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THE CONVERGENCE BETWEEN NON-CONVICTION BASED ASSET FORFEITURE AND HUDŪD IN ISLAMIC CRIMINAL LAW

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Abstrak

Unlike other extraordinary crimes in Indonesia, such as terrorism and narcotics, which apply deradicalization and rehabilitation, corruption still lacks a recovery-oriented mechanism. One proposed solution is *non-conviction-based asset forfeiture* (NCB-AF) under the Asset Forfeiture Bill, although it remains controversial due to human rights concerns and debates over its purpose. In Islamic criminal law, *hudūd* punishment for theft, including hand amputation under strict conditions, aims to ensure justice and prevent reoffending. Using a normative legal method with statutory and conceptual approaches, this article finds that *hudūd* and NCB-AF share a similar goal: preventing repeat offenses and ensuring that crime does not remain profitable. Hand amputation symbolically

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cuts off the offender's ability to reoffend, while NCB-AF cuts the economic lifeline the "blood of crime" that sustains criminal activity. The novelty of this study lies in linking these two concepts, while its contribution is offering a new perspective on the legitimacy and preventive function of NCB-AF in combating corruption.

Keywords: Asset Confiscation; Corruption; Criminalization; Islamic Law; NCB-AF

A. Introduction

Corruption exists in all countries, rich and poor, North and South. It is an attack on the values of the United Nations. Corruption robs communities of schools, hospitals, and other vital services, drives away foreign investment, and plunders a country's natural resources. Corruption undermines the rule of law and facilitates crimes such as human trafficking, drug trafficking, and illegal arms trafficking.[1] Based on Transparency International Indonesia's release on January 10, 2026, Indonesia's 2025 Corruption Perception Index was ranked 109, down 10 places from the previous year, which ranked 99 out of 182 countries.[2] The CPI ranks 182 countries and territories around the globe by their perceived levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean). Corruption in Indonesia is a deep-rooted problem, yet Indonesia remains committed to eradicating it. In reality, corruption exacerbates social inequality and paralyzes the state's ability to fulfill citizens' basic rights, including those born under the obligations inherent in the five pillars of Islam. Giving and receiving have been a practice since

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1 United Nations, "Cost of Corruption at Least 5 Per Cent of Global Gross Domestic Product, Secretary-General Says in International Day Message Meetings Coverage and Press Releases" (United Nations, 2018).

2 Transparency International Indonesia, "INDEKS PERSEPSI KORUPSI 2025: PENURUNAN KEBEBASAN SIPIL S AKSES PADA KEADILAN MENGANCAM PERJUANGAN MELAWAN KORUPSI – Transparency International Indonesia," TII.org, 2026.

feudal times,[3] Even corruption in Indonesia doesn't care at all which sector the corruptors are stealing from. Despite the majority of the population being Muslim, the Corruption Eradication Commission (KPK) is also having to handle corruption cases at the Ministry of Religious Affairs. Five months after the alleged Hajj quota corruption case was escalated to an investigation, the KPK announced the suspects: the former Minister of Religious Affairs from 2020 to 2024 and his former special staff.

Amidst the low CPI achievement and corruption occurring in various sectors, Indonesia also faces the challenge of political will in pushing for regulations that are more in line with the characteristics of corruption crimes through asset confiscation through the Non- Conviction Based Asset Foreclosure (NCB-AF) mechanism, which is currently still in the form of a Draft Law on Asset Confiscation (hereinafter referred to as the PA Bill). The NCB-AF mechanism has been initiated at least since the era of President Susilo Bambang Yudhoyono and has not yet been finalized to date.[4] In a global context, the fact that even if the perpetrator is successfully convicted, the assets resulting from corruption cannot be optimally recovered gives rise to fundamental criticism of the retributive punishment paradigm, which fails to address the primary goal of eradicating corruption, namely ensuring that crime should not pay. As an organized crime and an extraordinary crime, corruption currently lacks a restorative punishment instrument or a deterrent effect that eliminates the factors that cause corruption, both for the individual perpetrator and for the general public. Research in the 21st century strongly suggests that prisons are not ideal environments for supporting rehabilitation due to their

[3] Jamin Ginting, Patrick Talbot, and Erdick Darry, "Legal Pluralism Perspective in Prosecuting Perpetrators of Bribery and Gratuities Corruption Crimes," *Jurnal Konstitusi* 20, no. 4 (2023): 721–36, https://doi.org/10.31078/jk2049.

[4] Budiawan Sidik, "Dinamika Perjalanan Panjang RUU Perampasan Aset," *Kompas.Com*, September 2025, https://www.kompas.id/artikel/dinamika- perjalanan-panjang-ruu-perampasan-aset.

detrimental impact on identity, self-actualization, mental health, and social relationships.[5] The criminal sanction of the heaviest possible imprisonment is increasingly irrelevant to the paradigm of criminal reform that characterizes Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the 2023 Criminal Code) as the lex generalis of criminal law regulations in Indonesia. Compared to two other extraordinary crimes, namely terrorists who are rehabilitated through deradicalization and drug abusers through rehabilitation, both of which have specific characteristics in rehabilitating the perpetrators. Unfortunately, to date, the form of rehabilitative action, whether through criminalization or action against corruption perpetrators, has not had a specific characteristic amidst the ineffective form of punishment for corruptors in Indonesia.

The importance of asset recovery as the heart of a modern anti- corruption regime through the NCB-AF concept must continue to be emphasized. Weak law enforcement and demands for regulatory improvements should serve as momentum to expedite the passage of the PA Bill. The public believes that the ratification of the PA Bill must be accompanied by substantial improvements to prevent it from becoming a source of new problems.[6] In addition to the issue of potential human rights violations, particularly the basic right to own something, concerns regarding the PA Bill due to the potential for this regulation to be misused as a political tool against people who disagree with the government make this bill

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[5] Patricia Gray and Julie M Parsons, "The Harms of Imprisonment and Envisioning a Desistance-Supporting 'Good Society,'" *The Journal of Criminal Law* 88, no. 4 (July 2024): 282–301, https://doi.org/10.1177/00220183241265188.

