

## **Criminal Punishment in The Concept of Non-Conviction based on Asset Forfeiture (Analysis of Islamic Criminal Law)**

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**Abstract.** *Criminalization within the concept of Non-Conviction Based Asset Forfeiture (NCBAF) plays a crucial role in efforts to combat corruption. This study aims to analyze the implementation of NCBAF in the context of Islamic criminal law, particularly regarding the confiscation of assets obtained from criminal acts without requiring the direct prosecution of perpetrators. This research employs a normative legal method (juridical normative) with a statute approach and a conceptual approach to examine the legal basis, effectiveness, and challenges of NCBAF. The findings reveal that NCBAF offers substantial advantages over conventional criminal justice systems, as it enables the recovery of unlawfully acquired assets without the need for a lengthy trial process. This approach accelerates asset recovery, reduces the risk of legal loopholes exploited by corrupt individuals, and enhances the efficiency of anti-corruption efforts. In Indonesia, the adoption of NCBAF can significantly strengthen corruption eradication policies, provided that sufficient legal and institutional frameworks are in place. From an Islamic legal perspective, NCBAF aligns with fundamental principles of justice, accountability, and property protection. Islamic law upholds the prohibition of illicit wealth and mandates the restitution of unlawfully obtained assets to rightful owners or the public interest. Therefore, the application of NCBAF is not only legally justified but also ethically and religiously endorsed within Islamic jurisprudence. By integrating NCBAF into anti-corruption strategies, Indonesia can reinforce its commitment to justice and economic integrity while ensuring the protection of state assets from illicit enrichment.*

**Keywords:** *Conviction; Crime; Islamic; Law.*

### **1. Introduction**

Corruption crimes in Indonesia are becoming more complex along with the development of information technology, where criminals use more sophisticated methods to steal state money through modes such as corruption, money laundering and drug trafficking.(Harahap & Harahap, 2024). Corruption in Indonesia is considered systemic and endemic, harming state finances and violating the social and economic rights of the community. According to Transparency International, Indonesia still occupies a position

as a country prone to corruption.(Suyatmiko et al., 2020). In 2022, Indonesia's Corruption Perception Index (CPI) dropped from 38 to 34 points, placing it at 110th out of 180 countries. Anti-corruption law enforcement is considered ineffective, with only 50% of the target of 2,772 corruption cases successfully resolved in 2022.(ICW, 2023). Corruption occurs in almost all sectors of government, including the executive, legislative, and judiciary, so that the principle of checks and balances does not work well.

Corruption is not only a national problem, but also a global problem. The United Nations Convention Against Transnational Organized Crime (UNCATOC) in 2000 included corruption as an organized transnational crime. Corruption involves a complex network and is difficult for law enforcement to uncover. The 6th UN Congress in 1980 in Caracas, Venezuela, categorized corruption as a crime that is difficult to reach by law (offences beyond the reach of the law), especially because the perpetrators often have strong economic and political positions, as well as situations that make reporting and prosecution difficult.(Sahetapy et al., 2022).

In an effort to eradicate corruption, Indonesia has begun to adopt the concept of Non-Conviction Based Asset Forfeiture (NCB Asset Forfeiture), which is the confiscation of assets without first going through a criminal process. This concept first developed in common law countries such as the United States and England. In the United States, this concept is regulated in the Civil Asset Forfeiture Act 1988 and the Racketeer Influenced and Corrupt Organizations Act (RICO), which allows the confiscation of assets resulting from crime without having to wait for a court decision. In the UK, the Proceeds of Crime Act (POCA) 2002 has succeeded in confiscating assets worth 234 million pounds (around 4.387 trillion rupiah) since it was enacted in 2003.(Nails, 2020).

