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Judicial Disparities in Asset Confiscation Rulings in Online Trading Cases in Indonesia: A Maqāṣid al-Sharīʿah Analysis

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Abstract

This study examines the disparity in court rulings concerning the status of confiscated assets in online trading crime cases. The Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN ordered the return of assets to victims, whereas the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG ruled that such assets be confiscated for the state. This divergence generates legal uncertainty and raises fundamental questions of justice. The research aims to critically assess the extent to which these rulings are consistent with the objectives of maqāṣid al-sharīʿah, particularly the principle of ḥifẓ al-māl (protection of property). A normative legal approach is employed, drawing on statutory analysis, judicial decisions, and comparative perspectives. The findings indicate that the Banten ruling more closely reflects ḥifẓ al-māl by safeguarding victims' property rights, while the Bandung ruling risks undermining justice, as the state did not directly incur losses. Beyond highlighting this jurisprudential inconsistency, the study underscores the urgency of harmonizing regulatory frameworks so that the principle of ḥifẓ al-māl can be systematically integrated into Indonesian criminal justice practice, thereby advancing substantive justice and strengthening public trust in the law.

Keywords: Judicial Disparities, Confiscated Assets, Online Trading, *Maqashid al-Shariah*

Disparitas Putusan Hakim atas Aset Sitaan dalam Perkara Trading Online di Indonesia: Analisis Maqashid al-Syariah

Abstrak

Penelitian ini mengkaji disparitas putusan pengadilan terkait status aset sitaan dalam perkara trading online. Putusan Pengadilan Tinggi Banten Nomor 117/Pid.Sus/2022/PT BTN mengembalikan aset kepada korban, sedangkan Pengadilan Tinggi Bandung Nomor 1/Pid.Sus/2023/PT BDG merampasnya untuk negara. Perbedaan ini menimbulkan ketidakpastian hukum dan problem keadilan. Tujuan penelitian adalah menilai secara kritis konsistensi putusan tersebut dengan maqashid al-syari'ah, khususnya prinsip hifz al-mal. Metode yang digunakan adalah penelitian hukum normatif melalui analisis peraturan, putusan, dan perbandingan hukum. Hasil penelitian menunjukkan bahwa putusan Banten lebih selaras dengan prinsip ḥifẓ al-māl karena melindungi hak kepemilikan korban, sementara putusan Bandung berpotensi mengabaikan keadilan karena negara bukan pihak yang mengalami kerugian langsung. Temuan ini tidak hanya mengungkap adanya disparitas yurisprudensi akibat kekosongan norma, tetapi juga menegaskan urgensi harmonisasi regulasi agar prinsip ḥifẓ al-māl dapat diimplementasikan secara konsisten dalam praktik peradilan pidana di Indonesia, sehingga keadilan substantif dan kepercayaan publik terhadap hukum dapat terwujud.

Kata kunci: Disparitas Putusan, Aset Sitaan, Trading Online, Maqashid al-Syari'ah

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A. Introduction

The surge of illegal online trading[1] cases in recent years has generated a wave of victims across various regions of Indonesia.[2] Hundreds of individuals have lost substantial assets, with some losses amounting to billions of rupiah.[3] The state has intervened through criminal proceedings by prosecuting offenders and confiscating the proceeds of crime. Yet, at this point, a fundamental question arises: do the confiscated assets belong to the state, or are they the rightful property of the victims to be restored?

This question has not been answered consistently by the courts. In Decision No. 1/Pid.Sus/2023/PT BDG of the Bandung High Court, the judges emphasized that all confiscated assets must be seized for the state. The reasoning was straightforward: the proceeds of crime should not benefit any party, and the state, as the legal authority, holds exclusive rights over them. According to the court, there were in fact no victims; all individuals involved were considered perpetrators. By contrast, in Decision No. 117/Pid.Sus/2022/PT BTN of the Banten High Court, the judges underscored that the confiscated assets must be returned to the victims, as the principle of substantive justice requires the restitution of community losses rather than the enrichment of the state treasury. This disparity has given rise to a