[6] Rifqi Sjarief Assegaf, "RUU Perampasan Aset_ Senjata Pamungkas Atau Sumber Masalah Baru_,"*Hukumonline.Com,*September2025, https://www.hukumonline.com/berita/a/ruu-perampasan-aset--senjata- pamungkas-atau-sumber-masalah-baru-lt68c2a32808862/.

increasingly prone to appearing and disappearing in the national legislative program.[7]

A mixed legal system or mixed law, or more inclined towards a civil law system where proof is based on beyond reasonable doubt which refers to the standard of proof in the criminal justice process where the judge must have a very high confidence that there is no reasonable reason to doubt the truth of the accusations submitted so that at some point, the criminal justice system does not run properly even in situations where the perpetrator is strongly suspected of having committed a crime, but the prosecutor does not have sufficient evidence to try him before a judge. In cases of corruption or even crimes that are economically motivated or generate such large economic profits and involve high-class networks, the possibility that the perpetrator is very clever at eliminating evidence, or fleeing, including if the perpetrator dies has resulted in cases with large state *losses that cannot be resolved. As an asset confiscation mechanism, NCB-AF originates from countries with a common law system, so its application is more by countries with a common law system, but if examined further, both the concept and mechanism of NCB-AF tend to have harmony with the values and objectives of Islamic law.*

Research on asset forfeiture and Islamic law has been widely conducted. For example, an article entitled The Urgency of Implementing Asset Forfeiture in Anti-Corruption Efforts: A Study of Islamic Criminal Law Perspectives found that the principle of ta'zīr provides legitimate grounds for asset forfeiture for the sake of public welfare, even without individual criminal punishment. The study shows that the Non-Conviction Based approach is in line with Islamic legal values that emphasize substantive justice and the protection of public property.[8] *Another article entitled Penafsiran Ayat-Ayat*

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[7] Faisal Irfani, "RUU Perampasan Aset_ Dipicu Kasus Buron BLBI, Kini 'Bisa Berubah Jadi Alat Politik'" (Jakarta: BBC News Indonesia, 2025).

[8] Maskur Rosyid M. Imdad al-Kavafi, Ja'far Baehaqi, "Urgensi Perampasan Aset Dalam Pemberantasan Korupsi : Dalam Perspektif Hukum Pidana

tentang Perampasan Aset Koruptor dalam Perspektif Al-Misbah, Al-Azhar, Ibnu Katsir, dan Al-Munir found that commentators support the confiscation of corruptors' assets as a legitimate action in Islam, in accordance with the principles of maqāṣid al-sharīʿah, especially the protection of property (ḥifẓ al-māl). M. Quraish Shihab emphasizes the importance of asset confiscation to restore justice and protect society. Hamka views this action as a just punishment that also restores society's rights. Ibn Kathir stresses that corruption must be punished strictly to prevent greater harm. Wahbah Zuhaili highlights the government's authority in upholding justice and preventing injustice, including through the confiscation of illicit assets.[9] *Another article entitled Tinjauan Maqashid Syariah terhadap Rancangan Undang-Undang Perampasan Aset dalam* Pemberantasan Korupsi di Indonesia analyzes that the existence of this Bill raises philosophical and juridical discourse regarding the boundary between the state's efforts to safeguard public welfare and the risk of violating individual human rights, particularly in the context of the principles of due process of law. Within the framework of maqāṣid al-sharīʿah, asset forfeiture policy can be understood as an expression of the objectives of Islamic law to protect property (ḥifẓ al-māl), as well as a form of contemporary ijtihād in realizing social and economic justice. This article employs the systemic maqāṣid al-sharīʿah approach developed by Jasser Auda to explore how the values of ḍarūriyyāt, ḥājiyyāt, and taḥsīniyyāt provide normative justification for the urgency of asset forfeiture. On the other hand, this approach also emphasizes the importance of procedural justice and accountability to ensure that legal instruments do not become tools of power that undermine the

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Islam The Urgency of Implementing Asset Forfeiture in Anti-Corruption Efforts : A Study of Islamic Criminal Law Perspectives," *Jurnal USM Law Review* 8, no. 2 (2025): 952–77, https://doi.org/https://doi.org/10.26623/julr.v8i2.11057.

[9] Perspektif Al-misbah and Ibnu Katsir, "Penafsiran Ayat-Ayat Tentang Perampasan Aset Koruptor Dalam," *JURNAL ILMIAH PENDIDIKAN KEBUDAYAAAN DAN AGAMA* 2, no. 4 (2024): 72–81, https://doi.org/https://doi.org/10.59024/jipa.v2i4.926.

very principles of justice themselves. Although there has been considerable research on the Asset Recovery Bill which is considered to have similarities with Islamic law, there has been no research comparing asset confiscation using the NCB-AF method with hudūd in Islamic law. This research fills the gap in the literature, through the perspective of law/jarimah hudūd, this research aims to describe the harmony of asset confiscation using the NCB-AF mechanism with hudūd, including comparing the strict conditions for implementing NCB-AF and hudūd in Islamic law where the criminological perspective through white collar crime is also used to show that the mindset of white collar criminals may not be different from that of thieves in hudūd who deserve to be punished as applicable in Islamic law. This research then formulates two problems, first, how to analyze the philosophical legitimacy of asset confiscation using the NCB-AF method from the perspective of hudūd in Islamic law, second, whether the policy of criminalizing corruption through asset confiscation from the perspective of hudūd has an objective alignment with modern criminalization for corruption crimes?

The research method used in this study is normative legal research[10] with statutory and comparative conceptual approaches. The conceptual approach is employed to examine the concept of hudūd in Islamic criminal law and the objectives of modern punishment, while the statutory approach is used to analyze laws and regulations related to asset forfeiture and anti-corruption. The comparative approach is explicitly used to compare the principles of hudūd with the objectives and mechanisms of modern punishment within the framework of NCB-AF. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and Islamic legal sources such as the Qur'an and Hadith. Secondary legal materials include books, journal articles, and relevant previous studies, while

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[10] Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, 1st ed., vol. 1 (Yogyakarta: Mitra Buana Media, 2020).

tertiary legal materials include legal dictionaries and encyclopedias.

The analysis is conducted using qualitative descriptive methods through content analysis and comparative analysis, supported by teleological interpretation to interpret the underlying purpose and rationale behind the enactment of a legal rule. The analysis of these legal materials is then presented descriptively and systematically.