Indonesia has ratified the United Nations Convention Against Corruption (UNCAC) through Law No. 7 of 2006. Article 54 paragraph 1 letter c of UNCAC requires member states to consider asset forfeiture without conviction in cases where the perpetrator cannot be prosecuted due to death, escape, or not being found. However, the implementation of NCB Asset Forfeiture in Indonesia is still hampered by the lack of comprehensive regulations. Currently, asset forfeiture in Indonesia is regulated in Law No. 20 of 2001 in conjunction with Law No. 31 of 1999 concerning the Eradication of Corruption, which divides asset forfeiture into two paths: criminal and civil. The criminal path uses a reversal of the burden of proof, while the civil path can only be carried out after criminal efforts have failed.(Hiariej, 2013). The concept of NCB Asset Forfeiture is considered important because it can accelerate the recovery of state losses without waiting for a long criminal process. In addition, this concept can prevent perpetrators of corruption from enjoying the proceeds of their crimes during the legal process. However, its implementation in Indonesia still faces challenges, including the absence of a strong legal basis, limited institutional capacity, and protection of human rights. The Asset Confiscation Bill currently being discussed is expected to be a solution by regulating the mechanism for asset confiscation in a clearer and more measurable manner.

From an Islamic legal perspective, the concept of asset confiscation can be linked to Ta'zir crimes, namely punishments set by the government for perpetrators of sin.(Syarbaini, 2023). Although there are differences of opinion among the fuqaha regarding whether or not confiscation of property as a form of Ta'zir is permissible, several scholars such as Imam Malik, Imam Syafi'i, and Imam Ahmad bin Hanbal allow it if it brings benefits. The objectives of criminal punishment in Islam include prevention

(al-Jaza'), restoration (al-Islah), and atonement (at-Takfir), which are in line with the objectives of NCB Asset Forfeiture in recovering state losses and providing a deterrent effect.(FITRI WAHYUNI, 2018).

The principles of Islamic law relevant to NCB Asset Forfeiture include the prohibition of ownership of illicit assets (al-mal al-haram), enforcement of justice (iqamah al-'adl), prevention of crime (taq'i al-jurm), and recovery of state losses (istisha' al-mal al-muhtass). This concept is also in line with the principle of purification of assets (tahrir al-mal), where assets contaminated with crime must be returned to their rightful owners or used for the public interest.(Ali, 2023).

However, the implementation of NCB Asset Forfeiture in Indonesia still requires strengthening in various aspects, including legal basis, institutional capacity, and cooperation between institutions. The Asset Confiscation Bill is expected to regulate the mechanism of asset confiscation more effectively, including clear standards of proof and protection of human rights. By learning from the experiences of common law countries, Indonesia can develop a NCB Asset Forfeiture model that is in accordance with the local legal and cultural context, and contributes significantly to combating corruption and realizing good governance.

Corruption as an extraordinary crime requires extraordinary handling. Confiscation of assets without criminalization can be an effective solution to recover state losses and prevent corruptors from enjoying the proceeds of their crimes. However, its implementation must be supported by strong regulations, adequate institutional capacity, and commitment from all parties to uphold justice and legal certainty.

## **2. Research Methods**

The type of research in this study is normative legal research (normative juridical) with a statutory regulatory approach (statue approach) and a conceptual approach (conceptual approach).(Mahmud Marzuki, 2005). The research was conducted through library research by examining library materials or secondary data, which in this case are in the form of laws and regulations and other data that can be used to identify and evaluate the fisheries law system in Indonesia. The data collection technique used in this study is the library study and documentation technique. After all the research data has been collected, it will be analyzed using a qualitative descriptive method, namely by drawing conclusions from the general to the more specific based on the existing data. In addition, because this study uses a statutory approach, the author will therefore conduct a review of various laws and regulations that are related to the study material discussed in this study.(Mahmud Marzuki, 2005).

## **3. Results and Discussion**

### **3.1. Criminalization in the Concept of Non-Conviction Based Asset Forfeiture in Corruption Crimes**

Criminalization in corruption crimes is an important aspect in law enforcement in Indonesia. Criminal law, as a special sanction law, has special characteristics that distinguish it from other branches of law, namely the imposition of sanctions that are of

a nature that causes misery or suffering.(Zaidan, 2022). This is done with the aim of providing a deterrent effect and preventing similar crimes from occurring in the future. The state, through its organs, has the authority to impose criminal penalties, but this must be based on clear justification so as not to violate human rights. The concept of punishment has evolved from the retributive concept that focuses on revenge, to the concept of restorative justice or restorative justice which emphasizes more on recovery and prevention.

