



Reviewing Islamic Criminal Punishment Views On Corruption Asset Confirmation Without Crimination

Mustaufiq¹, Kurniati², Misbahuddin³

¹Program Studi Dirasah Islamiyah, Pascasarjana, UIN Alauddin Makassar, Indonesia

²Program Studi Hukum Tata Negara, Fakultas Syariah dan Hukum, UIN Alauddin Makassar, Indonesia

³Fakultas Dakwah dan Komunikasi, UIN Alauddin Makassar, Indonesia

Email: opikmusjpt@gmail.com, ¹kurniati@uin-alauddin.ac.id, ²

misbahuddin08121970@gmail.com³

ARTICLE INFO

Article History:

Received: 2022-11-23

Accepted: 2022-11-23

Published: 2023-01-31

Keywords:

*Asset Forfeiture,
Corruption, Islamic
Criminal System*

ABSTRACT

The paper discusses the Islamic criminal system's views on confiscating corruptors' assets, which has been proposed for a draft law since 2012. The confiscation of assets is a solution to provide a deterrent effect and restore state losses. This study uses library research methods with a normative approach to answering the question, "what is the view of Islamic crime on the concept of confiscation of assets without punishment?". The results state that the confiscation of assets resulting from criminal corruption is a form of ta'zir punishment that has been accommodated in Islamic criminal law, Islamic criminal law allows doubling corporal punishment and fines, to provide a deterrent effect on criminal offenders. Confiscation of assets has also fulfilled the essence of Islamic punishment in fulfilling the rights of Allah, rewarding in kind for the actions committed, and remorse that creates a desire to repent for the perpetrators.

A. Introduction

In the first semester of 2022, the Corruption Eradication Commission (KPK) handled a total of 99 corruption cases, with a classification of 63 carry-over cases and

36 new cases. Meanwhile, the achievement of asset recovery is Rp. 313.7 billion, this asset recovery increased 83.2% compared to the previous year's first half.¹ However, Indonesia's Corruption Perception Index (CPI) in 2021 is still at a score of 38/100 and is ranked 96th out of 180 countries surveyed.²

The facts still confirm corruption as an extraordinary crime whose prevention and handling must be implemented with serious efforts. Until this time, the construction of settlements for corruption cases in Indonesia still aims to punish the perpetrators of criminal acts, especially "corporate punishment", which does not create a deterrent effect for the perpetrators. The government adopted the solution by drafting a Law on Confiscation of Criminal Assets in 2012 by the National Legal Development Agency. Even though it has been included in the 2015-2019 National Legislation Program, it has never been a priority for DPR (Legislative Body) discussion.³

Despite it is still draft law, many articles have examined the theme of confiscation of corrupt assets. Darmadi Djufri's article, et al., entitled "The Asset Return Model as an Alternative to Recovering State Losses in Corruption Crime Cases" discusses the pathways of criminal prosecution and civil lawsuits in confiscating corruption assets.⁴ Additionally, an article by Enceng Arif Faizal entitled "Confiscation of Assets Without Criminal Perspective of Islamic Law" discusses the relevance of Islamic law to the concept of confiscation of assets using the foundations of the *naqli* and the *aqli* argument and Islamic law rules.⁵

The difference in the study that will be reviewed in this paper compared to the previous two articles is that this paper focusing on answering the perspective of Islamic crime punishment and its relationship with asset confiscation, especially in exploring the essence of Islamic crime contained in asset confiscation punishment.

¹ Issha Harruma, "Data Kasus Korupsi Di Indonesia Tahun 2022," *Kompas.Com*, September 21, 2022, <https://nasional.kompas.com/read/2022/09/21/01000051/data-kasus-korupsi-di-indonesia-tahun-2022>.

² TI Indonesia, "INDEKS PERSEPSI KORUPSI 2021: KORUPSI, HAK ASASI MANUSIA DAN DEMOKRASI – Transparency International Indonesia," Transparency International, 2022, <https://ti.or.id/indeks-persepsi-korupsi-2021-korupsi-hak-asasi-manusia-dan-demokrasi/>.

³ Yunus Husein, *PENJELASAN HUKUM TENTANG PERAMPASAN ASET TANPA PEMIDANAAN DALAM PERKARA TINDAK PIDANA KORUPSI*, first (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2019).

