



## Addressing Corruption of Village Funds: A Perspective from Islamic Criminal Law and Positive Law on Asset Recovery

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### ABSTRACT

Corruption in Indonesia is increasingly rampant, one of which is the issue of village funds, so the problem is analyzed, and problems are identified to resolve the case. The research method used is an empirical juridical approach using data collection techniques, namely in-depth interviews using qualitative descriptive analysis. The research results found that several things that cause corruption in village funds include low understanding, awareness, and supervision of the BPD (people's consultative body), lack of transparency and accountability, low community participation, political pressure and conflicts of interest, a culture of corruption, and the case studies raised to show that corruption occurs due to misuse by third parties and the efforts taken are based on This is an improvement on these 5 (five) aspects. The critical point is the offer from researchers regarding the reconstruction of the concept of asset recovery when it has been applied after going through the trial process. In this paper, we offer the idea of asset recovery outside of court based on an analysis of the cases raised.

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## 1. INTRODUCTION

Corruption is rampant and harms not only state finances but also the social and economic rights of the community (*Law No. 31 of 1999 Eradication of Corruption*, 1999). One of the focuses of this research is the issue of village fund corruption; several studies said that a lack of accountability in the management of village funds (Diansari et al., 2023). The data released places ranking Indonesia at 110 out of 180 countries with a score of 34/100 (Transparency International, 2023). In addition, in the year 2023, a total of 161 corruption cases occurred. (KPK, 2023) This shows that corruption is still high in Indonesia. Indonesia Corruption Watch (ICW) released in 2015-2017 increased, with 17 corruption cases in 2015, 41 in 2016, and doubling to 96 in 2017, so ICW 2019 revealed 154 cases there were recorded cases of corruption from funds, 46 cases have been prosecuted in villages (Manihuruk, 2021). For LW's context, there are indications of corruption in village funds worth IDR 320,962,282 for the 2019-2020 budget year (Interview with YL, 2023). From this data, much corruption originates from village funds.

In this context, comprehensive efforts are needed, one of which is an asset recovery approach to recover state losses in addition to focusing on the perpetrators. Several studies and references state asset recovery is essential for restoring state finances. A study conducted by Tommasso (Trinchera, 2020) shows that one form of the asset recovery concept is confiscation, without which the law will not be effective and will not have a deterrent effect; the confiscation model is not only limited to assets that have something to do with criminal acts but more so to restore state losses on the basis that it is reparation, not punishment. Globally, asset recovery has been launched by the United Nations Convention to revolutionize asset recovery by carrying out investigations and preventive recovery actions such as freezing, confiscation of funds, and other provisions that allow asset confiscation and the most important thing is the cooperation of all parties in the investigation and detect the criminal act in question (Brunelle-Quraishi, 2011). In line with this, it is stated in (Arifin et al., 2023) the implementation of asset recovery must be carried out collaboratively, focusing on cooperation in the ASEAN region because corruption is a global problem. However, several obstacles include differences in principles between several countries so that national and international regulations must be synchronized.

Another study in the Indonesian context also shows that the implementation of the concept of asset recovery has not been maximized even though legally, it has been regulated in Article 18 of Law number 31 of 1999 concerning corruption due to the many political interests (Wahyudi, 2019). Applying the Corruption Law, which prioritizes corporal punishment rather than asset recovery, should also pay attention to state losses (Amrullah et al., 2021). From these various perspectives, it is concluded that the importance of asset recovery lies in collaboration, not only in seizing assets resulting from criminal acts but also in maximizing the use of the *asset recovery* concept. It is evident from these perspectives that the *asset recovery* concept is utilized as a means of litigation; however, the author discusses asset recovery in a non-litigation context in this paper, thus changing the paradigm that the reimbursement of state finances can also be done non-litigiously.

