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THE PRINCIPLES OF LEGAL CERTAINTY FOR ASSET RECOVERY IN THE CORRUPTION LAW IN INDONESIA

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ABSTRACT

An effective asset recovery mechanism contributes directly to the recovery of state finances harmed by corruption. Indonesian law is not yet comprehensive and does not provide adequate legal certainty, especially regarding the recovery of assets resulting from corruption held abroad. The applicable regulations in Indonesia regarding the recovery of assets held abroad are not clearly regulated, and Indonesia has only ratified the UNCAC 2003, but its implementation in national legislation is still limited and has not been followed by clear implementing regulations. This study aims to analyze the principle of legal certainty in Indonesian legislation related to the recovery of assets due to corruption diverted abroad. The research method used was normative with a conceptual approach. The results of the study indicated that Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Eradication of Corruption (UU PTPK) concerning asset recovery did not fully uphold the principle of legal certainty. Meanwhile, the mechanism for confiscating assets abroad still relied on the provisions of the 2003 UNCAC, while Indonesia had only ratified the 2003 UNCAC. Therefore, it is hoped that implementing regulations for the 2003 UNCAC can be formed, as well as changes to existing laws and regulations.

A. INTRODUCTION

Pursuant to the Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (*Undang-Undang tentang Pemberantasan Tindak Pidana Korupsi/*UU PTPK) law, corruption is an unlawful act in the form of unlawful acts that aim to enrich oneself, others, and corporations that harm the state finances or the country's economy. The eradication of corruption does not stop at the imposition of prison sentences or fines for perpetrators. However, efforts to cover state losses can be done through asset recovery. Asset recovery constitutes a legal process through which a state seeks to trace, freeze, confiscate, and repatriate assets obtained from illicit conduct, whether arising from criminal or civil violations.[1] In the case of corruption of Jiwasraya Insurance through Decision Number 29/Pid.Sus-TPK/2020/PN.Jkt.Pst, the findings indicate the occurrence of corruption and money laundering offenses. The defendant bought land, exchanged foreign exchange, and transferred funds abroad (Singapore, Mauritius, America) with a value of trillions of rupiah. Then to track the flow of funds abroad, a special team was prepared to investigate the flow of funds, the asset tracking team consisted of elements of the Bureau of Law and Foreign Relations and the Asset Recovery Center consisting of a general assistant and a special assistant to the Attorney General.[2] However, until the case was decided by the court, some of the funds diverted abroad had not been successfully returned to the country because it involved foreign jurisdictions and relied on international cooperation.

The PTPK Law has not fully regulated the recovery of assets abroad. Article 18 of the PTPK Law only regulates additional sanctions regarding the confiscation of goods obtained from corruption, the payment of compensation equivalent to property obtained from corruption, the closure of companies, and the revocation of all or part of certain rights.[3] However, this article did not explicitly explain the seizure of cross-border goods so further interpretation is required which can then give rise to double interpretation. Indonesia incorporated the United Nations Convention against Corruption (UNCAC) 2003 into its domestic legal system through Law Number 7 of 2006. Nevertheless, several substantive provisions of the Convention have yet to be comprehensively reflected in national legislation.

Based on data released by the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*/KPK) for the period 2020 to 2025.[4] It can be seen that the number of corruption cases in Indonesia is still relatively large

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[1] Refi Meidiantama Cholfia Aldamia, "Pengembalian Aset Pelaku Tindak Pidana Korupsi Dalam Hukum Internasional Dan Implementasinya Pada Hukum Nasional Indonesia," *Muhammadiyah Law Review* 6, no. 1 (2022): 57.

[2] Axel Joshua Harianja, "Kejagung Bentuk Tim Khusus untuk Lacak Aset Milik Tersangka Jiwasraya," *IDN Times*, 24 Jan 2020. https://www.idntimes.com/news/indonesia/kejagung-bentuk-tim-khusus-untuk-lacak-aset-milik-tersangka-jiwasraya-00-57g8l-nqjks8, Accessed on February 14, 2026.

[3] Statute, "Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi."

[4] Komisi Pemberantasan Korupsi, "KPK membagi statistik data dalam 5 kategori, yaitu TKP berdasarkan Instansi, TPK berdasarkan Jenis Perkara, TPK berdasarkan Profesi, TPK berdasarkan Inkracht, dan TPK berdasarkan Wilayah," *kpk.go.id,* 11 Agustus 2025. https://www.kpk.go.id/id/publikasi-data/statistik/penindakan-2, Accessed on February 14, 2026.

and varies according to the type of case. Overall, these data showed that corruption was still a serious problem in Indonesia. Based on statistics, the types of corruption cases are more susceptible to asset transfer abroad, because the wider the methods of corruption carried out, the greater the likelihood of asset transfer abroad, in order to secure assets due to corruption. To provide a comparison of the number of corruption cases by type of case, the table below shows the number of cases from 2020 to 2025:

Table 1. Statistics on Types of Corruption Cases

Types of Corruption	2020	2021	2022	2023	2024	2025
Procurement of Goods/Services/KN	27	30	14	62	68	21
License		2		3		
Gratuities/ Bribery	55	65	100	85	63	16
Retribution/Extortion			1	1	16	6
Budget Abuse	6	3				
TPPU	3	7	5	8	6	
Obstructing the KPK Process		1		2	1	

The reports on corruption- and money laundering-related state losses revealed that PT. Taspen,[5] PT. Duta Palma,[6] PT. The construction of Persero[7] was based on the 2025 Kompas report. In his research, Fahril Hidayat[8] proposed the implementation of a plea-bargaining system to accelerate the recovery of state assets, but the study has not yet addressed the main obstacles in recovering assets abroad. The table below shows selected data concerning total state losses arising from corruption in Indonesia in 2025:

[5] Agustinus Rangga Respati, "Kronologi Kasus Investasi Fiktif PT Taspen, Eks Dirut Jadi Tersangka hingga Rugikan Negara Rp 1 Triliun," *Kompas.com*, April 28, 2025. https://doi.org/https://money.kompas.com/read/2025/04/28/170500726/kronologi-kasus-investasi-fiktif-pt-taspen-eks-dirut-jadi-tersangka-hingga, Accessed on February 14, 2026.