⁴ Darmadi Djufri, Derry Angling Kesuma, and Afriani Kinaria, "MODEL PENGEMBALIAN ASET (ASSET RECOVERY) SEBAGAI ALTERNATIF MEMULIHKAN KERUGIAN NEGARA DALAM PERKARA TINDAK PIDANA KORUPSI," *Disiplin : Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda* 26, no. September (2020): 120–32, <https://doi.org/http://doi.org/10.5281/zenodo.4475001>.

⁵ Enceng Arif Faizal, "Perampasan Aset Tanpa Pidana Perspektif Hukum Islam," *Jurnal Majelis (Media Aspirasi Konstitusi)* 1, no. 1 (2021).

Therefore, the description will begin by introducing the confiscation of criminal assets without punishment, then proceed by discussing the essence of punishment in Islam. After that, the point of view of Islamic criminal punishment on corruption and ended by explaining the crime of confiscation of corruption assets in the view of Islamic punishment, exploring the existence of Allah's rights in it and outlining the essence of the punishment of confiscation of criminal assets for corruption in Islam.

Hopefully, these findings will support the urgency of enacting the Bill on Confiscation of Criminal Assets to become a legally valid law. This can create a deterrent effect for corruptors and prevent the spread of corruption, which is an extraordinary crime.

B. Method

The method used in this research is library research through a normative legal approach by comparing primary sources such as draft criminal asset confiscation laws, related journals, and even decisions of the Indonesian Ulema Council, as well as secondary sources discussing the concept of Islamic criminal law, *ta'zir*, and a comparison of positive and Islamic criminal law. In addition, content analysis will be applied in exploring, classifying, and processing existing literary sources to answer Islamic criminal law views on the appropriation of corruption assets without sentencing.

C. Finding and Discussion

1. Confiscation of Corruptors' Assets

In general, asset confiscation is the forcible withdrawal of ownership of assets or property closely related to a criminal act.⁶ This concept is a form of effort to recover state losses that develop in law in many countries. Although the concept is termed as non-conviction-based asset forfeiture (abbreviated as NCB Asset Forfeiture), it was first used to seize assets and property resulting from the criminal act of narcotics and trafficking, which generates large amounts of money and can support other criminal activities.⁷ NCB Asset is also known as

⁶Husein, *PENJELASAN HUKUM TENTANG PERAMPASAN ASET TANPA PEMIDANAAN DALAM PERKARA TINDAK PIDANA KORUPSI*.

⁷Husein, 6.

civil forfeiture, or forfeiture in rem, or forfeiture of asset objects, not individuals.⁸

The Asset Confiscation Draft Law (abbreviated as the Asset Confiscation Bill) emphasizes that the Indonesian government's efforts to recover from its downturn from corrupt practices were carried out by ratifying the United Nations Convention Against Corruption 2003 (UNCAC 2003), which very firmly asked world countries to:

“Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted because of death, flight, or absence or in other appropriate cases.”⁹

The ratification of the 2003 UNCAC is manifested in Law no. 7 of 2000 concerning Ratification of the United Nations Convention Against Corruption, as well as making laws and regulations regarding Mutual Legal Assistance in the criminal field.¹⁰ However, the development of the Asset Confiscation Bill itself, until the writing of this article, is still stagnant since it was not accepted in the 2021 DPR RI National Legislation Program.¹¹ Now in 2022, the Ministry of Law and Human Rights Minister can only promise to push the Asset Confiscation Bill to be included in the 2022 DPR amendment Prolegnas.¹²

The content of the asset confiscation bill is conceptually a type of civil forfeiture or asset confiscation in rem. The United States specifically developed three asset confiscation classifications: criminal forfeiture, administrative

⁸Theodore S Greenberg et al., *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington: The World Bank, 2009), <https://doi.org/10.1596/978-0-8213-7890-8>.

⁹United Nations, “United Nations Convention Against Corruption,” Pub. L. No. 58/4 (2003).

¹⁰Tim Naskah Akademik, “Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana” (Jakarta, 2012), 23; Try Putra D. N. Kuku, Robert N. Warong, and Deby Telly Antow, “Perampasan Aset Tanpa Menjalani Pidanaan Bagi Pelaku Yang Melarikan Diri Atau Meninggal Dunia Dalam Perkara Tindak Pidana Korupsi,” *Lex Crimen IX*, no. 4 (2020): 55–65, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/30804%0Ahttps://ejournal.unsrat.ac.id/index.php/lexcrimen/article/viewFile/30804/29584>.