This writing aims to look at the causes of criminal acts of corruption by focusing on village fund corruption and finding solutions to resolve it. The most important thing is to give birth to a new idea. Returning assets can also be carried out through non-litigation channels while still paying attention to the inner attitude (*mens rea*) or responsibility and motives of the suspect, which is also in line with the essence of criminal Law as *the ultimum remedium* or last resort. (Yoserwan et al.,

2019). This is also confirmed from the perspective of Islamic criminal law, which is possible through the concept of *tak'zir*.

The novelty of this study is in the new idea of asset recovery concept through non-litigation channels as an alternative, as several studies have focused on the application of asset recovery through litigation means. Implementing asset recovery through non-litigation means it can be applied while still considering the mental attitudes or intentions of the perpetrators and public interests. This is important to achieve justice for the perpetrators by considering their good intentions and also for the state in terms of recovering state losses and, most importantly, for the public interest and implementing public services. In conclusion, this research identifies the causes of village fund corruption and proposes solutions using the concept of asset recovery.

## 2. METHODS

The research method for this article is empirical legal research, Where empirical findings are linked to the normative law (ANSEMS & VAN DEN BOS, 2022). This context is based on law from a normative perspective and the legal facts that occurred. Empirical legal research was carried out to find out directly from the primary source about the problems raised, namely the village fund corruption case and its resolution. The data collection technique uses field research by identifying social facts, relating them to the law, and conducting interviews with 7 (seven) informants, including the prosecutor's office, which plays a role in facilitating problem resolution, the village head as a related party, the village secretary, the BPD as supervisor, and 2 (two) community members and expert informants from a scientific perspective. The time used in this research is 3 (three) months from August to October 2023, located in NR Regency, SS Province. The interviews were conducted in-depth to gain a comprehensive understanding of the problem under study, and one of the informants was a party involved in the case. Apart from that, the location was chosen because the case was unique. After all, the case was resolved using the asset recovery concept through non-litigation instruments. The analysis technique used is explanatory to look for causal to explain a particular phenomenon with a focus on explaining what comes into being (Priya, 2021). Moreover, it relates to Islamic criminal law.

## 3. RESULTS AND DISCUSSION

### Causes of Village Fund Corruption

In this context, the author describes the case that occurred in MM village where the chronology of the village fund corruption case, as for the chronology of the case, on December 28 or the end of 2020, funds still had not been realized, amounting to  $\pm$  3 hundred million. At the same time, MM's parents, who were village heads at that time, were seriously ill. Hence, they had to refer to M as a form of responsibility, so they entrusted it to the third to complete the activity program related to drainage, graveling, and sanitation with a budget of  $\pm$  3 hundred million. This opportunity was exploited by a third party that was already trusted by MM and still is MM's family, but this trust was exploited so that the budget was misused. This is the cause of the findings from the inspector or supervisor (interview with MM, May 5, 2023).

From this view, corruption is caused by opportunities exploited by third parties. According to data released by the LU prosecutor's office, the corruption cases handled by the LW prosecutor were 5 cases from 2020-2023. One of the cases occurred in village M, where the LW prosecutor

issued an investigation warrant dated March 24, 2021 (Interview with YL, 2023). In this context, it can be seen that the alleged corruption case was handled by the Head of Intel, Kejari LW, and it was confirmed that:

*"It is true that a case occurred in MM village and was handled by the prosecutor's office in the investigation stage, but the case was stopped because there were good intentions and no mistakes, especially evil intentions and mental attitudes (mens rea)." (Interview with YL, August 2, 2022)*

From the results of observations and interviews, researchers found other causes of village fund corruption, according to the table below:

**Table 1.** Cause of corruption

Reason	Percentage
Low understanding, awareness, and supervision of BPD	35%
Lack of transparency and accountability	20%
Low community participation	15%
Political Pressure and Conflicts of Interest	15%
Culture of Corruption	15%