[6] Rahel Narda Chatarine, "Kejagung Sita Rp 6,8 Triliun dan Pecahan Mata Uang Asing di Kasus Duta Palma," *Kompas.com*, Mei, 8 2025. https://nasional.kompas.com/read/2025/05/08/14494151/kejagung-sita-rp-68-triliun-dan-pecahan-mata-uang-asing-di-kasus-duta-palma, Accessed on February 14, 2026.

[7] Haryanti Puspa Sari, "KPK Sita Uang Rp 62 Miliar Terkait Kasus Korupsi PT PP." *Kompas.com*, January 3, 2025. https://nasional.kompas.com/read/2025/01/03/20291801/kpk-sita-uang-rp-62-miliar-terkait-kasus-korupsi-pt-pp, Accessed on February 14, 2026.

[8] Fahril Hidayat, "Pengembalian Aset Negara (Asset Recovery) dalam Tindak Pidana Korupsi," *Pediaqu: Jurnal Pendidikan dan Humaniora* 2, no. 1 (2023): 419.

Table 2. State Losses Due to Corruption

Year	Item Type	Agency	Total State Losses
2025	Money Laundering	PT. Bag	IDR 1,000,000,000,000
2025	Corruption and Money Laundering	PT. Duta Palma	IDR 104,000,000,000,000: - Rp 6. 800.000.000.000 - 13,274,490 USD - 13.700 SGD - 2,005 Chinese Yuan - 2,000,000 Japanese Yen - 5.645.00 KRW - 300 Malaysian Ringgit
2025	Money Laundering	PT. Persero Development	IDR 80,000,000,000,000

In Indonesia, asset confiscation is still considered an optional additional punishment, making it ineffective in recovering state losses.[9] This is because the reliance on criminal convictions for asset confiscation often makes assets hidden abroad difficult to access if conventional legal processes are hampered. This limited legal instrument has prompted an urgent need to examine various normative weaknesses. The PTPK Law addresses cross-border asset recovery, which contradicts the principle of legal certainty, and recommends strengthening the existing legal framework. The existence of unclear rules regarding the recovery of corruption assets abroad is a turning point for corruptors to transfer assets derived from corruption crimes abroad. As mentioned earlier, this case is a small example of unsuccessful tracking of corrupt assets overseas. While the Asset Confiscation Bill has yet to be enacted. This journal aims to identify problems in the PTPK Law related to the mechanism for the recovery of corruption assets abroad, and provide an explanation of violations of the principle of legal certainty in Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, and provide recommendations for regulatory reform related to the recovery of assets from corruption that are transferred abroad to clarify the legal basis regarding the return of state losses due to corruption crimes.

Based on the discussion, this article answered the formulated research questions. First, it identified that the PTPK Law still contained significant regulatory deficiencies in governing cross-border asset recovery, particularly due to the absence of clear and comprehensive provisions. Second, these deficiencies led to violations of the principle of legal certainty, as the lack of clarity and synchronization with international instruments, such as UNCAC

[9] Sultoni Fikri, "The Urgency of Regulating Forfeiture of Assets Gained from Corruption in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 7 (2024): 294.

2003, creates legal ambiguity in the process of recovering assets abroad. Third, this study emphasized the urgency of legal reform through the revision of the PTPK Law, including strengthening regulatory frameworks and aligning them with international standards, in order to ensure effective and legally certain recovery of assets derived from corruption abroad.

B. RESEARCH METHODS

The research was conducted within a normative legal framework, utilizing a conceptual approach to analyze the relevant legal principles. Normative legal research is research that focuses on legal questions or problems in a specific jurisdiction, the implementation of normative law research is carried out by collecting data and continued by analyzing relevant laws and legal norms.[10] The selection of normative legal methods was taken because this study aims to explore violations of the principles of legal certainty contained in the PTPK Law related to the asset recovery mechanism and provide an argumentative basis in formulating regulatory reform suggestions. This research relied on the primary PTPK Law, Law Number 7 of 2006 concerning the ratification of the United Nations Convention Against Corruption (UNCAC) 2003, and relevant judicial decisions addressing corruption cases in Indonesia. Meanwhile, secondary legal sources in this study were nationally indexed articles/journals, relevant results of previous research, and legal doctrine. The selection of legal sources in this study was based on relevance directly related to the research, the credibility of the sources which were taken published by official institutions such as academic or government publishers, and the actuality that used the latest regulations and literature to ensure conformity with legal developments.

C. DISCUSSION

1. Regulatory Deficiencies of the PTPK Law in Governing Cross-Border Asset Recovery Mechanisms

The mechanism for recovering corruption assets abroad currently still faced major obstacles because the PTPK Law still contained significant regulatory deficiencies, particularly regarding the absence of clear and comprehensive procedures for regulating the tracking and confiscation of assets across national borders. Unlike Thailand, which has a unified legal framework in the Anti-Money Laundering Act, Indonesia still faced the challenge of regulatory fragmentation in implementing Conviction Based (NCB)

[10] Muhammad Zainuddin, and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum Use of Normative Juridical Methods in Proving the Truth in Legal Research," *Smart Law Journal* 2, no. 2 (2023): 114.

asset confiscation.[11] NCB was a mechanism for confiscating assets without criminal charges. This NCB mechanism focused on the status of the assets rather than punishing people who committed crimes. Indonesia has not officially adopted this system. It still relied on court decisions where someone must be found guilty before asset confiscation can be carried out.

