International Journal of Innovative Technologies in Economy

e-ISSN: 2414-1305

Operating Publisher
SciFormat Publishing Inc.
ISNI: 0000 0005 1449 8214

2734 17 Avenue SW, Calgary,
Alberta, T3E0A7, Canada
+15878858911
editorial-office@sciformat.ca

ARTICLE TITLE	ASSET FORFEITURE ARRANGEMENTS FOR CORRUPTION PERPETRATORS TO RECOVER STATE LOSSES
DOI	https://doi.org/10.31435/ijite.2(54).2026.5486
RECEIVED	30 January 2026
ACCEPTED	22 June 2026
PUBLISHED	30 June 2026
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ASSET FORFEITURE ARRANGEMENTS FOR CORRUPTION PERPETRATORS TO RECOVER STATE LOSSES

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ABSTRACT

Corruption, as an exceptional crime, results in enormous state financial losses and obstructs national development. Indonesia's asset forfeiture regime, however, remains anchored in a conviction-based model that presupposes a final, binding criminal judgment which is a precondition that significantly undermines effective asset recovery. Addressing this gap, the current research aims to critically evaluate the performance of existing loss-recovery instruments and to propose an optimal regulatory design for non-conviction based (NCB) asset forfeiture in Indonesia. Methodologically, this is a normative legal study incorporating statutory, conceptual, and comparative approaches. Legal materials including primary, secondary, and tertiary are examined qualitatively using a descriptive-analytical framework. The findings indicate that the existing asset forfeiture mechanism still faces various obstacles, including dependence on criminal prosecution, limited scope of forfeitable objects, weak inter-agency coordination, and a suboptimal asset tracing system. Moreover, the proportion of state losses actually recovered continues to lag significantly behind the aggregate losses incurred. Evidence drawn from comparative analysis with the United States and the United Kingdom indicates that the NCB model yields superior effectiveness by virtue of its in rem orientation which targeting the assets directly and its elimination of any prerequisite for securing a criminal conviction against the offender. Therefore, a reconstruction of Indonesia's legal system is needed through the establishment of specific regulations governing asset forfeiture without criminal conviction, strengthening of asset management institutions, enhancement of international cooperation, and optimization of technology in asset tracing. Accordingly, the implementation of NCB is expected to improve the effectiveness of state loss recovery and strengthen the corruption eradication system in Indonesia.

KEYWORDS

Corruption, Asset Forfeiture, Non-Conviction Based, State Loss Recovery, Asset Recovery

CITATION

Lenny Marta Baringbing, Setiawan Noerdajasakti, Yuliati. (2026) Asset Forfeiture Arrangements for Corruption Perpetrators to Recover State Losses. *International Journal of Innovative Technologies in Economy*. 2(54). doi: 10.31435/ijite.2(54).2026.5486

Introduction.

Corruption constitutes a category of extraordinary criminality whose systemic repercussions extend to national stability, impede economic progress, and undermine public well-being. Within Indonesia, corrupt practices have become entrenched across diverse sectors at both central and regional echelons, yielding as their principal consequence the incurrence of significant financial losses to the state. This situation disrupts the state's ability to deliver public services optimally. Efforts to eradicate corruption have tended to focus on a repressive approach through criminal law enforcement, but this approach has not been fully effective in recovering state losses (Abdullah & Eddy, 2021).

In this context, the forfeiture of assets resulting from corruption has become an increasingly important strategy. Asset forfeiture serves not merely to punish perpetrators but also to recover state losses and disrupt the economic chain of criminal proceeds. Notwithstanding these objectives, the implementation of asset forfeiture in Indonesia continues to encounter various impediments, including regulatory constraints, weak inter-agency coordination, and persistent difficulties in proving and tracing assets that have been concealed or transferred by offenders (Siburian & Amalia, 2025).

Normatively, Indonesia already possesses various legal instruments governing asset forfeiture, including the Law on Corruption Eradication, the Law on Money Laundering, and the latest Criminal Code through Law Number 1 of 2023 (Sibero et al., 2024). In the new Criminal Code, asset forfeiture is regulated as an additional penalty, as reflected in Articles 66, 91, 92, 98, and 120, which in principle permit the forfeiture of criminal instruments *(instrumenta sceleris)*, criminal proceeds *(producta sceleris)*, and profits derived from crime *(profectus sceleris)*. However, these regulations are still based on a conviction-based approach, which requires a legally binding criminal verdict as the basis for asset forfeiture.

This approach creates practical problems, because the lengthy criminal law enforcement process from investigation, inquiry, prosecution, to execution provides perpetrators with opportunities to conceal or transfer assets. In some cases, perpetrators flee, die, or are abroad before a verdict becomes legally binding, so that the proceeds of corruption cannot be optimally recovered. Furthermore, the focus of criminal evidence on proving the perpetrator's guilt rather than the origin of wealth makes the recovery of state assets even more difficult.

As an alternative, the non-conviction based asset forfeiture (NCB) approach has developed, focusing on assets (*in rem*) and not requiring a criminal verdict against the perpetrator. This approach is closely related to the concept of illicit enrichment, namely a condition in which a person possesses wealth disproportionate to their legitimate income and is unable to prove the legal origin of such wealth. Under the NCB mechanism, the state need only prove that the asset is suspected of originating from illegal activity, so that it can be forfeited through a civil or administrative process in court. The main characteristics of this approach include a focus on assets, the use of civil mechanisms, and the application of reverse burden of proof against the asset owner (Mukminah, 2020).

The international framework through Article 31 paragraph (8) of the United Nations Convention Against Corruption (UNCAC) 2003 allows states to carry out asset forfeiture without a criminal verdict under certain conditions, particularly when the perpetrator cannot be prosecuted. In addition, the United Nations Convention against Transnational Organized Crime (UNTOC) 2000 and the recommendations of the Financial Action Task Force (FATF) also encourage the implementation of non-conviction based asset forfeiture (NCB) as an effective step in combating organized crime and cross-border corruption. Practices in various countries demonstrate the success of this approach. In the United States, through Title 18 United States Code (U.S.C.) Section 981, the government can conduct civil forfeiture *in rem*, as in the case of United States v. One Gulfstream, in which a jet aircraft worth approximately US$38 million was seized because it was allegedly derived from corruption, with proof of a discrepancy between the owner's wealth and legitimate income (Reuter, 2005)

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In Indonesia, the idea of implementing NCB has long been raised through the Draft Law on Asset Forfeiture since 2012–2013. However, as of 2025, these regulations have not been enacted. Meanwhile, Indonesia has ratified UNCAC through Law Number 7 of 2006, which encourages the strengthening of asset recovery mechanisms, including through the NCB approach. Empirical conditions reveal a significant gap between state losses due to corruption and the rate of recovery. Data from the Attorney General's Office shows that out of total state losses of approximately Rp310 trillion, only around Rp44.13 trillion, or approximately 14–15%, has been recovered, meaning that approximately 85% of state losses have not been returned. This indicates that the existing mechanisms are not yet optimal in recovering state assets.

Furthermore, the conventional civil law approach also faces obstacles, such as the burden of proof resting on the plaintiff (state attorney), lengthy processes, and limitations in civil procedural law that still adheres to formal proof. These conditions further reinforce the urgency of developing a more effective and progressive mechanism for recovering state losses. Based on the foregoing, there is a pressing need to reconstruct the legal system relating to asset forfeiture in Indonesia, particularly through strengthening the *in rem*-based NCB approach. This approach is expected to overcome the obstacles in the existing system, accelerate state asset recovery, and provide a more effective deterrent effect against corruption perpetrators. This research endeavors to assess and characterize the operational effectiveness of Indonesia's current legal apparatus for recouping state financial losses due to corruption. Furthermore, it aims to develop an ideal regulatory design for non-conviction based asset forfeiture, thereby enabling the more efficient optimization of state loss recovery.

