

The Urgency of Enacting Asset Forfeiture Legislation in Relation to Criminal Offenses: A Perspective of Justice and Utility

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Abstract. *Along with the times, economic crimes are increasingly massive and structured. The complexity of these criminal acts can be seen from the development of modes used in carrying out crimes, such as the ease of escaping money from criminal acts which only takes a short time. The construction of the legal system, which currently focuses only on the confiscation of assets through criminal proceedings, is often limited in effectiveness because it requires a court decision with permanent legal force. This causes many assets resulting from crime that cannot be used for the benefit of the state or society. As a form of parliamentary support, the idea emerged to regulate the confiscation of assets resulting from criminal acts in a special law. However, the ratification of the Asset Forfeiture Bill has not been carried out until the time this research is written. This condition reflects the existence of obstacles in the legislation process that have an impact on efforts to eradicate crimes, especially in terms of the confiscation of assets resulting from crime. There are two main problems that will be raised, the first is how the practice of confiscating assets resulting from criminal acts in Indonesia according to the applicable rules is reviewed from the perspective of justice and utility. Second, how is the urgency of the Law on Asset Forfeiture Related to Criminal Acts reviewed through the perspective of justice and benefits. The type of research used is normative legal research. The nature of the research used is Descriptive Legal Research with the type of data used is secondary data. The data collection technique is carried out by library research through a statute approach and a conceptual approach.*

Keywords: *Assets; Justice; Benefits; Deprivation; Urgency*

1. Introduction

Crimes with economic motives that were initially conventional such as theft, fraud and embezzlement, have now developed into more complex because they involve educated perpetrators and are often transnational or cross-country. Along with the development of the times, economic crimes, corruption, and money laundering are also increasingly massive and structured (Sudirja, 2019). The complexity of these criminal acts can be seen from the development of modes used in carrying out crimes, such as the ease of escaping money from criminal acts, this can be done using computers, internet networks, without having to go abroad and only takes a short time (Latifah, 2016).

One of the main problems faced in the eradication of crime is the difficulty of recovering assets from crime that are often hidden or diverted by perpetrators. The construction of the legal system that exists today, which focuses only on the confiscation of assets through criminal proceedings, is often limited in effectiveness because it requires a court decision with permanent legal force. This causes many assets resulting from crime that cannot be used for the benefit of the state or society (Rahardjo, S., 2021). Meanwhile, the issue of legal development in the international scope such as the issue of confiscation and confiscation of the proceeds of criminal acts and instruments of criminal acts has not become an important part of the criminal law system in Indonesia. However, the conception of asset confiscation as a result of criminal acts in the legal system in Indonesia is not new. Several criminal provisions have regulated the possibility of confiscating and confiscating the proceeds and tools used in a criminal act. These provisions are contained in the Criminal Code (KUHP) concerning additional crimes, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (TIPIKOR Law).

Law enforcement officials in practice face many obstacles in confiscating assets resulting from criminal acts that have been controlled by the perpetrators. These obstacles include the lack of legal instruments to support the asset forfeiture process, the lack of effective international cooperation, and the low understanding of law enforcement officials regarding the mechanism of criminal asset confiscation. In addition, this process often takes a long time because new assets can be confiscated by the state after a court ruling that has permanent legal force. Legal developments in the international world show that the confiscation and confiscation of the proceeds and instruments of criminal acts are an important part of efforts to reduce the crime rate. In fact, asset forfeiture is specifically regulated in Chapter V of the United Nations Convention Against Corruption (UNCAC), which emphasizes the importance of forfeiture efforts as part of the settlement of cases.

Indonesia has ratified the UNCAC through Law Number 7 of 2006 concerning the Ratification of the UN Convention on Anti-Corruption. With this ratification, Indonesia becomes one of the UNCAC parties and should have an equal legal standing in taking the necessary steps to seize assets illegally obtained and hidden abroad. In addition to UNCAC, there are also various other UN conventions that regulate provisions regarding the confiscation of assets resulting from criminal acts. Nowadays, simply ratifying the UNCAC is no longer considered adequate. UNCAC does regulate and facilitate a framework for cross-border cooperation to overcome and eradicate corruption and money laundering. However, further steps must be taken from the presence of strong political will from various parties in the country, including parliament, government, and the judiciary (Hiariej, 2013).