B. Disscusions

1. Analyzing the Concept and Purpose of Hudūd in Islamic Law

In legal history, the punishment of hand amputation for theft has been known and implemented in several ancient and religious legal systems, particularly Islamic law. The most well-known punishment for hand amputation originates from Islamic criminal law, or hudūd, which is derived from Al Qur'an (QS. Al-Ma'idah: 38):

مرقِس يل هـ مرقِس يلعم هـ مسكع مط هق ك مِمك يهمم هد ميس ما م ن يا ميس ما مبمسس ما ممنك ن م ر الي مر الله م يمك ح م يكِ ح

"Men who steal and women who steal, have their hands cut off as a reward for what they have done and as a lesson from Allah SWT."

This verse is the basis for the hudūd punishment for theft. Theft in Islamic criminal law is included in the criminal acts called jinayah or jarimah and the punishment is called 'uqubah, which means punishment or retribution. Jinayah or jarimah is a crime that affects religion, life, mind, descendants, or property, and the punishment threatened by Allah SWT for such acts is in the form of hudūd or ta'zir punishment. Hudūd punishment or also called had punishment is a punishment or sanction whose level has been determined by Allah SWT because of the right of Allah, where this punishment or sanction is clearly stated in sharia, Al Qur'an, and the hadith so that the judge must enforce it according to his

authority and without granting forgiveness.[11] This is in accordance with Imam Al-Mawardy's opinion, namely that Jarimah are actions that are prohibited by syara' which are threatened by Allah SWT with the punishment of had and ta'zir. Likewise, according to Abdul Qadir Audah's opinion, the meaning of jinayah or jarimah is a term for actions that are prohibited by syara', whether these actions involve life, property and others.[12] Meanwhile, ta'zir punishment is a punishment or sanction that is not regulated in the Qur'an or Hadith, but is determined by a judge or ruler by considering the degree or severity of the crime committed. The ruler referred to in the previous definition does not only refer to a king, but also to authorized government institutions such as the legislative, executive, or a high priest.[13] Based on sharia', ta'zir is an educational punishment for a sinful act where the sin does not have provisions governing it, so the form of application and type of punishment is left to the judge.[14] Even though this punishment is educational or a teaching that does not cause destruction, there are exceptions made by most Islamic jurists to this punishment, namely that the death penalty is permissible if this punishment is required by public interest or the conflict cannot be resolved except by killing the person.[15] Even Ushul Fiqhi experts agree that every law prescribed by Allah contains benefits for humans, both worldly benefits and spiritual benefits. In fact, the benefit contained in every law prescribed by Allah is dharuri, which means that benefit is something that must be realized and realized.[16] Money and wealth, in Islam, must be obtained through legitimate and halal

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[11] Nisrina Tuhfatul Azizha and Naqiyah Naqiyah, "Hudūd Dalam Al-Qur'an: Pembacaan Ulang Hermeneutik Atas Hukuman Seratus Cambukan Dalam QS. An- Nūr [24]: 2-3," *Contemporary Quran* 5, no. 2 (2025): 121–38. Lihat juga, Mohammad Najib, "Korupsi Dan Ta'zir Dalam Perspektif Hukum Pidana Islam," *Jurnal 'Ulūm Al- Qur'Ān: Ilmu Pengetahuan Dan Masyarakat Madani* 1, no. 1 (2024): 61–84.

[12] Zulkarnain Lubis and Bakti Ritonga, *Dasar-Dasar Hukum Acara Jinayah* (Jakarta: Prenada Media, 2016).

[13] Ahmad Syarbaini, "Konsep Ta'zir Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiqa: Jurnal Pemikiran Hukum Islam* 17, no. 2 (2023): 37–48.

[14] Najib, *Op.Cit*: hlm. 70-71.

[15] Syarbaini, *Loc.Cit.*

[16] Moh Khasan and Ja'far Baehaqi, *Perampasan Asset Terpidana Korupsi Dalam Kajian Hukum Pidana Dan Fiqh Jinayah*, 1st ed. (Semarang: CV. Alinea Media, 2021).

means. Any form of business involving fraud, manipulation, or abuse of authority is strictly prohibited. Therefore, corruption is considered a form of ta'zir crime, a crime not specifically regulated in Islamic criminal law but detrimental to society at large. In this case, the government or ulil amri (the people in authority) has the authority to impose appropriate penalties, including asset confiscation, to restore justice and prevent further harm. It is important to note that in Islamic law, asset confiscation serves both preventive and retributive purposes. This action is not only to punish the perpetrator but also to deter similar violations in the future and to redress the losses suffered by society or the state as a result of the crime. Based on the principles of maqāṣid al-sharīʿah (the objectives of sharia), asset confiscation aims to protect property, public order, and security, as well as prevent further harm.[17] A crime sometimes violates only one right (individual rights and the rights of the community, namely God's rights), the crime of corruption also violates two rights, namely individual rights and the rights of the community (huqqan lillah). A person who commits the crime of theft in this article is a crime of corruption, then that person violates two rights, namely individual rights and the rights of the community and when the person is guilty, he can be subject to two sanctions or punishments, namely the sanction of imprisonment and the sanction of confiscation of assets resulting from corruption, therefore a person who commits a crime of corruption is not only sentenced to prison but must also return the proceeds of his corruption.[18] The form of punishment given to perpetrators of corruption is hudūd punishment. Why is the crime of corruption subject to hudūd punishment? Because corruption is essentially an act of taking something that is not one's right and by committing this crime, the rights and interests of the public are violated, because corruption has harmed the state and society.

The form of hudūd punishment as contained in the sharia, the Qur'an and the hadith is given for the sin of adultery, accusation of adultery (qazaf), theft (sariqah), apostasy, drunkenness, robbery

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[17] M Imdad Al-Kavafi, Ja'far Baehaqi, and Maskur Rosyid, "Urgensi Perampasan Aset Dalam Pemberantasan Korupsi: Dalam Perspektif Hukum Pidana Islam," *Jurnal USM Law Review* 8, no. 2 (2025): 952–77, https://doi.org/10.26623/julr.v8i2.11057.

