

The Ideal Concept of Asset Recovery in Corruption Criminal Acts Based on Progressive Law

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Abstract. *Indonesia, as a state based on the rule of law based on Pancasila and the 1945 Constitution, faces serious challenges in eradicating corruption, which has become a systemic crime. Law enforcement is still oriented towards a retributive approach, resulting in a less than ideal return of state assets (asset recovery). A progressive and restorative reconstruction of law enforcement based on the principles of the UNCAC is needed, with a focus on recovering state losses through inter-institutional synergy, strengthening legal instruments, and public participation to achieve justice and social welfare. The purpose of this study is to analyze the implementation of asset recovery in corruption crimes in Indonesia and to analyze the ideal concept of asset recovery in corruption crimes based on progressive legal principles. The method used in compiling this thesis is normative legal research. The specifics of this research are descriptive analysis. The theories used include the theory of the purpose of punishment and progressive legal theory. The results of this study are: (1) The implementation of asset recovery in corruption crimes in Indonesia shows that although regulations such as the Corruption Eradication Law, the Money Laundering Law, and the UNCAC are complete, they still focus on criminal penalties rather than recovering state losses. Legal instruments such as additional penalties and asset confidentiality have not been implemented optimally due to lengthy legal processes and high evidentiary standards. Many court decisions only impose prison sentences without maximum asset recovery, such as in the e-KTP case and the Harvey Moeis tin corruption case. The legal system needs to shift to a restorative paradigm that places the empowerment of corruptors as the primary instrument for restoring state finances and strengthening public trust in the law. (2) The ideal concept of asset recovery based on progressive law places asset recovery as the primary objective of criminal punishment by making the state actively reclaim corrupted public assets for the sake of social welfare. The Non-Conviction Based Asset Forfeiture (NCB) mechanism is a breakthrough instrument that allows for the confiscation of assets without waiting for the*

perpetrator's conviction through an in rem lawsuit with more flexible yet accountable standards of evidence. Practices in the Philippines demonstrate the effectiveness of NCB in pursuing cross-border assets and protecting third parties in good faith, serving as an important model for Indonesia. This approach aligns with the principles of progressive law because it is adaptive, supports social justice, and overcomes formal legal limitations to impoverish corruptors and restore public trust.

Keywords: Asset; Corruption; Law; Progressive; Recovery.

1. Introduction

Indonesia asserts itself as a state of law (rechtsstaat) based on Pancasila and the 1945 Constitution of the Republic of Indonesia, not a state of power (machstaat).¹This affirmation is stated in Article 1 Paragraph (3) of the 1945 Constitution, which serves as the philosophical, constitutional, and normative basis for the administration of government and law enforcement in Indonesia. Within the framework of the rechtsstaat, the law functions as a control on power, ensuring that every action of state administrators is within the legal corridor, and protecting human rights from potential abuse of power.²Indonesia's concept of a state based on the rule of law places the principles of equality before the law and the rule of law as its primary pillars. The rule of law and the supremacy of law require that every action by law enforcement officers comply with the provisions of the constitution and laws, and embody the values of justice that exist and thrive within society. This principle also applies to judges when handing down sentences to perpetrators of criminal acts, which must be based on applicable laws and regulations and align with legal norms and the community's sense of justice.³

One of the major challenges facing Indonesia is eradicating criminal acts of corruption. Corruption in Indonesia is widespread, not only causing financial losses to the state but also violating the social and economic rights of the wider community.⁴Due to its destructive nature and impact, corruption is classified as an extraordinary crime that requires extraordinary measures to eradicate it. The sentencing of corruptors by judges must be aimed at providing a deterrent effect

¹Nawa Angkasa, Analysis of the Position and Function of the Judiciary as the Holder of Judicial Power in the Legal State System in Indonesia, Nizham Journal of Islamic Studies, Vol. 1, No. 1, 2013, pp. 84-109.

²Constitutional Court, Legal State and Democracy Education Module, Center for Pancasila and Constitutional Education, Constitutional Court of the Republic of Indonesia, Jakarta, 2016, p. 2

³Bintang Mandala Karyudi and Nuril Firdausiah, Implementation of the Supremacy of Law in Law Enforcement in Indonesia, Lex Et Lustitia, Vol. 1, No. 2, 2024, pp. 86-98.