[1]Online trading is the activity of buying and selling financial instruments, such as stocks, foreign currencies (forex), commodities, or digital assets, through digital platforms connected to the internet. The main characteristic of online trading is its short-term orientation, which seeks to capitalize on market price fluctuations to generate quick profits. Due to its speculative nature, online trading tends to be high-risk and requires skills in analyzing market movements. In contrast to trading, investment refers to the allocation of capital into a financial instrument or real asset with the aim of gaining long-term returns. Investment emphasizes value accumulation and sustainable asset growth, for example, through stock dividends, bond interest, or the appreciation of property value. Thus, the fundamental distinction between trading and investment lies in their time orientation, level of risk, and objectives of capital management—trading is speculative and short-term in nature, while investment is oriented toward stability and long-term growth. Simon Anderson and Özlem Bedre-Defolie, "Online Trade Platforms: Hosting, Selling, or Both?," *International Journal of Industrial Organization*, The 48th Annual Conference of the European Association for Research in Industrial Economics (EARIE) 2021, Norway, vol. 84 (September 2022): 102861, https://doi.org/10.1016/j.ijindorg.2022.102861;

[2] Maureen Plaikoil, "Law Enforcement In The Case of Binary Option Under The Guise Of Investment and Trading," *Perspektif Hukum*, June 30, 2024, 92–102, https://doi.org/10.30649/ph.v24i1.270.

[3] Anindya Aryu Inayati et al., "Trading Digitalization: Legal Awareness in the Disruption Era," *Adzkiya : Jurnal Hukum Dan Ekonomi Syariah* 11, no. 1 (2023): 1–11, https://doi.org/10.32332/adzkiya.v11i1.6519; Rizqiah Safitri et al., "PERLINDUNGAN HUKUM BAGI KORBAN TRADING ONLINE PADA PLATFORM BINARY OPTION," *Dinamika* 29, no. 1 (2023): 6799–810.

substantial jurisprudential problem. At the same time, the legal framework reflects dual interpretations: one privileging state interests and the other prioritizing victims' rights. The implications are significant, as victims in one jurisdiction may be deprived of their rights, while in another those rights are fully recognized.[4]

Indonesian positive law does provide a normative basis for asset seizure and confiscation through the Criminal Procedure Code (KUHAP), the Anti-Money Laundering Law, the Information and Electronic Transactions Law, and the Commodity Futures Trading Law. However, none explicitly regulate the mechanism for returning assets to victims in the context of crimes such as online trading. This normative gap grants broad discretion to judges, resulting in divergent and even contradictory rulings.

Previous studies have examined the legal aspects of binary options practices and illegal platforms such as Binomo. Rina Ramadhani et al.[5] highlighted the legal protection of traders through preventive and repressive instruments scattered across the Criminal Code, the Consumer Protection Law, the ITE Law, and the Commodity Futures Trading Law. Nabila Annisa Noor and Ahmad Sholikhin Ruslie[6] noted that Binomo's affiliate system, from the perspective of Islamic law, contains elements of gharar and maysir. Meanwhile, Muhammad Bagas Haidar and Emmilia Rusdiana classified binary options as online gambling, consistent with the study by Nadila Sandra et al.,[7] which emphasized the need for clear regulation to protect consumers. The study by Yoko Anggara and Dian Alan Setiawan[8] examined the

[4] Stefan D. Cassella, "NATURE AND BASIC PROBLEMS OF NON-CONVICTION-BASED CONFISCATION IN THE UNITED STATES," *Veredas do Direito* 16, no. 34 (2019): 41–65, https://doi.org/10.18623/rvd.v16i34.1334.

[5] Rina Ramadhani et al., "Perlindungan Trader Dalam Platform Investasi Online Di Indonesia: Studi Kasus Platform Binomo," *Wacana Paramarta: Jurnal Ilmu Hukum* 21, no. 3 (2022): 87–93, https://doi.org/10.32816/paramarta.v21i3.164.

[6] Nabila Annisa Noor and Ahmad Sholikhin Ruslie, "SISTEM AFFILIATOR BINARY OPTION PADA PLATFORM BINOMO DALAM PERSPEKTIF HUKUM ISLAM," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (2022): 918–28, https://doi.org/10.53363/bureau.v2i3.72.

[7] Nadila Sandra et al., "Analisis Yuridis Normatif Praktik Investasi Ilegal Pada Aplikasi Binomo," *Indonesia Law Reform Journal* 2, no. 2 (2022): 237–53, https://doi.org/10.22219/ilrej.v2i2.22188.