2. Research Method

This study uses normative legal research, which focuses on the analysis of legal norms in the form of legislation, doctrine, and court decisions. This approach aims to evaluate, understand, and explain the meaning and application of legal norms in a specific context, with descriptive and analytical characteristics and without involving empirical field data (Diantha, 2016). Normative legal research serves a vital function in advancing legal theory, informing policy analysis, reinforcing legal certainty, appraising justice, and shaping proposals for legal reform (Djulaeka & Devi Rahayu, 2020)

Several methodological approaches inform this research. One is the statutory approach, which entails a systematic review of various legal regulations bearing upon the research question. Another is the conceptual approach, operationalized through critical analysis of prevailing views and doctrinal teachings within legal science, thereby yielding key legal constructs such as the definitions and principles underlying corruption, asset forfeiture, and the non-conviction based (NCB) forfeiture mechanism (Marzuki, 2017). Third, the comparative approach, by comparing the legal regulations of different countries regarding asset forfeiture in corruption cases. The approach used is macro comparison, comparing the law in force in Indonesia with other countries that have implemented similar regulations (Tahir et al., 2023)

The legal materials utilized in this research fall into three tiers: primary, secondary, and tertiary. Primary legal materials, as the most authoritative sources, include the 1945 Constitution of Indonesia; various laws on corruption eradication, money laundering, and the attorney general's office; the Criminal Code and Criminal Procedure Code; and international instruments alongside foreign statutes such as the US Code (USC), CAFRA 2000, and POCA 2002 (Ibrahim, 2006). Secondary legal materials encompass scholarly literature, treatises, periodicals, and academic writings pertinent to the research subject. Tertiary legal materials, by contrast, serve as supplementary references and include legal dictionaries, articles, journals, as well as the Indonesian Dictionary (Kamus Besar Bahasa Indonesia) (Sunggono, 2003).

Library research served as the technique for tracing legal materials, achieved by identifying, collecting, and reviewing all written sources relevant to the research problem. This technique is important for providing a theoretical foundation and a deep understanding of the values, principles, and legal norms under study (Sunggono, 2003). Within the analytical process, legal interpretation methods are employed. These include grammatical interpretation, which attends to the semantic meaning and syntactical structure of legal language, and systematic interpretation, which investigates the interconnections among norms situated within a coherent legal order (Moeljatno, 2002)

The technique for analyzing legal materials in this study uses a qualitative approach with a descriptive-analytical method, by examining the problem based on applicable legislation, literature, and the opinions of legal experts (Soekanto, 2007). The analysis comprises three stages: collection of primary, secondary, and tertiary legal materials; processing and classification of those materials to ease analysis; and interpretation of relevant legal provisions. Primary legal materials are analyzed specifically for corruption and asset forfeiture

regulations. Secondary materials strengthen and synchronize the analysis, and tertiary materials supply initial conceptual definitions. Subsequently, legal interpretation is carried out through grammatical and systematic interpretation to obtain a comprehensive understanding and to correctly address the research problems (Ali, 2002).

3. Result and discussion

3.1. Asset Forfeiture Mechanism for Corruption Perpetrators in Indonesia

3.1.1. Asset Forfeiture Regulation Based on the Law on Corruption Eradication and the National Criminal Code

One of the main objectives of law enforcement against corruption is to recover state financial losses caused by such acts. Therefore, the handling of corruption is not only directed at punishing perpetrators, but also at returning criminal proceeds to the state. In this context, asset forfeiture has become a legal instrument with a strategic role in Indonesia's anti-corruption system. Law Number 31 of 1999 on the Eradication of Corruption, amended by Law Number 20 of 2001, establishes the normative basis for state loss recovery from corruption perpetrators. Asset forfeiture therein serves as an additional penalty at judicial discretion. Article 18 explicitly provides that, alongside the principal sentence, a convict may face an extra penalty: forfeiture of movable and immovable property used to commit the crime or obtained from corruption.

Indonesia's current criminal law system continues to rely heavily on an in personam forfeiture model, wherein asset confiscation is predicated upon the punishment of the offending legal subject. The primary legal bases for this mechanism are twofold: first, the Corruption Law (Law Number 31 of 1999 as revised by Law Number 20 of 2001), and second, the recently enacted Criminal Code (Law Number 1 of 2023). Within the Corruption Law, asset forfeiture is effectuated via the "Additional Penalty" framework set forth in Article 18 paragraph (1) letter b. This provision mandates the payment of substitute money, capped at an amount equivalent to the assets procured through corruption. This provision shows that the orientation of law enforcement in corruption cases is not solely focused on punishing perpetrators, but also on recovering state financial losses arising from such criminal acts. This often becomes a loophole for corruptors to conceal assets and choose to serve a custodial sentence rather than return state losses. Thus, the additional penalty of asset forfeiture and payment of substitute money is an instrument directly related to the asset recovery mechanism in corruption cases.

The application of such additional penalties depends on the proven commission of corruption as the principal offense in a court verdict. Previously, Articles 2 and 3 of the law defined the principal offense: self-enrichment or enrichment of others harming state finances, and authority abuse causing state losses. Subsequent developments in Indonesian criminal law saw these offense formulations incorporated into the codified Criminal Code (Law Number 1 of 2023), specifically in Chapter XXXII, Article 603 on corruption. This provision is a re-codification of the core corruption offense of unlawful enrichment that was previously regulated in Article 2 paragraph (1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. Theoretically, Article 603 of the New Criminal Code has four fundamental characteristics:

1) *Delicta Communia*, meaning it can be committed by anyone;
2) Material Offense, which requires the consequence of state losses;
3) Delphi System Modification, a method of improving upon the model of corruption eradication based on the core crime classification system;
4) Core Crime of Article 2 paragraph (1) of the Corruption Eradication Law, meaning that the core of corruption consists of unlawful acts that harm state finances.

Regulation of Article 603 of the New Criminal Code as Delicta Commune. On the Phrase "Every Person" as a Marker of a General Offense. Article 603 of the National Criminal Code does not require "a public official," can be applied to ordinary citizens, and can be applied to corporations, so doctrinally it qualifies as a general offense (*delicta commune*).

A material offense is an offense considered complete once its consequences occur. Under Article 603, state loss is the controlling element which the offense is complete only upon actual loss and a causal relationship between the unlawful act and that loss. This element heightens evidentiary complexity, requiring proof of state loss calculation, *actus reus*, unlawfulness, and causation. This differs from the formal offense in the Corruption Law, where it is sufficient to prove potential loss. Furthermore, Article 603 of the New Criminal Code is categorized as a core crime in corruption because it focuses on the act of enriching oneself unlawfully at the expense of the state, without requiring a specific qualification of the perpetrator, and is in line with the

concept of unlawful enrichment in UNCAC. The elements of Article 603 and Article 2 paragraph (1) are identical as follows:

1) Subject element: every person;
2) Act element: enriching oneself;
3) Nature element: unlawful; and
4) Consequence element: state loss.

Atmasasmita (2012) states that Article 2 of the Corruption Law is the core corruption offense because it directly harms state finances, in line with Moeljatno's view that the core offense is an act that damages the protected legal value. The New Criminal Code adopts this offense in Article 603 as the main offense with the most complete elements and broad scope. However, the Corruption Law remains in force as lex specialis, so Article 603 does not replace it, but rather functions as a codification and harmonization within the criminal law system. In addition to the principal offense regarding corruption as described, there is also a renewal in the regulation of the forfeiture of goods, namely in Articles 45 to 48. There is an expansion of the objects that can be forfeited, which includes:

1) Goods obtained from criminal acts;
2) Goods used to commit criminal acts;
3) Goods used to obstruct investigations.

