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Confiscation of Corruptors' Assets: A Strategy for State Financial Recovery and Prevention of Corruption Crimes

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Abstract: Corruption is an extraordinary crime that not only results in state financial losses but also hinders national development and undermines public trust in the government. The current legal system still relies on a conviction-based forfeiture mechanism, requiring asset confiscation to await a final and binding criminal verdict. This situation has resulted in suboptimal recovery of corrupt assets, as perpetrators have the opportunity to divert or conceal assets during the judicial process. This study aims to analyze asset confiscation as an instrument for recovering state finances and to examine the urgency of drafting an Asset Forfeiture Law to strengthen the eradication of corruption in Indonesia. The study employed a normative juridical method with a statutory and conceptual approach. Data were obtained through a literature review of primary, secondary, and tertiary legal materials, then analyzed qualitatively using prescriptive analysis methods. The results indicate that asset confiscation plays a strategic role in recovering state financial losses, eliminating perpetrators' economic gains, and increasing the deterrent effect through the concept of impoverishing corruptors. However, the current legal regulations still have various limitations due to their reliance on criminal verdicts. Therefore, the drafting of the Asset Forfeiture Bill is crucial because it offers a non-conviction-based asset forfeiture mechanism with an in rem model that allows the state to confiscate assets more quickly, effectively, and efficiently without having to wait for a final and binding criminal verdict. This is expected to strengthen the asset recovery system and support the eradication of corruption in Indonesia.

Keywords: Asset Forfeiture, Corruption, State Financial Recovery, Non-Conviction-Based Asset Forfeiture, Asset Forfeiture Bill

INTRODUCTION

Corruption in Indonesia is not a new problem, but its characteristics have shifted significantly over time. While in the past, corrupt practices tended to be simple and limited to the abuse of administrative authority, in the last decade, the modus operandi used have become increasingly sophisticated and structured (Mulyadi 2024). The Corruption Perceptions Index released by Transparency International and the annual reports of domestic law enforcement agencies consistently show that although the number of corruption cases prosecuted fluctuates

from year to year, the nominal state financial losses incurred actually show a worrying upward trend (Mulyadi 2024). New emerging methods include cross-jurisdictional money laundering, the use of shell companies in tax havens, the use of nominees or third parties to disguise asset ownership, and the use of digital financial instruments and crypto assets, which are relatively difficult to track by conventional financial oversight systems. The impacts are not limited to the economic aspect of the loss of state finances, but also extend to broader social dimensions, including the erosion of public trust in government institutions, the hampering of equitable development across regions, and a weakening investment climate due to poor perceptions of clean governance (Eka et al. 2025).

Traditional law enforcement efforts have proven incapable of adequately addressing the challenge of asset recovery. The conventional approach, which focuses on punishing the perpetrator (follow the suspect approach), essentially emphasizes proving individual guilt and imposing criminal sanctions, rather than systematic efforts to track, freeze, and return the proceeds of crime (Fery Yudistira, Erna Dewi 2026). As a result, many cases have been found in which perpetrators of corruption have been sentenced to severe criminal penalties, yet the state still fails to recover the full financial losses incurred. This situation is exacerbated by the retributive nature of the criminal approach, which does not effectively break the chain of economic benefits enjoyed by perpetrators and affiliated parties. As a consequence, the potential for recidivism or the repetition of corruption remains high, given that the economic incentives for these crimes have not been completely eliminated (Laurence R. Helfer, Cecily Rose 2023).

From a legal perspective and in practice, the process of confiscation, recovery, and repatriation of assets resulting from corruption consistently faces various fundamental structural obstacles (Zaman et al. 2026). Current legal instruments, as stipulated in the Criminal Procedure Code and the Money Laundering Law, still adhere to the conventional criminal principle of proof, which requires a final and binding court decision (in kracht van gewijsde) before assets can be definitively confiscated by the state. This conviction-based forfeiture approach creates significant legal loopholes in practice, as the protracted criminal justice process allows perpetrators time and space to divert, conceal, transfer, or even dispose of the proceeds of crime before a final and binding verdict is reached (Irma Reisalinda Ayuningsih 2022). The burden of proof, which requires a direct link between the asset and the crime, further complicates the confiscation process, particularly for assets that have been commingled with legitimate assets.

