly its NCB mechanism, which is viewed as contrary to the concept of al-bara'ah al-ashliyyah (the presumption of innocence) and as risking the undermining of human rights and the protection of property (*ḥifẓ al-māl*) in Islamic law. Therefore, a more in-depth study of the NCB is needed, using the maṣlaḥah mursalah approach to assess its public-interest value and ensure it does not conflict with the values of Islamic law.

The objectives of this study are, first, to explain the draft law on asset forfeiture using the Non-Conviction-Based Asset Forfeiture (NCB) mechanism. Second, to examine the public interest from the perspective of Islamic law in asset recovery using the Non-Conviction-Based Asset Forfeiture (NCB) mechanism and to analyze the implementation of NCB in countries that have adopted it, so that regulations in Indonesia focus not only on punishing perpetrators but also on recovering financial losses to the state and considering the public interest.

Asset recovery has been studied by previous researchers. The first study was conducted by Muhammad Imdad et al (M. Imdad al-Kavaf dan Maskur Rosyid 2025), which examines the urgency of asset forfeiture in corruption cases from the perspective of Islamic criminal law; however, this study does not address the obstacles to implementing asset forfeiture through the Non-Conviction-Based Asset Forfeiture (NCB) mechanism. The two studies by Aziez Syaifuddin and M. Amruddin. (Syaifuddin dan Latif 2024) This study examines the *maslahah* analysis of the forfeiture of assets from convicted corrupt officials in relation to the Asset Forfeiture Bill; however, it does not delve deeply into the bill itself and instead emphasizes aspects of Islamic law. The three studies by Faza (Masruri, 2023) examine the recovery of assets derived from corruption from the perspectives of criminal law and fiqh jinayah. It does not address asset recovery through Non-Conviction-Based Asset Forfeiture (NCB); instead, it focuses on the asset forfeiture laws currently in effect in Indonesia. Fourth, Ade Mahmud et al (Mahmud,

2021) discuss substantive justice in the process of recovering assets derived from corruption, but do not explain in detail how to recover assets lost by the state as a result of corruption. The fifth study is by Rihantoro and Fikri (2025). This study focuses on the role of asset recovery in criminal law enforcement and its impact on the fulfillment of human rights, but it does not address religious aspects or perspectives based on religious values. The difference between this study and the five previous studies is that the previous studies emphasized normative aspects; this study aims to fill that gap by developing a functional legal approach that positions the Non-Conviction Based Asset Forfeiture (NCB) mechanism as a logical consequence of the nature of the law.

B. METHODE

The method used is normative legal research. Normative legal research examines applicable legal norms, using library research as a data collection method. This study employs a qualitative paradigm and draws on secondary data sources, including books, articles, official domestic and international websites, and newspapers related to corruption offenses. The approaches used in this study are the statutory approach—which involves analyzing legal instruments—and the comparative approach—which involves comparing the application of the concept of Non-Conviction-Based Asset Forfeiture (NCB) with the principles of Islamic law from the perspective of the public interest.

The analytical technique applied in this study is qualitative analysis. The analysis is conducted by gathering reference materials relevant to the research problem, conducting a legal comparison between the investigated legal issues and Islamic law, and drawing conclusions or formulating arguments based on the results of the analysis

C. RESULTS AND DISCUSSION

1. Asset Forfeiture Mechanisms in the Corruption Crimes Act and Draft Asset Forfeiture Bill

Non-Conviction-Based Asset Forfeiture, in accordance with the 2003 United Nations Convention Against Corruption (UNCAC), was ratified by Law No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption. Among other things, the 2003 UNCAC regulates Non-Conviction-Based Asset Forfeiture (NCBAF) or in rem asset forfeiture. Article 54(1)(c) of the UNCAC requires all States Parties to consider taking such measures as they deem necessary to enable the forfeiture of assets derived from corruption without criminal proceedings in cases where prosecution is not possible, for example, due to death, flight, or other reasons.