Furthermore, in the context of corruption, Article 603 of the National Criminal Code still positions forfeiture as part of the sanction imposed together with the principal penalty. A significant difference from the Corruption Law is the New Criminal Code's effort to align the categories of fines and additional penalties to be more systematic in codification.

3.1.2. Execution Procedure for Additional Penalty of Substitute Money

Asset forfeiture in Indonesian criminal law has the status of an additional penalty with significant implications for the effectiveness of recovering state financial losses, but its application is heavily dependent on the successful proof of the principal criminal offense, particularly corruption, at trial. This shows that the recovery of state losses cannot be separated from proving the elements of the main offense. Normatively, asset forfeiture regulations have been integrated into the national criminal law system, including in Law Number 1 of 2023 on the Criminal Code through the terminology "forfeiture of certain goods" as regulated in Article 64, which confirms that additional penalties can only be imposed alongside principal penalties. Therefore, asset forfeiture cannot stand alone, but always follows proof of the principal case.

In criminal law practice, asset forfeiture is part of the criminal-based forfeiture mechanism, which has long been known since the enforcement of Het Herziene Indonesisch Reglement through to the regulations in the Criminal Procedure Code, namely Law Number 8 of 1981, which was subsequently updated to Law Number 20 of 2025. Seizure is an essential preliminary stage: the investigator's taking or storing of movable or immovable property for investigation, prosecution, and trial. As a coercive measure (*dwangmiddelen*), it requires permission from the relevant district court chair. Seizable objects are limited to those directly linked to the crime namely, criminal proceeds, instrumentalities of the offense, or objects directly related to the criminal process (Purnama, 2007).

Subsequently, the status of evidence is determined in a court verdict that has become legally binding *(inkracht)*, which may take the form of return to the rightful party, destruction, or forfeiture to the state. In corruption cases, seized goods that are forfeited can be used to compensate for state losses through the substitute money payment mechanism. However, the limitation of objects to only those directly related to the criminal act often means that this mechanism falls short in comprehensively recovering state losses.

Specifically, the regulation of asset forfeiture in corruption cases is governed by Law Number 31 of 1999 as amended by Law Number 20 of 2001, particularly in Article 18 paragraphs (1), (2), and (3), which confirm that asset forfeiture is one form of additional penalty to return criminal proceeds. This provision is an extension of the additional penalty system in the Criminal Code as regulated in Article 10 letter b, which includes the revocation of certain rights, forfeiture of goods, and announcement of the judge's verdict. Nevertheless, Article 17 of the Corruption Eradication Law uses the word "may" in imposing the additional penalty, meaning that asset forfeiture is facultative and depends on the judge's consideration. As a result, although it has strategic objectives in recovering state finances, the application of asset forfeiture still faces obstacles in terms of proof, limited scope of objects, and its non-mandatory nature, potentially reducing its effectiveness in optimally eradicating corruption.

From a normative standpoint, the above provisions raise considerable hope for the systematic and comprehensive eradication of corruption, which is not only marked by the imposition of punishment on

perpetrators for their acts of misappropriating state funds, but also by the hope of saving state funds marked by forfeiture of assets obtained from corruption, which can then be used as much as possible for the interests of national development. In addition to the in personam criminal law instrument, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption (Corruption Law) has in fact accommodated asset forfeiture through the civil law route. Juridically, this civil law approach is positioned as an effort to safeguard state assets when the criminal law route encounters procedural obstacles, such as when the defendant dies or is discharged from all charges but state financial losses have in fact occurred (I. S. Adji, 2009). This mechanism is specifically regulated in Articles 32, 33, and 34 of the Corruption Law, which grant authority to the State Attorney (Jaksa Pengacara Negara/JPN) or the aggrieved institution to file a civil lawsuit against the convict, their heirs, or suspects/defendants whose cases have been discontinued. This regulation shows that the philosophy of corruption eradication in Indonesia is not solely oriented toward bodily punishment (retributive justice), but also emphasizes the recovery of state losses (restorative justice) through private law routes when public law instruments can no longer reach the criminal proceeds. The state loss recovery mechanism under Article 32 paragraph (1) of the Corruption Law states:

"When the investigator finds and believes that one or more corruption offense elements lack sufficient evidence, yet state financial losses have actually occurred, the investigator shall immediately submit the investigation case file to the State Attorney for a civil lawsuit or to the aggrieved institution to file a lawsuit."

Continued with paragraph (2) which reads:

"An acquittal in a corruption case does not eliminate the right to claim losses against state finances."

The Corruption Eradication Law also grants the state the right to file a civil suit against assets that a convict concealed, which are discovered only after a final and binding court verdict. Those hidden assets are suspected, or reasonably suspected, to stem from corruption. The suit may be brought against the convict and/or their heirs, with the state authorized to appoint a representative. This is regulated under Article 38 letter c, which reads in full:

"If after the court verdict has obtained legal force, it is found that there are still assets belonging to the convict that are suspected or reasonably suspected to also have originated from corruption that have not been subjected to forfeiture for the state as referred to in Article 38 B paragraph (2), the state may file a civil lawsuit against the convict and/or their heirs."

Asset forfeiture proceeds not only under criminal law but also through civil law. When the State Attorney uses civil instruments to recover state financial losses, the entire recovery process follows applicable civil law both substantive and procedural. Property law, governing asset-person relationships irrespective of criminal status, belongs to civil law. Placing civil liability on corruption perpetrators and their heirs aims to fully recover state losses while serving as shock therapy for would-be corruptors. Crucially, if the corruptor dies before repaying misappropriated state funds, repayment may still be demanded from their heirs (Zebua et al., 2008).

Civil instruments used by the State Attorney to recover state financial losses subject the entire asset recovery procedure to applicable civil law, substantive and procedural alike. Property law, governing asset-person relationships regardless of criminal perpetrator status, belongs to civil law. Placing civil liability on corruption perpetrators and their heirs seeks full recovery of state losses while delivering shock therapy to potential corruptors. Notably, if the corruptor dies before repaying misappropriated state funds, repayment may still be demanded from their heirs (Zebua et al., 2008)

The objects of forfeiture include criminal instruments *(instrumenta sceleris)*, criminal proceeds *(producta sceleris)*, and profits derived from crime *(profectus sceleris)*. Article 97 of Law Number 1 of 2023 on the Criminal Code also affirms that judges may impose additional penalties, including forfeiture of certain goods, in verdicts against defendants proven guilty. The Criminal Code regulation has not yet optimally adopted all approaches used for asset forfeiture. Forfeiture under the Criminal Code still requires a legally binding criminal verdict (conviction-based) as the basis for asset forfeiture, because Article 98 of Law Number 1 of 2023 on the Criminal Code links forfeiture to proof of the defendant's guilt.

Table 1. Asset Recovery Mechanism for Corruption Perpetrators

Criminal Procedure	Civil Procedure
a. Forfeiture of movable and immovable goods used for or obtained from corruption. b. Payment of substitute money or Execution of Seizure. c. Criminal fine. d. Court verdict of forfeiture to the state.	a. Civil lawsuit against legal subjects involved in corruption. b. Lawsuit against the heirs of the deceased corruption perpetrator.

3.1.3. Asset Tracing Mechanism in the Identification and Tracing of Assets Resulting from Corruption

The handling of corruption cases consists of the initial stages of inquiry, investigation, prosecution, legal remedies, and execution. The inquiry through investigation stages are used to collect preliminary evidence or sufficient evidence, where case investigators must find at least two pieces of evidence to advance the case to the next stage. During the investigation stage, investigators begin to seize evidence related to the case, including the suspect's assets or wealth suspected to be criminal proceeds. In addition to finding evidence, investigators also trace assets that can be seized and used for the recovery of state losses. The authority of prosecutors to conduct asset tracing is based on Article 30 letter A of Law No. 11 of 2021 on the Prosecutor's Office, which reads:

"The Prosecutor's Office is authorized to carry out asset recovery activities as regulated in this Law and other statutory regulations."