As a form of parliamentary support for asset confiscation efforts, the idea of regulating the confiscation of assets resulting from criminal acts has now emerged in a special law. The proposal for the formation of the law can be seen from the inclusion of the Draft Law (RUU) on Asset Forfeiture Related to Criminal Offenses, hereinafter referred to as the Asset Forfeiture Bill) into the 2009-2014 National Legislation Program (Prolegnas). However, even though it has been included in the Prolegnas and the draft bill has been submitted since 2012, the discussion on the Asset Forfeiture Bill has not been carried out during the five-year period. However, until the time this study was written, the Asset Forfeiture Bill was not passed, this condition reflects the existence of obstacles in the legislation process that have an impact on efforts to eradicate criminal acts, especially in terms of the confiscation of assets resulting from crime.

The absence of a law on asset forfeiture also shows the need for a stronger commitment from all stakeholders, including the government, parliament, and the judiciary to accelerate the discussion and ratification of such regulations. Without clear and firm regulations, law enforcement related to criminal acts, such as corruption and money laundering, will continue to face obstacles, especially in terms of recovering assets that have been transferred abroad.

There is an urgent need to build a system that allows for the effective and efficient confiscation and confiscation of proceeds and criminal instruments. These efforts must still uphold the values of justice and not violate individual rights. Perpetrators of criminal acts, by fraudulent and contrary to the law, achieve personal gain at the expense of the interests of the community or other individuals. In addition, crime often leads to the accumulation of large economic resources in the hands of the perpetrators, which are then used for purposes contrary to the interests of the wider community. In short, crime can disrupt the order of social life which is oriented towards the creation of justice and welfare for all members of society.

From the perspective of justice, there are two main concepts that need to be considered, namely distributive justice and commutative justice. Distributive justice focuses on the equitable distribution of resources and benefits among members of society. In the context of asset confiscation, this means that the proceeds from asset confiscation must be returned to the state and society to repair losses due to criminal acts. Meanwhile, commutative justice is related to restoring the victim's condition to its original position before the crime occurred. The state as a victim of corruption must recover the lost assets to prevent further losses. From a benefit perspective, the Asset Forfeiture Law is expected to increase the effectiveness of law enforcement in Indonesia. With regulations that allow the confiscation of assets without having to wait for a criminal verdict with permanent legal force, the process of recovering state losses can be carried out faster. This will send a strong signal to criminals that profits from illegal actions will not be left unchecked. From the perspective of utility, through this law, it is hoped that it can encourage the creation of social justice by returning assets from criminal acts to the state and society. It is not only about punishing the perpetrators of crimes, but also about recovering the losses suffered by society as a result of their actions. In this way, the Asset Forfeiture Law can serve as a tool to achieve welfare for all members of society.

Based on this description, there are two main problems that will be raised in this study, namely, first, how to practice the confiscation of assets resulting from criminal acts that apply in Indonesia according to the applicable rules from the perspective of justice and utility. Second, how is the urgency of the Law on Asset Forfeiture Related to Criminal Acts reviewed through the perspective of justice and benefits.

2. Research Methods

The type of research used is normative legal research. The nature of the research used in this study is Descriptive Legal Research. The type of data used is secondary data, which is sourced from primary legal materials obtained directly and is wrapped in strong legal force juridically. The data collection technique was carried out by *library research*. The approach in this study is to use a statute *approach* and a *conceptual approach*. The data analysis techniques used in this study were carried out qualitatively using the legal interpretation method.

3. Results and Discussion

3.1. The Practice of Criminal Asset Forfeiture in Indonesia Reviewed from the Perspective of Justice and Utility

White collar crime is a typology of crime committed by individuals or groups who have certain positions, positions, or powers, by using these positions to gain

personal or group benefits illegally (Badri, 2017). Examples that often occur in Indonesia are corruption and money laundering (TPPU). These two crimes are interrelated because corruption is a *predicate crime*, while TPPU is a following *crime*. TPPU is a means to protect the proceeds of corruption from the tracking of law enforcement officials, as well as to strengthen the structure of organized economic crime. The impact of these two crimes is widespread, not only causing financial losses to the state, but also hampering national development, lowering public trust in the government and financial institutions, and threatening the stability of the economic system (Anti-Corruption Education Center, 2022).