NCB is more commonly used in countries that follow the common law system. Indonesia, on the other hand, follows the civil law system. One of the differences between NCB under the common law and civil law systems lies in the standard of proof: under the common law system, the standard is "balance of probabilities" (more likely than not), meaning the judge need only be convinced that the assets were derived from illegal activities. Second, the burden of proof is shifted to the owner (who must prove

the origin of their own assets). In contrast, under the civil law system, the standard of proof is "beyond a reasonable doubt" (strong judicial conviction), requiring the prosecutor to prove absolutely and irrefutably that the assets are derived from illegal proceeds; if any doubt remains, the judge will not seize them. Second, the burden of proof typically rests more firmly with the prosecutor; the prosecutor must actively prove the origin of the assets and their connection to a specific criminal offense. (Greenberg dkk. 2009, 17)

Asset forfeiture in Indonesia involves two mechanisms: criminal and civil proceedings. Due to the difficulties in resolving civil lawsuits, corruption cases more often utilize the criminal route. The legal system used in Indonesia for criminal acts of corruption is based on civil law, meaning that the criminal act must first be proven before assets can be forfeited, as stipulated in Article 39, Paragraph 3 of the Criminal Code (KHUP). This provision explains that asset forfeiture is carried out only after a person has been proven guilty. Asset forfeiture in Indonesia can also be pursued through civil proceedings, as provided for in Articles 32, 33, and 34 of Law No. 31 of 1999—specifically when investigators lack sufficient evidence to establish the elements of a criminal act of corruption; Meanwhile, if it is clearly proven that the state has suffered financial losses, investigators may transfer the case file to the State Attorney (JPN) to file a civil lawsuit. Furthermore, if the defendant dies during the investigation or trial, but their actions are proven to have caused losses to the state, then the JPN or the aggrieved party may file a civil lawsuit against the heirs.

Civil lawsuits in corruption cases are very rarely filed because they are difficult to prove. According to the former Deputy Attorney General for Civil and Administrative Affairs, the success of a civil lawsuit in a corruption case depends heavily on the ability of the State Prosecutor's Office to present concrete evidence that the perpetrator committed corruption, so that asset forfeiture can be carried out (Hukum Online 2005). The burden of proof in civil cases falls on the defendant because the evidence or assets are in the defendant's possession, making it more difficult to prove the case. Under Article 79(4) of Law No. 10 of 2010 on the Prevention and Eradication of Money Laundering, if a defendant dies before a verdict is rendered and has committed the crime of money laundering, the judge may issue a ruling to forfeit the defendant's assets.

Indonesia has implemented the new Penal Code of Indonesia under Law No. 1 of 2023. There are distinct differences between the provisions in the new Criminal Code and the existing Anti-Corruption:

1) Under Article 604 of the new Criminal Code, the minimum prison sentence has been raised to two (2) years, whereas it was previously only one (1) year.
2) The new Penal Code of Indonesia excludes and effectively abolishes the death penalty for corrupt actors. Conversely, the Anti-Corruption Law retains the death penalty as the most severe capital punishment for corruption offenses.
3) Under Articles 603 and 604 of the new Penal Code of Indonesia, fines for corruption are substantially higher, classified under Category VI at 2,000,000,000 IDR (two billion

rupiah). In contrast, the maximum fine stipulated under the Anti-Corruption Law is capped at 1,000,000,000 IDR (one billion rupiah).

There is a discrepancy between the Anti-Corruption Law and Indonesia's new Penal Code: the new code reduces prison sentences while increasing the maximum financial fines for corrupt actors. If the fine is not paid, the convict's prison sentence will be extended in accordance with the judge's verdict. However, current trends indicate that corruptors prefer serving additional prison time over paying financial fines. Consequently, the provisions of this new Criminal Code fail to provide an effective means of combating corruption or recovering state financial losses resulting from these crimes.

It is time to reform regulations on corruption eradication, as many forms of corruption currently cause financial losses to the state. While existing regulations place greater emphasis on the criminal prosecution of perpetrators (in person), there is also a need for regulations that focus on assets. The draft law on corruption crimes (Asset Forfeiture Bill) currently being drafted employs a mechanism that focuses more on assets (non-conviction-based asset forfeiture).

The forfeiture of criminal assets is a coercive legal action that seizes control or ownership of assets following a final and binding court ruling. This demonstrates that asset forfeiture is separate from the criminal prosecution of the perpetrator; in other words, the forfeiture of assets does not absolve an individual of their criminal liability. Articles 6 and 7 of the Asset Forfeiture Bill outline several conditions under which assets can be forfeited, namely:

1) The assets must have a minimum value of 100,000,000 IDR (one hundred million rupiah).
2) The assets must be linked to a criminal offense carrying a prison sentence of four (4) years or more.
3) The suspect has passed away, fled, suffers from a permanent illness, or their whereabouts remain unknown.
4) The defendant is acquitted or granted a dismissal from all legal charges.
5) The case cannot be brought to trial.
6) Additional assets are discovered at a later date that were not previously forfeited, following a final and binding court judgment declaring the defendant guilty.

