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The Draft Asset Confiscation Law in the Recovery of State Losses

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Original Article

Abstract

Corruption constitutes an extraordinary crime that generates multidimensional harms and significantly undermines state finances. The effectiveness of anti-corruption efforts should be assessed not only through the punishment of offenders but also through the state's capacity to recover losses by means of asset recovery mechanisms. This study examines efforts to recover state losses within the Indonesian criminal law system, analyzes the normative, structural, and practical obstacles encountered, and evaluates the urgency and relevance of the Asset Confiscation Bill as an alternative legal policy. Employing normative legal research, this study adopts statutory, conceptual, comparative, and case-based approaches. The findings indicate that state loss recovery mechanisms reliant on the criminal punishment of offenders remain suboptimal due to the complexity of corruption offenses and the limitations of existing legal instruments. Accordingly, the enactment of the Asset Confiscation Bill, grounded in an asset-based approach, represents a strategic measure to enhance the effectiveness of state loss recovery.

Keywords: *State Loss, Corruption, Asset Forfeiture*

Abstrak

Korupsi merupakan kejahatan luar biasa yang menimbulkan kerugian multidimensional dan berdampak signifikan terhadap keuangan negara. Efektivitas pemberantasan korupsi tidak hanya diukur dari pemidanaan pelaku, tetapi juga dari kemampuan negara dalam memulihkan kerugian melalui mekanisme pengembalian aset. Penelitian ini bertujuan untuk mengkaji upaya pengembalian kerugian negara dalam sistem hukum pidana Indonesia, menganalisis hambatan normatif, struktural, dan praktis yang dihadapi, serta menilai urgensi dan relevansi Rancangan Undang-Undang Perampasan Aset sebagai alternatif kebijakan hukum. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, perbandingan, dan kasus. Hasil penelitian menunjukkan bahwa mekanisme pemulihan kerugian negara yang berbasis pemidanaan pelaku belum optimal akibat kompleksitas kejahatan korupsi dan keterbatasan instrumen hukum. Oleh karena itu, pengesahan RUU Perampasan Aset dengan pendekatan berbasis aset menjadi langkah strategis untuk memaksimalkan pengembalian kerugian negara secara efektif.

Kata kunci: *Kerugian Negara, Korupsi, Perampasan Aset*

1. INTRODUCTION

As a state founded on the rule of law (rechtsstaat), Indonesia bears a constitutional obligation to ensure justice, legal certainty, and social welfare. This rule-of-law principle positions criminal law as a primary instrument for maintaining public order, safeguarding human rights, and protecting the public interest. In the Indonesian context, criminal law did not develop *abistorically*; rather, it evolved through a long process shaped by customary norms and religious legal systems that flourished across the archipelago prior to the colonial era. Islamic kingdoms such as Demak, Banten, Samudera Pasai, and Gowa–Tallo implemented criminal norms grounded in Islamic law, while in Bali, criminal regulation developed within a customary legal framework influenced by Hindu teachings. This historical diversity reflects the inherently pluralistic character of Indonesian criminal law and its early orientation toward substantive justice.

The trajectory of Indonesian criminal law underwent a fundamental transformation during the Dutch colonial period through the codification of the *Wetboek van Strafrecht voor Nederland-Indië* (WvSNI), which was later adopted as the Criminal Code (KUHP) following independence. This codification introduced the Continental European criminal law paradigm, emphasizing the principle of formal legality and the individual criminal liability of offenders. While this framework has contributed to legal certainty, it has proven insufficient in addressing contemporary crimes that are complex, organized, and systemic in nature, particularly corruption.

In Indonesia, corruption is classified as an extraordinary crime due to its extensive and multidimensional impacts. Beyond causing substantial losses to state finances, corruption undermines the integrity of public institutions, erodes public trust, weakens the rule of law, and obstructs national development and social welfare. In response, the state has established a range of legal and institutional mechanisms, including Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes, as well as the creation of the Corruption Eradication Commission (KPK). Nevertheless, the effectiveness of corruption law enforcement continues to face significant challenges, particularly with respect to the recovery of state losses.