The confiscation was carried out through a civil court process, which allowed assets to be confiscated without having to wait for proof of the individual perpetrator's criminal guilt.[12] This mechanism has actually appeared in the Asset Confiscation Bill, which was still being debated by the government. Meanwhile, in its implementation, the Asset Confiscation Bill offered a new paradigm that focused on pursuing the proceeds of crime rather than simply pursuing the perpetrator. Meanwhile, a report by Indonesian Corruption Watch (ICW) revealed that corruption-related offenses have generated significant state losses, including court-ordered compensation totaling charged to corruptors through the courts in 2022 amounted to IDR 52.5 trillion while in 2023 it was IDR 63.3 trillion. If it is observed that this number increases from time to time, prevention is needed as a first step to reduce corruption. Article 52 of the UNCAC 2003 showed that each country was obliged to take the necessary steps in accordance with its national law to conduct detailed checks to detect unreasonable transactions. UNCAC 2003 elevated asset recovery to the level of a guiding principle in transnational anti-corruption efforts. Through Article 51, the Convention mandated cooperation and mutual legal assistance among States Parties to ensure the restitution of corruption proceeds.[13] This means that strong relations between countries are needed to be able to implement this convention, such as bilateral or multilateral agreements in accordance with Article 59 of the UNCAC 2003. The asset recovery mechanism is described in Diagram 1 below:

[11] Irma Reisalinda Ayuningsih, Febby Mutiara Nelson, Irma Reisalinda Ayuningsih, dan Febby Mutiara Nelson, "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia Telah satu dekade Pusat Pelaporan dan Analisis Transaksi Keuangan menuntaskan," *Jurnal Ius Constituendum* 7, no. 2 (2022): 244. See to, Tasya Anisa, and Febby Mutiara Nelson, "Asset Forfeiture through Non-Conviction Based Asset Forfeiture and Management of Criminal Proceeds Assets: A Comparative Study with the United States and Thailand," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 2 (2024): 1137.

[12] Hutmi Amivia Ilma, "Tantangan Mekanisme Non-Conviction Based Asset Forfeiture dalam Rancangan Undang-Undang Perampasan Aset di Indonesia," *Ma'mal: Jurnal Laboratorium Syariah dan Hukum* 5, no. 4 (2024): 321.

[13] United Nations, "The United Nations convention against corruption and its impact on international companies," *Journal of Business Ethics* 74, no. 4 (2007): 481.

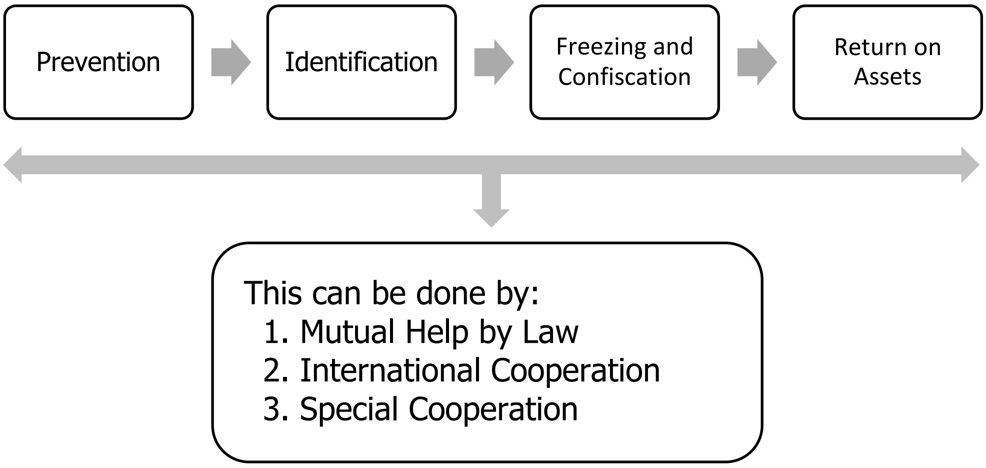

Diagram 1. Asset recovery mechanism at UNCAC 2003

The identification stage in handling corruption cases is an important process that must not be wrong in its implementation. This stage served as a starting point for authorized officials to investigate the flow of funds outgoing to other countries. Article 53 of the UNCAC 2003 provided that each country was required by its national law to allow a state party to bring a lawsuit in court to establish ownership of an asset, allowed the court to determine the cost of compensation to the corruptor to be paid to the other state party, and permitted the seizure of such assets. As previously explained, the implementation of the provisions of this convention required good relations between countries and clear rules regarding permission to conduct investigations in the countries where the parties were treated. The PTPK Law did not explain the licensing mechanism for investigating assets due to corruption in Indonesia, although the ratification of UNCAC 2003 in Indonesia was effected through Law Number 7 of 2006.

"Freezing" and "seizure" denote provisional actions that prevent the transfer or alteration of property rights, or temporarily place the property under official control pursuant to a lawful order.14 Under Article 54 of UNCAC 2003, international cooperation in asset confiscation was conditioned upon the application of the requested State's national legal framework. It has regulated the implementation of cooperation through Law Number 1 of 2006 concerning Mutual Assistance in Criminal Cases.

The last stage was the recovery of assets. Article 57 of the UNCAC 2003 explained that confiscated property must be returned to the other party's country, including by returning it to the previous rightful owner, which must also be in accordance with the provisions of the convention and the national law of the party country. All stages of asset recovery can be done in 3 ways.

[14] United Nations, "The United Nations convention against corruption and its impact on international companies," *Journal of Business Ethics* 74, no. 4 (2007): 484.