This section can address issues that frequently arise in corruption cases, such as when individuals flee, rendering their assets unseizable despite established evidence of their corrupt acts. Consequently, the existence of such regulations will significantly facilitate the tracing of corruptors' wealth and the recovery of state assets.

During the freezing or seizure phase under the Asset Forfeiture Bill, actions are taken upon strong suspicion that the assets are derived from a criminal offense, with the seizure lasting for thirty days. Under Article 19, any party who feels aggrieved by the freezing or seizure may file an objection. This article serves as a precautionary measure in ordering asset forfeiture, ensuring that individuals can defend their property rights.

The judicial proceedings for asset forfeiture are conducted in accordance with civil procedural law and are open to the public. Prior to the trial, the court clerk must publicly announce the asset forfeiture hearing to inform the general public. This notice is intended to prevent errors in the forfeiture process by ensuring public awareness.

During the evidentiary stage, the government law office presents and clarifies evidence regarding the origin and existence of the assets. Furthermore, the judge provides innocent third parties or any individuals aggrieved by the forfeiture petition an opportunity to prove that their assets do not originate from the illicit sources alleged by the state attorney. This process demonstrates that the asset forfeiture trial adheres to the principle of hearing both sides—namely, the state attorney and the aggrieved third party—by granting each the opportunity to substantiate their ownership claims. This mechanism minimizes procedural errors if the third party is proven to have no involvement in the criminal offense.

Based on the evidence presented during the trial, the judge evaluates and decides whether to grant or deny the asset forfeiture petition. Following the reading of the court's verdict, the management of the forfeited assets is handed over to the Attorney General, who must submit a report to the President every six (6) months. Article 60 further stipulates that the Attorney General must develop an electronic asset-tracking information system to enhance accountability and transparency regarding seized assets for the general public.

Regarding assets hidden abroad, Articles 63 and 64 provide relevant provisions; however, they outline international cooperation only in general terms. Because international cooperation is paramount for Indonesia—given that numerous corruption cases involve assets stowed away in offshore banks—the author argues that the international cooperation articles require a more comprehensive and detailed explanation.

Table 1. Differences Between Asset Forfeiture (Current Regulations) and the Draft Asset Forfeiture

No	Indicator	Asset Forfeiture (Current Regulations)	Draft Asset Forfeiture
1	The mechanism used	Criminal forfeiture	*Non-confiscation based on asset forfeiture*
2	Legal basis	1. Undang-undang Tipikor 31 tahun 1999 (Anti-Corruption Law No. 31 of 1999) jo Undang-undang No 20 Tahun 2001 ((Anti-Corruption Law No. 20 of 2001) 2. KUHP pasal 10 dan pasal 39 (KUHP lama) (Criminal Code, Articles 10 and 39) 3. KUHP No 1 tahun 2023 pasal 66 dan pasal 91	Draft Aset Forfeiture

		(Criminal Code No. 1 of 2023, Articles 66 and 91) 4. Undang-undang No. 8 Tahun 2010 TPPU (Law Money Laundering Offenses No. 8 of 2010)	
3	object	in personal	in rem
4	methods of asset seizure	Asset forfeiture is contingent upon a prior criminal conviction	Asset forfeiture does not require a criminal conviction
5	Process	This is imposed as an additional or alternative penalty if the corrupt official is unable to pay the fine	Asset forfeiture may be imposed if there is reason to believe that the assets are the proceeds of corruption
6	Solution	Conducted through criminal or civil proceedings	Conducted through civil

Many have debated the NCB because it reverses the burden of proof, which, if not handled carefully, could violate individual rights. Furthermore, Sudarto and Hari Purwadi explain that the reversal of the burden of proof in the NCB asset forfeiture framework is grounded in an object-oriented legal framework—focusing on the property or asset itself, rather than the perpetrator. This mechanism aims to verify the legitimacy of ownership and the origin of an asset suspected of being derived from criminal activity. Therefore, the obligation of the party in control of the asset to prove the origin of the asset is not intended to establish criminal guilt, but solely to determine the legal status of the asset. Thus, the reversal of the burden of proof in the NCB's asset forfeiture provisions does not conflict with the principles of protecting the rights of suspects or accused individuals.