Empirical evidence indicates that the success of corruption eradication in Indonesia remains predominantly measured by the number of cases prosecuted and the severity of custodial sentences imposed, rather than by the state's ability to restore assets derived from criminal activity to the public. According to Transparency International, Indonesia ranked 115th out of 180 countries in the Corruption Perceptions Index with a score of 34, reflecting persistent weaknesses in anti-corruption effectiveness. Data from Indonesia Corruption Watch (ICW) further reveals a substantial gap between the value of state losses caused by corruption and the amount recovered through

compensation mechanisms.¹ This disparity underscores the inability of the existing criminal justice system to ensure optimal asset recovery.

A fundamental weakness of the Indonesian criminal justice system lies in its reliance on conviction-based asset forfeiture. Under this model, assets may only be confiscated by the state following a final and binding criminal conviction. In practice, this mechanism encounters serious obstacles when corruption suspects abscond, die, or fall outside Indonesian jurisdiction. Consequently, assets derived from criminal activity often remain under the control of perpetrators or third parties, while the state and society bear irrecoverable losses.

The absence of a comprehensive legal framework governing asset confiscation further creates opportunities for the concealment, dissipation, or diversion of illicit assets, thereby undermining efforts to recover state losses. In this context, the Asset Forfeiture Bill emerges as both relevant and urgent. The bill introduces a Non-Conviction-Based (NCB) asset forfeiture mechanism, allowing the confiscation of assets without requiring a prior criminal conviction, while focusing on establishing a causal link between the assets and criminal conduct. This approach has been adopted in various jurisdictions and is explicitly endorsed by the 2003 United Nations Convention against Corruption (UNCAC) as an effective instrument for the recovery of assets derived from corruption.

Although the Asset Forfeiture Bill was initially proposed in 2008 and subsequently reintroduced into the National Legislation Program, its enactment has remained stalled. This prolonged delay underscores persistent structural and political–legal challenges in prioritizing the recovery of state losses as a central objective of corruption eradication. In the absence of substantive reform in asset forfeiture law, anti-corruption efforts risk being reduced to symbolic punishment of offenders, without delivering tangible restitution to serve the public interest.

Existing scholarship on corruption eradication in Indonesia consistently identifies the recovery of state losses as a critical component of effective law enforcement; however, this objective remains largely underachieved in practice. Numerous studies demonstrate that Indonesia's anti-corruption paradigm continues to be predominantly offender-oriented, emphasizing punitive sanctions, while asset recovery has yet to be institutionalized as a primary focus of the criminal justice system.

Indriana argues that the effectiveness of corruption law enforcement cannot be assessed solely on the basis of custodial sentences, but must also encompass the recovery of state financial losses. Her study highlights both normative and practical obstacles to restitution, including weak enforcement mechanisms and limited legal instruments for tracing and accessing assets derived from corruption. These findings

¹ Kurnia Ramadhana et al., “Catatan Akhir Tahun Agenda Pemberantasan Korupsi 2019 Indonesia Corruption Watch” (Jakarta Selatan, 2019), <https://antikorupsi.org/id/article/catatan-akhir-tahun-agenda-pemberantasan-korupsi-2019-indonesia-corruption-watch>.

suggest that the existing positive law framework has been unable to ensure optimal recovery of state losses.²

These conclusions are reinforced by Jamba et al., who find that asset confiscation under the Corruption Crimes Law remains discretionary and heavily dependent on judicial interpretation. Although the legal framework permits asset confiscation through both criminal and civil proceedings, its implementation is hindered by evidentiary challenges, inadequate inter-agency coordination, and the absence of a comprehensive legal basis for confiscation without a prior criminal conviction. Consequently, the recovery of state losses remains suboptimal.³

Kaharuddin et al. focus specifically on the urgency of ratifying the Asset Forfeiture Bill (RUU PA), identifying political considerations and regulatory disharmony as the primary causes of legislative delay. Their study confirms that the Non-Conviction-Based Confiscation (NCBC) mechanism proposed in the bill represents a strategic tool for addressing legal gaps when corrupt actors cannot be prosecuted through conventional criminal proceedings. However, the analysis situates the urgency of the RUU PA largely within a general normative framework, without providing an in-depth assessment of its systemic implications for the national criminal justice system.⁴

From an economic perspective, Zaenudin and Wasitaatmadja employ an Economic Analysis of Law (EAL) to argue that Non-Conviction-Based Asset Forfeiture (NCBAF) is not only legally efficient but also economically beneficial for the state. Their study emphasizes that conviction-based approaches create opportunities for offenders to conceal or dissipate illicit assets. Nevertheless, the analysis prioritizes economic efficiency, leaving issues related to human rights protection and due process guarantees insufficiently explored.⁵