⁴Dwi Atmoko and Amalia Syauket, Law Enforcement Against Corruption Crimes Reviewed from the Perspective of Impact and Eradication Efforts, Binamulia Hukum, Vol. 11, No. 2, 2022, pp. 177-191.

not only on the perpetrators but also as a warning to the wider community to refrain from engaging in similar or other crimes.⁵

Corruption in Indonesia is regulated by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. Corruption is an act that harms state finances or the national economy through illegal means, involving public officials or parties with ties to the government. This crime includes various acts such as abuse of office, embezzlement, bribery, and other actions aimed at enriching oneself or others in a manner detrimental to society and the state.⁶

Law enforcement against criminal acts of corruption in Indonesia is still dominated by a retributive approach, namely the imposition of criminal sanctions as a form of retribution for the perpetrator's actions, such as imprisonment and fines.⁷ Even though corruptors have been punished, the rate of state recovery of stolen assets remains very low compared to the amount taken. The state instead bears additional costs, from investigations and trials to the maintenance of corruption convicts in correctional facilities. This situation demonstrates that corruption eradication efforts remain far from effective, particularly in recovering state financial losses.⁸

Based on data from Indonesia Corruption Watch (ICW) from 2021 to 2023, the number of corruption cases and the number of suspects showed an increasing trend each year. In 2021, there were 533 cases with 1,173 suspects, in 2022 this number increased to 579 cases with 1,396 suspects, and in 2023 it rose again to 791 cases with 1,695 suspects. This data demonstrates that repressive measures against corruption have indeed been implemented. However, the increasing number of cases from year to year indicates that current law enforcement against corruption has not been able to erode or eradicate the culture of corruption that has become entrenched in Indonesia.⁹

In the 2021–2023 period, state losses due to corruption were recorded as very large, with a low recovery rate. In 2021, losses reached IDR 62.9 trillion, with a recovery of IDR 1.4 trillion (2.23%). In 2022, losses reached IDR 48.7 trillion, with a recovery of IDR 3.8 trillion (7.80%), and in 2023, losses reached IDR 56 trillion, with a recovery of IDR 7.3 trillion (13.04%). This data indicates that despite the

⁵Ifrani Ifrani, *Corruption as an Extraordinary Crime*, Al-Adl, Vol. 9, No. 3, 2018, pp. 319-336.

⁶Abdul Fatah et al., *Legal Study of the Application of the Element of Detriment to State Finances in Law Enforcement of Corruption Crimes*, Diponegoro Law Journal, Vol. 6, No. 1, 2016, pp. 1-15.

⁷Rida Ista Sitepu and Yusona Piadi, *Implementation of Restorative Justice in the Punishment of Corruption Offenders*, Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia, Vol. 1, p. 1, 2019, pp. 67-75.

⁸Wisnu Murtopo Nur Muhamad et al., *Problems of Asset Recovery in Corruption Crimes in Indonesia*, Adab Publisher, Indramayu, 2023, p. 22

⁹Division of Law and Judicial Monitoring, *Report on the Results of Monitoring Corruption Trends in 2023*, Indonesia Corruption Watch, 2024, p. 10

successful arrest of many corruptors, asset recovery is far from optimal and has not significantly covered state losses.¹⁰

A more restorative approach to corruption law enforcement is needed, with a primary focus on asset recovery. This approach aligns with one of the main pillars of corruption eradication as outlined in the United Nations Convention Against Corruption (UNCAC), namely the emphasis on the importance of returning state assets. Indonesia itself has ratified the convention through Law Number 7 of 2006 concerning the Ratification of the UNCAC. Indonesia bears both a moral and legal obligation to align its legal system with the principles set out in this international instrument.¹¹

The concept of asset recovery is understood as the return of benefits or profits to the public as the party most entitled to state finances, so that its implementation is a crucial issue in efforts to eradicate corruption. According to Mathew Fleming, asset recovery encompasses several key elements, namely, returning assets means withdrawing or revoking assets from the control of perpetrators who do not have rights to them, confiscating and eliminating profits obtained from the proceeds of crime, and preventing the assets from being reused as a means of committing other crimes.¹²