Source data: Field observation

The table explains that the most dominant causal factors are low understanding and awareness and the supervision of the importance of preventing corruption (Prihanto, 2020). The village consultative body, which plays a supervisory role (BPD), is also a significant factor. Limited knowledge about their duties and responsibilities in monitoring and managing village funds and inadequate training hampers the BPD's ability to detect and prevent corrupt practices (Sumarno, 2022). One of the obstacles often faced by BPD members is limited knowledge about their roles and responsibilities in supervising and managing village funds. Therefore, internal control is needed according to village characteristics (Putri et al., 2024), some BPD members must understand their duties and responsibilities to prevent corruption. A need for more skills, knowledge, and training from BPD could cause this. The above views are confirmed by interviews with both MM and YM parties (Interview with MM and YL, Wednesday, August 2, 2023). Apart from that, it was confirmed by a resident, namely Mr Yohanes, that it is true that up to now, the BPD has not been optimal in carrying out its duties, where, in general, the BPD has three duties and functions as regulated in Law No.6 2014 concerning Village Government, namely; a) discussing and agreeing on draft village regulations, b) accommodating and channeling community aspirations, c) monitoring the performance of the village head. It can be concluded that weak supervision and control and the absence of a code of ethics rules cause corruption in village funds (Putri et al., 2024).

*Second*, the lack of transparency and accountability in managing village funds is essential to corruption. When the village fund management process is not carried out openly and transparently, there is the potential for misuse and manipulation of funds by irresponsible parties. One problem that often arises is the need for an adequate reporting system. When there is no precise mechanism to track and monitor the use of village funds, loopholes can be exploited by individuals who want to enrich themselves. More timely and detailed reporting is needed to monitor the use of funds effectively (Diansari et al., 2023). This was also confirmed by an expert informant from the Muhammadiyah University of Parepare and a well-known IC advocate, the younger brother of Constitutional Court Judge SJ (Interview with IC, October 25, 2023).

In this context, it is related to sound moral and ethical issues; in Islam, this good deed is known as the word *Ihsan*, implemented in good deeds and responsibility. Other meanings are virtue, honesty, beauty, friendliness, harmony, and suitability, especially about God; in this context, the word *ihsan* becomes the basis for creating accountability (Eny Zuhrotin Nasyi'ah. et. al, 2022). Low levels of accountability are also a severe problem. Fund managers have little incentive to take responsibility for their actions when there is no precise mechanism to ensure accountability for using village funds. A lack of independent oversight and robust audit mechanisms can also provide room for undetected corrupt practices. In order to prevent corruption in village funds, it is crucial to increase transparency and accountability in fund management (Tuti Dharmawati et al., 2021). This can be done through implementing a clear and structured reporting system, adequate independent supervision, and actively involving the community in decision-making regarding village funds. By overcoming the lack of transparency and accountability, it is hoped that misuse of village funds can be minimized and resources can be used effectively for the progress and welfare of village communities. Village fund management is an essential factor that allows corruption to occur. Around 70% of cases revealed are related to budget misuse (KPK, 2023), so an inadequate reporting system, lack of independent monitoring, and low community participation in the decision-making process create opportunities for individuals to use village funds illegally.

*Third*, low community participation is also a factor causing corruption in village funds. When the community is not actively involved in the decision-making process regarding village fund management, the risk of corruption becomes higher. Low participation allows personal interests or specific groups to dominate the use of village funds, thereby increasing the risk of misuse for personal interests. Several factors can cause low community participation (Zakariya, 2019). 1) More information and community understanding about their rights, roles, and responsibilities in monitoring and managing village funds are needed. If the community does not have adequate knowledge about village funds, they tend not to realize the importance of active participation in monitoring the use of these funds. 2) need for more participation space provided by the village government. Participation can be in 3 (three) aspects: aspirations, access, and control, or supervision (Tyas et al., 2022). If these are related to managing village funds, the community tends to feel uninvolved and does not influence decision-making. This can reduce public trust in village government and increase the risk of corruption. Apart from that, differences in power and access to information between the village government and the community can also influence community participation (Majid et al., 2022). Suppose there are gaps in power and access to information. In that case, communities that are less empowered or do not have strong networks may find it difficult to participate effectively in managing village funds.