¹¹Nicholas Ryan Aditya, “RUU Perampasan Aset Gagal Masuk Prolegnas Prioritas, Janji Jokowi Tak Terealisasi Halaman All - Kompas.Com,” Kompas.com, 2021, <https://nasional.kompas.com/read/2021/09/17/09175001/ruu-perampasan-aset-gagal-masuk-prolegnas-prioritas-janji-jokowi-tak?page=all>.

¹² Nicholas Ryan Aditya, “Yasonna: RUU Perampasan Aset Bakal Masuk Perubahan Prolegnas Prioritas 2022,” Kompas.com, 2022, <https://nasional.kompas.com/read/2022/01/06/17301201/yasonna-ruu-perampasan-aset-bakal-masuk-perubahan-prolegnas-prioritas-2022>.

forfeiture, and civil forfeiture.¹³ The choice of in rem deprivation to eliminate deficiencies that occur in criminal proceedings, including lawsuits, can still be carried out even if the suspect, defendant, or convict flees, dies, has legal immunity and power, and the perpetrator is unknown. Still, the assets are found, controlled by a third party, and insufficient evidence in a criminal court.¹⁴ This theory's origin was initially used to seize goods that were not owned due to war.¹⁵

The asset confiscation bill contains a mechanism for implementing forfeiture without sentencing by blocking and withdrawing assets suspected of being the proceeds of corruption. The blocking action is carried out by asking the court. Suppose the court determines that the blocked asset is tainted. In that case, the court will publish an announcement in the media that many parties can access within 30 days, which is deemed sufficient for third parties to know that their assets will be confiscated and object to the forfeiture, so they will file a challenge to court with valid evidence.¹⁶

In addition to the mechanism, the Asset Confiscation Bill has included the types of assets that can be confiscated, with the following 4 types of assets:

- 1) Assets that have been turned into personal property, other people, or corporations, obtained directly or indirectly from a criminal act, either in the form of capital, income, or other economic benefits;
- 2) assets that are strongly suspected of being used and have been used to commit no crime;
- 3) other legal assets as a substitute for criminal assets;
- 4) assets are found items suspected of originating from a criminal act.¹⁷

The desired goal of the Asset Confiscation Bill is solely to return all assets that have been obtained in a criminal act and cover state losses arising from criminal acts that have occurred. Bearing in mind also the difficulties of the apparatus in dealing with criminals who have run away or other situations arising

¹³“Types of Federal Forfeiture,” accessed November 16, 2022, <https://www.justice.gov/afms/types-federal-forfeiture>.

¹⁴Tim Naskah Akademik, “Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana,” 28.

¹⁵Husein, *PENJELASAN HUKUM TENTANG PERAMPASAN ASET TANPA PEMIDANAAN DALAM PERKARA TINDAK PIDANA KORUPSI*.

¹⁶ July Wiarti, “Non-Conviction Based Asset Forfeiture Sebagai Langkah Untuk Mengembalikan Kerugian Negara (Perspektif Analisis Ekonomi Terhadap Hukum),” *UIR Law Review* 1, no. 1 (2017): 101–10.

¹⁷ Tim Naskah Akademik, “Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana,” 169.

from criminal offenders, it will be more difficult for the sentencing process if you want to prove a criminal error that was committed beforehand.

2. The Essence of Crime Punishment in Islam

Islamic crime act is a term connected with the term "Islamic sharia". Islamic criminal words are related to the words *jinayah* and *jarimah*.¹⁸ *Jinayah*, according to the *fuqaha* (Fiqh scholars), relating to acts regarding criminal acts related to the soul and body parts, such as killing, injuring, hitting, and so on. Some add the meaning of actions that the Shari'a forbids to property or life.¹⁹ Meanwhile, the word *jarimah* is a legal action that has the consequences of a form of punishment termed *hudud*, *diyat*, and *ta'zir*.²⁰ Although there are differences when comparing fiqh experts and legal experts in Indonesia in translating the word criminal, they have similarities in interpreting criminal acts, criminal events, or legal offenses. Even *jarimah* is the object of discussion in *jinayah*.²¹

Islamic criminal law divides three types of punishment for an act of *jarimah*, namely *hudud*, *qisas*, and *ta'zir*. All three have different substantive criteria, procedures, fulfillment of evidence, and sanctions adapted to the basis of the text, which is the source of reference in the Al-Quran and Sunnah.²² Simply put, *hudūd* is a type of punishment textually manifested in the Qur'an and Sunnah, while *qisas* forms of punishment are in the form of a general statement. Finally, the *ta'zir* punishment is based on the judge's decision handling the case.²³

The interesting thing that needs to be explained further is that in Islamic law punishment, there is a discussion about the rights of Allah (also known as

¹⁸ Ahmad Hanafi, *Asas-Asas Hukum Pidana Islam*, Second (Jakarta: Bulan Bintang, 1976), 5.