[8] Yoko Anggara and Dian Alan Setiawan, "Analisis Viktimologi Terhadap Korban Trading Ilegal (Binomo) Yang Di Promosikan Oleh Influencer," *Bandung Conference Series: Law Studies* 2, no. 2 (2022): 1248–52.

victimological aspects and the urgency of restitution. Valdi Adrian Sayoga,[9] as well as Fakhri Rizki Zaenudin and Hana Faridah, discussed the criminal liability of affiliates, while Meria Suryani et al.[10] analyzed the criminal liability for money laundering derived from binary options. However, none of these studies addressed the mechanism for resolving confiscated assets; this is precisely where analysis through the lens of maqashid al-shari'ah becomes relevant.

Considering the existing literature, it is evident that research on online trading has primarily concentrated on legal protection, affiliate criminal liability, and normative analyses of gambling and money laundering. However, the mechanism for managing confiscated assets has not been the primary focus, even though this very issue generates disparities in judicial practice. This research therefore fills a critical gap by examining confiscated assets not merely as a matter of technical execution, but as a fundamental question of justice and victim protection. By employing the framework of maqāṣid al-sharīʿah—particularly the principle of ḥifẓ al-māl—this study contributes a normative foundation for strengthening victim restitution and ensuring that Indonesian criminal justice advances substantive justice rather than remaining confined to formal compliance. Accordingly, the central question posed in this article is whether judicial considerations in determining the status of confiscated assets in online trading cases have been consistent with Indonesian positive law and the values of justice embodied in maqāṣid al-sharīʿah.

B. Discourse on Maqashid al-Shariah

Etymologically, maqāṣid al-sharīʿah derives from two words: *maqāṣid*, meaning objectives, aims, or orientations, and *al-sharīʿah*, meaning law or regulations originating from Allah SWT.[11] Terminologically, maqāṣid al-sharīʿah is

[9] Valdi Adrian Sayoga, "Pemidanaan Terhadap Affiliator Platform Binomo Di Tinjau Dari KUHP Dan Undang-Undang Tentang Informasi Dan Transaksi Elektronik (ITE)," *Al Qodiri : Jurnal Pendidikan, Sosial Dan Keagamaan* 20, no. 1 (2022): 46–59, https://doi.org/10.53515/qodiri.2022.20.1.46-59.

[10] Meria Suryani et al., "PERTANGGUNGJAWABAN PELAKU TINDAK PIDANA PENCUCIAN UANG HASIL DARI BINARY OPTION PADA PLATFORM BINOMO," *Triwangsa Hukum* 1, no. 2 (2022): 18–30.

[11] Muhammad Syukri Albani Nasution et al., "Hifz Al-Din (Maintaining Religion) and Hifz Al-Ummah (Developing National Integration): Resistance of Muslim Youth to Non-Muslim Leader Candidates in Election," *HTS Teologiese Studies / Theological Studies* 78, no. 4 (2022): 4,

defined as the fundamental objectives that Islamic law seeks to achieve in legal enactments. In essence, these objectives are none other than to realize benefit (*jalb al-maṣāliḥ*) while simultaneously preventing harm (*dar' al-mafāsid*). In other words, every law in Islam, whether related to worship (*ʿibādah*) or social transactions (*muʿāmalah*), carries an orientation toward human welfare.[12]

Yusuf Hamid Alim emphasizes that the term *maqāṣid al-sharīʿah* is essentially synonymous with the collection of benefits (*al-maṣlaḥah*) that constitute the ultimate goal of Islamic law. This understanding cannot be separated from the conceptual legacy developed by classical scholars.[13] Referring to al-Ghazali's view, what is meant by *al-maṣlaḥah* here is the protection of the five essential aspects of human life: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). These five aspects, known as *al-ḍarūriyyāt al-khams*, serve as the foundation for realizing public welfare and as the benchmark in every application of Islamic law.[14]

Al-Ghazali argued that without the protection of these five elements, human life could not proceed properly. Damage to any one of them poses a serious threat to the survival of individuals and society. Al-Shatibi later expanded and reinforced this framework by positioning *maqāṣid* as the very core of the *sharīʿah*. According to him, Islamic law cannot be separated from its underlying purposes, namely the realization of universal welfare for humanity.[15] Through an inductive (*istiqrāʾ*) approach to the texts of the *sharīʿah*, al-Shatibi demonstrated that the entirety of the Qur'an and Sunnah points toward the preservation of the *al-ḍarūriyyāt al-khams*.[16]