*Fourth*, political pressure and conflicts of interest are also causes of corruption. (Adelina, 2019) They are linked to village fund issues. Political pressure from parties with personal interests or specific groups in the use of village funds can threaten the integrity of village fund management, which arises between village officials, political groups, and private parties and can also trigger corrupt practices in managing village funds. Conflicts of interest usually originate from the power held, multiple positions, and relationships with certain parties (Illahi, 2019). Political pressure from certain political groups or individuals can harm the decision-making process regarding managing village funds. This especially happens when village fund managers must fulfill political interests or make decisions that benefit parties with solid political relationships. In this situation, public

interests and optimal use of village funds can be neglected, and village funds are used for personal or political interests. Apart from that, conflicts of interest between village officials, political groups, and the private sector can also be a factor causing corruption in village funds. When personal or specific group interests overlap with managing village funds, the risk of corruption increases.

*Fifth*, the culture of corruption that still exists in several regions of Indonesia is also a factor causing corruption (Malik & Qureshi, 2021), especially in the context of village fund corruption. When corruption is considered daily, it isn't easy to implement practical efforts to prevent and eradicate it. Serious efforts are needed to change the culture of corruption through ongoing anti-corruption campaigns and strict law enforcement against corrupt practices.

The importance of changing a culture of corruption into an anti-corruption culture cannot be ignored. Efforts to change the culture of corruption must be carried out through a sustainable and comprehensive anti-corruption campaign. This campaign can involve various parties, including the government, non-governmental organizations, the private sector, and the general public (Hope et al., 2020). The aim is to educate and increase public awareness about the negative impacts of corruption and the importance of integrity, transparency, and accountability in managing village funds. Apart from anti-corruption campaigns, strict law enforcement against corrupt practices is also essential. Consistent, fair, and non-discriminatory law enforcement can provide deterrence for perpetrators of corruption. This sends a signal that acts of corruption will not be tolerated and will have serious consequences (Pitriyah & Apriani, 2022). Thus, substantial law enforcement will provide a deterrent effect for those involved in corrupt practices of village funds. Apart from campaign efforts and law enforcement, strengthening the supervision system and internal control mechanisms is also essential in changing the culture of corruption. It is necessary to build a transparent, accountable, and technology-based system to reduce opportunities for corruption. Information and communication technology, such as financial information systems, electronic monitoring, and online reporting, can help increase transparency and reduce the space for corrupt practices.

Thus, the factors that contribute to corruption in managing village funds are essential. Lack of transparency and accountability, lack of an adequate reporting system, low level of accountability, low understanding and awareness of Village Consultative Body (BPD) members, lack of effective communication and coordination between BPD members and local government and related institutions, as well as low community participation, political pressure, and conflicts of interest are essential factors that need to be addressed to prevent corruption in village funds.

### **Resolving Corruption Cases**

The relevant party in carrying out criminal acts of corruption is the prosecutor's office as regulated in article 30 of Law No. 16 of 2004 Office, which states that in the criminal sector, the prosecutor's office can carry out investigations for specific criminal acts (Law No. 16 of 2004). In this context, the prosecutor's office can carry out investigations. For corruption cases. As with the indications of corruption that occurred in MM village, this was confirmed by the Kejari intelligence section:

*"There was indeed a case that occurred in MM village, but the case was stopped because, at that time, the inspectorate carried out an inspection, and it was found that state losses were found, and the prosecutor's office facilitated the return of state losses and on the other hand it was seen that there were good intentions and no mistakes, especially evil intentions and inner attitudes (men's rea), where all this time he has shown a good*