¹⁹ Islamul Haq, *Fiqh Jinayah*, ed. M Ali Rusdi Bedong, First (Parepare: IAIN Parepare Nusantara Press, 2020), 8.

²⁰ Nur Iqbal Mahfudh, "Hukum Pidana Islam Tentang Korupsi," *IN RIGHT Jurnal Agama Dan Hak Azazi Manusia* 6, no. 2 (2017): 249–65.

²¹ Haq, *Fiqh Jinayah*, 9.

²² M. Cherif Bassiouni, "The Islamic Criminal Justice System," in *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge University Press, 2013), 119, <https://doi.org/10.1017/CBO9781139629249.005>.

²³ Bassiouni, 120.

public rights), *adami* (individual) rights, and mixed rights.²⁴ The three existing rights are fundamental to be discussed in exploring the element of legal annulment in a criminal act in Islam, the type of punishment related to Allah's rights, so there will be no annulment of the law if someone has been sentenced with sanctions such as *hudud* punishment, whereas for individual rights, the annulment punishment and replacing it with *diyat* can be done for example *qisas* for murder.²⁵ Whereas in *ta'zir* there are simultaneously Allah's rights and *Adami's* rights in it, there are also opinions that state that Allah's rights are the rights of the majority and vice versa.²⁶

Although the categorization of these three rights is a definite matter in assessing the annulment of a sentence, there are three essences to be achieved in every sentence in Islamic criminal law, namely:

- a. Fulfillment of Allah's rights in a definite criminal sanction (having a certain form and size) and an uncertain punishment (it is left to the authorities to determine it)
- b. Appropriate retribution (*al-Jaza'*) to fulfill the principle of justice.
- c. Repentance (*al-taubah*) is the highest essence in Islamic punishment, distinguishing it from other criminal systems. The *ukhrawi* dimension is the final goal born of the perpetrator's regret. In *ta'zir* law, for example, a substitute punishment will be imposed if the perpetrator does not repent. However, in criminal cases *hirabah* also does not automatically remove the sentence because of its relation to the individual rights contained in several criminal cases.²⁷

The essential values in the Islamic penal system give Islam its advantages in solving problems that arise in society. Humanity's benefit is the highest indicator that must be realized in civilization, especially corruption, which destroys the foundations of human welfare. Applying the right law is one way to prevent it from destroying society and even the state.

3. Ta'zir on Corruption Crime

²⁴ Zakaria Syafe'i, "Pertanggungjawaban Pidana Dalam Hukum Pidana Islam," *Alqalam Jurnal Kajian Keislaman* 31, no. 1 (2014): 97–136, <https://jurnal.uinbanten.ac.id/index.php/alqalam/article/view/1107>.

²⁵ Syafe'i.

²⁶ Ahmad Fathi Bahnasi, *Al-Ta'zir Fi Al-Islam*, First (Kairo: Mu'assasah al-Halij al-Arabi, 1988), 16.

²⁷ Abdul Syatar and Ahmad Abubakar, *Filosofi Uqubah Islamiyah Versi Ramadhan Al-Buti*, ed. Muhammad Majdy Amiruddin, First (Gowa: Alauddin University Press, 2020), 91–98.

Corruption has been categorized as an extraordinary crime in humanity, which has undermined almost all aspects of people's lives. Because the word corruption defined by Law Number 20 of 2001 is

“unlawful acts with the intention of enriching oneself, other people, or corporations that result in harm to the state's finances or the country's economy”.²⁸

The provisions above are detailed in nine categories of action: bribes, illegal profits, secret transactions, gifts, grants, embezzlement, collusion, nepotism, and abuse of position, authority, and state facilities.²⁹ These corrupt behaviors are not related to just one type of work, for example, civil servants, officials, or particular jobs. These are the cause only certain groups are said to be corrupt when doing one or all of them. Although in Indonesia corruptors can only be performed in several types of work.