Arjunanda et al. examine the integration of the RUU PA within Indonesia's criminal and civil procedural systems, demonstrating that the bill adopts an in rem approach and incorporates the concept of unexplained wealth to broaden the scope of asset confiscation. A key contribution of this study is its emphasis on the necessity of transparent and accountable asset management mechanisms to ensure that forfeiture serves the public interest. However, the analysis remains largely technical and does not

² Yayan Indriana, "Pengembalian Ganti Rugi Keuangan Negara Pada Perkara Tindak Pidana Korupsi," *Jurnal Cepalo* 2, no. 2 (2018): 121–28, <https://jurnal.fh.unila.ac.id/index.php/cepal0/article/download/1769/1486/5769>.

³ Padrisan Jamba, Lenny Husna, and Ukas Ukas, "Analisis Yuridis Perampasan Aset Koruptor Ditinjau Berdasarkan Perspektif Undang-Undang Pemberantasan Tindak Pidana Korupsi," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 10978–10994, <https://doi.org/10.61104/alz.v3i6.2874>.

⁴ Kaharuddin Kaharuddin et al., "Analisis Yuridis Terhadap Urgensi Dan Implementasi Rancangan Undang-Undang Tentang Perampasan Aset Dalam Upaya Pemberantasan Tindak Pidana Korupsi Di Indonesia," *Jurnal Cendekia Ilmiah* 5, no. 1 (2025): 3379–3390, <https://doi.org/10.56799/jceki.v5i1.13977>.

⁵ Fakhri Rizki Zaenudin and Fokky Fuad Wasitaatmadja, "Urgensi Pengesahan Rancangan Undang-Undang Perampasan Aset Ditinjau Dari Analisis Ekonomi Atas Hukum," *Tema Hukum Perdata Dan Kenotariatan* 6, no. 4 (2025): 1–21, <https://doi.org/10.56370/jhlg.v6i4.2247>.

explicitly engage with the philosophical foundations of Indonesian criminal law, particularly its commitment to substantive justice.⁶

A more comprehensive examination of the Non-Conviction-Based Asset Forfeiture paradigm is offered by Paruntu and Sudiro, who propose a legal model integrating evidentiary standards, safeguards for good-faith third parties, and harmonization with the 2003 United Nations Convention against Corruption (UNCAC). While the originality of this study lies in its systemic legal construction, its analysis remains predominantly conceptual and is not explicitly linked to the empirical reality of Indonesia's persistently low rates of state loss recovery.⁷

Other studies, including Sembung et al. and Putra and Sugama, emphasize that continued reliance on conviction-based forfeiture is increasingly incompatible with the transnational and complex character of contemporary corruption. Both studies concur that asset confiscation without prior criminal conviction constitutes a strategic response to these challenges, while simultaneously underscoring the necessity of safeguarding human rights and applying the precautionary principle in its implementation.⁸

The existing literature thus reflects a broad academic consensus regarding the urgency of reforming asset forfeiture law in Indonesia. Nevertheless, no comprehensive study has systematically linked the Non-Conviction-Based Asset Forfeiture mechanism proposed in the Asset Forfeiture Bill to the Indonesian criminal law paradigm, which is grounded in the principles of substantive justice, human rights protection, and the public interest. This study addresses that gap by examining the Asset Forfeiture Bill not merely as a technical instrument for asset recovery, but as an integral component of a broader transformation of the criminal justice system—one that shifts the focus from offender-centered punishment toward the effective recovery of state losses. Accordingly, this study aims to:

- 1) critically examine current efforts to recover state losses resulting from corruption within the Indonesian criminal law system;
- 2) analyze the normative, structural, and practical barriers to the recovery of state losses arising from corruption; and

⁶ Ahmad Dicky Arjunanda et al., “Analisis Rancangan Undang-Undang Perampasan Aset Dalam Sistem Pemerintahan Indonesia,” *Jurnal Hukum, Administrasi Publik Dan Negara* 2, no. 6 (2025): 1–10, <https://doi.org/10.62383/hukum.v2i6.658>.