From this perspective, it can be understood that within the framework of Islamic law, maqāṣid al-sharīʿah serves as a foundational principle that animates the entirety of legal objectives. Its ultimate orientation is the realization of justice,

https://www.ajol.info/index.php/hts/article/view/248265; Hasan Matsum, "Fatwas of the Indonesian Ulama Council (MUI) on National Strategic Issues 2006-2018 in the Perspective of Maqashid al-Syariah," *Al-Ulum* 23, no. 1 (2023): 153–74, https://doi.org/10.30603/au.v23i1.3646.

[12] M. Syukri Albani Nasution and Ahmad Tamami, *Maqasid Al-Syariah Dalam Perspektif* (Rajawali Pers, 2024), 1.

[13] Yusuf Alim, *Al-Maqashid al-'Ammah Li Asy-Syari'Ah al-Islamiyah* (Dar al-Fikr, 1991), 79.

[14] Imam Al-Ghazali, *Al-Mustasyfa Min 'Ilm al-Usul* (Madinah Munawaarah, 1992), 481–82.

[15] Nasution and Tamami, *Maqasid Al-Syariah Dalam Perspektif*, 2.

[16] Nasution and Tamami, *Maqasid Al-Syariah Dalam Perspektif*, 64.

welfare, and the protection of the essential values of human life. Among the five principal *maqāṣid*, one that is highly relevant to contemporary legal discourse is *ḥifẓ al-māl* (the protection of property).

The principle of *ḥifẓ al-māl* affirms that within the framework of Islamic law, safeguarding the right of private ownership is an integral part of the *sharīʿah*. This encompasses the prohibition of unjust appropriation of wealth, protection against fraud and theft, and the guarantee of restitution for aggrieved parties. Qur'anic injunctions explicitly prohibit consuming the wealth of others through wrongful means (Q. al-Baqarah [2]:188) and command the distribution of rights according to lawful provisions (Q. al-Nisāʾ [4]:29). The Prophet's hadith likewise affirms the sanctity of a Muslim's property, which may not be violated except on lawful grounds.

Thus, *ḥifẓ al-māl* is not merely an ethical norm but also a philosophical framework that affirms the legitimacy of individual ownership in Islamic law. This principle demonstrates that the *sharīʿah* does not end with normative-formal aspects but also encompasses a teleological dimension: ensuring social stability through the protection of the community's economic rights. Therefore, *maqāṣid al-sharīʿah*, particularly *ḥifẓ al-māl*, can be regarded as a strong normative foundation for guaranteeing justice and welfare in every legal product, both in classical and contemporary contexts.

C. Research Methods

This study is a normative legal research. As is common in normative legal research, the approach applied is entirely documentary, relying on a literature-based study.[17] The focus of analysis is directed toward legal sources consisting of statutory regulations as the normative foundation, court decisions as sources of law in practice, legal theories as the conceptual framework, and the views of scholars providing doctrinal justification. Normative legal research, also known as doctrinal legal research or library research, emphasizes analytical, interpretative, and argumentative methods applied to legal texts relevant to the legal issues under investigation. The approaches employed in this study include the statute approach,

[17] Ahmad Tamami, *Metodologi Penelitian Hukum Islam: Sehimpun Pengantar Populer Dan Praktis* (PT Iyyaka Literasi Sumatera, 2024), 36.

the case approach, and the comparative approach. These three approaches are applied synergistically to obtain a comprehensive understanding of the legal problems under examination.

The primary legal materials in this research are the official copies of the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN and the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG, which are analyzed as the main objects of this study. In addition, the research also makes use of secondary legal materials, which consist of authoritative scholarly works by legal experts and Islamic law scholars. Non-legal materials are also employed to support the analysis, such as linguistic dictionaries and general encyclopedias. The inclusion of non-legal materials provides a broader social context to the issues being examined.