The implementation of the asset recovery concept in Indonesia currently faces various obstacles, both structural, cultural, and legal. Structural obstacles are evident in the weak coordination between law enforcement agencies such as the Corruption Eradication Commission (KPK), the Prosecutor's Office (AGO), the Police, the Financial Transaction Reports and Analysis Center (PPATK), and other related institutions, which often results in delays in the process of tracking, confiscating, and returning assets. Cultural obstacles are reflected in the persistent permissive culture toward corruption, bureaucratic resistance, and minimal public participation in encouraging the recovery of state assets. From a legal perspective, existing legal instruments, both criminal and civil, do not fully support asset recovery, particularly for pursuing cross-border assets or assets recovered after a court decision has been rendered.¹³

International experience shows that successful asset recovery depends heavily on the availability of flexible legal instruments and cross-border cooperation. Many corruption cases are transnational in nature, with perpetrators moving or hiding

¹⁰Ibid, p. 12

¹¹Lidya Agustin et al., Mechanism for Recovering State Financial Losses in Corruption Crimes from the Perspective of Indonesian Legislation, *PAMPAS: Journal of Criminal Law*, Vol. 5, No. 3, 2024, pp. 364-378.

¹²Wisnu Murtopo Nur Muhamad et al., Op. Cit., p. 25

¹³Ridwan Arifin et al., Efforts to Return Corrupt Assets Held Abroad (Asset Recovery) in Enforcing Corruption Eradication Law in Indonesia, *IJCLS (Indonesian Journal of Criminal Law Studies)*, Vol. 1, No. 1, 2017, pp. 105-137.

the proceeds of crime abroad. Countries cannot rely solely on rigid national legal instruments; they require adaptive mechanisms to ensure swift and effective asset recovery. Several countries, such as Switzerland, the United Kingdom, and Nigeria, have demonstrated non-conviction-based asset forfeiture mechanisms, which allow for the confiscation of assets without waiting for a final criminal verdict. This model has been proven to accelerate the asset recovery process, prevent repossession by perpetrators, and minimize the risk of asset loss due to protracted legal proceedings. Adopting these best practices with adjustments to the national legal system will be one way to implement progressive law in Indonesia.¹⁴

2. Research Methods

The type of research that the researcher used in this research is normative juridical, namely legal research that includes research on legal principles, legal systematics, and legal synchronization.¹⁵ This research is descriptive analytical in nature, namely by describing the applicable laws and regulations in relation to legal theories and the practice of implementing positive law related to the problem.¹⁶ The data used for this study is secondary data obtained from library research. The data analysis method used is qualitative analysis, a method that aims to provide in-depth understanding by assigning meaning to each piece of data and conducting structured interpretations.¹⁷

3. Results and Discussion

3.1. The Current Implementation of Asset Recovery in Corruption Crimes in Indonesia

Corruption, often referred to as the abuse of power for personal gain, is essentially a social justice issue, as the general welfare of society should not be sacrificed for the benefit of a particular individual or group. Corruption can be defined as fraudulent acts involving the misappropriation or embezzlement of state funds for personal or group enrichment, directly harming the state and weakening the moral foundations of government. This crime is systematic, organized, and typically committed by individuals holding prominent positions within the social and political structures. Therefore, it is often classified as a white-collar crime, often with a transnational reach. Corrupt practices have penetrated nearly all levels of bureaucracy, including the legislative, executive, and judicial branches, and have even extended into the private sector. This phenomenon not only gradually weakens the state structure but also erodes the foundations of morality,

¹⁴Ridwan Arifin et al., Loc. Cit.

¹⁵Nanda Dwi Rizkia and Hardi Fardiansyah, *Legal Research Methods (Normative and Empirical)*, Widina Publisher, Bandung, 2023, p. 9

¹⁶Nur Solikin, *Introduction to Legal Research Methodology*, Qiara Media, Pasuruan, 2021, p. 30

¹⁷Komang Ayu Henny Achjar et al., *Qualitative research methods: a practical guide to qualitative data analysis and case studies*, Sonpedia Publishing Indonesia, Jambi, 2023, p. 35

law, and social justice that underpin national life. If this situation continues unchecked, corruption will become a major obstacle to national development efforts and worsen Indonesia's image globally as one of the countries with a high level of corruption.¹⁸