⁷ Natasya Klarisa Paruntu and Amad Sudiro, “Pergeseran Paradigma Pemulihan Aset Dalam Tindak Pidana Korupsi Untuk Mewujudkan Optimalisasi Pengembalian Kerugian Negara,” *Jurnal USM Law Review* 8, no. 3 (2025): 1903–29, <https://doi.org/10.26623/julr.v8i3.12888>.

⁸ Argraldo Jizrial Patriot Sembung, Maarthen Youseph Tampanguma, and Herlyanty Yuliana A. Bawole, “Optimalisasi Perampasan Aset Dalam Tindak Pidana Korupsi,” *Lex Crimen* 13, no. 1 (2025): 1–12, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/62767>; I Putu Aris Perdana Putra and I Dewa Gede Dana Sugama, “Efektivitas Penerapan Perampasan Aset Dalam Mencegah Dan Memberantas Korupsi,” *Kertha Wicara: Journal Ilmu Hukum* 15, no. 3 (2025): 179–90, <https://ejournal4.unud.ac.id/index.php/wicara/id/article/view/49>.

- 3) assess the urgency and relevance of the Asset Forfeiture Bill as an alternative legal policy for maximizing the recovery of state losses.

2. RESEARCH METHODOLOGY

This study employs normative legal research, focusing on the analysis of legal norms, principles, and the systematic structure of laws and regulations governing the confiscation of assets derived from corruption and the recovery of state losses in Indonesia. This methodological approach is adopted because the issues examined are primarily conceptual and normative in nature, particularly those concerning regulatory gaps, normative disharmony, and the need to reformulate criminal law policy through the Draft Asset Forfeiture Law.

The research adopts several analytical approaches, namely statutory, conceptual, comparative, and limited case-based approaches. The statutory approach is used to examine relevant legal instruments, including the Anti-Corruption Law, the Anti-Money Laundering Law, criminal procedural law, and the substantive provisions of the Asset Forfeiture Bill as *ius constitutum*. The conceptual approach is applied to analyze legal doctrines and principles such as Non-Conviction-Based Asset Forfeiture, the principle of legality, due process of law, and the protection of human rights. The comparative approach examines asset forfeiture regimes in selected jurisdictions as benchmarks for best practices, while the limited case-based approach analyzes judicial decisions concerning asset confiscation and the imposition of compensation as an additional criminal sanction.

The legal materials utilized in this study consist of primary, secondary, and tertiary sources collected through an extensive literature review. Data analysis is conducted qualitatively and normatively, employing a deductive and argumentative method to evaluate the coherence, adequacy, and effectiveness of existing legal norms in facilitating the recovery of state losses arising from corruption.

3. RESEARCH RESULT AND DISCUSSION

3.1. Efforts to Recover State Losses Resulting from Corruption in the Indonesian Criminal Law System

This section critically examines efforts to recover state losses resulting from corruption within the current Indonesian criminal law system. The analysis focuses on the effectiveness of existing legal mechanisms—particularly those relying on the criminal punishment of offenders—and evaluates the extent to which such mechanisms are capable of ensuring the optimal recovery of state losses. Employing a normative legal approach grounded in the analysis of statutory frameworks and law enforcement

practices, this study identifies several key findings that reveal both structural and conceptual limitations in Indonesia's asset recovery regime.

From a normative perspective, Indonesian criminal law formally accommodates the recovery of state losses through additional criminal sanctions in the form of compensation, as provided under Article 18 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes. This provision reflects legislative recognition that punishment in corruption cases is not exclusively retributive, but also restorative in nature, particularly with respect to the recovery of state losses. Doctrinally, this framework is consistent with the principle that "crime does not pay," which asserts that offenders should not be permitted to benefit from the proceeds of their unlawful conduct.

In practice, however, the implementation of compensatory sanctions has proven far from effective. Empirical data reported by corruption monitoring institutions demonstrate a substantial disparity between the value of state losses caused by corruption and the amounts ultimately recovered through judicial decisions. In many cases, convicted offenders are either unable or unwilling to fulfill their compensation obligations. When compensation is not paid, Indonesian criminal law permits substitution with an alternative term of imprisonment, a measure that substantively fails to contribute to the recovery of state losses.