The processing of legal materials was conducted methodologically through the stages of inventory, identification, classification, and systematization. The inventory stage was carried out to collect all relevant legal materials. The identification stage was intended to select and assess the substantive relevance of each legal material to the research focus. Classification was then conducted by categorizing legal materials into primary, secondary, and tertiary sources, and grouping them according to the relevant legal themes. The final stage, systematization, arranged all materials into a logical and coherent conceptual framework to support the legal arguments to be constructed.

Data analysis was carried out qualitatively, emphasizing interpretation of the legal materials collected. This study employed various methods of legal interpretation, including grammatical interpretation (based on linguistic meaning), systematic interpretation (examining the interrelation of norms within a legal system), comparative interpretation (comparing with other legal systems), and teleological interpretation (tracing the objectives underlying the formation of legal norms).

D. Results and Discussion

1. Judicial Disparities in Confiscated Asset Considerations in Online Trading Cases: An Analysis of the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN and the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG

The issue of the status of confiscated assets in binary option criminal cases has received serious attention in two appellate court rulings. These rulings are the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN and the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG. Although both concern crimes with similar patterns, they produced different considerations, particularly regarding the determination of the status of evidence in the form of confiscated assets.

In the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN, the panel of judges determined that the evidence seized in the case should be returned to the victim-witnesses. The restitution mechanism was not carried out individually but through an official body, namely the "Paguyuban/Perkumpulan Trader Indonesia Bersatu," established under Deed of Establishment No. 21 dated 26 September 2022 before Notary-PPAT Musa Muamarta, S.H. In this way, restitution was expected to be carried out in an organized and proportional manner for the affected victims.

The judges' considerations in this decision emphasized the fact that the case originated from a report by a victim-witness, Maru Nazara. Therefore, according to the panel, it was inappropriate to regard the participation of victim-witnesses in Binomo trading activities as a form of gambling. The judges stressed that the victims' involvement should be understood as the consequence of unlawful acts committed by the defendant, not as voluntary activity that equates their position with perpetrators of crime. On this basis, the panel argued that, in order to restore the substantial losses suffered by the victims, the most proper, appropriate, and just decision was to return the evidence to the victims. Distribution was carried out through the victims' association administrators, in accordance with the demands of the public prosecutor, who also supported the restitution of losses.

This ruling thus demonstrates that confiscated assets are not always considered the property of the state, but can serve as a means of restitution for

victims' losses. Its primary emphasis lies in substantive justice, namely providing direct benefit to the injured parties through an institutional mechanism deemed legitimate and trustworthy to channel restitution fairly.

Meanwhile, the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG took a different approach. In this ruling, the panel determined that the evidence in the form of confiscated assets was not to be returned to the victims but instead seized for the state. Thus, the status of the assets no longer fell under the ownership of individual victims but became the full property of the state pursuant to the court's decision.

The judges' considerations in this case employed a method of legal discovery that was anticipatory in nature. The panel not only referred to the old Criminal Code (KUHP) still in force but also took into account Law No. 1 of 2023 concerning the new Criminal Code, which at the time had not yet come into effect. The panel applied an interpretive method known as futuristic interpretation, namely interpreting legal provisions by referring to rules that would later take effect (ius constituendum).

In this context, the panel referred to Article 91 of Law No. 1 of 2023. This article stipulates that the confiscation of certain property may be carried out against: (a) items used to commit or prepare a crime; (b) items specifically created or intended for committing a crime; (c) items related to the commission of a crime; (d) property belonging to the convict or another person obtained from a crime; (e) economic gains derived directly or indirectly from a crime; and (f) items used to obstruct investigation, prosecution, or court proceedings.

By basing its reasoning on these provisions, the panel of judges affirmed that confiscated assets resulting from binary option crimes could be fully seized for the state. This consideration reflects an orientation toward the principle that the proceeds of crime must not benefit anyone, whether perpetrators or other related parties. The state is positioned as the sole entity entitled to control over such confiscated assets.

Both decisions—the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN and the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG—equally emphasize normative aspects, yet they produce markedly different consequences.

The first ruling provides space for restitution to victims through asset return, while the second closes that space by opting for asset seizure for the state on the basis of futuristic interpretation.

From a substantive perspective, the considerations in the Banten decision emphasize corrective justice, namely restoring losses to those who have suffered harm. By contrast, the considerations in the Bandung decision emphasize the legal interests of the state as a representation of formal justice, ensuring that the proceeds of crime do not return to anyone except the state. This distinction is significant, as both are based on different interpretive methods: the first grounded in case facts and victim protection, while the second leans toward anticipating legal developments through the application of the new Criminal Code.