Indonesia has a number of specific laws that are still in effect and serve as the legal basis for preventing and eradicating corruption. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was later amended by Law Number 20 of 2001 (the Corruption Law), serves as the main legal umbrella for prosecuting perpetrators of corruption and regulating the mechanism for recovering state financial losses. Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission stipulates the establishment of the Corruption Eradication Commission (KPK) as an independent institution with the authority to investigate, inquire, and prosecute corruption crimes. Law Number 46 of 2009 concerning the Corruption Court provides the basis for the establishment of a special Corruption Court to ensure an independent, fast, and effective judicial process. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, which functions to trace the flow of funds from corruption so that they can be frozen and returned to the state. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims provides legal guarantees for witnesses and whistleblowers of corruption crimes so they can provide information without pressure or intimidation. Law Number 7 of 2006, which ratified the 2003 United Nations Convention Against Corruption (UNCAC), strengthens Indonesia's international cooperation in efforts to prevent, prosecute, and recover assets resulting from transnational corruption. All of these regulations complement each other and serve as the main foundation in the national legal system to realize clean, transparent, and corruption-free governance.¹⁹

The criminal threat for perpetrators of corruption is strictly regulated in the Corruption Eradication Law. This law is the main legal basis for determining the type and severity of punishment that can be imposed on perpetrators of corruption, whether in the form of imprisonment, fines, or additional penalties. Article 2 Paragraph (1) stipulates that:²⁰

The Corruption Eradication Law provides an important provision regarding the reversal of the burden of proof regarding the origin of a defendant's wealth. If a

¹⁸Firman Firdausi and Asih Widi Lestari, *The Existence of 'White Collar Crime' in Indonesia: A Criminological Study Finds Preventive Efforts*, *Reformasi*, Vol. 6, No. 1, 2016, p. 114

¹⁹Miftakhul Khobid and Gunarto, *Analysis of Criminal Law Formulation Policy in Combating Corruption*, *Khaira Ummah Law Journal*, Vol. 13, No. 1, 2018, pp. 37-44.

²⁰Roby Satya Nugraha, *Imposing the Death Penalty on Perpetrators of Corruption Crimes Based on Article 2 Paragraph 2 of Law Number 31 of 1999 concerning Criminal Acts of Corruption (Case Study of Minister Juliari Batubara's Covid-19 Social Assistance Corruption)*, *PALAR (Pakuan Law Review)*, Vol. 6, No. 2, 2020, pp. 59-73.

defendant cannot legally explain the source of their additional wealth, this can be used to strengthen existing evidence that the defendant is involved in a criminal act of corruption. This reversal of the burden of proof applies in criminal cases and is directly related to the criminal justice process itself. If the defendant is declared acquitted or freed from all legal charges, the prosecutor's request for asset confiscation cannot be granted by the court. This concept places the burden of proof on the defendant to demonstrate that their actions were not unlawful, which in practice shifts the principle of presumption of innocence to presumption of corruption or presumption of guilt. This situation often generates debate because it is considered to have the potential to violate basic human rights principles.²¹

The provisions of the Corruption Law provide the legal basis for Public Prosecutors (JPU) and State Attorneys (JPN) to file demands or lawsuits for asset confiscation in corruption cases against defendants who cannot be tried for certain reasons, or against their heirs. In the *pro justitia* stage, if the evidence is insufficient but there is a strong indication of state financial loss, the JPN has the authority to file a civil lawsuit to demand the restitution of the losses based on the case files resulting from the investigation. This provision strengthens the state's position in upholding justice and ensures that assets resulting from corruption can be returned for the sake of state asset recovery.²²

A number of articles in the Corruption Eradication Law have been adopted and adapted into the new Criminal Code, which will come into effect in 2026, as part of efforts to codify Indonesian criminal law. Several articles in the Corruption Eradication Law will now be transferred to the new Criminal Code, as explained in Article 622 Paragraph (4) of the new Criminal Code.²³

One of the main elements in criminal acts of corruption is the loss of state funds. To address this, various corruption regulations have established policies that require the perpetrator of corruption to return or compensate any state funds through an asset recovery mechanism. Asset recovery is defined as a legal process in which the perpetrator loses the rights to the proceeds of the crime and the means used to commit the crime. Some experts argue that asset recovery is part of the legal system enforced by the state as the party harmed by the crime. The state has the authority to revoke, confiscate, and erase ownership of assets obtained from corruption through legal mechanisms, both criminal and civil. These assets, whether located domestically or abroad, are tracked, confiscated, or seized and then returned to the state as victims of the crime. The goal is to recover state

²¹Yessy Artha Mariyanawati and Moh Saleh, *The Reverse Burden of Proof System in Eradicating Corruption, Perspective*, Vol. 28, No. 3, 2023, pp. 176-184.