Corruption in Indonesia is regulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. Corruption is defined as an unlawful act of abusing authority to enrich oneself, others, or a group, resulting in state financial losses. Corruption includes the bad behavior of officials, politicians, or civil servants who abuse their power for personal gain. This act not only harms state finances, but also damages the social and economic order.(Suhariyanto, 2016).

In the criminal justice system, there are three main theories used, namely absolute theory, relative theory, and combined theory.(Rivanie et al., 2022). Absolute theory focuses on retaliation for the crime committed, while relative theory emphasizes more on prevention and rehabilitation efforts for the perpetrator. The combined theory, which is most relevant for use in corruption crimes, combines elements of retaliation and prevention. This theory aims to provide a deterrent effect while preventing similar crimes from occurring in the future. This concept is reflected in criminal legislation, especially in the Corruption Eradication Law.

The criminal punishment system for corruption in Indonesia also adopts the Double Track System concept, which includes criminal sanctions and action sanctions. Criminal sanctions aim to provide retaliation and a deterrent effect, while action sanctions focus on efforts to rehabilitate perpetrators and prevent crime.(Rivanie et al., 2022). In Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, criminal sanctions that can be imposed include imprisonment, fines, and the death penalty. In addition, there are also additional penalties such as payment of compensation, confiscation of property, revocation of certain rights, and closure of the company.

Article 18 of Law No. 31 of 1999 regulates additional penalties, including confiscation of movable or immovable property used or obtained from corruption. This article also regulates the payment of compensation in an amount that is at most equal to the property obtained from corruption. If the convict is unable to pay compensation, his property can be confiscated and auctioned. In addition, Article 19 paragraph (1) states that confiscation of assets does not apply to third parties in good faith, unless they file an objection within two months after the judge's decision. Article 38B of Law No. 20 of 2001 regulates the reverse burden of proof, where the defendant is required to prove that his property did not originate from corruption. If the defendant cannot prove it, the property can be confiscated for the state. Article 38C regulates that if after the court decision there is still property suspected of originating from corruption, the state can file a civil lawsuit against the convict or his heirs.

Although the criminal punishment system for corruption crimes has been clearly regulated in the law, its effectiveness is still questionable. Several factors that influence the effectiveness of punishment include low sentences imposed, luxurious facilities in prison, legal vacuum, and weak law enforcement. Many corruption cases end with light

sentences, so they do not provide a sufficient deterrent effect. In addition, corruption convicts often enjoy luxurious facilities in prison, which reduces the impact of the punishment that should be felt.

Legal gaps are also a serious problem, especially in regulating corruption in the private sector. Although Indonesia has ratified the UN Convention Against Corruption (UNCAC), there are still legal loopholes that are exploited by corruptors. Weak law enforcement, caused by the low quality of human resources, corruption among law enforcers, and lack of coordination between institutions, is also a major challenge in eradicating corruption. To increase the effectiveness of criminalization, it is necessary to improve the prison sentence system, unify the principles between stakeholders in the criminal justice system, and strengthen regulations and stricter law enforcement. Thus, it is hoped that criminalization of corruptors can provide a deterrent effect and prevent the spread of corrupt practices in Indonesia.

### **3.2. Criminalization in Corruption Crimes Based on Non-Conviction Based Asset Forfeiture**

*Non-Conviction Based Asset Forfeiture*(NCBAF) is a legal concept that allows the seizure of assets suspected of originating from criminal acts without having to wait for a court decision declaring someone criminally guilty.(Wiarti, 2017). This concept is increasingly relevant in the context of eradicating corruption, considering that it is often difficult to prove someone's direct involvement in the crime. NCBAF does not involve criminalizing individuals, but rather focuses on confiscating assets suspected of being the result of crime. However, indirectly, NCBAF can have a deterrent effect on perpetrators of corruption because they lose the profits obtained from the crime, their reputation is damaged, and this case can trigger further investigations to uncover a wider corruption network.

NCBAF is a legal mechanism that allows the state to seize assets allegedly obtained through criminal activity, even if the perpetrator has not been prosecuted or convicted. This is particularly important in cases where the perpetrator has fled, died or is unable to be brought to justice. The concept is particularly relevant in the context of corruption, where traditional prosecutions are often hampered by a variety of factors. NCBAF aims to recover assets obtained through corruption, which can have a significant impact on state finances. The mechanism is designed to address the challenges of prosecuting corruption cases, enabling the recovery of illicit gains even when criminal convictions cannot be secured.(Wiarti, 2017).