Moreover, Mutual Legal Assistance (MLA) has been regulated in Law Number 1 of 2006 concerning Reciprocal Assistance in Criminal Cases. Within the framework of Law Number 1 of 2006, Mutual Legal Assistance was characterized as cross-border cooperation in criminal proceedings, covering investigative and adjudicative processes subject to the legal system of the requested state. Article 2 of Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters, assistance that could be provided by the State of Indonesia to other parties in the form of identification of persons, search of persons, obtaining statements, showing documents, seeking the presence of persons, conducting search requests, confiscation of the proceeds of criminal acts, etc. Each request had its own submission procedure. MLA was defined as a form of mutual cooperation related to the process of investigation, prosecution, court examination, and asset confiscation. An MLA request must be conveyed through the designated authorities in accordance with Law Number 1 of 2006 on Mutual Assistance in Criminal Matters, including compliance with the established submission procedures, verification of completeness of files, and execution by the competent authorities in Indonesia. However, differences in legal systems (Indonesia had civil law and many countries targeted by asset escapees have common law) meant that requests for legal assistance (MLA) were often rejected due to the absence of "dual criminality" or differences in confiscation procedures.[15]

In the book "Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action" stated that MLA was an overly rigid procedural requirement because many countries required too high a standard of proof before being willing to freeze assets, which actually gave corruptors time to move their funds again.[16] This condition showed that the MLA procedure stipulated in the law was often slower than the dynamic movement of assets resulting from corruption abroad. Derry explained that the lack of political will, in the form of weak government commitment and the unwillingness of developed countries to assist in the asset recovery process, was a significant obstacle.[17] The high egos among law enforcement agencies in Indonesia, which prioritized their own institutions rather than working together to trace assets resulting from criminal acts, were also inhibiting

[15] Irma Reisalinda Ayuningsih, Febby Mutiara Nelson, Irma Reisalinda Ayuningsih, dan Febby Mutiara Nelson, "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia Telah satu dekade Pusat Pelaporan dan Analisis Transaksi Keuangan menuntaskan," *Jurnal Ius Constituendum* 7, no. 2 (2022): 246.

[16] Kevin Stephenson, Larissa Gray, and Ric Power, *Barriers to asset recovery: An analysis of the key barriers and recommendations for action* (Washington: World Bank Publications, 2011), 233.

[17] Derry Angling Kesuma, Yuli Asmara Triputra, "Penerapan Mutual Legal Assistance (MLA) dan Perjanjian Ekstradisi Sebagai Upaya Indonesia Terkait Pengambilan Aset Hasil Tindak Pidana Korupsi," *Lex LATA: Jurnal Ilmiah Ilmu Hukum*, (2021): 15.

factors. On the other hand, developed countries are often unwilling to provide maximum assistance because assets hidden by criminals indirectly benefit the country's economy, but this certainly violates the 2003 UNCAC regulations.

Furthermore, international cooperation is important because with this international cooperation, UNCAC 2003 can be implemented as it should. Article 55 of the UNCAC 2003 confirmed that a State Party that has received a request from another State Party having jurisdiction over a criminal act in its territory must be able in its national legal system to make a request to the competent authority for an order to confiscate assets and be enforced to the extent that such an order is issued by a court. When viewed from this provision, it showed that international cooperation was not only aimed at political activities but also for law enforcement on the seizure of assets due to cross-border corruption. Indonesia can enhance its capacity to combat transnational corruption and achieve alignment with the UNCAC anti-corruption standards, the speed of response between authorities, and the level of trust between countries.

Therefore, without increased capacity and regulatory harmonization, the implementation provisions of the UNCAC, particularly those related to performance and asset recovery, would not be optimally implemented. Although Indonesia had a Mutual Legal Assistance (MLA) instrument, legal certainty in asset recovery often encountered practical obstacles in the destination country. One of the international agreements entered into by Indonesia was the MLA agreement with Switzerland. In the implementation of MLAT itself, there were obstacles, such as aspects of the Case Handling and Evidence Process, Responses from the Requested Country, and Submission of MLA.[18] The effectiveness of MLA with tax haven countries remained low because the Indonesian PTPK Law has not been able to align with the technical requirements requested by foreign authorities. This confirmed that without comprehensive domestic regulations, international agreements were merely formalities without definite executive power. Therefore, strengthening international cooperation must be carried out through regulations and institutional capacity building so that Indonesia not only acts as a recipient of requests but also actively and effectively reforms in tracing and returning corrupt assets abroad.

Special Cooperation, Article 56 of the UNCAC 2003 stated that each State Party would endeavour to authorize, forward, without prejudice to its own investigation, prosecution, or judicial process, to the other State Party without prior request. This provision aimed to encourage stronger cooperation

[18] Dimas Rahmat Martanto, "Implementasi Perjanjian Mutual Legal Assistance Dalam Pemberantasan Korupsi Indonesia – Swiss," *Journal of International Relations* 9, no. 2 (2024): 347.

between the parties, allowing cross-border asset recovery to operate efficiently while avoiding unnecessary procedural complexity. However, this implementation must still pay attention to the national legal limitations of each party so as not to conflict with the applicable legal provisions. However, there were challenges in the normative development of the UNCAC 2003 asset recovery provisions, namely related to the addition or renewal of inter-state agreements[19]. This challenge was also related to the results of previous discussions regarding Mutual Legal Assistance (MLA) and international cooperation. Although formal cooperation mechanisms were available, their effectiveness was still limited by complex procedures and dependence on the approval of other countries.