This article provides an explicit legal standing for the Prosecutor's Office to operate within the scope of asset recovery, not merely criminal prosecution. Investigators take two steps: first, tracing the criminal perpetrator's assets; second, blocking bank savings suspected as corruption proceeds to secure them. Blocking may occur during investigation, prosecution, or trial, where investigators, public prosecutors, or judges may request banks to freeze accounts of suspects or defendants allegedly containing corruption-derived assets. Third, the seizure of evidence or high-value assets by investigators must first obtain permission from the Chairman of the District Court. However, in urgent situations and only for movable objects, seizure may be carried out before obtaining permission from the Chairman of the relevant District Court.

Asset forfeiture plays a substantial role in corruption eradication. Indonesia's experience, consistent with that of other nations, demonstrates that detecting crimes, identifying perpetrators, and imprisoning them (the "follow the suspect" approach) does not effectively reduce crime rates absent complementary efforts to seize and forfeit criminal proceeds and instrumentalities (Muhammad, 2013). If the perpetrator's or defendant's assets have been seized and used as evidence, the prosecutor must prove authentication as evidence of authenticity, identity, integrity, and connection to the criminal act or chain of custody, so that when the case is decided by the panel of judges, the status of the evidence is already clear whether it will be returned or forfeited to the state as recovery of state losses. This is certainly advantageous for the prosecutor since no further asset forfeiture is necessary, but there are many cases in corruption handling where there is no evidence suspected as criminal proceeds of corruption, so that the corruption perpetrator fails to recover state losses.

3.1.4. Juridical Implications of the State Loss Recovery Mechanism on the Effectiveness of Asset Recovery

In the criminal law instrument, which rests on the regulation of the additional penalty of substitute money in Article 18 of the Corruption Law and fines in Article 603 of the National Criminal Code. There is a shift in the regulation of corruption in the National Criminal Code compared to the Corruption Law, particularly in the application of Article 603 of the National Criminal Code compared to Article 2 of the Corruption Law, namely in the lower minimum and maximum limits of criminal fines. The application of Article 2 of the Corruption Law has long been the substance for ensnaring perpetrators who harm state finances. With the National Criminal Code, criminal law codification has occurred. This transitional state of law affects the prosecutor's strategy in demanding recovery of state losses, including in asset forfeiture. The application of Article 2 of the Corruption Law and Article 603 of the National Criminal Code, which are based on personal punishment (in personam), has not yet focused on assets (*in rem*).

Far from being merely redactional, the regulatory migration from Article 2 paragraph (1) of the Corruption Law to Article 603 of the National Criminal Code embodies a transformation of criminal policy of fundamental import. The ongoing evolution of Indonesia's substantive criminal law yields significant

ramifications for the doctrinal construction of corruption offenses that inflict financial loss upon the state. Two overarching dimensions of this shift are as follows:

a. Rationalization of Minimum Prison Sentence

There is a shift in the minimum prison sentence from 4 (four) years under the Corruption Law to 2 (two) years under the National Criminal Code. The implication of this shift reflects an effort to harmonize the law so that the sentence imposed is more proportional. However, from the perspective of asset recovery strategy, the low minimum prison sentence is often disproportionate to the value of the assets misappropriated. This reinforces the argument that bodily criminal instruments *(in personam)* must be supported by more progressive asset forfeiture mechanisms such as NCB, so that corruptors do not merely "pay" for their crimes with a brief period of detention while their criminal proceeds remain safe (Atmasasmita, 2004).

b. Reconstruction of Criminal Fine Sanctions

One of the most controversial shifts is the reduction of the minimum criminal fine. Under Article 2 of the Corruption Law, the minimum fine is set at Rp 200,000,000.00 (two hundred million rupiah). Meanwhile, Article 603 of the National Criminal Code sets the minimum fine at category VI (minimum Rp 10,000,000.00). The legal consequence of this article is that the reduction of the minimum fine threshold carries the risk of weakening the asset recovery instrument from the criminal fine aspect. Theoretically, financial sanctions should function as economic deterrence. This reduction is feared to reduce the amount of asset recovery entering the state treasury through fines (I. S. Adji, 2009).

The transitional period of the National Criminal Code's enforcement in 2026 is moving toward a new paradigm. As reflected in the new paradigm of the National Criminal Code, from retributive justice (punitive revenge) toward restorative and rehabilitative justice through Article 51 letter c of the National Criminal Code, which affirms the purpose of punishment to "restore balance." This step reflects the state's effort to restore the social, economic, and legal order disrupted by criminal acts. From the perspective of realizing social justice, "balance" disrupted by corruption is to be repaired. Corruption causes poverty and inequality (social injustice). Therefore, non-penal policy to forfeit assets is the fairest instrument to restore the community's access to economic resources previously controlled by corruptors (Muladi & Arief, 1984)

Under the provision of Article 18 paragraph (3) of the Corruption Law, the subsidiary prison sentence (as a substitute if the assets are insufficient to pay the substitute money) is often exploited by corruptors. Perpetrators tend to conceal or transfer their assets to other parties and then choose to serve a relatively short additional period of detention rather than return assets worth billions of rupiah. This has implications for the low recovery rate compared to the total value of state losses caused by corruption. The current conventional mechanism does not yet have a progressive instrument to reach assets that have been mixed with legitimate assets (commingled property) or transferred to third parties through complex schemes. Without a strong legal umbrella for asset forfeiture, investigators are often constrained by the principle of legality when they seek to forfeit assets that are clearly criminal proceeds but are formally owned by another party.

Similarly, the asset forfeiture mechanism through civil law also encounters several difficulties that the State Attorney will face in filing civil lawsuits. These include, among others: the civil procedural law used is entirely subject to ordinary civil procedural law, which adheres to the formal proof principle. The burden of proof lies with the claiming party, the State Attorney as plaintiff, alongside principles of party equality and judicial duty to reconcile. The State Attorney must concretely prove state losses, demonstrate that those losses result from or relate to the perpetrator's acts, and identify forfeitable assets belonging to the perpetrator for state loss recovery. With current asset forfeiture both through criminal and civil law requiring a very long time until there is a legally binding verdict, the perpetrator or the perpetrator's family has sufficient time to transfer the criminal proceeds.

3.2. Regulation of Asset Forfeiture Without Criminal Conviction Abroad

3.2.1. Asset Forfeiture in the United States

The United States implements asset forfeiture through the legal framework of United States Code (U.S.C.) Section 981 with a civil forfeiture *in rem* approach, namely a civil lawsuit against assets allegedly originating from criminal acts. This system has long been used, both through criminal forfeiture and non-conviction based forfeiture (NCB), to return criminal proceeds. There are three main mechanisms: administrative forfeiture, civil forfeiture, and criminal forfeiture. Administrative forfeiture can be carried out without court proceedings (with certain exceptions), criminal forfeiture is carried out through a criminal verdict with an *in personam* approach, while civil forfeiture is carried out through a lawsuit against the asset (*in rem*) without requiring a criminal verdict and can be filed before, after, or without criminal proceedings. This NCB

mechanism is widely used to combat organized crime such as drug trafficking and illegal gambling by cutting off criminal funding flows (Hauert, 1994).

The execution of civil forfeiture in the US makes the asset a legal subject, based on the Civil Asset Forfeiture Reform Act (CAFRA) 2000, which also adopts the fugitive disentitlement doctrine, namely the restriction of a fugitive's right to contest seizure unless they surrender. Initially, the application of NCB was domestic in nature, but it evolved to become extraterritorial through the USA Patriot Act 2001, which expanded government authority to seize assets related to serious crimes abroad as long as those assets are within US territory. This law also grants broad authority to authorities to access data and regulate financial transactions, and enables the recognition and enforcement of foreign court decisions (Hauert, 1994; Shinta, 2025). In addition, courts may order the repatriation of assets from abroad or carry out seizures, including freezing of foreign accounts, particularly if related to crimes affecting the US (Cassella, 2006).