Thus, the narrative emerging from these two rulings demonstrates how judges interpret the same legal space with different outcomes. The decision numbers, the status of confiscated assets, and the reasoning employed by the judges provide a concrete illustration of disparities in Indonesian judicial practice. These differences underscore the importance of clarity in regulations regarding the management of confiscated assets to prevent future legal uncertainty.

Table: Judges' Considerations Based on the Description of the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN and the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG

Defendant and Decision	Confiscated Assets	Judges' Considerations
Indra Kenz in Banten High Court Decision No. 117/Pid.Sus/2022 /PT BTN	Determined that evidence be returned to the victim-witnesses through the "Paguyuban/Perkumpulan Trader Indonesia Bersatu" (Deed of Establishment No. 21 dated 26 September 2022 before Notary-PPAT Musa Muamarta, S.H.)	According to the judges, this case arose from a report by a victim-witness named Maru Nazara, thus it was inappropriate to regard the conduct of the victim-witnesses who joined Binomo trading as gambling. Therefore, the Banten High Court panel concluded that in order to restore the substantial losses suffered by the victims, it was proper, appropriate, and just to return the evidence to the victims to be proportionally distributed through the victims' association

		administrators, as also demanded by the public prosecutor.
Doni Salmanan in Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG	Determined that the evidence be seized for the state	The panel applied an anticipatory method of legal discovery by considering the old Criminal Code in force and at the same time referring to a law not yet effective (*ius constituendum*), namely the new Criminal Code (Law No. 1 of 2023). This method is commonly referred to as futuristic interpretation, i.e., applying provisions of law that will later take effect. Article 91 of Law No. 1 of 2023 essentially provides: "Confiscation of certain items and/or as referred to in Article 66 paragraph (1)(b) may include certain items or claims: (a) used to commit or prepare a crime; (b) specifically created or intended for committing a crime; (c) related to the commission of a crime; (d) belonging to the convict or another person obtained from a crime; (e) derived economic gains, whether directly or indirectly, from a crime; or (f) used to obstruct investigation, prosecution, and trial proceedings."

2. Maqashid al-Shariah Analysis of Judicial Decisions on Confiscated Assets in Online Trading Cases: A Study of the Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN and the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG

The surge of illegal online trading cases in Indonesia has caused enormous economic losses to society. Hundreds of individuals have become victims, losing the wealth they had earned through hard work as they were trapped in deceptive digital investment schemes. At this point, the issue is not only about the criminal liability of the perpetrators but also touches on a much more fundamental dimension: who has the rightful claim over the confiscated assets of such crimes? Should the state,

as the representative of the law, take possession of these assets, or should the victims, who have actually suffered the losses, be prioritized as their rightful owners? This question is of paramount importance as it concerns the principle of substantive justice as well as the legitimacy of law itself in the eyes of society.

Two appellate court decisions present vastly different answers to this fundamental question. The Banten High Court Decision No. 117/Pid.Sus/2022/PT BTN ruled that confiscated assets should be returned to the victims through a legally recognized association. Conversely, the Bandung High Court Decision No. 1/Pid.Sus/2023/PT BDG ruled that all assets must be confiscated for the state. This disparity opens the door to a broader discussion on how the law ought to function, particularly when viewed through the framework of maqashid al-shariah, especially the principle of ḥifẓ al-māl (protection of property).

The Banten High Court ruling provides a concrete example of how judges can go beyond the mere formalities of law and choose to uphold substantive justice. The decision to return assets to the victims was not based solely on the text of legislation but also on the social reality that the victims were those who had genuinely lost property due to the crime. The judges firmly rejected the idea of treating victims as perpetrators of gambling. They were seen not as individuals seeking to gamble but as ordinary citizens deceived by an illegal digital investment scheme disguised as legitimate. From the perspective of maqashid, this decision represents taḥqīq al-'adl (the realization of justice),[18] as it restores rights to their rightful owners and prevents ẓulm (injustice) against victims' property.