In this context, special cooperation actually presented a solution to accelerate the process, but without updated agreements and harmonization of regulations between countries, this mechanism continued to face similar obstacles. Over the past three decades, international cooperation against corruption has evolved rapidly from mere discourse to a globally binding legal framework. However, significant gaps remained between international standards and domestic practice. Implementation and enforcement remain uneven across countries, and domestic reforms often lag behind prevention efforts.[20] Therefore, strengthening the legal framework through updating international treaties and adjusting national regulations in both Indonesia and other countries that have ratified the 2003 UNCAC is crucial for the effective functioning of specialized cooperation in supporting asset recovery from transnational corruption.

2. Implications of Regulatory Deficiencies on the Principle of Legal Certainty in Cross-Border Asset Recovery

The regulatory deficiencies in the PTPK Law, as explained previously, essentially stemmed from a violation of the principle of legal certainty. Legal certainty demanded that legal norms be formulated clearly and consistently. However, the lack of synchronization between the PTPK Law and international instruments, such as the 2003 UNCAC, created legal ambiguity that hindered the process of recovering assets abroad. The main problems identified included institutional fragmentation, procedural delays, lack of international cooperation, and the suboptimal use of the Non-Conviction Based Asset Forfeiture (NCBAF) mechanism. In Indonesia, the absence of a comprehensive

[19] Cecily Rose, "The Progressive Development of Stolen Assets: Mapping the Paths Forward," *The European Journal of International Law Vol.* 35, no. 3 (2024): 701.

[20] Leonardo Borlini, and Anne Peters, "Three Dexades of International Coorperation against Corruption-Looking Ahead," *International Journal of Constitutional Law* 22, no. 2 (2024): 469.

Asset Forfeiture Law is a major obstacle to efficient asset recovery.[21] This regulatory vacuum created legal uncertainty because law enforcement officers lacked a strong legal basis for seizing assets without waiting for a final and binding criminal verdict. This hindered asset recovery because the standard of proof became unclear and rigid. Uncertainty arises when there are differences in the definition of crimes or confiscation procedures between countries. Without harmonized regulations, the process of cross-border asset recovery was very lengthy and often failed midway because there was no guarantee of consistent procedures at the regional level.

The meaning of "Certainty" itself means clarity and firmness towards the application of the law in society so as not to cause many interpretations, while "Legal Certainty" is a guarantee that those who have legal rights can obtain their rights and.[22] Radbruch[23] defined legal certainty as rules that must be obeyed with the primary goal of creating public order. Mertokusumo[24] defines legal certainty as the assurance that legal norms must be formulated and implemented clearly and consistently.

The legal uncertainty in the PTPK Law was increasingly apparent when dealing with the Mutual Legal Assistance (MLA) mechanism. As emphasized in the NCB Asset Forfeiture research, it focused on assets or property suspected of being tainted by corruption, while Indonesian positive law regulates asset confiscation as an additional criminal action that is only carried out after a court decision.[25] The paradigm difference between the rigid Indonesian legal system (conviction-based) and the legal system of the destination country of the assets (which often uses NCB) is a major barrier. This caused requests for mutual legal assistance in Indonesia could not be executed frequently, thus failing to achieve the goal of recovering state finances.

The absence of national standards resulted in an inconsistent and ineffective asset recovery regime. There needs to be a specific definition included in the law governing asset confiscation.[26] The definition of assets

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[21] Rouli Dame Marbun, Prof Prasetijo Rijadi, and Jonaedi Efendi, "Asset Recovery Regulation in Corruption Cases: Comparative Legal Frameworks in Southeast Asia under the UNCAC Perspective," *Contemporary Readings in Law and Social Justice* 18, no. January (2026): 88.

[22] Siti Halilah, dan Fakhrurrahman Arif, "Asas Kepastian Hukum Menurut Ahli," *Siyasah: Jurnal Hukum Tata Negara* 4, no. Desember (2021): 58.

[23] Gustav Radbruch, "Statutory lawlessness and supra-statutory law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 5.

[24] Sudikno Mertokusumo, "Sistem Peradilan di Indonesia," *Jurnal Hukum Ius Quia Iustum* 6, no. 9 (1997): 4.

[25] Tsalis Abida Nurdin, "Perbandingan Pengaturan Perampasan Aset Tindak Pidana Korupsi Antara Indonesia Dengan Amerika Serikat Yang Sudah Menerapkan Non- Conviction Based Asset Forfeiture," *Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 13, no. 2 (2024): 134.

[26] Andhie Fajar Arianto, "Peran Lembaga Penegak Hukum Dalam Proses Perampasan Aset the Role of Law Enforcement Agencies in the Asset Confiscation Process," *Jurnal USM Law Review* 7, no. 3 (2024): 1601.

remained dependent on proving criminal wrongdoing, making confiscation impossible to implement independently.[27] This lack of clarity in the definition ultimately created significant procedural obstacles, particularly when law enforcement officials attempted to pursue assets that have been transferred across borders. Without clear legal certainty, tracking and confiscation mechanisms became heavily reliant on often rigid judicial interpretations. This situation emphasized that successful recovery of state losses cannot rely solely on inter-institutional coordination but requires a concrete foundation of norms. It can be concluded that in order for the recovery of corruption assets abroad to be carried out, it must be followed by clear and firm regulations. Although Indonesia formalized its commitment to the United Nations Convention Against Corruption (UNCAC) 2003 through the enactment of Law Number 7 of 2006, several substantive provisions of the Convention have not yet been comprehensively integrated into the national legal framework. This gap was particularly evident within the PTPK Law, which served as the primary statutory instrument governing corruption offenses in Indonesia.