In classical Islamic studies, the word corruption has never been used or has the same meaning, as a result in criminal studies there are eight terms used to describe an act of corruption. The word is as follows:

1. *Ghulul* (Embezzlement)
2. *Risywah* (Bribery)
3. *Gahsab* (Forcibly taking property)
4. *Khianat* (Betrayal/Agreement Violation)
5. *Sariqah* (Theft)
6. *Hirabah* (Robbery)
7. *Al-Maks* (Illegal fees)
8. *Al-Ikhtilah* (Seize by deception)³⁰

Islamic criminal law emphasizes that in the eight criminal acts, each type of punishment is adjusted to the form of the crime. Even in the form of punishment for the eight acts that contain elements of corruption, some are categorized as *hudud* punishments such as *sariqah* and *hirabah*. At the same time, the rest are *ta'zir* punishment categories.

Interestingly, not all of the eight acts mentioned fulfill the elements of corruption contained in articles 2-13 of Law No. 31 of 1999 in relation with Law No. 20 of 2001 concerning the elements of corruption.³¹ Nurul Irfan in his book

²⁸ Republik Indonesia, “Undang-Undang Nomor 20 Tahun 2001,” Pub. L. No. 20 (2001).

²⁹ Rabain Jamaluddin, “Perspektif Islam Tentang Korupsi,” *An-Nida'* 39, no. 2 (2014): 187–98, <http://ejournal.uin-suska.ac.id/index.php/Anida/article/view/875>.

³⁰ Mahfudh, “Hukum Pidana Islam Tentang Korupsi.”

³¹ Mahfudh.

even revealed that from the article mentioned earlier, the criminal acts of *sariqah*, *hirabah*, and *ghasab* did not fulfill the existing articles. Therefore, corruption laws only fulfill the elements of *ghulul*, *ghasab*, and *khianat* crimes.³²

Arafa in his writings "Corruption and Bribery in Islamic law" further specifies that the roots of corruption are *risywah* with all its conceptual forms such as illegal earning (bribery to witnesses, judges and authorities), *al-hadiyah*, and *sadaqah*, according to him, is the development of the concept of acts that are indicated as corruption.³³

The classification of corruption in Islam is only in acts of bribery, treason, and embezzlement, confirming that the classification of the punishment is *jarimah ta'zir*. *Ta'zir* is an option because it does not allow an analogy to the act of *sariqah* as guided by Abu Hanifah regarding *hudud jarimah*.³⁴ The *ta'zir* punishment also does not make the crime of corruption less critical when compared to other criminal offenses. Simply, the *ta'zir* classification only confirms corrupt behavior. Therefore, proportionate to society and prevent the recurrence of similar criminal acts.³⁵

4. Confiscation of Corruption Assets in the Islamic Criminal System.

Concerning the confiscation of assets to corruptors, the Indonesian Ulema Council (MUI) has issued a fatwa that contains five legal provisions regarding the assets of corruptors, with the following explanation:

The assets of the perpetrators that are legally proven to originate from corruption crimes must be confiscated and taken by the state; The state may not confiscate the perpetrator's assets that do not originate from corruption crimes; The perpetrator's assets that cannot be legally proven originate from corruption crimes, then the perpetrator is required to prove the origin of these assets, if he cannot prove his legal ownership, then they are taken by the state; The assets of the perpetrators confiscated by the state are utilized for the benefit of society; and the confiscation of assets resulting from corruption does not eliminate the punishment for the perpetrators.³⁶

³² M Nurul Irfan, *Korupsi Dalam Hukum Pidana Islam*, First (Jakarta: Amzah, 2014), 163.

³³ 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>.

³⁴ Mahfudh, "Hukum Pidana Islam Tentang Korupsi."

³⁵ Arafa, "Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?"

³⁶ Majelis Ulama Indonesia, "Ijma' Ulama Indonesia 2012 (Himpunan Keputusan Ijtima Ulama Komisi Fatwa Se- Indonesia Tahun 2012)" (Jakarta, 2012).

MUI based its recommendations on the aforementioned legal provisions by asking law enforcers to act decisively and measurably in confiscations, affirming sanctions for law enforcers who abuse their authority, and the active participation of clerics (*ulama*) in conveying threats of world and *ukhrawi* punishment for perpetrators of corruption.