Transparency International data also shows that Indonesia's Corruption Perception Index (CPI) in the last five years has tended to fluctuate, reflecting the unstable efforts to eradicate corruption and the structural challenges still faced.

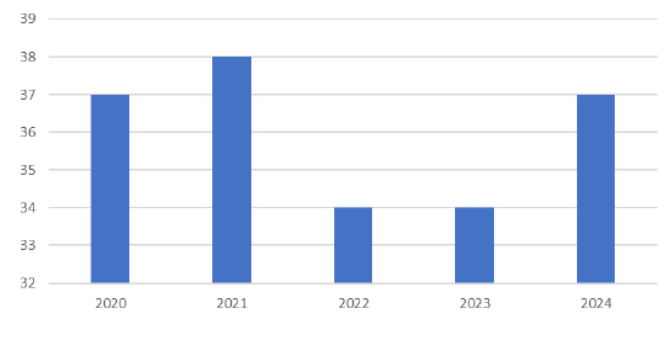


Figure 1. Indonesian Corruption Index (2020 to 2024)

These fluctuations show that despite various efforts to improve transparency and accountability, challenges in the eradication of corruption are still persistent and have not been fully resolved. This condition emphasizes the need for more consistent, measurable, and sustainable steps so that the improvements achieved can last and have a significant impact.

Previously, ICW has also conducted a number of studies that show a number of cases where assets proceeds of crime were not successfully confiscated due to differences in interpretation between institutions such as the Prosecutor's Office, the Police, and the KPK regarding proving the origin of assets. In some cases, the execution process of asset confiscation has even been halted due to the lack of a clear legal basis for proactive action, especially if the perpetrator has not been sentenced (ICW, 2022). The huk um system that relies on criminal judgments for asset confiscation makes the state unresponsive in tracking and securing the wealth of the proceeds of crime which very quickly changes hands in the context of transnational crimes. Until now, the confiscation of assets resulting from criminal acts in Indonesia is still based on a conventional approach, namely through *the conviction-based asset forfeiture* mechanism. In short, confiscation or

confiscation of assets can only be carried out after a court decision with permanent legal force.

The Indonesian legal system has also not fully accommodated the principle of separation between criminal acts and objects of crime as applicable in modern criminal law principles. This can be seen from the need for a criminal proof process first before assets can be confiscated. Barda Nawawi Arief stated that one of the weaknesses of the Indonesian criminal law system lies in its orientation that focuses more on the offender (*offender-oriented*), and does not pay attention to the aspects of losses incurred and the recovery of assets from crime (Arief, 2017).

Reflecting on the problems that often occur, now the Asset Forfeiture Bill has been included in the list of National Legislation Priorities (Prolegnas) for the 2025-2026 period. This decision shows the state's recognition of the urgency of establishing special regulations that comprehensively regulate the confiscation of assets from crimes, including the aspect of asset *recovery*. Nevertheless, the process of discussing the bill still faces a number of normative, administrative, and political obstacles. Some parties highlighted that the scope of seized assets, evidentiary standards, cross-jurisdictional asset blocking and confiscation mechanisms, and the protection of the rights of affected parties are still not final in the regulatory text.

Overall, the ratification of the Asset Forfeiture Bill has attracted a lot of pressure from many groups. In 2023, President Joko Widodo emphasized the importance of immediately passing this regulation as an instrument to strengthen the eradication of corruption. Despite receiving broad support from the KPK and civil society groups, the discussion process is still stalled, due to debates on the protection of human rights and the mechanism for asset confiscation without criminal convictions. Currently, the bill is still awaiting further discussion in the House of Representatives as part of the national law reform agenda (Hamonangan, 2025). Conducting an analysis of the impact of regulations on the Asset Forfeiture Bill is very important to ensure that this regulation is effective, fair, and can be applied in a sustainable manner. Because this bill allows the confiscation of wealth from crime without going through the usual criminal process, various risks, both social, legal, economic, and related to property rights, need to be comprehensively evaluated. Without in-depth study, its implementation has the potential to cause public rejection, conflicts of authority between institutions, and threats to the rights of parties who legally own assets.