²²Kiki Kristanto et al., *Characteristics of Civil Lawsuits in Corruption Crimes in Indonesia*, *Palangka Law Review*, Vol. 1, No. 1, 2021, pp. 1-12.

²³Asti Dwiyanti et al., *Introduction to Criminal Law: Theory, Principles, and Implementation*, Green Pustaka Indonesia, Yogyakarta, 2024, p. 33

funds and prevent corruptors from using the proceeds of crime to commit other crimes. This step also serves as a form of law enforcement that provides a deterrent effect for corruptors.²⁴

However, the issue of asset recovery presents unique challenges in its implementation. Indonesia has so far focused on criminal channels, which focus on punishing perpetrators rather than on asset recovery or recovering state financial losses. Yet, the criminal approach has proven ineffective in preventing, suppressing, or reducing the number of corruption cases. When perpetrators are allowed to retain control of the proceeds and means of crime, this provides an opportunity for them or other related parties to enjoy the proceeds of crime, reuse the instruments of crime, and even repeat or develop similar crimes. Rather than deterring corruptors with imprisonment and fines, this approach fails to address the state's substantial need to recover losses resulting from corruption.

According to Romli, the deterrent effect for corruptors is not the length of the prison sentence, but rather the extent to which the perpetrator loses the proceeds of his crime by taking all the assets and property from the corruption (impoverishing the corruptor).²⁵

The long-standing mega corruption case of the e-KTP project involving former Speaker of the Indonesian House of Representatives, Setya Novanto, is a stark example of the disparity between state losses and the recovery of the proceeds of corruption. This project, valued at approximately Rp 5.9 trillion, resulted in Rp 2.3 trillion in state losses due to bribery, mark-ups, and tender-fixing practices involving high-ranking officials and the private sector. In a 2018 ruling by the Jakarta Corruption Court, Setya Novanto was sentenced to 15 years in prison, fined Rp 500 million, and restitution of Rp 7.3 billion, or only about 0.3 percent of the state losses.²⁶

The corruption case involving tin commodity trading that ensnared businessman Harvey Moeis, husband of actress Sandra Dewi, is one of the most glaring examples of the disparity between the magnitude of state losses and the value of compensation imposed by the court. In this case, investigators calculated that state losses due to corrupt practices in the Mining Business Permit (IUP) area of PT Timah Tbk reached approximately Rp 300 trillion. This figure includes not only state financial losses, but also extensive environmental damage due to illegal exploitation of natural resources. The panel of judges only imposed an additional

²⁴BPPK Journal, *Obstacles to Returning Assets Proceeding from Transnational Corruption Crimes*, BPPK Journal: Financial Education and Training Agency, Vol. 11, No. 1, 2018, pp. 28-55.

²⁵Yuli Purwanti et al., *Impoverishing Corruptors as an Effort to Enforce Law and Indonesian Legal Politics*, JURIST: Journal of Law and Political Science, Vol. 2, No. 1, 2025, pp. 1-6.

²⁶Cleopatra Nataly Kakomba, *Legal Review of Abuse of Authority in the Procurement of E-KTP as a Form of Criminal Act of Corruption (Study of the Decision of the Central Jakarta District Court No. 130/Pid. Sus/TPK/2017/PN. JKT. PST)*, LEX PRIVATUM, Vol. 15, No. 4, 2025, p. 78

penalty in the form of compensation of Rp 210 billion on Harvey Moeis. The comparison between the value of the compensation and the magnitude of state losses shows an extreme disparity, namely only around 0.07 percent of the total losses.²⁷

The implementation of asset recovery in corruption cases in Indonesia demonstrates that the goal of punishment is still retributive and not fully aligned with the principles of justice and expediency as mandated by the theory of the purpose of punishment. The punishment system, which still emphasizes imprisonment for perpetrators rather than restitution of state financial losses, is evident in various major cases such as the e-KTP project and the tin corruption case by Harvey Moeis, where the value of the compensation imposed by the court was disproportionate to the magnitude of the state's losses. This situation demonstrates the imbalance between the aspects of punishment and economic justice, thereby preventing punishment from losing its primary function of restoring social balance and restoring public trust in the law.