The concept of NCBAF has been incorporated into international law through instruments such as the United Nations Convention Against Corruption (UNCAC) of 2003. This convention encourages member states to implement asset recovery measures in cases where the perpetrators cannot be prosecuted. Indonesia, as a country that has ratified the UNCAC through Law No. 7 of 2006, has begun to adopt these principles into its legal system. One of the main features of NCBAF is the lower standard of proof compared to traditional criminal forfeiture. Instead of needing to prove guilt beyond a reasonable doubt, authorities only need to show on a balance of probabilities that the assets are linked to criminal activity. This facilitates the seizure of assets even in the absence of a criminal conviction.

In the context of corruption, NCBAF is very relevant because many perpetrators have managed to avoid the legal process. With this mechanism, the state can still recover assets obtained illegally even though the criminal process cannot be continued. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption regulates the return of assets resulting from corruption through civil and criminal channels. The relevant articles in this law include Article 32 paragraph (1), Article 32 paragraph (2), Article 33, Article 38B, Article 38C, Article 38 paragraph (5), and Article 38 paragraph (6). These articles give authority to law enforcement officers, such as the police, prosecutors, and judges, to confiscate assets resulting from corruption based on applicable laws and regulations.

While NCBAF provides a means to recover assets, the concept also raises concerns about individual rights and the presumption of innocence. The burden of proof shifts to the asset holder to prove that their assets did not originate from illicit activities, which may raise debates about the fairness of the application of this mechanism.(Hiariej, 2013). However, NCBAF still provides protection for individual rights, where the perpetrator is given the opportunity to prove that the seized assets did not originate from a criminal act. This creates a balance between public interest and individual rights.

In Indonesia, the implementation of NCBAF is regulated in a broader legal framework, including provisions in the Law on the Eradication of Criminal Acts of Corruption and international conventions such as UNCAC. This shows Indonesia's commitment to adopting best practices in recovering assets from crime. UNCAC regulates asset confiscation through two channels, namely the criminal channel and the civil channel.(Nugraha, 2020). In the criminal path, the asset confiscation process is carried out through four stages: asset tracking, freezing or temporary confiscation, asset seizure, and return of assets to the state. UNCAC also regulates the return of assets through the "negotiation plea" or "plea bargaining system", as well as indirect returns through the confiscation process based on court decisions (Articles 53 to 57 UNCAC).

In addition to UNCAC, the NCBAF mechanism has also been discussed in detail in the Academic Manuscript of the Draft Law on Confiscation of Criminal Assets drafted by Dr. Ramelan, SH, MH. This manuscript regulates the authority of investigators or public prosecutors to conduct asset tracing, blocking, and confiscation of assets suspected of originating from criminal acts. Investigators or public prosecutors can order the blocking of assets for 30 days, which can be extended for another 30 days. During the blocking period, assets cannot be transferred to other parties. If there is an objection from a third party, they can file an objection within a certain time. In addition, this academic manuscript also regulates the legal provisions for the examination of an application for confiscation of assets in court, including providing an opportunity for third parties to submit evidence related to their objections.(Nugraha, 2020).

The Indonesian government has drafted a Bill on Asset Confiscation that aims to be a legal basis for pursuing the proceeds of corruption. This bill contains three paradigm updates to criminal law enforcement: first, focusing on the party charged in a crime; second, the use of civil justice mechanisms; and third, court decisions are not subject to criminal sanctions as in other crimes. Article 15 of the Asset Confiscation Bill emphasizes that asset confiscation does not eliminate the court's authority to prosecute perpetrators of criminal acts. Assets that have been confiscated based on a court decision can be used as evidence in prosecuting perpetrators of criminal acts. The NCBAF concept is

considered an effective step in handling corruption cases in the future. With this mechanism, the state can recover assets obtained illegally, even when the perpetrators cannot be tried. This is in line with the UNCAC principle which emphasizes the importance of international cooperation in recovering assets from corruption. Although there are still challenges in its implementation, NCBAF provides a significant solution in efforts to eradicate corruption and recover state losses.