The following are the advantages and disadvantages of the NCB mechanism (Husein dkk. 2019, 14–15)

1) Asset forfeiture without criminal conviction occurs when there is insufficient evidence for a criminal conviction beyond a reasonable doubt (the evidence of the individual's actions is not strong enough), but sufficient to demonstrate that the assets stem from illegal activities (for example, a courier delivers goods of unclear origin, and since the owner is unknown, the individual remains unidentified, yet the assets are presumed to have come from illegal activities)
2) Asset forfeiture under the NCB can be effective in recovering state losses from a corrupt individual by returning funds to the state, which is the victim.
3) Asset forfeiture under the NCB does not preclude criminal penalties, and the NCB is not contingent upon criminal penalties.

2. Non-Conviction Based Asset Forfeiture (NCB) in *Maslahah Mursalah* Criminal Acts of Corruption

The debate over the NCB in the Asset Forfeiture Bill presents a dilemma, as this mechanism focuses on proving the origin of assets rather than proving a person's guilt. Under the NCB evidentiary system, the defendant bears the burden of proving the origin of their assets (reverse burden of proof), while the plaintiff need only prove the origin of the seized or discovered assets, without having to prove that the asset owner committed a criminal act (in rem approach).

This mechanism allows the state to seize assets without a final and binding court ruling and is therefore considered contrary to the concept of al-bara'ah al-ashliyyah (the presumption of innocence), as it violates human rights and the principle of property protection (*hifzh al-mal*) in Islamic law. The punishment of asset forfeiture in Islamic criminal law falls under the category of *ta'zir* punishment. *Ta'zir* is a form of punishment for perpetrators of criminal acts, the authority to impose which is entirely delegated to the *waliyul amri* (ruler/judge), as its provisions are not explicitly outlined in either the Qur'an or the hadith, with the aim of promoting the public interest and preventing harm (*mafsadah*). (Abdul Basith Junaidy dkk. 2020, 8)

Asset forfeiture falls under the category of *ta'zir* (punishment) related to property. *Ta'zir* bi al-mal is a punishment imposed by the waliyul amri on property obtained unlawfully through seizure, forfeiture, destruction, or freezing of assets. (Syaifuddin dan Latif 2024, 8). The mechanism of non-conviction-based (NCB) asset forfeiture is not explicitly codified in classical Islamic legal texts. However, its essence can be derived from the principle of *ta'zīr*, the hisbah oversight system, and the concept of the protection of public wealth (*hifz al-mal al am*); this alignment provides room for modern law to formulate asset forfeiture regulations that not only possess formal legal force (legality) but also do not violate Sharia values. (M. Imdad al-Kavaf dan Maskur Rosyid 2025)

Corruption causes harm and damage (*mafsadah*); its consequences are far-reaching for the state and society. For this reason, strict regulations are needed to prevent corruption. However, when drafting such regulations, one must take into account the public interest—without violating an individual's human rights—and the public interest in safeguarding property.

Public interest in Islam is divided into three categories. First, *maslahah mu'tabarah* is a public interest that is explicitly recognized, supported, and mandated by Sharia. This form of public interest is directly stated in the text of the Qur'an and the Hadith, so its legal status is binding and absolute, and cannot be revoked or altered by anyone, as its essence is inherent in the prescribed acts of worship or laws. Second, *maslahah mulghah* (public interest) that is considered or assumed to exist by human reason, yet is explicitly rejected, nullified, and not recognized by Islamic law because there is a far greater harm (*mafsadah*) that must be prevented to protect the peace and well-being of human life. Third, benefits that are textually neutral; there is no specific evidence mandating them, nor is there any evidence prohibiting them in the Qur'an, Hadith, or *ijma'*. Sharia leaves this matter to human ijtihad to be developed for the sake of convenience, order, and the

common good, provided that it remains in line with the general objectives of sharia (*maqashid asy-syari'ah)* (Musthafa Dib al-Bugha, dikutip dalam Sofyan 2020, 256).

Based on this definition, asset forfeiture using the NCB method falls under *maslahah mursalah* because, first, there is no explicit text in the Qur'an or hadith that mandates the use of asset forfeiture without criminal punishment; second, there is no verse or text in the Qur'an that directly rejects the method of asset forfeiture without criminal punishment. Third, it is in line with the maqasyid al-sharia, namely to protect property (*hifzh al-mal*) and to serve the public interest.