Moreover, Article 4 of the PTPK Law provided that "The return of state financial losses or the state economy does not abolish the verdict of the perpetrator of a criminal act as referred to in Article 2 and Article 3". Accordingly, the return of state losses by the offender did not function as a ground for extinguishing criminal responsibility, as it did not abolish the legal process and punishment. This provision reflected a repressive approach that prioritized punishment over mere restitution, thereby affirming that corruption was not solely a matter of financial loss but also a violation of public trust and state integrity. However, Article 4 did not explain the mechanism for recovering assets transferred abroad, creating a normative gap in addressing transnational aspects of corruption. This absence of regulation opened opportunities for perpetrators to transfer and conceal illicit assets in foreign jurisdictions, which ultimately weakened the effectiveness of asset recovery efforts and undermined the principle of legal certainty. As a result, law enforcement authorities faced limitations in pursuing assets located outside national borders, particularly in the absence of clear procedural guidelines and international coordination mechanisms.

Furthermore, Article 18 of the PTPK Law only regulated additional sanctions regarding the confiscation of goods obtained from corruption, the payment of compensation equivalent to property obtained from corruption, the closure of companies, and the revocation of all or part of certain rights. While this provision provided a legal basis for asset deprivation, it remained limited

[27] Zydane Maheswara Prasetyo, Indah Putri Malinda, Chornilia Silvi P J, Louisa Aulia Azzahra, dan Sandrina Rahma N., "Sinkronisasi Kebijakan Penegakan Hukum: Posisi RUU Perampasan Aset dalam Sistem Hukum Indonesia," *Jurnal Penelitian Nusantara* 4, no. 2 (2025): 801.

to a punitive framework and did not comprehensively regulate the implementation, tracing, or recovery of assets, especially those transferred abroad. The absence of detailed provisions on asset tracing, freezing, and repatriation indicated that the regulation was still domestically oriented and has not fully accommodated the complexity of cross-border corruption crimes. The lack of supporting instruments in the form of legislation had resulted in the absence of a "single identification number" or a single identifier valid for all public purposes (driver's license, tax, bank, etc.) that could reduce the opportunity for misuse by any member of the public, weak law enforcement in handling corruption, and difficulties in proving corruption crimes.[28] Consequently, this limitation not only hindered the effectiveness of asset recovery but also created legal uncertainty in its application, as there is no clear legal framework governing the procedures and coordination required for recovering assets beyond national jurisdiction.

The PTPK Law did not regulate in detail the mechanism for recovering assets from abroad, for example, through the MLA mechanism, international cooperation, and special cooperation, which was described in the UNCAC 2003.[29] Articles 38B and 38C introduced a reverse burden of proof mechanism in relation to assets suspected of originating from corruption, including property that had not been formally charged in the indictment. Under this framework, the accused bears the obligation to show the lawful origin of such assets; failure to do so empowers the court to order partial or total confiscation for the benefit of the state. A related approach to evidentiary cooperation was also reflected in Law Number 1 of 2006 concerning Mutual Legal Assistance, which provided procedural support in cross-border legal processes. This situation was then exploited by perpetrators of corruption to hide or transfer assets obtained from corruption abroad to avoid tracking and confiscation. Consequently, the expected goal of asset recovery, which aimed to recoup state financial losses, has not been achieved.

The elucidation of Article 12B of the PTPK Law clarified that gratification included benefits received both within and outside Indonesia, regardless of whether provided through electronic or conventional mechanisms. This provision showed recognition of cross-border gratification, thus serving as a legal basis for identifying, tracking, and potentially seizing assets located abroad. In this context, the regulation reflected an awareness of the transnational nature of corruption and broadened the scope of the crime to include cross-border elements. However, this law did not establish an asset

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[28] Salma Napisa, and Hafizh Yustio, "Korupsi di Indonesia (penyebab, bahaya, hambatan dan upaya pemberantasan, serta regulasi) kajian literatur manajemen pendidikan dan ilmu sosial," *Jurnal Manajemen Pendidikan Dan Ilmu Sosial* 2, no. 2 (2021): 568.

[29] Statute, "Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi."

recovery mechanism for assets located abroad, creating a gap between substantive recognition and procedural implementation. The absence of a clear mechanism for tracking, freezing, seizing, and repatriating assets across jurisdictions undermined the practical application of this provision. Consequently, although cross-border bribery was legally recognized, the lack of procedural clarity limited the ability of law enforcement agencies to effectively recover these assets, ultimately undermining the principle of legal certainty and the overall effectiveness of anti-corruption efforts.

3. The Urgency of Legal Reform: Reforming the PTPK Law to Align with International Standards for Effective Asset Recovery

Based on the analysis of regulatory deficiencies and legal uncertainty discussed previously, this study emphasized the urgent need for legal reform through a revision of the PTPK Law. Indonesian criminal law policy must immediately focus on strengthening the regulatory framework in line with international standards to ensure the effective recovery of assets obtained from corruption abroad and a strong foundation of legal certainty.

Marc Ancel conceptualizes criminal policy as both a scientific discipline and a practical art directed toward the improvement of positive law, with the objective of ensuring that legal regulations are formulated more effectively and rationally, where the meaning of this "positive legal regulation" is the criminal law regulation itself.[30] This means that this criminal law policy is the government's effort to make regulations to protect the community in accordance with the conditions at that time. In Indonesia itself, criminal law may be conceptually divided into two primary categories: general criminal law and special criminal law. General criminal law governs offenses that apply broadly to individuals who violate statutory provisions, whereas special criminal law regulates specific types of offenses that require particular legal frameworks due to their distinctive characteristics, such as money laundering, narcotics trafficking, terrorism, and corruption. Corruption itself is an act that is very detrimental to the state and society, especially corruption committed by government officials or law enforcement officials. Asset recovery is one of the solutions to restore state losses due to corruption. However, corruptors over time are getting smarter at hiding assets from corruption abroad because they know that there are no regulations that clearly govern asset recovery in Indonesia.