The Asset Forfeiture Bill has introduced the *Non-Conviction Based Asset Forfeiture* (NCB) mechanism, which is fundamentally different from the conventional *conviction-based system*. This approach allows the state to confiscate assets resulting from criminal acts without having to wait for the perpetrator to be legally

convicted, as long as there is sufficient evidence that the assets originated from criminal acts. From a justice standpoint, this approach reflects the principles of commutative and distributive justice, in which the state can immediately recover public losses and prevent criminals from enjoying the fruits of their actions.

The concept of NCB in international practice has been widely applied. Jean-Pierre Brun and Larissa Gray from the World Bank state that this system is effective in preventing perpetrators who flee, die, or cannot be reached by legal jurisdiction, from remaining restricted in their ownership rights to illegal assets (Brun & Gray, 2021). In the context of Indonesian law, the adoption of this system is also an effort to harmonize with Article 54 paragraph (1)(c) of the UNCAC which encourages the state to have a mechanism for asset confiscation without penalization.

The absence of NCB instruments makes the asset forfeiture mechanism in Indonesia very vulnerable to *delaying tactics* and procedural exceptions. The civil process can run for years and is full of technical debates regarding the capacity of the sued party, the validity of the lawsuit, and the control of inheritance. All of these barriers are not found in NCB systems designed to simplify the asset recovery process. In terms of public policy, the absence of the NCB mechanism provides room for moral hazard. Corrupt actors can disguise assets before they are inspected, transfer ownership to a third party, or spend assets privately. If the perpetrator dies, the state can only claim the remaining assets that are still in the heir's possession.

Furthermore, the absence of the NCB scheme causes Indonesian law enforcement to be not in line with international practice, especially the UNCAC (*United Nations Convention Against Corruption*) standard which encourages the adoption of civil-based asset forfeiture mechanisms. Indonesia has actually regulated asset recovery in the Anti-Corruption Law and other draft regulations, but it does not yet have a stand-alone NCB instrument as a *global* best practice.

The confiscation of assets suspected of coming from criminal acts in the case has the potential to harm a number of parties. Especially for third parties who have good faith because they feel disadvantaged because their assets are also blocked during the trial process. So far, third parties who have good intentions towards their assets often experience injustice in the legal process, where the assets will only be returned after the case has been decided (*inkracht*). Therefore, the state needs to play an important role in ensuring that the asset forfeiture mechanism is carried out in accordance with the applicable rules and principles of human rights restrictions to ensure legal protection for third parties who are considered to be not optimal. Although legal instruments are needed to prevent state losses due to criminal acts, the state must also ensure that the enforcement of the law does not

violate human rights. This is important because with the formation of a balanced justice system, the actions of law enforcement officials can be accounted for and overall play a role in maintaining a balance between the purpose of asset confiscation and the protection of human rights.

From the perspective of retributive justice, asset confiscation is understood as a form of proportionate retribution against the perpetrators of criminal acts. This view arises from the belief that the perpetrator should not enjoy the results of the crime even though he has served corporal punishment or can no longer be tried. Thus, asset confiscation is a way to ensure that punishment meets a sense of commutative justice (Wedha, et.al, 2018). Restorative justice offers a different perspective. The focus is not only on the perpetrators, but on the recovery of conditions damaged by crime. In the context of corruption, the state and society are collective victims. Therefore, the return of assets is seen as an important step to restore public rights that have been deprived through the abuse of power.

The benefits are also reflected in its preventive effects. Loss of economic benefits is a significant risk for perpetrators of economic crimes, so asset confiscation sends a strong signal that no proceeds of crime can be enjoyed safely. The effectiveness of asset forfeiture practices also improves the efficiency of the judicial system. With a more concise legal path and not entirely dependent on criminal judgments, asset recovery can be done faster, while reducing the burden of resolving cases that accumulate in law enforcement agencies. Another benefit lies in the potential to increase the efficiency of state financial management. Assets that have been successfully confiscated can be immediately transferred or utilized by the state for the public interest, without waiting for the resolution of prolonged criminal cases.

Overall, asset forfeiture should be seen as an effort to strike a balance between justice and utility. If the mechanism is clearly regulated and both in the evidentiary procedure, the form of the decision, and its implementation, then the confiscation of assets will be able to provide real recovery for the state while strengthening the legitimacy of law enforcement. Public awareness that asset confiscation must be carried out within the framework of *equality before the law* and respect for human rights is reflected in various social movements that have emerged throughout 2025. These actions show that the public not only wants strict law enforcement against corrupt actors, but also urges the government to provide an effective, transparent, and respectful asset recovery mechanism.