Although this legal framework is comprehensive, its implementation faces obstacles such as the limitations of mutual legal assistance treaty (MLA) agreements. To overcome this, the US has developed a mechanism of direct seizure of funds in foreign bank correspondent accounts with strong evidence, while also limiting the right of objection from bank parties. In practice, asset forfeiture can be carried out without waiting for a criminal verdict and runs parallel to criminal court proceedings, but still requires proof of the asset's origin by the owner in accordance with legal provisions (CAFRA 2000).

Institutionally, the implementation of asset forfeiture involves the United States Marshals Service (USMS), which is responsible for managing seized assets, as well as the Department of Justice through the Asset Forfeiture Program (AFP), which aims to prevent and combat crime by forfeiting proceeds and instruments of crime. This program also supports international cooperation through the MLA mechanism managed by the Office of International Affairs (OIA). In addition, there are two channels for returning assets to the victim state: through recognition of foreign court decisions or through US legal initiatives based either on criminal conviction or without criminal conviction.

Empirically, the asset forfeiture program in the US has shown significant results, with a total of more than USD 68 billion collected between 2000–2019 from various criminal acts, including corporate corruption and financial fraud. Recent developments also show a significant increase in the seizure of digital assets, such as the Silk Road case involving the seizure of Bitcoin worth approximately USD 3.36 billion, as well as other major cases reaching approximately USD 14–15 billion, which is one of the largest civil forfeitures in the history of the US Department of Justice. This demonstrates that the NCB and civil forfeiture mechanisms remain effective instruments in law enforcement and recovery of criminal proceeds in the United States.

3.2.2. Asset Forfeiture in the United Kingdom

In the United Kingdom, asset forfeiture is regulated under the Proceeds of Crime Act 2002 (POCA), with one of the main approaches being a civil forfeiture *in rem* lawsuit (civil forfeiture or civil recovery). This mechanism enables the state to seize assets without waiting for a criminal verdict, simply by proving that the assets originated from illegal activities or do not have a legitimate origin. For example, in 2018, the National Crime Agency (NCA) successfully seized more than £3.2 million from a foreign national's bank account after the High Court declared the funds to be criminal proceeds. In general, the UK has five asset forfeiture mechanisms: through criminal conviction, seizure of cash, civil recovery, taxation, and Unexplained Wealth Orders (UWO). Civil recovery is not intended to replace the criminal process, but is used in certain conditions, such as when the perpetrator has died, is outside the jurisdiction, or there is insufficient criminal evidence. The asset recovery process is carried out through the stages of tracing, collecting evidence, freezing, seizure, and asset management, including the possibility of return to the country of origin.

Through the Criminal Finances Act 2017, the UK strengthened this system by introducing UWO, which is an order requiring individuals particularly Politically Exposed Persons (PEP) to explain the origin of their wealth if it is disproportionate to their official income. If it cannot be explained, assets can be frozen through Interim Freezing Orders (IFO) and potentially seized. This provision also enables accountability against parties who control or enjoy the assets, even if they are not the registered owner, thereby expanding the effectiveness of law enforcement in asset recovery. Under these legal provisions, law enforcement authorities have a period of 60 (sixty) days to determine whether they will proceed with the civil asset recovery process before the IFO expires. The convict has the right to apply to reduce the value of the order if they can demonstrate that they do not have other assets that can be used to meet the obligation. Conversely, UK authorities can apply to increase the value of the forfeiture order if additional assets belonging to the convict are found. This mechanism is intended to encourage convicts to sell their assets to satisfy the forfeiture order and avoid additional prison

time. However, this option only applies if forfeiture is considered part of the perpetrator's punishment, not merely as a remedial, preventive, recovery, or security measure (Bostwick et al., 2024).

The value of asset recovery in the UK shows a fluctuating trend but is relatively small compared to the potential scale of economic crime. In 2023, asset forfeiture reached approximately £179 million, falling to £128.5 million in 2024, and increasing to £284.5 million in 2025, including major cases such as Zamira Hajiyeva and alleged corruption in Bangladesh. Nevertheless, these amounts remain far below the estimated scale of economic crime in the UK, which exceeds £100 billion per year. This gap occurs because many assets are transferred abroad, through the use of shell companies, and because not all frozen assets are ultimately successfully seized. By contrast, the United States is considered far more superior and aggressive in asset forfeiture through a structured system, such as the combination of criminal and civil forfeiture, the "follow the money" strategy, early asset freezing, and support from integrated agencies (FBI, DEA, IRS-CI, etc.), self-sustaining funding (AFF and TFF), and extensive international cooperation. Supported by tracing technology, specialist human resources, and profit-sharing incentives, the US is able to handle large cross-border cases with very significant recovery values, even reaching tens of billions of dollars over the past two decades.

3.3. Formulation of Ideal Asset Forfeiture Regulation for Optimizing State Loss Recovery

Indonesia's current asset forfeiture regulation is still oriented toward the in personam approach, which focuses on perpetrators through retributive criminal mechanisms, so that the effectiveness of state loss recovery has not been optimal (Kusnadi, 2020). This approach requires proof of the defendant's guilt before assets can be forfeited, so it is heavily dependent on the success of the law enforcement process, and has weaknesses in dealing with organized crime. Conversely, the *in rem* approach focuses on assets as the object and allows forfeiture through civil mechanisms to more effectively recover state losses. Therefore, reformulation toward the non-conviction based (NCB) approach has become an important need in Indonesia's legal system (Gultom, 2022; Manumpahi, 2021). The limitations of the criminal forfeiture system are evident from the low rate of asset recovery compared to state losses, as well as various obstacles such as concealed assets, fugitive perpetrators, and the difficulty of criminal proof. In addition, the absence of an NCB mechanism and the weak integration among law enforcement agencies further hinders the optimization of asset recovery. Other countries have demonstrated that the NCB approach can accelerate asset recovery and cut the incentives for crime. This is also in line with international obligations through UNCAC, which encourages the implementation of *in rem*-based asset forfeiture.

In Indonesia, the NCB concept is still in the formulation stage through the Asset Forfeiture Draft Law that has not been enacted as of 2025, thus creating a legal vacuum in asset forfeiture without a criminal verdict. This situation impacts the state's limited capacity to handle assets without an owner or a deceased perpetrator. Yet the *in rem* mechanism enables the state to directly sue suspicious assets without depending on the criminal process. Therefore, the enactment of specific regulations has become extremely urgent. The *in rem* approach in NCB operates on the principle of complementing the criminal process and can be implemented before, during, or after a criminal verdict (Putra & Prahassacitta, 2021). Its implementation is supported by reverse burden of proof, which places the burden on the defendant to prove the origin of their assets (O. S. Adji, 1985). This mechanism is relevant because corruption has complex characteristics and is difficult to prove through conventional approaches (Mulyadi, 2015). In addition, reverse burden of proof is also important to enhance the effectiveness of asset forfeiture and prevent injustice (Setiawan, 2019; Abdulahanaa, 2018)

The concept of unexplained wealth as part of NCB is considered easier to implement because it focuses on the discrepancy between wealth and legitimate income with a lighter civil burden of proof (Husein, 2019). This scheme not only simplifies proof, but also serves as a preventive measure to close off opportunities for perpetrators to enjoy criminal proceeds. In addition, this approach is an effective form of financial sanction in recovering state losses. Thus, the paradigm of asset forfeiture shifts from punishing the perpetrator to optimally recovering state losses. In terms of implementation, the application of NCB in Indonesia requires civil procedure law reform, capacity building of human resources, and the establishment of a specialized asset recovery institution (Kennedy, 2006). This is because many of Indonesia's corruptors' assets have been transferred abroad. Furthermore, international cooperation and expanded jurisdiction are needed to pursue assets abroad. This system must also be accompanied by a check and balance mechanism to prevent abuse of authority. With strong regulatory and institutional support, NCB has the potential to become an effective solution in optimizing the recovery of state losses due to corruption.