[18] Khasan and Baehaqi, *Loc.Cit*.

and rebellion against the legitimate government.[19] Corruption is identified as theft in terms of controlling assets that are not one's own. Although some criminal law experts, such as Prof. Muladi, differentiate corruption from theft, stating that corruption is not simply theft. The main characteristic of corruption is the abuse of authority, means, or opportunities available to someone due to their position or status. Theft, on the other hand, is a conventional crime that relies on the physical act of taking another person's property. Corruption is a crime of office (ambtsdelicten) that involves the manipulation of public authority for personal or group interests.[20] However, from the point of view of the rules of ushul fiqh in Islamic Law with the Philosophical Foundation of Al-Ghurmu bi al-Ghunmi in the rules of fiqh it is stated "Al-Ghurmu bi al-Ghunmi" (Risks are directly proportional to benefits), if someone acquires property without the "risk" of a legitimate business or the proceeds of crime, then he has no right to the "benefits" of that property. Therefore, confiscation of assets is not just a punishment for the perpetrator, but rather an effort to return the status of assets to their original position when they were returned to the state.

A person who has reached puberty and then steals another person's property worth at least a quarter of a sharia dinar, of his own free will and without being forced, and knows that his actions are haram, prohibited by religion, then he fulfills the requirements to be subject to the punishment of having his right wrist cut off as ordered in the verse above.[21] Theft can be determined if there is evidence or a confession from the thief himself. The law of wrist amputation is carried out by the authorized party appointed for that purpose, under certain conditions. The determination of the value of the stolen property that is imposed as a punishment for the perpetrator's hand amputation, which is at least a quarter of a sharia dinar, as mentioned above, is the opinion of the majority of

[19] *Ibid*.

[20] Muladi and Barda Nawawi Arief, *Korupsi: Kebijakan Strategi Pencegahan Dan Pemberantasan* (Bandung: Bandung Alumni, 1991).

[21] Maulida Hasanah, Muna Hasanah, and Noormala Santi, "Hukuman Pidana Dalam Islam: Analisis Konseptual, Maqāṣid Asy-Syarī 'ah, Dan Relevansi Kontemporer," *Ahsan: Jurnal Ilmiah Keislaman Dan Kemasyarakatan* 2, no. 2 (2025): 221–32.

scholars, both the salaf and khalaf scholars, based on the following saying of the Prophet Muhammad SAW:

ماس ما مل ەكَ ەاللي مصّ الله مّكِ يع مُ مّم مكَ مطهُ ممه رّبس يل يَ نْف هلاك يُ بِمكمنس دل مْ مدس نّيهِ لَ رخشيا ّّ سّئخَ)

"Rasulullah SAW cut off the hand of the thief who stole a quarter of a dinar and above." (History of al-Bukhārī - Muslim from Aisha).[22]

The main requirement for the application of hudūd punishment in an act of theft is that the minimum nominal amount obtained from the theft is a quarter of a sharia dinar or, if converted into rupiah, Rp. 531,250. Other requirements for the application of hudūd to perpetrators of theft in Islamic criminal law according to Imam Syafi'i area:

1) The theft was carried out secretly,
2) The thief was already mature, not insane, and was not under any compulsion to commit the theft,
3) Stolen items up to the nisab or size determination,
4) The stolen items were items that were stored in a safe place,
5) The stolen items are valuable items, and
6) There is a section for thieves in the stolen goods.[23]

The majority of Islamic jurists or the majority of fuqaha scholars agree that the six conditions relating to the property and the perpetrator of the theft must be fulfilled so that the hudūd punishment of cutting the wrists can be applied,[24] However, the application of hudūd punishment for the crime of theft can still be replaced or suspended if the victim forgives the perpetrator and the crime of theft has not been brought to court and has not been declared guilty. Conversely, if the crime of theft has been brought to court and the defendant found guilty, then the sanction of

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[22] *Ibid.*

[23] Muhammad Adnan Lutfi et al., "Studi Perbandingan Tentang Penetapan Sanksi Pidana Pencurian Berdasarkan Hukum Pidana Positif Indonesia Dan Hukum Pidana Islam," *Borobudur Law and Society Journal* 1, no. 1 (2022): 20–30, https://doi.org/10.31603/6537.

[24] Fiddini Izaturahmi et al., "Konsep Hudūd Dalam Al-Quran," *Jurnal Budi Pekerti Agama Islam* 2, no. 1 (2024): 166–84, https://doi.org/10.61132/jbpai.v2i1.78.

amputating the hand must be imposed and cannot be replaced with other sanctions.[25]

A thief whose right hand has been cut off, then steals again with the same conditions as before, then cuts off his left leg, namely from the toe to the ankle. If he steals again for the third time, his left hand will be cut off again, if he steals again for the fourth time, his right leg will be cut off again, as Rasulullah SAW said regarding thieves as follows:

ىكا م م م مسكع مطهقوكِ ممهه ه ىكا م م م مسكع مطهقوكِ يل كامهع ه ىكا م م م مسكع مطهقوكِ ممهه ه ىكا م م م

مْسكع مطهقوكِ يل كامّهع إُل كِسَا رخسُقف ّّ ياف ةمَه)

"If he steals, cut off his (right) hand, if he steals again, cut off his (left) leg, if he keeps stealing again, cut off his (left) hand and if he continues to steal, cut off his (right) leg." (History of al-Imām al-Syāfi'i from Abū Hurairah).

If all of this has been done but he still steals for the fifth time, then he is ta'zir, meaning he is given a punishment according to the judge or ruler's decision, for example, imprisonment or exile to another place, so that he cannot steal again. Cutting off hands is commanded by Allah SWT as a punishment for thieves, both men and women, because Allah SWT will allow thieves and other humans to commit sins. Allah is All-Wise in determining the sanction of cutting off hands for thieves because if you look more deeply, of course in its implementation it will bring many benefits, at least it can limit the rampant theft. This is based on the fact that whatever Allah SWT commands will certainly bring benefits and whatever He forbids will certainly cause damage and destruction if violated. Corruption is qualified as part of the act of theft because the essence of this act has fulfilled the elements in Islamic criminal law such as the elements of crime, jarimah, and jinayah, there are two, namely; 1) The existence of a text that prohibits certain actions accompanied by threats for the act, this element is known as the formal element (Ar-rukn al-Sya'i). 2).