Article 4 of the PTPK Law emphasized that the restitution of state financial or economic losses did not eliminate the criminal liability of offenders as stipulated under Articles 2 and 3. However, the provision remained silent

[30] Awaluddin Habibi Siregar, Deby Rinaldi, and Fauziah Lubis, "Pengertian Kebijakan Hukum Pidana," *Yustisi Jurnal Hukum & Hukum Islam* 11, no. 3 (2024): 227.

regarding the treatment of corruption-related assets located outside Indonesian jurisdiction. The absence of explicit regulation on transnational asset recovery within this article highlighted a normative gap in addressing corruption cases with cross-border dimensions. Article 18 of the PTPK Law only regulated additional sanctions for goods obtained from corruption crimes, again it did not explain about assets located abroad. Articles 38B and 38C of the PTPK Law regulate reverse proof of corruption assets that have not been charged, but the rules for asset recovery mechanisms have not be explained. Article 12B of the PTPK Law explained that cross-border gratuities were recognized so that they became the basis for tracking and confiscating assets, but only so far, the rules of this article apply without an explanation of the mechanism for tracking or confiscating assets.

Article 54 UNCAC 2003 established a framework for the recovery of property through international cooperation, emphasizing that mutual legal assistance must be carried out in accordance with the domestic legal system of each State Party. Furthermore, Article 57 outlined the obligation to return confiscated assets to the requesting State, including restitution to legitimate owners, subject to the procedural requirements set forth in both the Convention and national law. Although Indonesia formalized its commitment to UNCAC 2003 through the enactment of Law Number 7 of 2006, the incorporation of detailed domestic regulations governing transnational asset recovery remained limited. Consequently, the ratification has not yet been fully translated into a comprehensive operational mechanism within Indonesia's internal legal framework.

An examination of Articles 4, 18, 38B, 38C, and 12B of the PTPK Law indicated that although provisions concerning asset confiscation were regulated, the framework did not comprehensively address procedures for recovering corruption-related assets located abroad. This gap became particularly significant considering that Indonesia has formally committed to the United Nations Convention Against Corruption (UNCAC) 2003 through the enactment of Law Number 7 of 2006.

The absence of detailed transnational recovery mechanisms within the domestic statute raised concerns regarding the consistency of the legal framework with the principle of legal certainty. As financial transactions increasingly transcend national borders and were facilitated by technological advancements, regulatory clarity became indispensable to ensure effective and enforceable asset recovery measured. A country was forced to continue to develop laws in its country. Indonesia in this case, still did not have concrete rules regarding the recovery of corruption assets abroad, which in the PTPK Law did not accommodate this. In other words, legal policy recommendations were needed for rules for the recovery of corruption assets abroad that were considered inadequate and had legal loopholes.

An alternative to regulatory reform could be regulatory reform, as the first step the government can take in the form of amendments to existing laws. According to Article 37 of the 1945 Constitution of the Republic of Indonesia, it was stated that proposals for changes can be submitted by at least 1/3 of the members of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/* MPR), and the decision must be approved by at least 2/3 of the MPR members. This amendment was made to close gaps in the asset recovery mechanism that were not yet regulated in the applicable law. A more comprehensive regulatory framework can be achieved by inserting a special clause in the PTPK Law that addressed the procedures for transnational asset recovery, ensuring that domestic law reflects the standards established under the UNCAC 2003. The drafting of legislation must be improved through structured functional training to ensure the availability of competent personnel in designing quality regulations at the central and regional levels[31]. This ensured that when the regulations were implemented, they could be implemented appropriately and without a very lengthy process.

The issuance of implementing regulations (Government Regulations, Presidential Regulations, or Ministerial Regulations) on asset recovery as implementing regulations for Law Number 7 of 2006 concerning the Ratification of the 2003 UNCAC, if it was felt that changing the law requires a long process and stages, then the issuance of implementing regulations from the 2003 UNCAC can be the right solution. The ratification of the Asset Confiscation Bill is also important to be carried out immediately. The Asset Confiscation Bill is considered important because it introduces a mechanism for asset confiscation without a criminal verdict (non-conviction-based asset forfeiture/NCB asset forfeiture). This concept aims to accelerate and simplify the process of confiscating assets suspected of originating from criminal acts without having to go through a criminal process first.[32] This can significantly accelerate the recovery of state financial losses, especially in cases where the perpetrator dies, flees abroad, or when criminal evidence is difficult to obtain but the origin of the assets cannot be legally explained.

Strengthening the effectiveness of law enforcement requires increased coordination between institutions, particularly in monitoring the movement of illicit financial flows domestically and internationally. Especially in monitoring the movement of illegal financial flows within and outside the country, success

[31] Aisyah Rahman, and Yusup Hidayat, "Eksistensi Peranan Penilaian Reformasi Hukum Pada Penataan Regulasi Nasional," *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 6 (2025): 5656.
[32] Ummu Faizah, and I Gede Hartadi Kurniawan, "Urgensi Pengesahan Undang-undang Perampasan Aset dalam Penegakan Hukum di Indonesia (Studi Putusan Nomor 1277 PK/PID.SUS/2024)," *SANTRI: Jurnal Riset Ilmiah* 5, no. 2 (2026): 1608.