As a comparison, Indonesia can use methods similar to those used by the United States with the Equitable Sharing Model, where there is a mechanism for sharing proceeds among law enforcement agencies,

including when another country assists in seizure, that country receives a portion of the results of the asset forfeiture. This creates strong incentives to participate in asset forfeiture, including by foreign parties. The concept of civilly suing corruptors' assets is not new to Indonesia. The government has already begun to introduce this effort through Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on Corruption (Corruption Law). According to the Corruption Law, law enforcement officials (State Attorneys) or authorized institutions can civilly sue corruptors' assets if it has been proven that "state losses" exist, along with other reasons namely:

1) There is insufficient evidence to prove the elements of corruption (an acquittal does not bar civil lawsuit efforts);
2) The suspect has died (suing their heirs); and
3) The defendant has died (suing their heirs).

Additionally, civil lawsuits may be filed when, after a final and binding court verdict, a corruption convict still possesses assets not yet forfeited. In such cases, the state may sue the convict and/or their heirs if the defendant failed to prove at trial that the assets were obtained from non-corrupt sources. Although at first glance the civil lawsuit provided in the Corruption Law appears somewhat similar to NCB, there are differences between the civil effort regulated by the Corruption Law and NCB. The civil effort in the Corruption Law still uses the ordinary civil regime, where the court proceedings are still subject to ordinary formal or substantive civil law. Thus, civil lawsuits under the Corruption Law require the prosecutor to prove the existence of state losses. In addition, the provision of Article 38 of Law Number 20 of 2001 also only regulates civil lawsuits after a legally binding court verdict.

This is certainly different from NCB, which uses a different civil regime such as reverse burden of proof. Furthermore, NCB is not related to the criminal perpetrator and treats an asset as the litigating party. In practice, this difference can produce different results as well. The civil lawsuit in the Corruption Law places the burden of proving the "element of state loss" on the State Attorney (State Prosecutor). This is certainly not easy to do. It is even feared that the burden of proof that must be borne by the STATE ATTORNEY in the civil lawsuit is as heavy as criminal proof. By contrast, NCB adopts the principle of reverse burden of proof, where the parties who object are the ones who prove that the asset being sued is not connected to corruption. The State Attorney need only prove a suspected link between the sued asset and a corruption offense. Furthermore, NCB forfeiture is an *in rem* action unrelated to the criminal act. Thus, the State Attorney is not required to prove the "element of state loss" which is a notoriously difficult element to establish in court.

An *in rem* NCB lawsuit provides significant advantages for the State Attorney because it enables rapid seizure of assets before they are transferred or concealed, even without having to wait for suspect, defendant, or convict status. This differs from the civil lawsuit mechanism in the Corruption Law, which can only be conducted after such legal status exists, and which is therefore often too late to anticipate the rapid movement of assets. This advantage makes NCB a more responsive instrument in efforts to recover criminal proceeds. Therefore, the weaknesses of the existing legal regime constitute an important basis for Indonesia to consider adopting NCB. However, the adoption of NCB into Indonesia's legal system is not simple due to its differing principles from civil law in general. It requires the formation of a specific law that comprehensively regulates the legal basis, procedures, and procedural law of NCB so that it can function as lex specialis. Merging NCB into the Corruption Law is considered inappropriate because that law is in the criminal domain, while NCB is a civil instrument. Without a clear separation, it is feared that differences in legal interpretation may arise that actually hinder implementation.

In addition to the regulatory aspect, the success of NCB implementation also heavily depends on the existence of strong political will from the government and law enforcement officials. Given that many corruption cases are related to the political and bureaucratic sectors, the potential for resistance is a challenge that must be anticipated. Therefore, consistent political commitment is the key to ensuring the effectiveness of the implementation of this instrument. Without such support, NCB risks being unable to operate optimally even if it has an adequate legal basis. Furthermore, amendments to Law Number 1 of 2006 on Mutual Legal Assistance (MLA) are also needed so that it is not limited to criminal cases, but also covers NCB (Husein, 2007). This is particularly important in the context of asset seizure abroad, which requires international cooperation. The government also needs to expand and intensify MLA agreements with various countries and ratify existing agreements, particularly in the ASEAN region. Without this step, cross-border asset recovery efforts will face significant obstacles. Moreover, extensive socialization to the public and law enforcement officials is equally important. Given that NCB is a relatively new and somewhat controversial instrument, comprehensive understanding is essential to prevent misunderstandings. Especially since NCB adopts new

principles such as reversal of the burden of proof, which is not yet common in Indonesia's legal system. Shared understanding will help facilitate implementation in practice.

In terms of institutions, the implementation of NCB should not be followed by the establishment of new institutions, but should utilize existing officials such as investigators and public prosecutors. However, a specialized institution needs to be established to manage seized assets so that their economic value is maintained and the goal of recovering state losses can be achieved. Professional asset management will support the overall effectiveness of the NCB system. This is also important to ensure transparency and accountability in asset management. Finally, before fully implementing NCB, the government needs to conduct an in-depth study from economic, social, and political perspectives. The experience of other countries shows that although effective, NCB also generates controversy in practice. Therefore, the selection of the appropriate model must be adapted to Indonesia's conditions so as not to generate resistance from society or the legal community. A careful and measured approach will increase the chances of successful implementation. Comparatively, the application of NCB in various countries has different characteristics although it upholds the same principles. Australia applies the retroactive principle and the concept of unexplained wealth, the Philippines limits it to monetary assets, while the United States has a very broad scope including against foreign accounts. These differences show that there is no single uniform model, so Indonesia needs to adopt the most appropriate approach. Thus, the application of NCB can run effectively while remaining consistent with the national legal system.

The differences in the application of NCB must be taken into consideration by Indonesia when implementing it into the national legal framework. The government must pay attention to the advantages and disadvantages of each method and concept of NCB implementation so that the application of this instrument can be accepted and run effectively. For example, Indonesia can begin by using NCB instruments to seize monetary assets first, as done by the Philippine government. If this succeeds, the government can begin to expand its use to a broader scope, as currently done by the US government. For greater clarity, the following two tables illustrate the differences and similarities between criminal asset forfeiture (Criminal Forfeiture) and Civil Forfeiture (NCB), as well as the application of NCB in common law and civil law jurisdictions.

Table 2. Differences and Similarities Between Criminal Forfeiture and Asset Forfeiture (NCB)

Criminal Forfeiture	Aspect	Asset Forfeiture (NCB)
Against the person (in personam): as part of the criminal charges against the perpetrator.	Object or Target	Against the asset (*in rem*): a judicial action filed by the government against the goods themselves.
Imposed as part of the punishment in a criminal case.	Time of Application	Can be filed before, during (the process of), or after criminal punishment, or even without criminal charges against the perpetrator.
Requires a criminal verdict. Must establish criminal activity "beyond reasonable doubt" or with "genuine conviction."	Connection Between Proceeds and Unlawful Act	Asset-based.
Based on object or value.	Forfeiture	Seizes the object itself, in the case of an innocent owner.