The asset forfeiture system in Indonesia currently relies on several legal instruments that overlap and have not been comprehensively integrated. The Criminal Procedure Code (KUHP) as a *lex generalis* regulates the confiscation of assets. However, the mechanism regulated in the current Criminal Procedure Code is still conventional and highly dependent on court decisions that have permanent

legal force. Reliance on a final criminal verdict (*inkracht*) creates a critical *window of opportunity*, where the perpetrator or his family can freely move, disguise, or transfer assets to other jurisdictions.

The legal framework regarding asset confiscation is currently still scattered in various laws and regulations that are not integrated, have a limited scope and depend on the criminal justice process which takes quite a long time. This condition shows that there is a *legal gap* that can be used by criminals to secure assets from crimes they have committed.

This gap between international commitments and national law poses serious consequences to the effectiveness of asset recovery efforts, especially in corruption cases involving experienced actors with international networks. The absence of an NCB mechanism in Indonesia causes the state to be unable to act quickly to secure assets suspected of being derived from criminal acts before the perpetrator succeeds in transferring them. Romli Atmasasmita criticized this condition by stating that Indonesia has lagged behind in implementing international standards on asset confiscation, even though the UNCAC was ratified more than a decade ago.

Furthermore, when viewed from the perspective of justice, the current practice of asset forfeiture faces various fundamental challenges in its implementation, the theory of justice proposed by John Rawls emphasizes the importance of the principles of *fairness* and *the veil of ignorance*. In the context of asset forfeiture, this principle requires that the existing system must be able to recover losses proportionately and nondiscriminatory. However, data showing a low percentage of state losses that have been successfully recovered have indicated serious distributive injustices. The wider community as an indirect victim of non-criminal corruption does not benefit from the recovery of assets that should be allocated for development and public services. The substantive justice put forward by Aristotle that focuses on restoring the victim's state to its original position cannot be realized in the current system.

In addition, when viewed in terms of procedural justice, the current asset forfeiture system also shows weaknesses. From the perspective of restorative justice, the current system is also considered not able to meet its goals. Restorative justice emphasizes the importance of restoring relationships and circumstances damaged by criminal acts. However, with the low rate of asset recovery, the state cannot fully recover the losses suffered by the community.

In the context of asset confiscation, this benefit can be measured by the extent to which the current system is able to recover state losses and prevent greater losses in the future. Data showing a low rate of asset recovery indicates that the current system is not successfully meeting this principle of usefulness. Irreparable state

losses significantly reduce the state's ability to provide public services and implement development programs that ultimately harm the wider community.

From an efficiency point of view, the current asset forfeiture system is also uneconomical. A long criminal justice process requires a lot of costs, both for the state and for the perpetrators. Meanwhile, assets confiscated during judicial proceedings often depreciate in value because they cannot be managed optimally. In a broader perspective, the ineffectiveness of the current asset forfeiture system also has an impact on the investment climate and the national economy. Legal uncertainty and weak enforcement of the law against economic crimes can reduce investor confidence and hinder economic development. Thus, it can be concluded that the current asset forfeiture system does not meet the principle of usefulness both in terms of the effectiveness of state loss recovery, process efficiency, and its impact on the economy as a whole.

3.2. The Urgency of the Law on Criminal Asset Forfeiture Reviewed Through the Perspective of Justice and Utility

The establishment of the Asset Forfeiture Law is an urgent need in order to realize the principle of the rule of law (*rechstaat*) as contained in Article 1 paragraph (3) of the 1945 Constitution. The absence of special regulations on asset confiscation creates a legal vacuum that hinders the state in carrying out its function as a guardian of the public interest. The Asset Forfeiture Bill will fill this legal void by providing a clear and comprehensive legal framework for law enforcement officials in recovering criminal assets.

The establishment of the Asset Forfeiture Law is one of the most important instruments for the state in carrying out its moral responsibility, especially in ensuring that economic criminals cannot enjoy the proceeds of their illegal actions. Through the *non-conviction-based asset forfeiture* (NCB) mechanism proposed in the Asset Forfeiture Bill, the state can be more effective in recovering public losses due to corruption and money laundering, so that the principle of substantive justice can be realized.