These findings indicate that reliance on criminal punishment as the primary mechanism for recovering state losses is inherently problematic. While custodial sanctions may generate a deterrent effect, they do not ensure the restitution of assets derived from corruption to the state. Moreover, illicit assets are frequently transferred, concealed, or placed under the names of third parties prior to the commencement of judicial proceedings. Such practices significantly hinder the ability of law enforcement authorities to trace, freeze, and confiscate assets, particularly within a legal framework that conditions forfeiture on the existence of a final and binding criminal conviction.

The results of this study are consistent with the findings of Indriana and Pebrianto et al., who identify structural barriers to the recovery of state losses in corruption cases, both in terms of legal norms and enforcement capacity.⁹ This study also corroborates the conclusions of Jamba et al., who observe that asset forfeiture under Indonesian positive law remains discretionary and largely dependent on judicial interpretation.¹⁰ However, this study advances the existing literature by arguing that the core problem lies not merely in the implementation of legal norms, but in the prevailing criminal law paradigm itself, which remains offender-oriented rather than asset-oriented.

⁹ Indriana, "Pengembalian Ganti Rugi Keuangan Negara Pada Perkara Tindak Pidana Korupsi"; Roli Pebrianto et al., "Diskursus Perampasan Aset Sebagai Bentuk Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi," *Jurnal Hukum Perjuangan* 3, no. 1 (2025): 313–26, <https://doi.org/10.58406/jurnalhukumperjuangan.v3i1.1914>.

¹⁰ Jamba, Husna, and Ukas, "Analisis Yuridis Perampasan Aset Koruptor Ditinjau Berdasarkan Perspektif Undang-Undang Pemberantasan Tindak Pidana Korupsi."

In contrast to the analysis of Zaenudin and Wasitaatmadja, which emphasizes economic efficiency through an Economic Analysis of Law framework, this study affirms that the recovery of state losses cannot be assessed solely in terms of efficiency.¹¹ Rather, it must also be understood through the lens of substantive justice and the public interest. Asset recovery is therefore not merely an economic exercise, but a mechanism for restoring public trust in the state and reinforcing the legitimacy of the criminal justice system.

Reliance on conviction-based asset recovery mechanisms is increasingly inadequate for addressing the complexities of contemporary corruption, which is often organized, transnational, and cross-jurisdictional in nature. As an economic crime, corruption cannot always be effectively addressed through criminal prosecution, particularly in situations where offenders abscond, die, or fall beyond the reach of national jurisdiction. In such circumstances, the recovery of state losses must shift its focus from the offender to the object of the crime, namely the assets derived from corrupt activities.¹²

An asset-based approach is therefore both relevant and essential within the context of Indonesian criminal law reform. This approach enables the state to trace and confiscate assets proven to originate from corruption, irrespective of the perpetrator's criminal status.¹³ Under this framework, the recovery of state losses no longer depends exclusively on the success of criminal prosecution, but rather on the state's institutional capacity to identify, secure, and reclaim illicit assets.

Accordingly, the effectiveness of corruption eradication should not be assessed solely by the number of criminal convictions or the severity of custodial sentences imposed, but by the extent to which the state succeeds in restoring losses caused by corruption.¹⁴ As long as the Indonesian criminal justice system continues to prioritize criminal punishment as the primary mechanism for recovering state losses, a persistent disparity will remain between the actual financial harm caused by corruption and the assets ultimately returned to the public.

On this basis, the findings of this study underscore the necessity of a paradigm shift in the Indonesian criminal justice system—from a perpetrator-oriented model toward an asset-oriented approach. This shift is not intended to undermine the

¹¹ Zaenudin and Wasitaatmadja, "Urgensi Pengesahan Rancangan Undang-Undang Perampasan Aset Ditinjau Dari Analisis Ekonomi Atas Hukum."

¹² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Prenada Media, 2016), <https://prenadamedia.com/produk/bunga-rampai-kebijakan-hukum-pidana/>; Muladi Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

¹³ Rihantoro Bayuaji and Fikri Hadi, "Asset Recovery In Corruption Cases In Indonesia: A Human Rights Perspective," *Fiat Justitia: Jurnal Ilmu Hukum* 19, no. 1 (2025): 93–112, <https://doi.org/10.25041/fiatjustitia.v19no1.4024>.