When examined within the theory of the purpose of punishment, the Indonesian legal system needs to shift from a retributive paradigm to a restorative paradigm, which emphasizes the restoration of state losses as part of justice. Ideal punishment for corruption perpetrators involves not only imposing prison sentences but also ensuring that all proceeds of crime are confiscated and returned to the state. Punishment not only provides an individual deterrent effect but also a broader social deterrent effect and revitalizes the function of law as a means of achieving justice and prosperity.

3.2. The Ideal Concept of Asset Recovery in Corruption Crimes Based on Progressive Legal Principles

The confiscation of assets through criminal channels in the Corruption Eradication Law includes provisions regarding the reversal of the burden of proof regarding the origin of assets. Based on Article 37 Paragraph (4) of the Corruption Eradication Law, if the defendant cannot explain assets that are disproportionate to their income or source of acquisition, then their inability can be used as a tool to strengthen evidence that the defendant has committed a criminal act of corruption. The Corruption Eradication Law also provides space for the recovery of state funds through a civil lawsuit mechanism. This route is taken when efforts through the criminal process are not possible, for example when confiscation or payment of compensation cannot be made due to certain legal constraints. The civil route is optional and functions as a complement to criminal law. Civil lawsuits are subject to civil law provisions both materially and formally, so that the burden

²⁷Nurul Qomariyah, Socio-Cultural Practices in Online News on the Corruption Case of PT Timah Officials, Sandra Dewi's Husband, *Demagogi: Journal of Social Sciences, Economics and Education*, Vol 2, No. 4, 2024, pp. 171-188.

of proof rests with the plaintiff, namely the State Attorney or the state institution that suffered the loss. Both routes have weaknesses, especially because they require a long time to prove the defendant's guilt. Perpetrators of corruption often hide, transfer, or disguise the origin of assets to make them difficult to trace and take over by law enforcement.²⁸ Court decisions often deviate from legal considerations. Although compensatory monetary punishment under positive law is an additional, non-mandatory punishment, it should still be imposed if the perpetrator is proven to meet the elements of Article 2 or Article 3 of the Corruption Law. Its application depends heavily on the discretion of the judge examining and deciding the case. This situation often creates negative public perceptions because the decisions rendered do not reflect a sense of justice and do not provide any real public benefit.²⁹

The legal basis for implementing Non-Conviction Based Asset Forfeiture is stated in Article 54 Paragraph (1) letter c of the UNCAC which states: "Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases". Based on this provision, participating countries are required to take steps in accordance with national law to allow the confiscation of assets without a criminal verdict, especially in circumstances where the perpetrator cannot be prosecuted due to death, escape, absence, or in certain other conditions.³⁰

NCB is an important instrument in the asset recovery mechanism. This term is also known as civil forfeiture, in rem forfeiture, or objective forfeiture. This mechanism focuses on the asset itself, not the individuals involved, so the case is filed against the object, not the perpetrator (in personam). NCB is a stand-alone process, separate from criminal proceedings, and only requires proof that an asset has been "tainted" by a crime. The proof refers to the principle of the balance of probabilities, where state authorities only need to show sufficient evidence that the asset is related to the crime. This approach eases the burden of proof for the government, as it allows for seizure if there is sufficient evidence to convince the judge. Because this process is not directed at individuals, but rather at property, the rightful owner of the property has the right to file a defense to defend the assets to be seized. The process of confiscation and repossession of assets is through an in rem lawsuit or a lawsuit against the object. The concept of civil

²⁸Erwin Ogi, Application of the Reversal of the Burden of Proof in Corruption Crimes and its Legal Implications for Judicial Practice, *Lex et Societatis*, Vol. 3, No. 4, 2015, p. 51

²⁹Jeremy Alexander Sine et al., Application of Additional Criminal Sanctions in the Form of Replacement Money in the Corruption Case of the Former Regent of Kupang Regency, Ibrahim Agustinus Medah (Decision No. 78/Pid. Sus-TPK/2021/PN. KPG), *Artemis Law Journal*, Vol. 2, No. 2, 2025, pp. 570-582.