The principle of separation of power, which is one of the important elements in the concept of the state of law, has also been strengthened through this Asset Forfeiture Bill. Currently, the authority to confiscate assets is spread across various legal instruments with different mechanisms, causing overlapping authority and legal uncertainty. The Asset Forfeiture Bill will provide an integrated legal umbrella, clearly regulating the division of authority between law enforcement agencies as well as coordination and supervision mechanisms.

In Indonesia, the adoption of the NCB mechanism with modifications that are in accordance with the characteristics of the national legal system will be a significant

leap in asset recovery efforts. Based on the Academic Manuscript of the Asset Forfeiture Bill, the proposed NCB mechanism includes several important stages. The first stage is asset tracing, where investigators or public prosecutors are authorized to request documents or information from every person, corporation, or government agency to trace the origin, existence, and legal status of assets suspected of originating from criminal acts. The second stage is the blocking and confiscation of assets. Investigators or public prosecutors may order the blocking of assets suspected of being derived from criminal acts for a maximum period of 30 days. This block can be extended for the same period of time. The third stage is asset confiscation, which can be done under certain conditions, including: if the suspect or defendant dies, escapes, experiences permanent illness, or is unknown; if the defendant is acquitted of all lawsuits; if the criminal case related to the asset cannot be tried; and if the criminal case has been found guilty by a court with permanent legal force, but in the future other assets derived from criminal acts that have not been confiscated by the state are found.

If you look at the steps mentioned above, the adoption of the NCB mechanism with modifications in accordance with the characteristics of the national legal system in Indonesia will be a significant development in asset recovery efforts. The implementation of NCB in the Asset Forfeiture Bill can also strengthen Indonesia's position in international cooperation relations for asset recovery. Currently, many corruption cases involve assets placed abroad, but the recovery process is hampered by the absence of an adequate legal basis at the domestic level to meet the requirements of *dual criminality* and *mutual legal assistance*.

From the aspect of utility, the legal economic analysis shows that the adoption of the NCB mechanism will provide significant economic benefits. NCBs can reduce transaction costs in the asset recovery process and shorten the time given to securing criminal assets. This efficiency will ultimately increase the *recovery rate* of state assets, which have been very low. Assets that are successfully seized can be used to finance law enforcement efforts themselves, creating a positive cycle in the eradication of economic crime.

Although the urgency of the Asset Forfeiture Bill cannot be denied, its implementation after this bill is passed will definitely face various challenges. Judging from the long history of this bill which has been included in the Prolegnas since 2009 – 2014 but has not yet been passed, it is possible that political challenges to legislation will arise. Hardjuno Wiwoho identified that the successful implementation of NCB in Indonesia requires political courage and real cooperation between the government and the DPR. In addition, strong synergy is needed between law enforcement agencies such as the Police, KPK, Prosecutor's Office, and Courts.

4. Conclusion

Based on the analysis that has been carried out, it can be concluded that the practice of confiscating assets resulting from criminal acts that currently applies is not adequate in realizing the principles of justice and utility. A system that relies on *conviction-based* mechanisms has proven ineffective in recovering state losses. Reliance on criminal convictions poses a variety of problems, especially when the perpetrator dies, escapes, or cannot be prosecuted for various reasons. From a justice perspective, *the existing* system fails to realize distributive, substantive, and procedural justice. From a benefit perspective, the existing system is inefficient and unable to maximize benefits for the wider community. On the other hand, an analysis of the Asset Forfeiture Bill shows the urgency of its ratification as an urgent need. The bill will not only fill legal gaps and provide legal certainty, but also introduce *a non-conviction based asset forfeiture* (NCB) mechanism that has proven effective in many countries. From a justice perspective, this bill allows for the realization of more substantive restorative and distributive justice. From a beneficitation perspective, the NCB mechanism will increase the efficiency and effectiveness of asset recovery, while creating a stronger deterrent effect for economic criminals. The ratification of the Asset Forfeiture Law is not only a legal necessity, but also a moral and social need to realize justice and utility in law enforcement, especially in efforts to recover assets from criminal acts. The existence of this law will be an important milestone in reforming Indonesia's criminal justice system and strengthening the state's commitment to eradicating corruption and other economic crimes.

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