The existence of an element of action that forms jarimah, either doing a prohibited act or leaving an ordered act, this element is called the material element (al-rukn -almadi) of the two elements. Theft is a prohibited act that is determined in the text and

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[25] Muhammad Adnan Lutfi et al, *Loc.Cit.*

this act has formed a criminal act so that theft is qualified as a criminal act that has fulfilled the elements of punishment in the context of Islamic criminal law. In criminal jurisprudence, the practice of depriving criminals of their economic rights is well known, especially in the category of ta‘zīr, which is a punishment whose authority lies with ulil amri. Classical fiqh literature, such as al-Ahkam al-Sultaniyyah by al-Mawardi, al-Tasyri‘ al-Jina'i al-Islami by Abdul Qadir Audah, as well as the works of fuqaha mazhab (Shafi‘i, Hanafi, Maliki, Hanbali), shows that confiscation of property is part of ta'zir punishment when the crime causes public harm (mafsadah 'ammah).[26]

The purpose of applying hudūd punishment to the perpetrator of theft in Islamic criminal law is not only to ensure that the perpetrator of theft cannot commit similar crimes in the future, but also to minimize the opportunity for the perpetrator of theft to steal again or the impact resulting from the theft if he does not feel deterred by the punishment of his wrists being cut off. The biggest purpose of applying this hudūd punishment is to fulfill the provisions of maqashid sharia which means the purpose of establishing Islamic law is to create or realize the welfare of human life,[27] where one form of this benefit is to protect the soul, honor or self-respect, and property.[28] This is also supported by previous research by scholars that the purpose of implementing punishment or uqubah in Islamic criminal law is divided into two types, namely, the relative purpose (al-ghard al-qarib) where the purpose of inflicting painful punishment on perpetrators of crimes is to provide a deterrent effect and encourage repentance, and the absolute purpose (al-ghard al-ba'id) where the purpose of Islamic criminal punishment is to protect human welfare.[29]

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26 Andi Marlina, "From Confiscation to Prevention : Asset Confiscation and the Impoverishment of Corruptors in Islamic Jurisprudence," Https://Mail.Ijospl.Org/Index.Php/Ijospl/Article/View/192/148 14, no. 2 (2025): 352–74, https://doi.org/10.22373/legitimasi.v14i2.32508.

27 Muhammad Tahmid Nur, "Urgensi Penerapan Hukum Pidana Islam (Tinjauan Filsafat Hukum)," MADDIKA: Journal of Islamic Family Law 1, no. 1 (2020): 1–16, https://doi.org/10.24256/maddika.v1i1.1557.

28 Fiddini Izaturahmi et al., Op.Cit., hlm 172.

29 Muhammad Tahmid Nur, Loc.Cit.

2. Non-Conviction Based Asset Forfeiture in the Draft Asset Forfeiture Bill and Its Relevance to Hudūd

Asset forfeiture using the NCB-AF method is understood as a mechanism for the forced seizure of assets or property that the government believes is closely related to a criminal acts of corruption. NCB-AF places a lawsuit against the asset rather than against the perpetrator of the crime, so that assets can be seized even if the criminal justice process against the perpetrator has not been completed, or even if the owner or perpetrator of the crime cannot be found or has fled. The NCB-AF method is better known in the common law legal system, in America by the term civil forfeiture, which is considered more effective than criminal forfeiture because it does not require many requirements and is therefore more attractive to implement and beneficial for the state. Asset forfeiture without punishment is a fundamental concept in efforts to eradicate crimes that harm the state's finances and economy, by reclaiming the perpetrator's assets that are suspected of being obtained from crimes that harm the state's finances or economy. These crimes can stem from corruption, illegal logging, narcotics, customs and excise crimes, and money laundering.[30] Confiscation and recovery of proceeds of crime is a powerful way to combat organized crime effectively.[31] NCB is one of the efforts that can be carried out by countries that have committed themselves to the United Nations Convention Against Corruption (UNCAC). After ratifying the UNCAC through Law Number 7 of 2026 concerning the Ratification of the UNCAC, until now Indonesia has not regulated NCB as a legal effort to eradicate corruption which is getting worse every day.[32] As a country involved in international relations, the Eurocentrism of international law requires Indonesia to direct the hegemony of norms toward harmonizing international legal norms based on value and cultural pluralism. Therefore, the development of international legal norms increasingly influences national policy,

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30 Yunus Husein, “Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan,”*Restatement* (Jakarta, 2019).

31 Crime Does Not Pay,” EUR Lex:, 2009.

32 Irwan Hafid, “Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law,” *Jurnal Lex Renaissance* 6, no. 3 (2021): 465–80, https://doi.org/10.20885/jlr.vol6.iss3.art3.

including in the context of legislation related to law enforcement that guarantees human rights.

When linked to the modern criminal justice paradigm, imprisonment is no longer effective in deterring economic crimes, particularly corruption, which is systemic and oriented towards wealth accumulation. As an extraordinary crime, corruption is currently the only crime without a remedial model compared to other extraordinary crimes, just as terrorism has both a criminal sanction and a remedial instrument through deradicalization, and narcotics through rehabilitation to restore perpetrators. In this context, the discourse of asset confiscation through NCB-AF in Indonesia is expected to become a strategic instrument that places the recovery of state losses and the impoverishment of perpetrators as the primary objectives of criminal punishment, which is in line not only with the objectives of modern criminal punishment as updated through the 2023 Criminal Code, but also the objectives of criminal punishment according to Islamic law.

As a new legal instrument in Indonesia, the mechanism for asset confiscation without criminal prosecution places the state face to face with assets and not with the perpetrator of the crime. Assets in the draft asset confiscation law are defined as all movable or immovable objects, both tangible and intangible, and have economic value. Criminal assets that can be confiscated under the Draft Law on Criminal Procedure are assets resulting from criminal acts or assets obtained directly or indirectly from criminal acts, including those that have been donated or converted into personal, other people's, or corporate assets, whether in the form of capital, income, or other economic benefits derived from such assets, assets known or reasonably suspected to be used or used to commit criminal acts, other assets legally belonging to the perpetrator of the crime as a substitute for assets that have been declared confiscated by the state and assets that are found objects known or reasonably suspected to originate from criminal acts, assets that are not balanced with income or are not balanced with sources of additional wealth whose origin cannot be proven legally and are suspected to be related to criminal assets, and assets that are confiscated objects obtained from criminal acts or used to commit criminal acts.