¹⁴ Fendi Nugroho, Hartiwiningsih Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, "Rethinking Subsidiary in Corruption Cases: Indonesian Experiences," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 686–713, <https://doi.org/10.53955/jhcls.v5i2.714>.

principles of due process of law or the protection of human rights, but rather to reinforce the role of criminal law as an instrument for safeguarding the public interest. Within this paradigm, the recovery of state losses is positioned as a central objective of corruption eradication, consistent with the principle that crime should not yield economic benefit and with the demands of substantive justice in a modern rule-of-law system.

3.2. Normative, Structural, and Practical Barriers to the Recovery of State Losses Resulting from Corruption

This section analyzes the normative, structural, and practical barriers to recovering state losses resulting from corruption within the Indonesian criminal justice system. The discussion focuses on the extent to which the existing legal framework is capable of addressing the complexities of contemporary corruption, as well as the institutional and technical constraints that impede the effective return of crime-derived assets to the state.

From a normative standpoint, the recovery of state losses is supported by a relatively adequate legal framework. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 authorizes law enforcement authorities to seek restitution, confiscate assets obtained from corruption, and pursue civil actions against offenders or related parties. In addition, anti-money laundering regulations provide legal mechanisms for tracing and freezing assets suspected of originating from corruption. Nevertheless, this study demonstrates that the existence of such legal provisions does not, in itself, ensure the effective recovery of state losses in practice.

The primary normative barrier lies in the continued reliance on conviction-based asset recovery mechanisms. Provisions governing compensation and confiscation require a final and binding criminal judgment, rendering the recovery of state losses heavily dependent on the outcome of criminal prosecution. When offenders die, abscond, or cannot be brought before the court, the state loses a critical legal basis for seizing assets derived from corruption. Moreover, under Indonesian positive law, asset confiscation remains discretionary and largely dependent on judicial interpretation, creating the potential for inconsistent rulings and legal uncertainty.

In addition to normative constraints, this study identifies significant structural barriers to asset recovery. The increasing complexity of corruption offenses—particularly those involving transnational networks—demands a high level of institutional capacity and technical expertise. However, the findings indicate that law enforcement agencies continue to face limitations in asset tracing, financial investigation, and forensic auditing. These challenges are further compounded by the lack of effective interoperability among information systems operated by key institutions, including the police, public prosecutors, the Corruption Eradication Commission (KPK), the Financial Transaction Reports and Analysis Center (PPATK),

and state asset management bodies. The absence of integrated data systems hampers timely and accurate access to information on financial flows and asset ownership, thereby delaying efforts to secure illicit assets.

Structural obstacles are also evident in the lengthy and multi-layered bureaucratic procedures governing asset confiscation, management, and execution. In practice, confiscated assets often suffer depreciation or even disappear due to deficiencies in asset management mechanisms. This condition illustrates that the recovery of state losses is contingent not only upon successful confiscation, but also upon the effectiveness of post-confiscation asset management and execution.

Practical obstacles to the recovery of state losses further exacerbate existing challenges. Corruption offenders frequently employ sophisticated money-laundering techniques to conceal the origins of illicit assets, including the use of beneficial ownership structures, digital financial instruments such as cryptocurrencies, and the placement of assets in tax-haven jurisdictions. These practices significantly complicate law enforcement efforts to identify assets and to establish a causal link between such assets and corrupt activities. Moreover, during the execution of compensation orders, resistance from convicted offenders and ownership disputes involving third parties claiming lawful title to the assets are common. Such disputes often trigger additional legal proceedings that are both time-consuming and costly, thereby undermining the timely and effective recovery of state losses.

The findings of this study are consistent with those of Jamba et al., who highlight implementation challenges in asset confiscation arising from weak inter-agency coordination.¹⁵ This study also corroborates the conclusions of Kaharuddin et al., which emphasize that the absence of a legal framework allowing asset confiscation without a prior criminal conviction constitutes a major factor contributing to low recovery rates.¹⁶ However, unlike prior studies that tend to address regulatory, institutional, or practical issues in isolation, this research offers a more comprehensive analysis by conceptualizing normative, structural, and practical barriers as interconnected components of a single systemic problem.

The persistently low level of state loss recovery cannot be attributed solely to deficiencies in individual law enforcement performance, but rather reflects structural shortcomings in the design of the legal system, which has not fully adapted to the evolving dynamics of modern corruption. Continued reliance on a criminalization-based approach creates a structural bottleneck in the asset recovery process¹⁷, while advances

¹⁵ Jamba, Husna, and Ukas, “Analisis Yuridis Perampasan Aset Koruptor Ditinjau Berdasarkan Perspektif Undang-Undang Pemberantasan Tindak Pidana Korupsi.”