### **3.3. Implementation of Non-Conviction Based Asset Forfeiture in Corruption Crimes**

*Non-Conviction Based Asset Forfeiture*(NCBAF) is a concept of asset recovery without the need for a criminal verdict against the perpetrator of the crime. This concept first developed in Common Law countries such as the United States and aims to restore state losses arising from criminal acts of corruption, even though the perpetrator cannot be punished criminally.(Wiarti, 2017). In Indonesia, NCBAF has become an important tool in the effort to eradicate corruption, especially in recovering illegally obtained assets. However, its implementation still faces various challenges, including legal loopholes, inadequate regulatory frameworks, and the need for effective enforcement mechanisms. Legally, NCBAF in Indonesia has not been explicitly regulated in legislation. However, this concept is in line with the principles stated in the United Nations Convention Against Corruption (UNCAC) 2003, which has been ratified by Indonesia through Law No. 7 of 2006. Article 54 paragraph (1) letter c of UNCAC stipulates that participating countries may consider confiscating assets without the need for a criminal verdict, especially in cases where the perpetrator cannot be prosecuted because he has died, fled, or cannot be found. This provides an international legal basis for Indonesia to adopt NCBAF.

In the Indonesian legal system, asset confiscation is regulated in the Criminal Code (KUHP) and Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001. Article 10 letter b of the Criminal Code stipulates that asset confiscation is an additional penalty that can be imposed by a judge on certain goods obtained from a crime or used to commit a crime. Meanwhile, Articles 32, 33, and 34 of Law No. 31 of 1999 regulate the process of asset confiscation through civil channels, which can be carried out by the State Attorney or the injured agency if the criminal route is not possible.

NCBAF offers an innovative approach to asset recovery by allowing for the seizure of assets without the need for a criminal conviction. This concept is particularly relevant in corruption cases where the perpetrator may have fled, died or enjoyed immunity from prosecution. For example, in cases where the perpetrator of corruption has died, the criminal justice process cannot proceed, but the assets obtained from the crime can still be seized through NCBAF. In addition, NCBAF can also be used when the perpetrator of corruption has fled abroad or when sufficient evidence for criminal prosecution is not available.(Wiarti, 2017).

One of the advantages of NCBAF is the lower standard of proof compared to traditional criminal proceedings. Under NCBAF, authorities only need to show on a balance of probabilities that the asset is connected to the crime, rather than proving the perpetrator's guilt beyond a reasonable doubt.(Greenberg, 2009). This allows for faster and more efficient asset recovery, especially in corruption cases involving extensive networks and complex modus operandi. However, the implementation of NCBAF also

poses challenges, especially regarding human rights protection. This concept uses the principle of reverse burden of proof, where the asset holder must prove that the asset did not originate from a criminal act.(Hiariej, 2013). This can be considered a violation of the presumption of innocence and property rights. Therefore, it is important to balance the need for asset recovery and the protection of individual rights. To address these challenges, Indonesia needs to strengthen the legal and institutional framework that supports NCBAF. One important step is to improve legislation, including the Draft Law on Asset Forfeiture, which is currently under consideration. In addition, increasing the capacity of law enforcement agencies, such as training and human resource development, is also needed to ensure effective implementation of NCBAF.

Cooperation between institutions is also key to the success of NCBAF. Coordination between the Prosecutor's Office, Police, Corruption Eradication Commission (KPK), and other law enforcement agencies needs to be improved to ensure the asset confiscation process runs smoothly. Transparency in the asset confiscation process must also be improved to prevent abuse of authority and ensure accountability. In addition, socialization to the public regarding the importance of NCBAF in eradicating corruption also needs to be carried out. The public needs to understand that NCBAF is not only about punishing perpetrators of corruption, but also about recovering state losses and preventing corruption in the future. By increasing public awareness, it is hoped that public support for efforts to eradicate corruption through NCBAF will be stronger.

Overall, NCBAF has great potential to be an effective instrument in eradicating corruption in Indonesia. The concept allows for efficient asset recovery, lowers the burden of proof, and aligns with international standards. However, the success of its implementation depends heavily on the commitment of various parties, including the government, law enforcement agencies, and the community. By addressing existing challenges and strengthening the legal and institutional framework, NCBAF can be a powerful tool in recovering state losses and eradicating corruption in Indonesia.