*inner attitude from MM and is also based on the circular letter of the Attorney General for Special Crimes Number B-111/f/Fd.1/05/2010 and during this time the perpetrator in his daily life in office has made many achievements and accepted by all levels of society.*" (Interview with YL, August 2, 2023)

Based on this, it appears that the district attorney's office facilitated the resolution of the case as stated, apart from referring to the Attorney General's Circular Letter for Special Crimes Number B-111/f/Fd.1/05/2010, also because it looks at the inner attitude or in the criminal context it is referred to as responsibility. or talking about inner attitude, about this circular, the resolution of corruption cases with small losses of under 100 million and the public in good faith returning state losses then the case can be stopped with considerations of efficiency because the average cost of handling cases at the Prosecutor's Office reaches 200 million per case (Arrasid, 2020). This was confirmed by the expert informant, Mr. IC, the younger brother of the Supreme Court judge, that in the circular letter, the resolution of cases that were indicated as corruption only resulted in state losses of around 100 million, and this was also unusual (Interview with IC, October 25, 2023).

In this context, it can be seen that the efforts made and taken by the Prosecutor's Office are similar to the concept of asset recovery. This concept is essential to recover state losses through confiscation and can be carried out not only from money obtained from criminal acts but also more than that (Trinchera, 2020). In the context of Indonesia, the model adopted in asset recovery can be through criminal means by imposing an additional penalty of payment of replacement money, which is legally regulated in Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes that:

- 1) Apart from additional penalties as intended in the Criminal Code, in addition are:
  - a) Confiscation of tangible or intangible movable goods or immovable goods used for or obtained as a result of criminal acts of corruption is carried out, as well as the price of the goods that replace these goods;
  - b) Payment of compensation money in an amount equal as much as possible to the assets obtained from the criminal act of corruption;
  - c) Closure of all or part of the company for a maximum period of 1 (one) year;
  - d) Revocation of all or part of certain rights or elimination of all or part of certain benefits that the government has or can provide to convicts
- 2) If the convict does not pay the replacement money as intended in paragraph (1) letter b no later than 1 (one) month after the court decision, which has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money
- 3) If the convict has insufficient assets to pay replacement money as intended in paragraph (1) letter b, he is sentenced to imprisonment whose length does not exceed the maximum threat of the main sentence by the provisions of this Law and the length of the sentence. This has been determined in the court decision.

Juridically, there are already regulations regarding asset recovery, but in their implementation, they prioritize physical law (Amrullah et al., 2021). Apart from that, it is not optimal because of

many political interests. (Wahyudi, 2019). From these views, it can be seen that asset recovery is essential. In the Indonesian context, it is resolved through criminal means after a sentence is handed down as regulated in the article, namely that the amount of compensation money is equal to the losses incurred by the defendant. Apart from criminal means, the state attorney or state attorney can also use civil means. After going through the criminal process at the investigation stage, the injured party did not find sufficient evidence. However, there was a factual loss to the state, which was not yet operational, so it was not implemented optimally (Sujono, 2020). The concept of asset recovery is essential, so through the United Nations Convention, all relevant countries are recommended to cooperate in implementing asset recovery (Brunelle-Quraishi, 2011). In line with that, the recovery of state losses can be carried out collaboratively, but several countries must have similarities in principles (Arifin et al., 2023).

Just as with positive criminal acts, the sanctions given to the perpetrator are based on the consequences they cause; likewise, in Islamic criminal law, it must be proportional to the evil act (Alam et al., 2022). As regulated in the Al-Qur'an, "and the retribution for a crime is a similar crime, then the Allah Whoever forgives by doing Allah, his reward will be borne by Allah. Allah does not like wrongdoers (Q.S. Asy-Syura, verse 40).