One of the backgrounds for the need to enact an Asset Forfeiture Law is that there is currently no regulation in the form of a law. Indonesia has ratified UNCAC through Law Number 7 of 2006 on the Ratification of UNCAC, but NCB asset forfeiture has not truly been regulated. As a consequence of this ratification, the Indonesian government must align existing legislative provisions with the provisions in the convention, so that Indonesia can conduct asset forfeiture of criminal proceeds, particularly corruption proceeds, to the fullest extent. UNCAC contains comprehensive provisions on NCB asset forfeiture as a mechanism for confiscating criminal proceeds. This framework guides state parties in international cooperation on criminal and financial matters, and in deploying technology to recover corruption proceeds. UNCAC obliges all state parties to consider forfeiture without criminal punishment (NCB asset forfeiture), viewing it as capable of transcending differences in national legal systems. Thus, UNCAC proposes NCB asset forfeiture as a universal tool for corruption eradication across all jurisdictions (Sudarto et al., 2016).

Asset forfeiture without criminal conviction, or NCB, as an effective step in combating organized crime and cross-border corruption. Forfeitable criminal assets comprise five categories (Ramelan, 2013). First, assets

obtained or suspected to have been obtained from criminal conduct. Second, assets directly or indirectly derived from such conduct, including those donated or converted to personal, third-party, or corporate holdings for example, capital, income, or other economic benefits from that wealth. Third, assets strongly suspected as criminal instrumentalities. Fourth, legitimate substitute assets for criminal assets. Fifth, found goods suspected to originate from criminal activity. Statutory regulations shall determine the minimum value subject to forfeiture and any subsequent modifications to that threshold.

In addition to the categories of criminal asset forfeiture, assets owned by any person that are disproportionate to their income or disproportionate to the sources of their wealth increase and who cannot prove the legitimate origin of their acquisition may also be forfeited. Asset forfeiture under criminal asset provisions applies to: (a) cases where the suspect or defendant has died, fled, is permanently ill, or missing; (b) an acquitted defendant; (c) assets whose criminal case cannot be tried; or (d) assets from a convicted case (final and binding) where additional criminal assets are later discovered not previously forfeited. Such asset forfeiture does not eliminate the authority to prosecute the criminal perpetrator.

Furthermore, the criminal asset forfeiture provision states that if criminal assets have been forfeited based on an asset forfeiture verdict, those criminal assets cannot be petitioned for forfeiture in a verdict against the criminal perpetrator. In the event that there is the same object to be forfeited in both criminal case proceedings and an asset forfeiture petition, the examination of the asset forfeiture petition is suspended until there is a judge's verdict in the criminal case. However, if the judge's verdict in the criminal case declares that the asset that is the object of the asset forfeiture petition is forfeited, then the asset forfeiture petition becomes void.

The subjects of non-conviction based asset forfeiture (NCB asset forfeiture) are parties with a potential interest in property from such actions. The forfeiture subject is the party controlling the asset sought to be forfeited. The controlling party may be the perpetrator, family, heirs, or even a third party such as a creditor or another party with rights over the asset petitioned for seizure. Therefore, at the time of forfeiture action, there must be notification to the parties or whoever is responsible for the property. In addition, it is necessary to notify the general public that NCB asset forfeiture will be carried out. This is intended so that if there are other parties with a legal interest in the object to be forfeited, the party concerned can file an opposition.

The next stage grants investigators and public prosecutors authority to block and seize assets. A strong suspicion from asset tracing of criminal assets permits an official to order blocking by the authorized institution. Blocking may be followed by seizure, and the institution must block immediately upon order receipt. The written blocking order must state the official's name and title, asset description, blocking grounds, and asset location. Blocking lasts thirty days from order receipt, extendable by another thirty days. Third parties controlling blocked assets may object. Good-faith officials and executing institutions are immune from criminal or civil prosecution. During blocking, criminal assets are non-transferable. Seizure actions follow statutory regulations.

In this regard, NCB asset forfeiture regulates provisions on forfeiture of assets owned by any person that are disproportionate to their income or disproportionate to the sources of their wealth increase and who cannot prove the legitimate origin of their acquisition such assets may be forfeited. Asset forfeiture may be executed under the criminal asset forfeiture regime in four specified scenarios. First, where the suspect or defendant has died, fled, suffers a permanent medical condition, or cannot be located. Second, where a defendant has been acquitted on all counts. Third, where assets are associated with a criminal case that cannot proceed to trial. Fourth, where a final and binding conviction has been entered, but additional criminal assets are later discovered that were not previously ordered forfeited.

In the event that criminal assets petitioned for forfeiture belong to a third party acting in good faith, the third party may file an objection to the asset forfeiture petition with the chairman of the district court. The third party acting in good faith is obliged to prove their ownership rights over the asset. The Minister who administers government affairs in the field of Law and Human Rights (HAM) may make agreements or arrangements with foreign countries to obtain cost reimbursement and profit sharing from forfeited assets:

a. In a foreign country, as a result of actions taken based on a forfeiture verdict at the request of the government; or

b. In Indonesia, as a result of actions taken in Indonesia based on a forfeiture verdict at the request of a foreign country.

UNCAC requires all state parties to consider NCB asset forfeiture including forfeiture of criminal proceeds without criminal punishment. UNCAC disregards legal system differences among parties, viewing NCB asset forfeiture as transcending such variations and proposing it as a universal corruption eradication

tool. Indonesia's criminal justice system follows its statutory regulations; for corruption, resolution proceeds under the corruption criminal justice mechanism, including asset forfeiture to recover proceeds and restore the state economy. This mechanism is governed by the Corruption Law (Law Number 20 of 2001 amending Law Number 31 of 1999) and Law Number 46 of 2009 on the Corruption Court. Article 18 letter (a) of the Corruption Law provides: *"Forfeiture of tangible or intangible movable goods or immovable goods used for or obtained from corruption, including companies owned by the convict where the corruption was committed, as well as the value of goods substituting those goods."*

Pursuant to this article, the act of asset forfeiture has been codified and established as a sanction against corruption perpetrators in furtherance of recovering criminal proceeds. Moreover, the Corruption Law positions asset forfeiture not solely as a criminal sanction imposed upon the perpetrator, but also as applicable to goods already seized in cases where the defendant dies prior to the rendering of a verdict, provided that sufficiently strong evidence exists that the person concerned committed corruption. Under the Corruption Law, upon the motion of the public prosecutor, the judge issues a determination ordering the forfeiture of the previously seized goods.

In addition to the above provisions, the Corruption Law also contains other criminal law policies against the ownership of assets controlled by corruption perpetrators. Basically, this criminal law policy is applied to the formulative policy, where asset forfeiture of corruption perpetrators can be carried out through 2 (two) channels: through criminal proceedings via a court verdict and through civil law via a civil lawsuit (civil procedure). The following presents the mechanism and procedures for forfeiture of assets, proceeds, or instruments of criminal acts through criminal charges and through the civil lawsuit route.

The Draft Law on Asset Forfeiture articulates three fundamental transformations in criminal law enforcement. The first shift redefines the accused party: not only the criminal perpetrator but also the assets procured through the offense are subject to proceedings. The second shift adopts civil adjudication as the procedural mechanism. The third shift provides that the court's verdict shall carry no criminal penalty, in contrast to sanctions imposed upon other criminal perpetrators (Saputra, 2017).

The NCB asset forfeiture mechanism has been discussed in detail in the Academic Paper of the Draft Law on Criminal Asset Forfeiture written by Dr. Ramelan, S.H., M.H., including the following (Saputra, 2017):

a. Asset tracing in the criminal asset forfeiture mechanism

Investigators and public prosecutors are granted the authority to perform tracing activities aimed at *in rem* forfeiture of criminal assets. When discharging this tracing function, they possess the power to demand documentary evidence from any person, corporate entity, or state institution.

b. The authority conferred upon investigators and public prosecutors to block and seize forfeitable assets operates under the following framework:

1) Strong suspicion from asset tracing of criminal assets permits an official to order blocking by the authorized institution.

2) Blocking may be followed by seizure. The authorized institution must block immediately upon order receipt.