The argument applied by the MUI to this confiscation case which can be seen from the results of the 2012 MUI IJMA, only used the standard arguments of the Qur'an and Hadith in general regarding corruption, such as the Word of Allah swt. on QS Al-Baqarah 188 :

وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ
بِالْإِثْمِ وَأَنتُمْ تَعْلَمُونَ ۝

Trans.:

188. And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].

Imam al-Qurtubi, in his interpretation, explains that the verse above emphasizes the prohibition of taking property in all forms of taking negative rights, such as fraud, robbery, deprivation of ownership rights, and all forms.³⁷ Meanwhile, the *qaul* method that is used as a basis is *atsar* Umar bin Khattab ra. as in the IJMA manuscript, which tells that when Abu Hurairah returned from Bahrain with money, Umar then asked whether Abu Hurairah had wronged anyone. He answered no, Umar asked again whether Abu Hurairah took something without rights. He answered no, Umar asked again regarding the money he brought, and the answer was twenty thousand. Umar also said to calculate how much your trade capital and work wages are; only those two parts are your right while the rest should be returned to the *Baitul Mal*.³⁸ This story at first glance does not explain the context of corruption, but Umar's assertion about the rights of someone who works and separates it from assets or income that is not clear is something that must always be considered.

The appropriation of corruption assets in positive law is an inseparable part of eradicating corruption. Breaking off the flow of proceeds from crime by seizing fulfills not only the elements of law enforcement but also the recovery of

³⁷ Abi Abdillah Al-Qurtubi, *Al-Jami' Li Al-Ahkam Al-Qur'an Vol 3*, First (Beirut: Dar al-Risalah, 2006), 222.

³⁸ Majelis Ulama Indonesia, "Ijma' Ulama Indonesia 2012 (Himpunan Keputusan Ijtima Ulama Komisi Fatwa Se- Indonesia Tahun 2012)."

state assets that have been taken.³⁹ This view then makes asset confiscation so that the absence of the perpetrator subject is not a problem because the issue is the asset.⁴⁰

The view of positive law is different from the provisions that already exist in the Islamic criminal system, especially in confiscating corrupt assets. Corruption has been determined in various existing studies as one of the crimes classified as *ta'zir* punishments. The Islamic criminal system does not view the property as a subject and views the absence of perpetrators as not providing a problem in a crime. Still, confiscation of corrupt assets can be a form of *ta'zir* punishment given by the authorities to perpetrators of corruption.

Islamic criminal law has introduced the existence of God's rights and adam's rights in every criminal act; these two rights are important indicators in the elimination of criminal responsibility. In the criminal act of corruption, the perpetrator not only corrupts money but has corrupted morals and affected the moral values that have been tried to improve in Islam.⁴¹ The social disruption created from an act of corruption has become an indicator that the value of Allah's rights concerning the benefit of the people is the majority right compared to individual rights in *ta'zir* punishment.

The existence of Allah's right, which is the most dominating element in acts of corruption, makes the *ta'zir* punishment assigned to corruptors cannot be removed with the expiry of the case, a plea for forgiveness, repentance, and even with the death of the corruptor.⁴² The death of the perpetrator of corruption does not make the *ta'zir* penalties that have been set on fines, confiscation of assets, or additional penalties that are not related to the body remain in effect.

Ta'zir punishment for criminals in Islam also makes it possible to double the punishment for crimes that have resulted in massive damage. For example, the Prophet Muhammad stipulated a *ta'zir* law on those who stole fruit still hanging on a tree before being placed in a basket by being punished with lashes and being fined twice as much.⁴³ So for corruption, *ta'zir* punishment with imprisonment and confiscation of assets resulting from corruption is not

³⁹ Fatin Hamamah and Heru Hari Bahtiar, "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi," *Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 193–204.

⁴⁰ Kuku, Warong, and Antow, "Perampasan Aset Tanpa Menjalani Pidanaan Bagi Pelaku Yang Melarikan Diri Atau Meninggal Dunia Dalam Perkara Tindak Pidana Korupsi."

⁴¹ Jamaluddin, "Perspektif Islam Tentang Korupsi."

⁴² Syafe'i, "PERTANGGUNGJAWABAN PIDANA DALAM HUKUM PIDANA ISLAM."