The goal of public welfare is for humans to attain and fulfill their *dharuriyat* (primary) needs, and to fulfill their hajiyat (secondary) and tahsiniyat (tertiary) needs. First, dharuriyat (primary needs) refer to the preservation of religion, life, reason, property, and lineage, as outlined in the maqasyid al-shar'iyah. The issue of corruption falls under the category of *maslahah dhururiyyah*, specifically the violation of property (*hifzh al-Mal*). Allah SWT explains the protection of property in Surah an-Nisa (4:29). This verse explains the need to safeguard one's property and to acquire wealth through lawful means, without infringing upon the rights of others or causing them harm; if wealth is acquired through improper means, it can ultimately lead to one's own ruin. There are two aspects of the protection of property (*hifzh al-mal*) discussed here: first, the protection of individual property *(maslahah khasanah*), and second, the protection of state property or public property (*maslahah 'ammah*).

One of the fundamental dilemmas in the concept of NCB is the conflict between individual and societal interests in the protection of property (hifz al-mal), which raises the question of which interest should be prioritized. This is addressed in the fiqh principle "*dar'u al-mafasid muqaddamun 'ala jalbi al-mashalih*," which means that the public interest (*maslahah 'ammah*) must take precedence over individual interests (*maslahah khasanah*).(Syaifuddin dan Latif 2024, 13)

An example of asset confiscation using the NCB mechanism under the burden-of-proof reversal during the caliphate of Umar bin Khattab, may Allah be pleased with him. When Abu Hurairah returned home carrying a large sum of money, Umar asked him about it several times. Umar asked if Abu Hurairah had taken what belonged to others. Abu Hurairah replied, "No." Then Umar asked again, "How much money did Abu Hurairah bring?" The Companion of the Prophet (peace be upon him) replied that he had brought 20,000 dinars. Umar asked where he had obtained that much money. Abu Hurairah replied that he had earned it from trading profits. (La Jamaa 2017, 324–325). In this regard, Caliph Umar was a leader who was very firm and cautious regarding the assets acquired by government officials during his reign.

The two *Hajiyat* (essential needs) are the need to provide convenience and to eliminate hardship. Asset forfeiture through the NCB mechanism can restore state finances following acts of corruption, deter corrupt actors, and restore public confidence in the enforcement of fair laws. Third, the *tahsiniyat* (necessities for improvement): current regulations do not specifically address asset forfeiture, and the various corruption cases currently pending cannot be adequately addressed or resolved under existing laws. Therefore, a specific regulation on asset forfeiture is needed to achieve a more perfect form of justice. (Tambunan 2025, 10)

Upon analysis, the application of non-conviction-based (NCB) asset forfeiture in the Asset Forfeiture Bill—allegedly violating human rights—lacks a strong legal basis. From an Islamic perspective, non-conviction-based asset forfeiture remains permissible and does not contradict the principle of *hifz al-mal* (protection of property), as it is carried out for the greater good. Although there is no verse that explicitly mandates asset forfeiture without a conviction, this concept fulfills the criteria of *maslahah mursalah*, as it serves a clear public interest (*maslahah 'ammah*) and can serve as a solution in the fight against corruption without contradicting the principles of *maqasid al-sharia*.

Scholars have agreed on seven types of valid evidence in the Islamic legal system. These seven types of evidence include confession (*iqrar*), testimony *(syahadah*), oath (*al-yamin*), refusal to take an oath (*al-nukul*), circumstantial evidence (*al-qarinah*), oath by a guardian (*qasamah*), and the judge's conviction or knowledge. (Saenah 2020, 80)

Among these seven is a form of evidence that corresponds to the NCB concept, namely *qarinah*. *Qarinah* is a sign or indication in a disputed case that has a clear and relevant connection to the events that occurred. Ibnul Qayyim regarded *Qarinah* as a means of evidence, and its status is equivalent to that of a witness (*syahadah*) in assisting the judge in deciding a case. The Prophet Muhammad (peace be upon him) once detained a person and punished the accused after suspicion arose due to suspicious signs observed in the accused. The Prophet once ordered a person who found something to hand it over to the person who accurately described the characteristics of the lost item; subsequently, the Prophet ordered that person (the owner) to describe the characteristics of their lost item. (Asep Saepullah 2016, 79)

In NCB proceedings, the primary focus is on proving the origin of assets strongly suspected of deriving from criminal activity, not on proving that a person committed a crime. This contradicts the Islamic principle of the presumption of innocence (*al-bara'ah al-ashliyyah*), which holds that a person cannot be punished until a court has issued a final and binding judgment declaring them guilty.