### **3.4. Analysis of Islamic Criminal Law on the Concept of Non-Conviction Based Asset Forfeiture**

*Non-Conviction Based Asset Forfeiture*(NCBAF) is a modern legal concept that allows the confiscation of assets suspected of originating from criminal acts without waiting for a court decision declaring someone guilty of a crime. This concept aims to restore state losses due to corruption effectively and efficiently. In the context of Islamic criminal law, NCBAF is interesting to study because it has the same goals as Islamic principles, namely upholding justice, protecting the rights of the community, and preventing social losses due to criminal acts. Islamic criminal law recognizes several principles that can be analogous to the NCBAF concept, such as ghasab (seizing the rights of others), risywah (bribery), and ghulul (embezzlement). Ghasab refers to the act of taking the rights of others without permission, which in the context of corruption can be interpreted as taking state assets for personal gain. Risywah or bribery is the practice of giving something to obtain certain benefits, such as positions or convenience in matters. Meanwhile, ghulul refers to the embezzlement of assets that should belong to the public, such as the baitul mal (state treasury). These three principles show that corruption in Islam is considered a very reprehensible act and must be eradicated.(Ningtias, 2024).



In Islamic criminal law, NCBAF can be applied through the Ta'zir mechanism, namely punishment whose form and level are determined by the ruler based on considerations of public interest. Ta'zir is a flexible form of punishment and is not explicitly regulated in the Qur'an or Hadith, thus providing space for judges or rulers to determine sanctions that are in accordance with the conditions of the times and the needs of society.(Syarbaini, 2023). Confiscation of assets resulting from corruption without criminalization can be considered as a form of Ta'zir, which aims to prevent the perpetrator from enjoying the proceeds of his crime and to return the state's losses.

*Ta'ziin* in the context of asset confiscation, it is known as Ta'zir bil mal, which is a punishment imposed by taking the perpetrator's property as a fine or sanction for his actions. Ta'zir bil mal consists of three types, namely al-itlaf (damaging objects that symbolize evil), at-taghyir (changing confiscated goods), and at-tamlík (doubling the fine). The fuqaha (Islamic legal experts) have different opinions regarding whether or not Ta'zir bil mal is permissible. Imam Abu Hanifah, for example, does not allow confiscation of property as a form of Ta'zir, while Imam Malik, Imam Syafi'i, Imam Ahmad bin Hanbal, and Abu Yusuf allow it as long as it brings maslahat (goodness) to society.(Syarbaini, 2019).

The principle of al-mashlahah al-mursalah (public interest) is a strong basis for implementing NCBAF in Islamic criminal law. Al-mashlahah al-mursalah refers to the determination of law based on considerations of public interest, although there is no specific evidence that justifies or invalidates it.(Alias, 2021). In the context of NCBAF, confiscation of assets resulting from corruption is considered an action that brings benefits because it can restore state losses, prevent crimes from becoming "profitable", and support the realization of a clean bureaucracy. However, its implementation must be carried out carefully so as not to violate human rights (HAM) and the principle of justice.

Islamic law also emphasizes the importance of justice (adl) and balance in every aspect of life, including law enforcement.(Santoso, 2003). NCBAF is in line with this principle because it aims to restore rights that have been unlawfully seized to society and the state. In Islam, this concept is known as redho al-mazlum, which means that the rights of the wronged must be returned. In addition, NCBAF also aims to provide a deterrent effect on perpetrators of crimes, thereby preventing future criminal acts. Despite having similar goals, there are fundamental differences between Islamic criminal law and NCBAF in terms of approach and mechanism. Islamic criminal law generally requires strong and clear evidence to impose a sentence, while NCBAF is more flexible in terms of proof. It is sufficient to have a strong suspicion that the asset is the result of a crime to carry out confiscation. In addition, Islamic law recognizes various types of punishments, including corporal punishment, fines, and flogging, while NCBAF focuses more on confiscation of assets as a form of sanction.