depends on coordination between the KPK (coordination), PPATK (financial intelligence), the Attorney General's Office (execution), and the Indonesian National Police (investigation/Interpol network).[33] Corruption cases are considered extremely difficult to handle, so the standard for resolution is approximately 120 days, or approximately four months[34]. This means that strengthening the effectiveness of law enforcement requires increased coordination between institutions, particularly in monitoring the movement of illicit financial flows domestically and internationally, so that all institutions can assist each other in investigating corruption cases. This means that the PPATK also plays a crucial role in tracking the flow of funds abroad through analysis of banking data and international transfers. Coordination between government institutions can also create a clear and efficient process for tracking these flows, although the system for handling corruption cases differs from that for handling ordinary criminal cases. Article 39 of Law Number 8 of 2010 regulates the authority of the PPATK to prevent and eradicate money laundering, which includes receiving reports from various transaction reports, including suspicious financial transactions, and is authorized to temporarily suspend suspicious transactions and request data from government agencies or private institutions. In carrying out its duties, the PPATK faces several obstacles such as the suboptimal follow-up of the Analysis Results Report (*Laporan Hasil Audit*/LHA) forwarded from the PPATK to investigators, legal weaknesses for investigators who deliberately do not follow up on the LHA, and difficulties in the evidentiary procedure which is still considered difficult.[35] Although Law Number 8 of 2010 is quite comprehensive, major obstacles lie in non-legal factors such as coordination between institutions in following up on suspicious transactions.

Conduct international cooperation by making special, bilateral, and multilateral agreements regarding asset recovery on the other side. For example, by signing bilateral or multilateral agreements to implement MLAs that directly address the weaknesses of the PTPK Law in terms of asset recovery due to corruption abroad. Institutional reform should prioritize capacity-building measures aimed at equipping law enforcement authorities with advanced cross-border asset tracing skills. Such efforts may involve structured training initiatives, Integration of digital forensic technology in the

[33] Feabo Adigo, Mayora Pranata, Joko Setiono, dan Iza Fadri, "Asset Recovery Mechanisms in Transnational Corruption Cases: Legal Frameworks and International Cooperation Challenges," *Jurnal Greenation Sosial Politik* 3, no. 3 (2025): 605.

[34] Ardi Hajuan, and Syawal Abdajid, "Analisis Efektivitas Penegakan Hukum terhadap Penyidikan Tindak Pidana Korupsi oleh Kepolisian Daerah Maluku Utara," *Syntax Literate: Jurnal Ilmiah Indonesia* 10, no. 8 (2025): 6088.

[35] Gatot Subroto Ansori, "Peran PPATK Dalam Mencegah dan Memberantas Tindak Pidana Pencucian Uang," *Unira Law Jurnal* 1, no. 1 (2022): 37.

form of blockchain (a financial monitoring system). Blockchain technology has significant potential for monitoring public officials' income compliance and tracking money laundering in the digital asset ecosystem as part of a national security strategy,[36] and coordinated engagement with international law enforcement networks, including Interpol, to compensate for existing regulatory shortcomings under the PTPK framework, where in this case law enforcement officials in Indonesia are still less skilled in handling cases of tracking assets due to corruption hidden abroad. This step is crucial to address regulatory deficiencies within the existing PTPK Law framework. The use of blockchain here is not simply a technological adoption but rather an instrument for creating radical transparency in tracking illicit fund flows that have long been hidden within the complex global financial system. In line with the view Rose's views in his journal, asset recovery policy must transform from merely pursuing formal legality to a more progressive, transparent, and public benefit-based mechanism.[37]

D. CONCLUSION

The mechanism for recovering corrupt assets was regulated in the 2003 UNCAC, which placed asset recovery as a form of international cooperation. The asset recovery process included several stages: asset identification, freezing or confiscation, and returning assets to the aggrieved state. Through the promulgation of Law Number 7 of 2006, Indonesia confirms its adherence to the UNCAC 2003 framework and regulates the mechanism of Mutual Legal Aid through Law Number 1 of 2006. However, there were still challenges in its implementation. Specifically, those were related to the licensing mechanism and technical procedures for investigating assets abroad that have not been thoroughly regulated in the PTPK Law. This result suggested that the success of asset recovery did not depend only on international legal instruments, but also required harmonization and strengthening of regulations at the national level.

In addition, the PTPK Law regulated the restitution of state financial losses while affirming that such restitution did not extinguish the criminal liability of the perpetrator. The law also introduced a mechanism of reverse burden of proof, allowing the accused to demonstrate that the assets in their possession are not derived from corruption. Moreover, cross-border gratuities, whether conducted electronically or otherwise, were recognized as acts causing state loss. Although Indonesia has ratified the United Nations

[36] Victoria Kosa Oleksi Makarenkov, "Forensic Technique for Identifying Corruption Challenges to National Security through Digital Technologies," *Baltic Jurnal of Economic Studies* 10, no. 4 (2024): 289.

[37] Cecily Rose, "The Progressive Development of Stolen Assets: Mapping the Paths Forward," *The European Journal of International Law Vol.* 35, no. 3 (2024): 703.

Convention Against Corruption (UNCAC) 2003 through Law Number 7 of 2006 and enacted Law Number 1 of 2006 concerning Mutual Legal Assistance, the domestic legal framework has not comprehensively incorporated procedures for recovering assets located abroad. The absence of a detailed and integrated regulatory mechanism created structural weaknesses in asset recovery efforts, enabling corrupt actors to relocate illicit assets beyond national jurisdiction. This condition raised concerns regarding the fulfilment of the principle of legal certainty, as the enforcement framework remained predominantly centered on domestic confiscation while transnational recovery continued to rely heavily on international instruments rather than a cohesive national regulation.

Furthermore, the regulatory improvement might be pursued not only through amendments to existing legislation but also by translating the provisions of UNCAC 2003 into detailed implementing instruments, such as Government Regulations or Presidential Regulations, to ensure practical enforceability within the domestic legal framework or Ministerial Regulations, improving the functions and strengthening coordination between government agencies, ratify the Asset Confiscation Bill and conducting international cooperation through agreements, and improving the quality of investigators.

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