Upon analysis, circumstantial evidence (*qarinah)* as a means of proof does not contradict the principle of the presumption of innocence (*al-bara'ah al-ashliyyah*). In fact, the two are in harmony, because circumstantial evidence is not, in essence, intended to convict someone without proof, but rather serves as a guide to uncovering the true facts. The presumption of innocence remains intact, because circumstantial evidence can only serve as the basis for a decision if it meets a certain standard of strength and is not refuted by common sense (*qarinah wadhihah*), so that it does not negate a person's right to be presumed innocent as long as doubt (*syubhat*) still exists.

The Non-Conviction-Based Asset Forfeiture mechanism allows the state to seize assets derived from criminal acts, including those involving corruption, even if the perpetrator has not yet been, or cannot be, criminally prosecuted. Within the framework of *fiqh al-jinayah*, this is consistent with the principle of ta'zir, which allows the state to act in the interest of the public good (*maslahah 'ammah*) and to protect state assets, without making such actions contingent upon a criminal conviction of the perpetrator.

The following are Muslim countries that have implemented the NCB in asset forfeiture. Malaysia, as a predominantly Muslim country, has regulations governing asset forfeiture without criminal conviction. These regulations are contained in the Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act

2001 (AMLA). There are two avenues for asset forfeiture: First, asset forfeiture through criminal prosecution. This means that after a defendant is found guilty by a court of money laundering or terrorist financing, the judge will impose a sentence and order the forfeiture of those assets. Second, asset forfeiture without criminal prosecution (non-conviction-based asset forfeiture). This can be done under certain conditions, for example, if the suspect has absconded, has died, or their identity is unknown; however, the prosecutor must prove to the High Court judge that the seized assets are validly derived from the proceeds of crime. The AMLA does not conflict with Islamic values, as explained in Nurazlina Abdul Raof's research, which states that those in authority (*ulul amri*) have full authority to examine and seize the assets of public officials if there is strong suspicion that such wealth was obtained through corruption or abuse of power. (Nurazlina Abdul Raof dan Mohd Sulaiman 2023)

The United Arab Emirates has Federal Law by Decree No. (31) of 2021, promulgating the Crimes and Penalties Law (Criminal Code of the United Arab Emirates). Article 83 of this law governs the confiscation of property or funds related to a criminal offense. The court may still decide to confiscate property or funds related to a crime, even if the perpetrator is unknown, criminal liability is waived, or criminal charges are dismissed (for example, because the perpetrator has died or fled). This is the core of the NCB mechanism, whereby the law targets the assets (in rem) rather than the person (in personam).

Saudi Arabia has laws enacted by the Saudi Arabian Monetary Authority (SAMA) governing asset forfeiture. Under Articles 33–35 of the asset forfeiture regulations established by the Saudi Arabian Monetary Authority (SAMA), assets may be seized directly through administrative investigations or based on financial evidence, without the need to await a criminal conviction. This mechanism is based on the view that the state possesses the moral and legal authority to protect public wealth for the sake of the public interest (*maṣlaḥah 'āmmah*). This theological rationale provides a strong basis for the legitimacy of this policy, both from the perspective of positive law (juridical) and religious ethical principles. (M. Imdad al-Kavaf dan Maskur Rosyid 2025, 961)

CONCLUSIONS

Indonesia does not yet have a law that specifically regulates the forfeiture of assets related to corruption, but provisions regarding asset forfeiture are included in several laws. If enacted, the Asset Forfeiture Bill will improve the legal framework for corruption-related asset forfeiture. The regulations in the Asset Forfeiture Bill employ a Non-Conviction Based Asset Forfeiture (NCB) mechanism that focuses on assets rather than on the punishment of the perpetrator. From an Islamic legal perspective, the Non-Conviction-Based Asset Forfeiture (NCB) mechanism in the Asset Forfeiture Bill aligns with the concept of *maslahah mursalah*; it is not considered contrary to Sharia because it serves the public interest (*maslahah 'ammah*) under the principle of *hifzh al-Mal* and does not contradict the presumption of innocence (*al-bara'ah al-ashliyyah*). However, this mechanism requires strict regulatory oversight, as Indonesian law enforcement is currently not fully effective, raising concerns that it could create new problems.

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