From a legal perspective, corruption is a crime because it can damage five things, including property, but it is part of *ta'zir* because it is not regulated in the text. In Islam, one of the safeguards given regarding the protection or preservation of property (*hifdz al-mal*) by confiscating it, even if confiscation is challenging to carry out, is that the opinion of the Hanabilah ulama allows the death penalty, this is in line with the concept of *maqasid al-syari'ah* because it contains benefits. For the state, and it aims to provide a deterrent effect for the perpetrators (Alam et al., 2022).

*Maqasid al-syari'ah* contains the term *maqasid* which comes from the Arabic *maqasid* whose plural form is *maqasid* which means goal, principle, goal, intention. *Maqasid* in Islamic Law is the ultimate goal or concept of applying Islamic law. Al-Bannani says *Maqasid* is legal wisdom, while Al-Al-Ghazali, Al-Amidi, and Ibn al-Hajib define it as obtaining benefits and avoiding damage (*mafsadat*). The death penalty for perpetrators of corruption is relevant and in line with *maqasid al-syari'ah* which aims to maintain religion (*hifz al-din*), save the soul (*hifz al-nafs*), save the mind (*hifz al-'aql*), save the hasa, saving property (*hifz al-mal*), saving offspring (*hifz al-nasl*) of mankind (Asa' ari et al., 2023).

The concept of asset recovery is related to the concept of *tak'zir*, which means exaltation and assistance; this concept is the authority of the authorities to determine punishment to prevent crime. In this context, the concept of takfir in question is related to property; in the hadith, Rasulullah SAW said:

*"Whoever takes other people's goods/property, then that person must replace 2 (two) times the goods that have been taken and also be punished."*

In this context, it aligns with the concept of asset recovery, which is related to the return of assets/property resulting from criminal acts committed (Ahmad Syarbaini, 2022). There are several views regarding the return of assets resulting from corruption; according to Imam Ahmad and Imam Syafi'i, punishment or sanctions can be carried out simultaneously in the sense that apart from being sentenced, the offender can also be sentenced to a fine or, this case the return of assets. (Masruri, 2023) All *fuqaha* experts agree that the sanction for criminals in Islam is *ta'zir*, not



*hudud* or *qishash*, and is confirmed by the Al-Ashar Cairo research institute in Egypt. Therefore *ta'zir* is the authority of the Judge (*waliyyul amri*) (Syarbaini, 2022). Because in this case it seems that apart from the absence of evil intentions on the part of the perpetrator, it is also due to the public interest or benefit of the people, this is in line with the view of Islamic law regarding *maqasid al-syari'ah*. If confiscation is difficult or even hampered, then the final alternative is the death penalty. This is by the opinion of the Hanabilah ulama who allow the death penalty as a *ta'zir* if the perpetrator of the crime repeatedly commits crimes. If viewed from the concept of *maqashid al-syari'ah*, the threat of the death penalty as *ta'zir* is by the concept of *maqashid al-syari'ah* (Alam et al., 2022).

In this context, there is a meeting point with positive law as regulated in Article 18 of Law No. 31 of 1999 concerning Corruption; apart from that, the aim of asset recovery from an Islamic perspective is as an ultimatum *remedy* and to provide a deterrent effect. From the perspective of Islamic criminal law and positive law, both are important ways to recover assets resulting from corruption after going through the litigation process. However, in this context, the author sees that it is time to change the asset recovery paradigm, as illustrated in the case analyzed, not only in the litigation process but also in non-recovery aspects. Litigation, as pursued by the LU prosecutors with several considerations above as well as for reasons of public interest and MM's good intentions, became the consideration for the prosecutor to stop the case and not proceed to the investigation stage, apart from that to accommodate the nature of the crime as an ultimatum *remedium* and in line with the principle of opportunity, which describes criminal suggestions as the last step (Eddy O.S. Hiariej, 2016) In this context, is in line with the steps taken by the Prosecutor's Office that crime is the last means of strengthening in Article 218 of the Criminal Code (Law Number 1 of 2023 concerning the Code of Laws). The latest Criminal Law Act in 2023 states that insulting the President can be excluded when there is public interest and self-defense. This has been confirmed, according to the prosecutor's office, that the case occurred after there was a transition between old and new officials and, in general, the village head who was indicated had so far had achievements and been accepted in the community (Interview with YL, august 2, 2023)