⁴³ Wahbah al-Zuhaili, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, 2nd ed., vol. II (Beirut: Dār al-Fikr, 1985), 527.

impossible to apply together if the act of corruption has caused massive damage to society.

The provision for confiscation of assets in the *ta'zir* punishment is also not an agreement. At least Wahbah Zuhaili expressed Abu Yusuf's opinion that it allows temporary detention to increase the deterrent effect so that he does not repeat his mistakes, but the judge must return it, Ibnu Abidin also added that it is permissible to use confiscated assets to the public good if the offender is no longer expected to repent. Meanwhile, permanent confiscation may only be carried out by *Baitul Mal* employees and must be sent to the *Baitul Mal*.⁴⁴

The criminal confiscation of corruptors' assets using the method without punishment when viewed from an Islamic criminal point of view has fulfilled the essence that must be contained in Islamic crime. The points, including fulfilling Allah's rights to uphold the public good, and asset confiscation will return state assets that have been taken in illegal ways to be reused in nation-building. The second essential is that there is retribution commensurate with the actions committed; deprivation will deter perpetrators of corruption and will be an example for others who will do so. While the last essence is repentance, which in Islamic law will appear after consciously regretting the consequences of his actions. The third essence expected from the confiscation of assets of corruptors is a plea for forgiveness for the horizontal and vertical sins they have committed, accompanied by the intention not to repeat acts of corruption.

D. Conclusion

Islamic criminal law has stipulated the punishment for corruption in the form of a *ta'zir* penalty, the *ta'zir* form allows for confiscating the assets of the perpetrators of corruption which have been proven to be the result of criminal acts of corruption. Even in Islamic criminal law, doubling the *ta'zir* punishment by accommodating corporal punishment and asset confiscation can be carried out to achieve the essence of Islamic crime, namely upholding the rights of Allah, appropriate retribution for actions that have been committed to damage the social order of society, and realizing the perpetrator's remorse until he/she repents.

The confiscation of assets studied in this paper is still limited to the study of the rights contained in the form of *ta'zir* punishment and the essence of Islamic crime, which must be realized in punishing corruptors. Recommendations for further research related to the confiscation of corrupt assets are the steps that will be taken by

⁴⁴ al-Zuhaili, II:529.

law enforcers in Indonesia in carrying out the confiscation of corrupt assets because even though it is permitted, Islamic crime has strict guidelines for carrying out the confiscation of corrupt assets.

Reference

- Aditya, Nicholas Ryan. "RUU Perampasan Aset Gagal Masuk Prolegnas Prioritas, Janji Jokowi Tak Terealisasi Halaman All - Kompas.Com." Kompas.com, 2021. <https://nasional.kompas.com/read/2021/09/17/09175001/ruu-perampasan-aset-gagal-masuk-prolegnas-prioritas-janji-jokowi-tak?page=all>.
- . "Yasonna: RUU Perampasan Aset Bakal Masuk Perubahan Prolegnas Prioritas 2022." Kompas.com, 2022. <https://nasional.kompas.com/read/2022/01/06/17301201/yasonna-ruu-perampasan-aset-bakal-masuk-perubahan-prolegnas-prioritas-2022>.
- Al-Qurtubi, Abi Abdillah. *Al-Jami' Li Al-Ahkam Al-Qur'an Vol 3*. First. Beirut: Dar al-Risalah, 2006.
- al-Zuhaili, Wahbah. *Al-Fiqh Al-Islami Wa Adillatuhu*. 2nd ed. Vol. II. Beirut: Dār al-Fikr, 1985.
- Arafa, Mohamed. "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>.
- Bahnasi, Ahmad Fathi. *Al-Ta'zir Fi Al-Islam*. First. Kairo: Mu'assasah al-Halij al-Arabi, 1988.
- Bassiouni, M. Cherif. "The Islamic Criminal Justice System." In *The Shari'a and Islamic Criminal Justice in Time of War and Peace*, 118–49. Cambridge University Press, 2013. <https://doi.org/10.1017/CBO9781139629249.005>.
- Djufri, Darmadi, Derry Angling Kesuma, and Afriani Kinaria. "MODEL PENGEMBALIAN ASET (ASSET RECOVERY) SEBAGAI ALTERNATIF MEMULIHKAN KERUGIAN NEGARA DALAM PERKARA TINDAK PIDANA KORUPSI." *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda* 26, no. September (2020): 120–32. <https://doi.org/http://doi.org/10.5281/zenodo.4475001>.
- Faizal, Enceng Arif. "Perampasan Aset Tanpa Pidanaan Perspektif Hukum Islam." *Jurnal Majelis (Media Aspirasi Konstitusi)* 1, no. 1 (2021).
- Greenberg, Theodore S, Linda Samuel, Wingate Grant, and Larissa Gray. *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture*. Washington: The World Bank, 2009. <https://doi.org/10.1596/978-0-8213-7890-8>.
- Hamamah, Fatin, and Heru Hari Bahtiar. "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi." *Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 193–204.
- Hanafi, Ahmad. *Asas-Asas Hukum Pidana Islam*. Second. Jakarta: Bulan Bintang,