¹⁶ Kaharuddin et al., “Analisis Yuridis Terhadap Urgensi Dan Implementasi Rancangan Undang-Undang Tentang Perampasan Aset Dalam Upaya Pemberantasan Tindak Pidana Korupsi Di Indonesia.”

¹⁷ Roe Sarel, “Crime and Punishment in Times of Pandemics,” *European Journal of Law and Economics* 54 (2022): 155–186, <https://doi.org/10.1007/s10657-021-09720-7>.

in financial technology and globalization provide greater opportunities for offenders to conceal illicit proceeds beyond the reach of national legal systems.

Effective recovery of state losses resulting from corruption therefore requires comprehensive legal and institutional reform. As long as the Indonesian criminal justice system relies on fragmented and partial asset recovery mechanisms, recovery outcomes are likely to remain suboptimal. A more progressive and integrated legal framework is thus necessary—one that enables effective asset confiscation without exclusive dependence on criminal conviction, while simultaneously strengthening institutional capacity and inter-agency coordination.

The findings of this study confirm that normative, structural, and practical barriers to state loss recovery constitute a set of interrelated systemic challenges. Without coordinated and integrated reform efforts, the fundamental objective of corruption eradication—namely, the protection of state finances and the public interest—will be difficult to achieve. This study therefore reinforces the urgency of reforming asset recovery policy as a core element of an effective and sustainable anti-corruption strategy.

3.3. Urgency and Relevance of the Asset Forfeiture Bill as an Alternative Legal Policy

This section assesses the urgency and relevance of the Asset Forfeiture Bill as an alternative legal policy aimed at maximizing the recovery of state losses resulting from corruption. The analysis focuses on the limitations of asset recovery mechanisms within the current Indonesian criminal law framework and evaluates the transformative potential of an asset-based recovery model through the Non-Conviction-Based Asset Forfeiture (NCB) mechanism. Employing a normative juridical approach and conceptual analysis of statutory provisions and law enforcement practices, this study situates the Asset Forfeiture Bill within the broader objectives of effective corruption eradication and the protection of state finances.

At present, the recovery of state losses remains heavily dependent on an *in personam* approach, in which criminal prosecution constitutes a prerequisite for asset confiscation. In practice, additional criminal sanctions in the form of restitution, as regulated under the Corruption Eradication Law, frequently fail to achieve full recovery of state losses. Evidentiary constraints, protracted judicial proceedings, the death or flight of offenders, and the successful concealment or diversion of illicit assets often result in crime-derived property remaining beyond the reach of the state, despite strong indications of its unlawful origin. This condition reveals a persistent enforcement gap between the normative objective of restoring state losses and the realities of criminal law enforcement.

The Asset Forfeiture Bill is therefore of particular relevance, as it introduces a paradigm shift from a perpetrator-centered model to an asset-based (*in rem*) approach.

The NCB mechanism embedded in the bill enables the state to confiscate assets reasonably suspected of originating from criminal conduct without awaiting a final and binding criminal conviction against the asset holder. Empirical and comparative studies demonstrate that this mechanism is capable of overcoming structural and technical barriers to asset recovery, especially in cases involving fugitives, deceased defendants, or evidentiary difficulties in proving *mens rea* and *actus reus*.

A central feature of the Asset Forfeiture Bill is the partial reversal of the burden of proof, which functions as a key instrument for enhancing the effectiveness of state loss recovery. In many corruption cases, a pronounced discrepancy exists between an individual's accumulated wealth and their verifiable lawful income. Under the NCB framework, the state is required to establish a reasonable basis indicating that assets lack a legitimate economic explanation, after which the asset holder bears the burden of demonstrating the legality of their acquisition. This evidentiary model is widely regarded as more responsive to the concealed, complex, and organized nature of contemporary corruption.

Consistent with international scholarship, this study affirms that *in rem* asset confiscation constitutes a core component of modern anti-corruption regimes. Prior research indicates that jurisdictions adopting NCB mechanisms tend to achieve higher asset recovery rates than those relying exclusively on conventional conviction-based approaches.¹⁸ This study contributes to the literature by situating the relevance of the Asset Forfeiture Bill within the specific context of the Indonesian legal system, which remains predominantly oriented toward retributive justice rather than restorative and reparative justice in the regulation of economic crimes.