³⁰Bhilla Aliffitria and Nuriyeni Kartika Bintarsari, The Impact of the Implementation of the United Nations Convention Against Corruption on Corruption Eradication in Australia 2013-2017, *Insignia: Journal of International Relations*, Vol. 6, No. 2, 2019, pp. 106-122.

forfeiture is based on the doctrine of taint, namely the principle that a crime can "taint" assets used in a crime or obtained from the proceeds of that crime. While they share the same goal as criminal forfeiture, namely to seize and take possession of assets resulting from criminal activity, the two mechanisms differ. Criminal forfeiture is pursued through an in personam lawsuit, or a lawsuit against the perpetrator, while NCB uses an in rem approach that focuses on the asset.³¹

The concept of an in rem lawsuit, namely a lawsuit directed against assets resulting from corruption through civil proceedings, with the aim of recovering state assets that have been corrupted. Unlike confiscation of assets through criminal mechanisms that are carried out based on a criminal judge's decision against the perpetrator, the in rem system places the assets themselves as the object of the lawsuit. In this way, the state can still reclaim assets obtained from crime even if the perpetrator cannot be sentenced to criminal punishment, thus expanding law enforcement in recovering state losses due to corruption. In rem confiscation is a legal mechanism designed to overcome various weaknesses in the process of confiscating assets through criminal channels, which often face obstacles. Criminal processes that cannot be implemented due to obstacles, so the in rem mechanism becomes an alternative that can be used. The application of in rem confiscation can be carried out in several situations.³²

The application of in rem asset confiscation has been proven to recoup state losses and return the proceeds of crime to the rightful parties. While not intended to replace criminal prosecution, in many corruption cases, this mechanism is often the only realistic means of ensuring the return of the proceeds of crime and upholding justice. Factors such as the influence of corrupt officials or other practical obstacles often hinder a thorough criminal investigation, particularly when the perpetrator has died or fled. Corrupt officials often use their power to obtain immunity to avoid accountability. Because the concept of in rem asset confiscation does not depend on a criminal conviction, the process can continue even if the perpetrator has died, fled, or otherwise enjoys immunity. This approach provides a more effective legal framework for ensuring that assets obtained from crime are recovered and returned to the state.³³

One of the most prominent cases demonstrating the effectiveness of the NCB system in the Philippines is the recovery of assets held by former President Ferdinand Marcos in Switzerland. The Philippine government convinced Swiss financial authorities to freeze all Marcos-linked accounts, and USD 658,175,373.60

³¹Tri Indah Sakinah and Benny Sumardiana, *Non-Conviction Based Asset Forfeiture Policy Concept Through in Rem Lawsuit Based on Economic Analysis of Law, Legal Reform*, Vol. 29, no. 1, 2025, p. 52-69.

³²Zulkarnain Pantoli, *Draft Law on Asset Confiscation (New Strategy to Fight Corruption with an in-REM Approach)*, *Journal of Human and Education (JAHE)*, Vol. 4, No. 6, 2024, pp. 1124-1132.

³³Refki Saputra, *Challenges of Implementing Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia*, *Integritas: Jurnal Antikorupsi*, Vol. 3, No. 1, 2017, pp. 115-130.

was subsequently transferred to a designated account for delivery to the Philippine government. Although Imelda Marcos and several other parties claiming ownership of the funds filed a lawsuit to annul the seizure decision, the court dismissed the lawsuit, affirming that the NCB process in the Philippines is a civil, not a criminal, legal mechanism *in rem*. This case marked a significant milestone for the Philippines in implementing the NCB system, demonstrating that a country can recover assets derived from transnational crimes without relying on criminal prosecution. This approach provides a strong legal foundation for asset recovery efforts in the Philippines and serves as a model for other countries in optimizing civil legal instruments to combat corruption and money laundering.³⁴

Non-Conviction Based (NCB) Asset Forfeiture is considered an ideal instrument for confiscating and taking over assets derived from corruption in Indonesia. Its implementation offers several benefits to law enforcement officials in the process of recovering state assets. First, the NCB mechanism is not directly tied to the criminal process, allowing forfeiture to be submitted to the courts more quickly than with criminal forfeiture. In criminal proceedings, confiscation can only be carried out after a suspect or guilty verdict has been established, whereas with NCB, confiscation can be initiated immediately upon suspicion of a link between the asset and the crime. This speed is crucial in the Indonesian context, given the numerous cases in which corruptors quickly move or hide their assets, even abroad, upon learning of a potential investigation.