This problem is further complicated by weak coordination between law enforcement agencies authorized to eradicate corruption and recover assets. The fragmentation of authority between the Corruption Eradication Commission (KPK), the Attorney General's Office (AGO), the Indonesian National Police (Polri), the Financial Transaction Reports and Analysis Center (PPATK), the Directorate General of Taxes (DGT), and the Ministry of Foreign Affairs, within the context of international cooperation, often results in overlapping authority and slow information exchange between institutions (Irma Reisalinda Ayuningsih 2022). The absence of an integrated database on the asset profiles of suspects and defendants also hampers the process of tracking assets quickly, accurately, and comprehensively. The challenge becomes even more complex at the international level, given that many assets resulting from corruption are stored or concealed in countries with strict banking secrecy regimes or jurisdictions that lack extradition or mutual legal assistance treaties with Indonesia (Gebrihet 2026). In practice, the process of repatriating assets across borders takes years, is costly, and diplomatic cooperation is often slow and does not always yield optimal results. The state's inability to optimally recover assets obtained from corruption imposes significant opportunity costs on state finances (Sinta et al. 2025). Funds that could be reallocated to finance various development programs and essential public services, such as education, health, infrastructure,

and social protection for vulnerable communities, are not utilized optimally due to being stalled in protracted legal processes or having been illegally transferred to other parties. The loss of potential state revenue due to unrecovered assets in turn reduces the government's fiscal capacity to carry out its social welfare functions comprehensively, while widening development disparities between regions, particularly in regions with limited budgets that rely on central transfers (Widya Umar, Somawijaya 2021).

Recognizing these systemic limitations, the urgency of ratifying the Asset Confiscation Bill has become increasingly urgent for lawmakers to implement. This bill offers a new paradigm in eradicating corruption through an asset forfeiture approach without having to wait for a criminal verdict (non-conviction-based asset forfeiture) (Syam, Marlina, and Suhartina 2022), which is believed to be able to overcome various structural weaknesses in the current legal system. This approach allows the state to more quickly freeze, seize, and confiscate assets strongly suspected of originating from corruption, without being tied to a lengthy criminal justice process. Therefore, a comprehensive academic study is needed on the strategy for recovering state finances through the mechanism of confiscating corruptors' assets, along with the urgency of strengthening the legal framework as a more effective instrument for preventing corruption crimes in the future (Wahyuni et al. 2026).

METHOD

This research uses a normative legal research method, which positions law as a norm or rule that serves as a guideline for regulating social life and serves as the basis for resolving legal issues. Normative legal research was chosen because it focuses on analyzing legal regulations regarding the confiscation of assets resulting from corruption as an instrument for recovering state finances and examining the urgency of developing a Draft Asset Forfeiture Law to strengthen the corruption eradication system in Indonesia.

According to Soerjono Soekanto and Sri Mamudji, normative legal research is conducted by examining library materials or secondary data, consisting of primary, secondary, and tertiary legal materials. Meanwhile, Peter Mahmud Marzuki explains that legal research is the process of discovering legal rules, legal principles, and legal doctrines to address the legal issues at hand. Based on this opinion, this research focuses on analyzing legal norms governing the confiscation of assets resulting from corruption and developing legal arguments regarding the urgency of developing a Draft Asset Forfeiture Law.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to corruption and money laundering, as well as the Draft Law on Asset Forfeiture. Secondary legal materials include books, scientific journals, research results, and expert opinions, while tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources supporting the research.

The legal materials were collected through documentary study, which involved inventorying, identifying, classifying, and systematically reviewing all legal documents relevant to the research problem formulation. All legal materials were then organized based on the hierarchy of laws and regulations, the substance of the regulations, and their relationship to legal issues concerning the effectiveness of asset forfeiture in state financial recovery. Furthermore, documentary study was used to identify developments in expert thinking, international legal practice, and legislative policy trends related to the implementation of non-conviction-based asset forfeiture mechanisms.

The legal materials were analyzed qualitatively using prescriptive analysis methods. According to Peter Mahmud Marzuki, prescriptive analysis aims to provide arguments regarding what should be done based on legal norms, principles, and doctrine. Therefore, this study analyzes all legal materials through legal interpretation and reasoning to draw conclusions regarding the effectiveness of regulating the confiscation of assets resulting from

corruption and the urgency of developing a Draft Asset Confiscation Law to strengthen the state's financial recovery system.

RESULTS AND DISCUSSION

Asset Confiscation as the Primary Instrument for Recovering State Losses and Impoverishing Corruptors

Asset confiscation in the context of corruption can be defined as a series of legal measures aimed at seizing ownership of assets obtained unlawfully as a result of corruption, whether directly under the perpetrator's control or transferred to a third party (Salsabila and Law 2025). Unlike confiscation, which is temporary and serves as evidence in the judicial process, asset confiscation aims to definitively transfer ownership of the assets to the state. This definition emphasizes that asset confiscation is not merely a supporting instrument for criminal proceedings, but rather a distinct mechanism with distinct philosophical and practical objectives: severing the link between the perpetrator and the proceeds of their crime (Arifin, Riyanto, and Putra 2023).