- 1976.
- Haq, Islamul. *Fiqh Jinayah*. Edited by M Ali Rusdi Bedong. First. Parepare: IAIN Parepare Nusantara Press, 2020.
- Harruma, Issha. "Data Kasus Korupsi Di Indonesia Tahun 2022." *Kompas.Com*, September 21, 2022. <https://nasional.kompas.com/read/2022/09/21/01000051/data-kasus-korupsi-di-indonesia-tahun-2022>.
- Husein, Yunus. *PENJELASAN HUKUM TENTANG PERAMPASAN ASET TANPA PEMIDANAAN DALAM PERKARA TINDAK PIDANA KORUPSI*. First. Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2019.
- Indonesia, TI. "INDEKS PERSEPSI KORUPSI 2021: KORUPSI, HAK ASASI MANUSIA DAN DEMOKRASI – Transparency International Indonesia." Transparency International, 2022. <https://ti.or.id/indeks-persepsi-korupsi-2021-korupsi-hak-asasi-manusia-dan-demokrasi/>.
- Irfan, M Nurul. *Korupsi Dalam Hukum Pidana Islam*. First. Jakarta: Amzah, 2014.
- Jamaluddin, Rabain. "Perspektif Islam Tentang Korupsi." *An-Nida'* 39, no. 2 (2014): 187–98. <http://ejournal.uin-suska.ac.id/index.php/Anida/article/view/875>.
- Kuku, Try Putra D. N., Robert N. Warong, and Deby Telly Antow. "Perampasan Aset Tanpa Menjalani Pidanaan Bagi Pelaku Yang Melarikan Diri Atau Meninggal Dunia Dalam Perkara Tindak Pidana Korupsi." *Lex Crimen* IX, no. 4 (2020): 55–65. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/30804%0Ahttps://ejournal.unsrat.ac.id/index.php/lexcrimen/article/viewFile/30804/29584>.
- Mahfudh, Nur Iqbal. "Hukum Pidana Islam Tentang Korupsi." *IN RIGHT Jurnal Agama Dan Hak Azazi Manusia* 6, no. 2 (2017): 249–65.
- Majelis Ulama Indoenesia. "Ijma' Ulama Indonesia 2012 (Himpunan Keputusan Ijtima Ulama Komisi Fatwa Se- Indonesia Tahun 2012)." Jakarta, 2012.
- Republik Indonesia. Undang-Undang Nomor 20 Tahun 2001, Pub. L. No. 20 (2001).
- Syafe'i, Zakaria. "Pertanggungjawaban Pidana Dalam Hukum Pidana Islam." *Alqalam Jurnal Kajian Keislaman* 31, no. 1 (2014): 97–136. <https://jurnal.uinbanten.ac.id/index.php/alqalam/article/view/1107>.
- Syatar, Abdul, and Ahmad Abubakar. *Filosofi Uqubah Islamiyah Versi Ramadhan Al-Buti*. Edited by Muhammad Majdy Amiruddin. First. Gowa: Alauddin University Press, 2020.
- Tim Naskah Akademik. "Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana." Jakarta, 2012.
- "Types of Federal Forfeiture." Accessed November 16, 2022. <https://www.justice.gov/afms/types-federal-forfeiture>.
- United Nations. United Nations Convention Against Corruption, Pub. L. No. 58/4 (2003).
- Wiarti, July. "Non-Conviction Based Asset Forfeiture Sebagai Langkah Untuk Mengembalikan Kerugian Negara (Perspektif Analisis Ekonomi Terhadap Hukum)." *UIR Law Review* 1, no. 1 (2017): 101–10.