Confiscation of assets that are regulated to be confiscated using the NCB-AF mechanism cannot be automatically applied, as the conditions for implementing hudūd in Islamic law require the existence of conditions to be able to punish amputation of hands or hudūd. Based on

Article 6 paragraph (1) of the PA Bill, criminal assets that can be confiscated using the NCB-AF mechanism are assets with a minimum value of IDR 100,000,000.00 (one hundred million rupiah); and assets related to criminal acts that are threatened with imprisonment of 4 (four) years or more. This regulation shows the minimum limit of economic value and the minimum limit of the crime threatened in the article that regulates the crime. This regulation is intended to emphasize that crimes with a minimum amount of economic value and minimum imprisonment that are threatened as sanctions are acts that have a degree that is appropriate for confiscation of assets using the NCB-AF mechanism. This condition shows that not all crimes that have economic benefit value can immediately be subject to asset confiscation with the NCB-AF mechanism, but only acts with a proper category can be subject to asset confiscation with the NCB-AF mechanism. If it is linked to hudūd in Islamic law, it can be seen that the concept of its implementation is similar, namely the existence of certain conditions before the punishment of cutting off the hand in the context of hudūd as certain conditions must be met to be able to implement asset confiscation with the NCB-AF mechanism, the difference is that the punishment of cutting off the hand for perpetrators of theft in the context of hudūd is a direct punishment, while asset confiscation in the RUU PA is not a form of direct criminal sanction, but is a mechanism to confiscate assets for crimes that have an economic benefit value of at least one hundred million rupiah and is threatened with a minimum sentence of 4 (four) years.

Criminal Acts in Islam have several main categories, each level or level has a different type of sanction and basis for determination. This category of sanctions can be studied as a level that reflects the level of legal certainty, whose rights are violated and flexibility in its application. The classification of these crimes is hudūd, qisas, diyat and ta'zir. Hudūd is a fixed sanction which is the right of Allah and aims to maintain public welfare, one of the public welfare regulated in Islamic law is to maintain property (hifhdzil maal). State assets or wealth that result in state losses which belong to the people, then the implementation of the law of cutting off the hands for the perpetrators is very possible from the opinion of experts who interpret cutting off the hands by encouraging

strengthening the punishment in the form of impoverishing corruptors by confiscating assets resulting from corruption as a form of "social cutting off the hands" which is more effective in reducing the intention of corruption. Both hudūd and asset confiscation have similar goals, where hudūd aims to ensure that theft, which is punished by amputation, is prevented from being committed again because the hand used to steal has been amputated. In the NCB- AF concept, asset confiscation aims to eliminate the perpetrator's ability to repeat the act and prevent anyone from enjoying the financial or economic benefits derived from the crime. Preventing anyone from enjoying the economic benefits of crime is known as the principle of crime should not pay (that no one has the right and does not deserve to benefit from the evil deeds of others). It is a common belief that crime does not generate profit.[33] Financial gain is the primary incentive for most serious and organised crime networks, and seizing their proceeds is the most effective way to dismantle them.[34] In addition to enforcing the principle that crime should not pay, confiscation of assets with the NCB-AF concept is also expected to cut the veins of crime because the results of economic profits are considered the blood that supports crime (blood of crime) so that the veins that have supported the crime must be cut so that similar crimes or other crimes that are supported or sourced from the profits of crimes committed previously, either by the perpetrator himself or by others, are not repeated.

[33] G Paul, "Crime Shouldn't Pay: A Proposal to Create an Effective and Constitutional Federal Anti-Profiting Statute," *University of California Press* 19, no. 2 (2006): 119–24, https://doi.org/fsr.2oo6.19 .2.1i9.

[34] OSCE Secretariat, "Crime Should Not Pay! Police Experts Discuss Ways to Disrupt Criminal Activities at Annual OSCE Meeting _ Organization for Security and Co- Operation in Europe," *OSCE.Org* (Vienna, September 2017).

Table 1. Conditions for Implementing Hudūd and NCB-AF

Assets reach the nisab (a certain minimum value);	Assets worth at least IDR 100,000,000.00;
The property is taken from a safe place of storage (hirz);	Assets related to criminal acts punishable by imprisonment of 4 (four) years or more.
Done intentionally and secretly, not because of emergency needs;	
The perpetrator is sane, mature, and legally responsible;	
There is no element of syubhat (legal doubt)	

Source: Author's Analysis, 2026

The first requirement for hudūd is that assets must reach the nisab (the threshold limit). The nisab is the minimum threshold that allows hudūd to be imposed on a perpetrator of theft. In the context of the NCB-AF, there is also a minimum amount of assets that can be confiscated, namely one hundred million rupiah. The second requirement for hudūd is that assets be taken from a safe place of storage. In Islamic criminal law (hudūd), one of the important requirements for theft to be subject to severe punishment (amputation of the hand) is that the stolen goods must be taken from a safe place of storage, known as hirz (ح◌َ◌ْ). This is a place or condition that is reasonably considered safe for storing assets, so that others cannot take them without permission. By placing assets in a safe place, it is legally recognized that the owner has made appropriate efforts to protect their assets. In the context of the NCB-AF, which is applied to crimes that are clearly prohibited both morally and legally, the economic benefits from the proceeds of crime must of course come from a place or source that is not permitted for anyone to misuse for personal or group gain. For example, corruption that harms state finances, where state funds originate from public taxes collected in the State Budget (APBN), prevents anyone from using them for personal or group gain. Furthermore, the assets and conditions of confiscated assets are regulated as follows:

Table 2. Types and Conditions of Assets that Can Be Confiscated

Types of Assets That Can be Confiscated	Conditions of Assets that Can be Confiscated
Assets resulting from criminal acts or assets obtained directly or indirectly from criminal acts, including assets that have been given or converted into personal assets, other people's assets, or company assets, in the form of capital, income, and other economic benefits obtained from these assets.	The suspect or accused has died, fled, is suffering from a permanent illness, or his/her whereabouts are unknown.
Assets that are known or strongly suspected to be used or have been used to commit a crime.	Based on a court decision that has obtained permanent legal force, the defendant is acquitted of all legal charges due to his inability or incompetence to be held criminally responsible.
Other legitimate assets belonging to the perpetrator of the crime as a substitute for assets	The criminal case cannot be tried.

that have been declared confiscated by the state.	
The assets found were items known or strongly suspected to originate from criminal acts.	Has been found guilty by a court that has obtained permanent legal force, and later it turns out that there are assets from the crime that have not been declared confiscated.
The assets confiscated are items obtained from the proceeds of crime or used to commit crimes.	
Assets that are not balanced with income or are not balanced with additional sources of wealth that cannot be legally proven and are suspected of being related to assets resulting from crime.	