The urgency of enacting the Asset Forfeiture Bill thus derives not only from the technical necessity of improving state loss recovery, but also from the normative imperative to align Indonesia's legal system with developments in global economic criminal law. By broadening the scope of confiscable assets to include proceeds of crime, instrumentalities, substitute assets, and assets resulting from the transformation or commingling of funds, the bill addresses legal loopholes that have been systematically exploited through money-laundering practices. Moreover, the explicit inclusion of digital assets and cryptocurrencies within the confiscation regime reflects a timely response to the increasing use of modern financial instruments to conceal the proceeds of corruption.

Furthermore, strengthening authority over asset tracing, provisional seizure, and asset freezing prior to a final judgment introduces a preventive dimension that has

¹⁸ Dewic Sri Ratnaning Dhumilah, Muhammad Mustofa, and Md. Shodiq, "Reconstruction of The Expansion of Criminal Sanctions For Money Laundering Crimes Through Non-Conviction Based (NCB) Asset Forfeiture And In Rem Lawsuit," *Asian Journal of Social and Humanities* 3, no. 9 (2025): 1717–27, <https://doi.org/10.59888/ajosh.v3i9.586>; Mat Tromme, "Waging War Against Corruption in Developing Countries: How Asset Recovery Can Be Compliant with the Rule of Law," *Duke Journal of Comparative & International Law* 29 (2019): 165–233.

remained underdeveloped within Indonesia's positive legal system. Enhanced integration between law enforcement agencies and financial intelligence—particularly through the role of the Financial Transaction Reports and Analysis Center (PPATK)—facilitates the early detection and preservation of assets before they are transferred across jurisdictions or concealed through layered transactions. This indicates that the Asset Forfeiture Bill is oriented not only toward repressive enforcement but also toward the early prevention of state asset dissipation.

Nevertheless, this study underscores the need to balance the effectiveness of asset recovery mechanisms with the protection of the rights of bona fide third parties. Provisions governing good-faith third parties are essential for maintaining legal certainty and fostering a sound business environment. In this regard, allocating the burden of proof of good faith to third parties is considered appropriate to prevent the abuse of nominee arrangements by corrupt actors, thereby ensuring that protective measures do not evolve into new legal loopholes that undermine the objectives of asset forfeiture.

This study concludes that the Asset Forfeiture Bill is both urgent and highly relevant as an alternative legal policy instrument for maximizing the recovery of state losses. The shift toward an asset-based paradigm represents a rational response to the structural limitations of the conventional criminal justice system in addressing increasingly complex and transnational corruption. Accordingly, the enactment of the Asset Forfeiture Bill should be regarded not merely as a policy option, but as an imperative to ensure the effective realization of the principle that crime does not pay within Indonesia's law enforcement framework.

4. CONCLUSION

This study examines the effectiveness of recovering state losses arising from corruption within Indonesia's criminal justice system, identifies the normative, structural, and practical obstacles to asset recovery, and assesses the urgency and relevance of the Asset Forfeiture Bill as an alternative legal policy. The findings indicate that the existing mechanism for recovering state losses—predominantly based on an *in personam* approach to punishment, particularly through the imposition of additional monetary penalties—has been inadequate to ensure optimal recovery. Key obstacles include normative constraints, the increasing complexity of contemporary corruption offenses, limited institutional capacity, and the systematic concealment and cross-border diversion of illicit assets.

This study further confirms that an asset-based approach, particularly through the Non-Conviction-Based Asset Forfeiture mechanism proposed in the Asset Forfeiture Bill, constitutes an urgent and relevant instrument for addressing legal gaps in asset recovery. Both theoretically and practically, the study reinforces an anti-corruption paradigm oriented toward the recovery of state losses and the effective realization of the principle that crime does not pay. However, the analysis is limited to normative and

conceptual dimensions and does not empirically assess the effectiveness of policy implementation. Accordingly, this study recommends the prompt enactment of the Asset Forfeiture Bill, while ensuring the protection of human rights and the preservation of legal certainty. Further research is necessary to examine the empirical performance and comparative implementation of asset forfeiture regimes across jurisdictions in order to inform and refine national policy development.

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