The primary objective of asset confiscation can be identified as a just dimension: state financial recovery, which positions the state as the injured party and has the right to recover assets lost through corrupt acts (I Made Wantra, Cokorde Istri Dian Laksmi Dewi 2025). The deprivation of proceeds of crime, which aims to eliminate all economic benefits enjoyed by the perpetrator and those who benefit from the proceeds of corruption, is also crucial. These two dimensions collectively form a concept commonly referred to as "impoverishing the corruptor" (to make the crime unprofitable), which is an effort to make corruption economically unprofitable for the perpetrator (Brun et al. 2021).

The relationship between asset confiscation and the deterrent effect is a fundamental aspect that requires careful consideration. Conventional criminal sanctions, such as imprisonment or fines, are ineffective in generating an optimal deterrent effect if the perpetrator continues to enjoy the proceeds of their crime after serving their sentence (Sinta et al. 2025). The rational logic of economic crime perpetrators suggests that as long as the profits derived from corruption far exceed the risks and legal consequences they must bear, the incentive to commit corruption will remain strong. Asset confiscation serves as an essential complementary instrument to eliminate profit-loss calculations that favor the perpetrator, thus creating a more tangible deterrent effect for both the perpetrator and potential perpetrators (Refi Meidiantama 2022).

Within the legal framework of state finance, assets resulting from corruption should be viewed as an integral part of the state's losses, not merely as separate objects from the calculation of losses. This perspective is crucial to ensuring that the asset recovery process does not stop with proving a crime, but rather continues with efforts to quantify and recover the full value of the losses, including any development or profits derived from the assets while they were in the perpetrator's possession (Paruntu and Sudiro 2025). The mechanism for returning assets to the state generally involves several stages: asset tracing, freezing and seizing, the legal process to determine asset ownership, and finally, the execution of the confiscation and transfer of assets to the state treasury. Each stage requires adequate institutional support, legal authority, and cross-sectoral coordination for the recovery process to be effective.

The impact of asset recovery on state finances cannot be underestimated, given that recovered assets essentially constitute a source of state revenue that can be reallocated to finance various public service programs (Miftakhul Jannah Hasny 2026). The more optimally the asset recovery process is implemented, the greater the government's fiscal capacity to fund strategic sectors, such as education, health, and infrastructure, ultimately providing direct

benefits to the welfare of the wider community. Conversely, failure to recover assets contributes to widening the fiscal gap and hinders the fulfillment of basic community rights.

Another equally important aspect is the relationship between economic gain and the perpetrator's motivation to commit corruption. Various economic criminology studies indicate that the primary motive behind corruption is generally rational-economic, namely the desire to obtain instant personal or group gain (Henny Yuningsih 2024). As long as the perpetrator remains convinced that the proceeds of crime can be enjoyed without the risk of losing everything, the motivation to commit corruption will persist, and may even encourage the emergence of new, more sophisticated methods to evade detection. Asset confiscation plays a strategic role in preventing recurrence of corruption (Muhammad Fajar Akbar 2026), because by eliminating the primary economic gain, the temptation to re-offend can be significantly reduced.

Ultimately, the relationship between criminal sanctions and asset sanctions must be understood as complementary, not substitute, instruments. Criminal sanctions serve to provide retribution and guidance to the perpetrator as a legally responsible individual, while asset sanctions serve to sever the economic link between the perpetrator and the proceeds of their crime. The simultaneous combination of these two instruments is expected to create a more comprehensive corruption eradication system, not only punishing individual perpetrators but also ensuring that the state recovers the losses incurred and prevents similar acts from recurring in the future.

The Asset Forfeiture Bill and the In Rem Model as Instruments to Accelerate Asset Recovery without Waiting for a Final Criminal Verdict

The current provisions regarding asset forfeiture in Indonesia's positive legal system still suffer from several fundamental weaknesses that hinder the effectiveness of asset recovery from corruption (Muhammad Fajar Akbar 2026). Provisions scattered throughout the Criminal Procedure Code, the Corruption Eradication Law, and the Money Laundering Law essentially adhere to a forfeiture mechanism that relies entirely on the criminal process against individuals (conviction-based forfeiture). Consequently, asset forfeiture can only be implemented after a final and binding court decision has been obtained, a process that typically takes years given the complexity of proving corruption and the availability of tiered legal remedies ranging from the first instance to cassation and judicial review.