Source: Author;s Analysys based on primary materials, 2026

The terms and conditions of confiscated assets indicate that the confiscated assets originate from criminal acts or are related to criminal acts. Anything that has been regulated as a criminal act indicates the existence of legal limitations that have been regulated in written regulations. The next condition of hudūd is that it is done intentionally and secretly, not because of an emergency need. Islam regulates that hudūd does not apply to thieves who commit their actions to meet basic needs, so the punishment imposed does not apply to them because the punishment must be commensurate and hudūd is irrelevant in the context of theft committed because of an emergency need. This is also related to intent where a person who commits an act of theft not because of an emergency need indicates a clear intent. In the context of confiscation of assets with the NCB-AF concept which only applies to crimes that have a background of financial gain with a minimum profit of 100 million rupiah and is threatened with a minimum sanction of 4 (four) years indicates that the crime was committed with malicious intent. For example, the crime of corruption, which is one of the crimes regulated and can be subject to confiscation of assets without punishment, is an act carried out out of greed, as corruption on a large scale is known

as corruption by greed, namely corruption carried out because of greed, and not corruption to fulfill basic needs or corruption by needs.[35] Severe punishments such as amputations can only be imposed on perpetrators who meet the legal capacity for accountability. The requirement that the perpetrator be sane, mature, and legally responsible is a prerequisite for the application of hudūd. The perpetrator's ability to demonstrate normal thinking and the ability to distinguish between right and wrong indicates that he or she can be legally responsible. In criminal law studies, this concept is relevant to the teachings of guilt and the capacity to be responsible, namely that a person who commits a criminal act must be someone who has committed a mistake in the form of intent, where he or she wills and knows that his or her action is wrong but still chooses to do it, thus it can be concluded that he or she wills and knows the consequences of his or her actions. In the application of the NCB-AF asset confiscation mechanism applied to corruption crimes, of course, this requirement is very easy to fulfill. Perpetrators of corruption are people who have the ability to act and make decisions, even qualified as white-collar crimes. Essentially, the term 'White Collar Crime' has the meaning of white-collar crime. A white collar is a symbol of position. When it first appeared, white collar crimes were committed by people who held positions, dressed neatly (with suits and white collars), so that "white collar" symbolized the position attached to that person.[36] Since Sutherland first addressed the topic of white-collar crime, it has been noted that white-collar criminals do not consider themselves or their actions to be criminal. Almost without exception, white-collar criminals deny any malicious intent when committing their offenses. Indeed, one of the defining characteristics of the psychological makeup of white-collar criminals is believed to be their ability to neutralize the moral constraints of law and rationalize their criminal behavior.[37] The

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35 Wijayanto Ridwan Zachrie, *Korupsi Mengorupsi Indonesia* (Jakarta: Gramedia Pustaka Utama, 2013).

36 Ian Findlay et al., *Quinine Inhibits Ca2+-Independent K+ Channels Whereas Tetraethylammonium Inhibits Ca2+-Activated K+ Channels in Insulin-Secreting Cells*, *FEBS Letters*, vol. 185 (Depok: PT Rajawali Buana Pusaka, 1985), https://doi.org/10.1016/0014-5793(85)80729-8.

37 William A Stadler and Michael L Benson, "Revisiting the Guilty Mind: The Neutralization of White-Collar Crime," *Criminal Justice Review* 37, no.

main characteristic of this crime is that it is an economic crime committed by people who have a good reputation and high social status in their profession. Although Sutherland's concept of white-collar crime has enlightened sociologists, criminologists, and management researchers, it may have confused lawyers, judges, and lawmakers. One reason for this confusion is that in Sutherland's research, white-collar crime is a crime committed by a certain type of person, and also a certain type of crime.

White-collar crime is not a specific type of crime, but rather a crime committed by a specific type of person. Scenarios in which the perpetrator has high status are rated higher on the white-collarness scale. Access to employment is also associated with higher ratings for both middle and upper status perpetrators. Scenarios in which the means and consequences of the crime are financial are more likely to be considered white-collar crimes.[38] White collar crime explains why college-educated, relatively well-off, and conventional-looking people can commit crimes when they work in white-collar jobs.[39] In Indonesia, white collar crime according to ius constitutum has been regulated in Law Number 31 of 1999 Article 3, which reads: "Any person who, intending to benefit himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty

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4 (November 2012): 494–511, https://doi.org/10.1177/0734016812465618.

38 Miranda A Galvin, Matthew Logan, and Daniel W Snook, "Assessing the Validity of White-Collar Crime Definitions Using Experimental Survey Data," *Journal of Experimental Criminology* 18, no. 3 (2022): 665–93, https://doi.org/10.1007/s11292-020-09455-6.

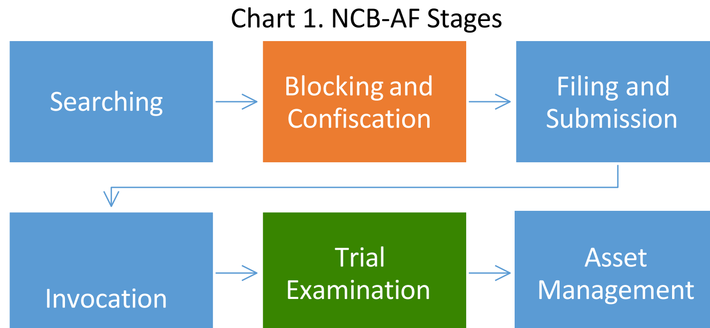
39 Robert Apel and Raymond Paternoster, "Understanding 'Criminogenic' Corporate Culture: What White-Collar Crime Researchers Can Learn from Studies of the Adolescent Employment–Crime Relationship BT - The Criminology of White-Collar Crime," in *The Crimonology of White Collar Crime*, ed. Sally S Simpson and David Weisburd (New York, NY: Springer New York, 2009), 15–33, https://doi.org/10.1007/978-0-387-09502-8_2.

million rupiah) and a maximum of Rp. 1,000,000,000.00 (One Billion Rupiah)".

The final condition for implementing hudūd is that there is no element of subhyat or doubt. Therefore, if there is still even the slightest doubt, then hudūd should not be applied.

In relation to this requirement, NCB-AF confiscation is not simply the seizure of assets without any basis. This can be seen from the regulatory concept in the PA Bill, which stipulates that the procedural law for asset confiscation involves several stages, starting with tracing, blocking and confiscation, filing, requesting an asset confiscation, summons, and court hearing.