3) The written order must state: (a) the official's name and title; (b) asset description; (c) blocking reasons; and (d) asset location.

4) Blocking lasts thirty (30) days from order receipt, extendable by another thirty (30) days.

5) Third parties controlling blocked assets may object.

6) Good-faith officials and executing institutions are immune from criminal or civil prosecution.

7) Criminal assets are non-transferable during the blocking period.

8) Seizure actions follow statutory regulations.

9) Investigators and public prosecutors must hand over criminal assets and supporting documents to the criminal asset management institution.

c. The procedural law provisions governing the examination of criminal asset forfeiture petitions at court hearings are as follows:

1) Investigation, pre-prosecution, hearing examination, and verdict execution follow statutory regulations.

2) If the district court receives a forfeiture petition and finds jurisdiction, the court chairman appoints a panel or single judge to hear the case.

3) The appointed judge orders the registrar to announce the petition. Within thirty (30) working days of announcement, the judge sets a hearing date and orders the registrar to summon the public prosecutor/state attorney and any opposing party.

4) The public prosecutor submits the forfeiture petition with legal arguments and evidence on the asset's origin and existence. The prosecutor may present the asset, or upon judicial order, an on-site examination is conducted.

5) In case of third-party opposition, the judge gives the opposing party an opportunity to submit supporting evidence.

6) The judge considers all arguments from the public prosecutor and/or third party before deciding whether to accept or reject the forfeiture petition.

Upon the filing of an objection to an asset forfeiture petition, the district court registrar bears the duty to notify the objecting party and to inform the public prosecutor to attend the court hearing directly. The summons must be delivered no later than three days before the scheduled hearing, sent to the party's last known address or residence. Should the party be absent from that address, delivery shall be effected through the village or subdistrict head (or equivalent official) within whose jurisdiction the party's last known address or residence lies. For a party held in state detention, the summons shall be delivered via the detention center official. When a corporation is a party, the summons shall be served upon its management at the corporate domicile as recorded in its articles of association, and one member of management must appear at the hearing to represent the corporation. Receipt of the summons by the party personally, or by or through another individual, must be acknowledged with a signed receipt.

In setting the hearing date, the chief presiding judge must consider the geographical distance between the litigating party's domicile and the court venue. The period between the issuance of the summons and the hearing shall be no less than three working days, unless the summons expressly states that urgency or necessity for examination justifies a shorter period.

d. The formulation of asset forfeiture regulations adopts the successes of the United States and the United Kingdom, which can be used as internationally recognized best practices that have been proven effective, including:

1) Asset Forfeiture Fund (AFF & TFF): Funds from forfeiture are managed professionally to support law enforcement operations; finance training; provide incentives for institutions that successfully forfeit assets; compensate victims. This increases the motivation and capacity of officials.

2) Establishing an Indonesia Asset Forfeiture Fund (IAFF) with the function of collecting all forfeiture proceeds; financing tracing, investigation, and joint operations; performance incentives for the prosecutor's office, PPATK (Financial Intelligence Unit), and the Police; improving accountability through public audits.

3) Establishing a National Asset Recovery Task Force (NARTF) led by the Prosecutor's Office as the central institution (similar to the DOJ), with members from PPATK, the Police, KPK (Corruption Eradication Commission), OJK (Financial Services Authority), the Directorate General of Taxes, Immigration, and Customs; with the tasks of coordinating tracing; freezing → forfeiture → recovery; and data sharing through an integrated system.

4) Modernization of Asset Tracing Technology, adopting the US model of Artificial Intelligence (AI) to map transaction networks as an early warning system for suspicious transactions. An integration system can be established among financial institutions, specifically PPATK and OJK, to conduct cross-checking of assets.

5) Positioning the Prosecutor's Office to carry out duties and functions in leading the asset seizure process. With the consideration that the Prosecutor's Office is ideally suited to be the center of asset recovery because it has integrated authority over criminal, civil, and administrative cases from the prosecution stage through to the execution or enforcement of verdicts stage.

By adopting the key elements of the US model particularly the Non-Conviction-Based Forfeiture mechanism, the establishment of an Asset Forfeiture Fund, and a multi-agency task force Indonesia has the potential to significantly improve asset recovery. This model not only aligns with global standards, but also addresses the structural weaknesses of asset forfeiture that have long persisted in Indonesia. It is hoped that asset forfeiture through the NCB *in rem* mechanism can optimize the recovery of state losses from corruption perpetrators. The approach of suppressing crime rates through the seizure and forfeiture of criminal proceeds and instruments is in line with the principle of swift, simple, and low-cost justice. This approach will increase the possibility of recovering criminal proceeds and instruments without being affected by the success or failure of prosecution and court examination. A reduction in crime rates will provide legal certainty and guarantees of legal protection in Indonesia. This will increase investor confidence in conducting investment and

developing business activities in Indonesia. A reduction in crime rates will also increase the security of development funds and outcomes within the framework of "sustainable development." The welfare of the community can be assessed, among other things, by the crime rate occurring in a country. Crime rate data will serve as a reference in planning sectoral development in the areas of security and law to improve public welfare.

Civil lawsuits should be positioned as a primary legal remedy alongside criminal measures, not merely as facultative or complementary to criminal law under the Corruption Eradication Law. Recovering state losses or criminal proceeds requires a progressive concept of state financial recovery, including asset forfeiture through the NCB *in rem* approach. Accordingly, Indonesia's criminal law system needs reconstruction: seizure and forfeiture of criminal proceeds and instruments must be regulated in a single law. Such regulation must be comprehensive and integrated with other laws to ensure effective implementation, legal certainty, and legal protection guarantees for the community.

4. Conclusions

The present study arrives at the conclusion that Indonesia's state loss recovery mechanism for corruption continues to be dominated by an *in personam* forfeiture model, which conditions forfeiture on the punishment of the offender. The primary legal tools consist of the supplementary penalty of substitute money under Article 18 of the Corruption Law and the imposition of fines pursuant to Article 603 of the National Criminal Code. While civil avenues exist and investigator powers have been strengthened, the overall effectiveness of these mechanisms remains limited, as they are heavily contingent upon the issuance of a final and binding criminal judgment (*inkracht*). This situation causes many assets to be unrecoverable, particularly when the perpetrator dies, flees, or conceals assets through complex schemes. Furthermore, legal regulations scattered across various instruments such as the Criminal Procedure Code, the Criminal Code, the Corruption Law, and the Money Laundering Law create fragmentation and legal gaps, particularly in reaching assets transferred to third parties, money laundering proceeds, or assets located abroad. From an implementation perspective, obstacles also arise from weak data integration, limited asset tracing technology, lack of inter-agency coordination, and the absence of a specialized institution for managing forfeited assets, while criminal perpetrators are increasingly adaptive in disguising their assets.

The results of comparative studies with practices in the United States and the United Kingdom show that the implementation of Non-Conviction Based Asset Forfeiture (NCB) is more effective because it focuses on the legality of assets, not on proving the perpetrator's guilt, thereby allowing forfeiture to proceed even without a criminal verdict. However, although Indonesia has ratified UNCAC, this mechanism has not yet been adopted into the national legal system. Therefore, this study emphasizes the need to reconstruct a more progressive asset forfeiture system through the establishment of specific regulations accommodating NCB, strengthening of asset management institutions, integration of technology-based tracing systems, enhancement of international cooperation, and strengthening of law enforcement capacity. Thus, the success of asset forfeiture is not only determined by legal instruments, but also by a law enforcement paradigm that places asset recovery as the primary objective. As a recommendation, concrete and directed steps are needed at all stages of asset recovery, as well as the acceleration of the enactment of the Asset Forfeiture Draft Law so that Indonesia's legal system is more effective and adaptive in dealing with modern crime.

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