Obstacles to the recovery of assets obtained from corruption become increasingly apparent when the perpetrator dies before the criminal justice process is completed, flees abroad, or the assets are transferred to a third party who is not formally a defendant. A legal system based on criminal penalties becomes irrelevant because, without a legal entity capable of criminal prosecution, the state loses the legal basis for seizing assets, even if they are clearly derived from the proceeds of corruption. This situation underlies the importance of specific regulations specifically governing asset forfeiture mechanisms that are more progressive and responsive to these various scenarios (Hindiawati 2024).

The Draft Asset Forfeiture Law is essentially designed to address this legal gap, with the primary goal of providing a stronger and more comprehensive legal basis for law enforcement to track, freeze, seize, and confiscate assets suspected of originating from criminal acts, including but not limited to corruption (Ahmad Dicky Arjunanda, Ibnu Nafi, Ahmad Nuzulurrizki 2025). The scope of the regulations in this bill generally includes provisions regarding the types of assets that can be confiscated, the mechanisms and procedures for submitting a request for confiscation to the court, the authority of relevant institutions in conducting asset tracing, and the mechanisms for managing and utilizing assets that have been confiscated by the state.

One of the legal breakthroughs offered by the bill is the adoption of the concept of *in rem* asset confiscation, a legal mechanism that positions the asset itself as the object of a lawsuit or case, rather than the individual or perpetrator as the subject who must first be proven guilty (Rachmarani, Fitri Aliva Afriana, Anita Mantili 2024). This approach shifts the focus of evidence from proving the perpetrator's criminal guilt to proving the link between the asset and the underlying crime, allowing the legal process to proceed independently without having to wait for the completion of the criminal proceedings against the perpetrator.

The fundamental difference between the *in rem* model and the *in personam* confiscation mechanism lies in the subject and the standard of proof used (Aria Zurnetti 2024). In the *in personam* mechanism, the state must prove the perpetrator's criminal guilt to a high standard of proof (beyond reasonable doubt) before assets can be confiscated. In contrast, in the *in rem* mechanism, the evidence used tends to be civil in nature with a lower standard (preponderance of evidence or balance of probabilities). It is sufficient to prove that the asset is reasonably suspected to have originated from the proceeds of crime, without having to wait for a criminal conviction against the owner (Gaol et al. 2024).

The advantage of the *in rem* model in the context of tracing and confiscating assets derived from crime lies in its flexibility and speed. This model allows the state to directly file a request for confiscation of assets strongly suspected of originating from crime, without being tied to the certainty of the owner's legal status, whether because the perpetrator has died, fled, or cannot be definitively identified (Aria Zurnetti 2024). This approach also provides law enforcement with greater latitude to access assets transferred to third parties in bad faith (*mala fide*), as long as a link between the asset and the predicate crime can be proven.

In terms of time efficiency, the *in rem* model offers a significant acceleration in the process of returning assets to the state, given that the legal process for the assets can run parallel to, or even independently of, the much more lengthy criminal process against the perpetrator. This acceleration is crucial, considering that the longer the legal process takes, the greater the risk of asset depreciation, damage, or the loss of the state's opportunity to utilize these assets for the public good.

Another significant advantage is the *in rem* model's ability to reduce the risk of asset diversion or concealment by perpetrators during the legal process. Conventional mechanisms, which require a prior criminal conviction and the long time lag between the investigation and the final decision, provide perpetrators with the opportunity to transfer ownership of assets to other parties, move them abroad, or disguise their form through various financial instruments (Harefa, Beniharmoni 2025). With the *in rem* mechanism in place, the state has the legal basis to immediately freeze or confiscate suspected assets, significantly minimizing the perpetrator's opportunity to recover the proceeds of their crime (Desi Fitriyani 2023).

CONCLUSION

Asset forfeiture is a crucial instrument in the corruption eradication system because it focuses not only on punishing perpetrators but also on recovering state financial losses and eliminating economic gains derived from criminal activity. Through this mechanism, the state can recover assets obtained from corruption to finance development and public services, while simultaneously creating a deterrent effect through the concept of impoverishing corruptors, thereby suppressing the motivation to commit corruption.

The current regulation of asset forfeiture in the Indonesian legal system still faces various obstacles because it relies on a conviction-based forfeiture mechanism that requires a final and binding criminal decision. This situation slows down the asset recovery process and opens up opportunities for perpetrators to divert, conceal, or dispose of assets obtained from crime. Therefore, the development of an Asset Forfeiture Bill is urgently needed as a more comprehensive legal basis to support the non-conviction-based asset forfeiture mechanism

through an in rem model. The implementation of this mechanism is expected to expedite the process of tracking, freezing, confiscating, and confiscating assets obtained from corruption, thereby increasing the effectiveness of state financial recovery and optimizing the corruption eradication system in Indonesia.

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