Furthermore, this decision also reflects jalb al-maṣāliḥ wa dar' al-mafāsid—bringing about benefit while preventing harm. By returning assets to the victims, the court not only restored economic losses but also rebuilt public trust in the law. If victims were left without restitution, the social and psychological damage would deepen: families would collapse, trust in the legal system would erode, and the sense of justice would disappear. Thus, this ruling not only resolved a criminal case but also functioned as an instrument to maintain social stability. Within the context of

[18] Sidiq Siadio and Ismail, "Keadilan Dan Maqasid Al-Syariah: Mengatasi Reformasi Hukum Dan Keadilan Sosial," *ICSIS Proceedings* 1 (December 2024): 23–30.

maqashid, this embodies the true meaning of ḥifẓ al-māl[19]—the protection of property from unjust appropriation, whether by criminals or by a state misusing its authority.

On the other hand, the Bandung High Court decision presents serious ethical and juridical problems. The confiscated assets in that case were ruled to be seized for the state. The judges based their reasoning on Article 91 of the new Criminal Code (Law No. 1 of 2023), even though at the time it was not yet in effect. The panel employed what they termed a futuristic interpretation, using a law not yet effective as a basis for judgment. However, the greater problem lies in the substance of the ruling: the state was designated as the primary recipient of confiscated assets, even though it did not directly suffer losses from the crime. The victims, who had clearly lost their property, were left without restitution.

From the perspective of maqashid, this constitutes tajāwuz al-'adl (a deviation from justice) and ta'addī 'alā al-māl[20] (an infringement upon property). The protection of property, which should have been realized through restitution to the victims, instead became an act of confiscation legitimized by law. The state has neither moral nor juridical legitimacy to take possession of assets that do not belong to it, especially when the people are the ones who have suffered tangible losses. Within the framework of maqashid, the state's function is not to become the new owner of the proceeds of crime but to act as an intermediary ensuring the restitution of victims' rights. When the state appropriates such assets, maqashid turns into naqd al-maqāṣid—a contradiction of the very objectives of law.

The problems revealed by these two decisions cannot be separated from the normative gap in Indonesian positive law. Existing legislation, such as the Criminal Procedure Code, the Anti-Money Laundering Law, and the ITE Law, does regulate seizure, confiscation, and management of evidence. However, none of these provisions explicitly and unequivocally regulate the mechanism for returning assets to victims. This normative gap grants judges broad interpretive discretion, leading

[19] Muhammad Irwan, "KEBUTUHAN DAN PENGELOLAAN HARTA DALAM MAQASHID SYARIAH," *Elastisitas : Jurnal Ekonomi Pembangunan* 3, no. 2 (2021): 160–74.

[20] Iza Hanifuddin, "Ganti Rugi Perspektif Fiqh Ekonomi," *Muslim Heritage* 5, no. 1 (2020): 1–26, https://doi.org/10.21154/muslimheritage.v5i1.1959.

to contradictory rulings: one favoring victims, the other designating the state as the beneficiary. From the perspective of maqashid, this condition creates mafsadah niẓāmiyyah—systemic harm that undermines legal certainty and erodes judicial legitimacy in the eyes of society.

Upon closer examination, the only ruling that can be categorized as taḥqīq al-'adl is the one that returns assets to victims. The state did not suffer any loss in cases of illegal online trading and therefore has no right to claim the confiscated property. The role of the state is merely as a wasīlah (means) to ensure the restitution of victims' rights, not as a ghāyah (end) that enriches itself with these assets. When the state positions itself as the primary beneficiary, its role shifts from protecting citizens to competing against them. This is clearly contrary to maqashid, which prioritizes the protection of individual rights as the ultimate goal.

The principle of ḥifẓ al-māl in maqashid does not merely mean protecting property from theft or physical robbery but also from unlawful appropriation through distorted legal mechanisms. The Bandung ruling, in this context, legitimizes a new form of confiscation: assets already taken by perpetrators are once again seized by the state, while victims remain deprived of their rights. This not only violates ḥifẓ al-māl but also undermines distributive justice, which lies at the heart of maqashid.

From a social perspective, such decisions produce broader consequences. Victims who lose their property without restitution suffer psychological pressure, family economic collapse, and even a complete loss of trust in the legal system. Within maqashid, such harm goes beyond property matters to encompass ḥifẓ al-nafs (protection of life) and ḥifẓ al-'ird (protection of dignity). Thus, the decision to confiscate assets for the state not only fails to achieve maqashid in the realm of property but also causes harm to other essential objectives.