From the author's view, the application of the asset recovery concept can be used as an alternative in resolving corruption cases while still paying attention to several things, including inner attitudes and general interests, below explained, *First*, Mental attitudes in the context of criminal acts are related to the principle of culpability, "*geen straf zonder Schuld*," that there is no crime without fault (Satria, 2018). It also refers to a person's mental state or mind when committing or being involved in a criminal act. This inner attitude involves factors such as the individual's intention, deliberateness, and moral considerations when committing a criminal act (Jonathan Herring, 2022). In the legal system, courts often consider this inner attitude to determine the level of guilt and the punishment to be given to the perpetrator. For example, whether the action was carried out intentionally or unintentionally, whether there was an element of careful consideration or planning, and the extent of the individual's responsibility for the action, which Van Hammel mentioned are three indicators to determine responsibility, namely: 1). Understand the meaning and meaning of the consequences of his actions, 2). Aware that his actions are contrary to the values that exist in society, 3) the existence of free will (Fadlian, 2020). This inner attitude is integral to the judicial process to ensure fairness and consistency in handling criminal cases.

Inner attitudes can also describe how much the individual feels regret or guilt for their criminal actions. Inner attitude or *mens rea* determines whether a person can be held responsible, feel deep regret and are willing to take responsibility for their actions, or show an indifferent attitude or even have no remorse. These factors can also influence how punishment is administered through punishment, rehabilitation, or special supervision. Understanding this inner attitude allows the legal system to take a more holistic approach in dealing with criminal acts, considering individuals' moral and psychological aspects and seeking recovery and improvement to maintain social justice. Thus, inner attitude becomes important in determining sanctions and coaching criminals. (Awaludin, 2019). *Second*, the issue of public interest, as in this case it appears that apart from the absence of evil intentions on the part of the perpetrator, it is also due to the public interest or benefit of the people, this is in line with the view of Islamic law regarding *maqasid al-syari'ah*. in the concept of *maqasid al-syari'ah*, the threat of the death penalty as *ta'zir* is in accordance with the concept *maqasid al-syari'ah*, because it contains the benefit of the state and can provide benefits to the state if the corruptor's assets are returned to the state. Apart from that, confiscation of corruptors' assets can also provide benefits provide a deterrent effect for perpetrators of corruption, where punishments are currently regulated in Indonesia no longer effective (Alam et al., 2022), in conclusion, *asset recovery* outside of court can be an alternative in resolving corruption cases by fulfilling the provisions above.

#### 4. CONCLUSION

In general the concept of asset recovery can be applied in corruption cases, especially in positive law. In this context, researchers offer the concept of non-litigation asset recovery. This is in line with Jarimah, in this case, it is *ta'zir*. In implementing asset recovery, consider several things, including; that the essence of criminal law is the final step (ultimum remedium) that in the context of Islamic law the death penalty can be applied by the concept of *maqasid syariah* and as a deterrent effect. Apart from that, it also takes into account the public interest and in the concept of Islamic criminal law the concept of *ta'zir* can be applied to property which in its application is the authority of the person concerned, even if its aim is the same as Islamic criminal law, namely public benefit/interest.

The concept of non-litigation asset recovery offers an innovative approach that is in line with positive law and the principles of Islamic law, especially *maqasid sharia* and *ta'zir*. Research recommendations include the development of a clear legal framework, integration of Islamic legal principles, a multidisciplinary approach, strengthening institutional capacity, and increasing community involvement. However, this research is faced with several limitations, including the complexity of different legal frameworks, limited data, resistance to corruption perpetrators, differences in interpretations of Islamic law, and the dilemma between public interests and individual rights.

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