The principle of legality is also an important consideration in the application of NCBAF in Islamic criminal law. Islamic law adheres to the principle that no act can be punished unless it has been regulated in law.(Sunarto, 2020). Therefore, the implementation of NCBAF must be based on clear legal rules and not contradict the principles of sharia. In addition, the principle of presumption of innocence must also be considered. In Islam, everyone is considered innocent until proven otherwise. Therefore, the implementation of NCBAF must be carried out carefully so as not to violate individual human rights.

The concept of follow the money in combating corruption is also in line with the principles of Islamic law. This approach emphasizes the importance of tracing the flow of money suspected of being the result of a crime, rather than just focusing on the perpetrators. In Islam, corruption is considered a highly reprehensible act (haram) because it harms society and the state. By implementing the "follow the money" approach, law enforcement can be more effective in identifying and seizing assets obtained illegally, thereby reducing the incentive to commit corruption.(Sutrisni & Sukranata, 2013).

Islamic law also views tracing the flow of money as an important and effective approach in dealing with corruption cases. Some of the reasons are: first, preventing the perpetrator from enjoying the proceeds of crime; second, returning state losses; third, upholding justice; and fourth, implemented through Ta'zir sanctions in Islamic criminal law. By tracing the flow of money, law enforcers can identify and seize assets obtained illegally, thus preventing the perpetrator from enjoying the proceeds of their crime. In addition, tracing the flow of money allows for the return of state losses due to corruption, which is in line with the principle of hifzh al-mal (protection of assets) in *Maqashid Syari'ah*(Busyro, 2019).

*Maqashid Syari'ah*, which refers to the goals and purposes of Islamic law, has a significant relationship with NCBAF. One of the main objectives of *Maqashid Syari'ah* is to protect property (hifzh al-mal). NCBAF is in line with this principle as it aims to return ill-gotten property to the state, thus preventing greater economic losses due to corruption. In addition, *Maqashid Syari'ah* also emphasizes the importance of justice (adl) in every aspect of life(Busyroy, 2019). NCBAF provides an opportunity to uphold justice by eliminating the benefits obtained from corruption, without having to go through a lengthy criminal process.

However, the implementation of NCBAF in the context of Islamic law also faces several challenges. First, clear regulations are needed to ensure that the implementation of NCBAF does not violate individual human rights and still upholds the principle of justice. Second, the asset confiscation process must be carried out transparently and accountably to avoid abuse of authority. Third, the application of a lower standard of proof in NCBAF must be balanced with the protection of individual rights to prevent arbitrariness. Overall, NCBAF has strong relevance to the principles of Islamic criminal law, especially in the context of combating corruption. This concept is in line with the objectives of protecting property, justice, and preventing social harm. However, challenges in its implementation need to be overcome to ensure that the principles of *Maqashid Syari'ah* and human rights are maintained(Busyroy, 2019). Thus, NCBAF can be an effective tool in upholding justice and protecting the rights of the people, both in the context of modern law and Islamic law.

#### **4. Conclusion**

The concept of Non-Conviction Based Asset Forfeiture (NCBAF) offers significant advantages in the law enforcement system, especially in dealing with corruption. The main advantage of NCBAF lies in its ability to confiscate assets from crime without having to wait for the prosecution or criminalization process against the perpetrators. This allows for the return of state assets stolen through corruption more quickly and efficiently. This mechanism also does not eliminate the court's authority to prosecute perpetrators of crimes, as stipulated in Article 15 of the Asset Confiscation Bill. The implementation of

NCBAF in corruption crimes in Indonesia is a progressive step in efforts to eradicate corruption. This concept provides a faster and more effective approach to returning state assets lost due to corruption. From an Islamic law perspective, NCBAF is in line with the basic principles of sharia, especially in terms of protecting assets (hifzh al-mal) and enforcing justice (adl). Islamic law strongly emphasizes that assets obtained illicitly, such as through corruption, are illicit and must be returned to their rightful owners, in this case the state and society. Confiscation of assets resulting from corruption through NCBAF can be considered as a form of justice for the community harmed by corruption. However, the implementation of NCBAF must be carried out carefully and pay attention to various aspects, including legal, social, and economic aspects. The basic principles of Islamic law, such as ownership, justice, and protection of property, must be the main reference in analyzing the suitability of NCBAF with Islamic law.

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