At this point, it becomes evident that prioritizing victims is the only approach consistent with the objectives of maqāṣid al-sharīʿah. The Banten High Court's decision to return confiscated assets to victims through their association reflects judicial courage in advancing substantive justice. The state must not enrich itself from crimes that have harmed its citizens. If the state were to appropriate victims' assets despite having suffered no direct loss, such a practice would amount to

legitimizing a new form of injustice. This position is in line with the findings of Widiastuti et al.[21] and Kuat Puji Prayitno et al.,[22] who argue that one viable mechanism for asset restitution in fraud cases is through judicial rulings that explicitly order the return of assets to victims named in the judgment, thereby recognizing their financial losses. Moreover, Ezzah[23] emphasizes the need to expand and strengthen international legal frameworks governing the restitution of assets derived from transnational crimes, ensuring that such assets can be confiscated and effectively returned to the rightful victims.

Accordingly, these two contradictory rulings demonstrate that Indonesian positive law still leaves a dangerous normative vacuum. Without clear regulations governing the restitution of assets to victims, there is always a risk that substantive justice will be defeated by legal formalism. From the perspective of maqashid, this represents a real form of naqd al-maqāṣid—the failure of law to achieve its objectives, turning instead into a source of injustice.

Therefore, the direction that must be taken is clear: every asset confiscated from illegal online trading fraud should be returned to the victims, not seized for the state. The state's role is solely as a facilitator of justice, not a beneficiary of crime. Only in this way can the law fulfill its function as an instrument of taḥqīq al-'adl, realize substantive justice, and safeguard the values of maqashid al-shariah in the lived reality of society.

E. Conclusion

From the analysis of Decision No. 117/Pid.Sus/2022/PT BTN of the Banten High Court and Decision No. 1/Pid.Sus/2023/PT BDG of the Bandung High Court, it is evident that there exists a fundamental disparity in determining the status of

[21] Widiastuti Widiastuti et al., "Return of Confiscated Property to Victims of Crime of Fraud in Indonesia's Legal System," paper presented at Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, MALAPY 2022, 28 May 2022, Tegal, Indonesia, August 15, 2022, https://eudl.eu/doi/10.4108/eai.28-5-2022.2320571.

[22] Kuat Puji Prayitno et al., "Resolving Execution of Judgment in Indonesia Investment Fraud Case to Ensure Asset Recovery for Victims," *Revista Criminalidad* 66, no. 3 (2024): 81–95, https://doi.org/10.47741/17943108.663.

[23] Ezzah Nariswari Lupianto, "Asset Recovery for Victims of 'Binary Option' Case in Review of International Criminal Law," *Corruptio* 3, no. 1 (2022): 47–60, https://doi.org/10.25041/corruptio.v3i1.2640.

assets confiscated from illegal online trading crimes. The Banten decision is more consistent with the principles of maqāṣid al-sharīʿah, particularly ḥifẓ al-māl, as it restores victims' losses by ordering the return of assets through an official restitution mechanism. This ruling exemplifies taḥqīq al-'adl by generating benefits (jalb al-maṣāliḥ) and preventing harm (dar' al-mafāsid). By contrast, the Bandung decision mandated the confiscation of assets for the state, despite the absence of any direct loss suffered by the state, thereby constituting tajāwuz al-'adl (a deviation from justice) and taʿaddī 'alā al-māl (the violation of property rights).

This disparity essentially stems from a normative gap in Indonesian positive law. The Criminal Procedure Code (KUHAP), the Anti-Money Laundering Law (UU TPPU), and the Information and Electronic Transactions Law (UU ITE) regulate mechanisms for seizure and confiscation but do not provide clarity on the restitution of assets to victims. Such a gap grants judges broad interpretive discretion, producing contradictory rulings that risk undermining the legitimacy of the law.

Based on this, two recommendations are proposed. First, the legislature must reformulate regulations on the status of confiscated assets to explicitly prioritize victim restitution. Second, the judiciary should reinforce an approach rooted in maqāṣid al-sharīʿah, positioning the state as a facilitator rather than a beneficiary. Only in this way can the law function as an instrument of substantive justice and restore public trust.

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