Chart 1. NCB-AF Stages



Source: The author's analysis is based on processed primary materials/data, 2026

This shows that even though it does not go through criminal justice, asset confiscation begins with a series of stages before the confiscation is carried out, starting with the tracing stage. If the results of the tracing indicate that the assets in question are assets as referred to in Article 5 paragraph (1) and paragraph (2) letter a, investigators are authorized to block and/or confiscate. Blocking as referred to in Article 12 is carried out with a blocking order to the authorized institution. As a form of protection of human rights and balance regarding assets confiscated without a criminal evidentiary process, the PA Bill regulates two legal remedies that can be taken by anyone who feels that their ownership rights to assets confiscated by the state have been disturbed. The Asset Confiscation Bill regulates two forms of legal remedies that can be taken by anyone who feels that their rights have been harmed by the blocking and/or confiscation of assets. Anyone who objects to the blocking and/or confiscation has the right to file an objection that the blocked and/or confiscated assets are legally owned or are

not criminal assets.[40] Therefore, anyone who feels aggrieved can file an objection through legal action submitted in writing to a higher investigator.[41]

In this last condition, it is necessary to first understand that in the modern criminal law system where this mechanism for confiscating assets without punishment originates, namely the Anglo-Saxon tradition, the balance of probabilities standard of proof is known, which is a standard of proof in which a fact is considered proven if it is more likely to be true than not true.[42] This standard of proof is looser when compared to the standard of proof used in criminal procedure law in Indonesia which uses beyond reasonable doubt where the judge may only declare the defendant guilty if the judge's conviction is very strong and there is no reasonable doubt based on the evidence and the minimum standard of two pieces of evidence must be met.[43] Based on the author's analysis, the balance of probabilities standard of proof used in the NCB-AF asset confiscation is appropriate considering the procedural law in asset confiscation because in this context the state is dealing with assets, not with individual legal subjects as criminal justice demands a high standard of proof through beyond reasonable doubt which is a very strict standard of proof in criminal law to protect individuals. In addition, the difference in objectives in the procedural law for asset confiscation and criminal procedural law requires the effectiveness of asset confiscation where so far criminal justice has often experienced a deadlock in dealing with economic crimes, especially corruption in the context of recovering state losses. As a counterbalance, proof with a balance of probabilities has been balanced with high legal protection where the draft law on asset confiscation has provided

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40 Badan Pembangunan Hukum Nasional, "Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana," *BPHN* (Jakarta, 2012).

41 Orin Gusta Andini et al., "Human Rights Protection for the Third-Party in Non- Conviction Based Asset Forfeiture : A Comparison of Indonesia and Australia," *Uti Possidetis: Journal of International Law* 6, no. 2 (2025): 240–59, https://doi.org/https://doi.org/10.22437/up.v6i2.41117.

42 Illia But, "Application of the Balance of Probabilities Standard of Proof in Judicial Practice," *Law Rev. Kyiv UL*, 2020, 227–33, https://doi.org/10.36695/2219- 5521.4.2020.41.

43 Larry Laudan, "Is Reasonable Doubt Reasonable?," *Legal Theory* 9, no. 4 (2004): 295–331, https://doi.org/10.1017/S1352325203000132.

a mechanism for objection and resistance. As an effort to protect the basic right of ownership which is a human right, Article 19 of the PA Bill stipulates that anyone who feels their rights have been violated due to the blocking and/or confiscation of assets as referred to in Article 12 and Article 15 has the right to file an objection that the blocked and/or confiscated assets are legally theirs or are not assets of a criminal act. Thus, the state has provided measures that can be taken to confiscate the assets of people who have objections and resistance. efforts made by the state to confiscate assets resulting from criminal acts or assets that meet the requirements to be confiscated by the state.

Although there are conceptual similarities and limitations in the form of strict requirements prior to the implementation of hudūd and non-conviction based asset forfeiture (NCB-AF), there are also several fundamental differences from both philosophical and human rights perspectives. Hand amputation in the concept of hudūd is derived from divine revelation and is regarded as a divine provision with transcendent legitimacy. In Islamic jurisprudence, this sanction is not merely a punishment, but a manifestation of obedience to Allah's command and the protection of ḥifẓ al-māl (protection of property) within the framework of maqāṣid al-syarī'ah. In contrast, asset forfeiture under NCB-AF is derived from positive law established by the state. Its legal legitimacy arises from pragmatic needs to recover state losses, uphold the principles of crime should not pay and blood of crime, and create an economic deterrent effect. Hand amputation in hudūd symbolizes the termination of a person's ability to commit crimes, whereas in the concept of NCB-AF, cutting off economic benefits symbolizes preventing offenders and others from enjoying the proceeds of crime.

Furthermore, because hudūd is a divine concept originating from the Qur'an and Hadith, it is considered to possess fixed legitimacy. Meanwhile, NCB-AF is a product of state law, and as such, its legislative formation may contain loopholes because it is the result of human reasoning. In relation to human rights, both hudūd and NCB-AF face criticism due to their potential to violate certain rights: hudūd may infringe upon bodily integrity, while NCB-AF may restrict property rights. However, as previously explained, the substance of the Asset Recovery Bill provides legal

remedies and mechanisms for objection as a guarantee of human rights protection. Thus, it can be understood that both hudūd and NCB-AF involve the limitation of rights. If hudūd restricts physical rights in order to maintain social and moral order, then NCB-AF restricts economic rights in order to maintain economic order and the financial integrity of the state.

C. Conclusion

Islamic criminal law recognizes hudūd, including the punishment of hand amputation for theft, which is imposed under strict conditions to ensure proportionality and deterrence. Philosophically, this concept is relevant to non-conviction based asset forfeiture (NCB-AF) in the Asset Forfeiture Bill, as both share the same objective: preventing repeated offenses, ensuring that crime should not pay, and cutting off the blood of crime by depriving offenders of the economic benefits derived from criminal acts. In addition, the requirements for their implementation equally emphasize prudence and the protection of rights. However, despite these conceptual similarities, both differ fundamentally in terms of legal legitimacy, legal certainty, and the human rights they restrict. Therefore, this conceptual similarity may serve as a normative basis for accelerating the deliberation of the Asset Forfeiture Bill in order to strengthen fair, effective, and asset recovery-oriented law enforcement.

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