Second, the NCB mechanism uses a lighter civil standard of proof compared to criminal law. This facilitates the asset recovery process because law enforcement officials are not burdened with the burden of proof as in criminal cases. This system also applies the principle of reverse burden of proof, where the defendant or asset owner must prove that their assets were acquired legally, thus easing the government's burden in the legal process.

Third, NCB is a lawsuit against assets (*in rem*), not against the individual perpetrator (*in personam*). Therefore, the trial process is independent of the perpetrator's condition, whether they have fled, died, or even been acquitted of the charges. This allows the confiscation and seizure process to proceed unhindered, which is highly relevant to practice in Indonesia, where corruption defendants often evade legal proceedings through various means, such as disappearing or feigning illness. NCB is a highly effective alternative to ensure the return of embezzled state assets.

Fourth, the implementation of NCB is particularly useful in situations where criminal prosecution is hampered or impossible. Authorities often encounter perpetrators with strong political power or social connections, making it difficult

³⁴Lola Yustrisia, *Asset Recovery Mechanisms in Southeast Asian Countries*, Sumbang12 Law Journal, Vol. 1, No. 1, 2022, pp. 23-44.

to bring them to justice. NCB is a more efficient solution because it focuses on the assets, not the perpetrators, thus minimizing political and social risks. In cases where the owner of the proceeds of crime is unknown, NCB can still be used because the lawsuit is directed against the assets, not the individual. Unclaimed assets can be confiscated by the state if no party files an objection within a certain period of time after the seizure.

The implementation of NCB also provides a solution to the stagnation in the asset confiscation mechanism based on the criminal procedure law system (KUHP), which requires evidence of the defendant's guilt before assets can be confiscated. This provision complicates the implementation of confiscation, especially when the defendant cannot be present in court due to death, absconding, being unknown, or suffering from a permanent illness. The only way to continue recovering assets resulting from criminal acts is by using the NCB legal instrument which provides a legal basis for the state to confiscate and take over assets without having to wait for a criminal verdict against the perpetrator.

Although Indonesia has ratified the 2003 United Nations Convention Against Corruption (UNCAC) through Law Number 7 of 2006 concerning the Ratification of the 2003 United Nations Convention Against Corruption, which was passed on April 18, 2006, the implementation of the provisions of Non-Conviction Based Asset Forfeiture (NCB) in the national legal system is still limited to the draft stage, namely through the Draft Law on Asset Confiscation (RUU PA). To implement this concept, it is necessary to revise a number of regulations, or at least the preparation of new regulations that specifically regulate the mechanism for asset confiscation without criminal penalties. This instrument must still pay attention to individual civil rights, such as the right to self-defense, but still allow the state to take firm action to recover state financial losses.³⁵

As with any new policy, implementing asset forfeiture without conviction will not be without challenges. Some of the challenges that may be faced include:³⁶

Based on Satjipto Rahardjo's progressive legal theory, the concept of asset recovery through the Non-Conviction Based Asset Forfeiture (NCB) mechanism aligns with the legal concept that is not rigidly based on normative texts, but is oriented towards humanitarian and justice goals. Progressive law positions the law as a tool to serve humanity, not the other way around. Therefore, in terms of eradicating corruption, the law must be able to adapt to the nation's social and moral challenges. Corruption has damaged the foundations of public life and social justice, so that the recovery of state assets cannot continue to depend on

³⁵Yopi Gunawan and Kristian Kris, *Eradication of Criminal Acts of Corruption After Ratification of the United Nations Convention Against Corruption (UNCAC) and Reform of Indonesian Criminal Law*, *Positum Law Journal*, Vol. 3, No. 1, 2018, pp. 37-70.

³⁶Refki Saputra, *Challenges of Implementing Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia*, *Integritas: Jurnal Antikorupsi*, Vol. 3, No. 1, 2017, pp. 115-130.

formalistic and complicated criminal law procedures. Through a progressive approach, NCB becomes a legal instrument that transcends the limits of formalism in criminal procedural law, providing a way for the state to effectively uphold justice by recovering state assets without waiting for a criminal verdict against the perpetrator. This step reflects Satjipto Rahardjo's spirit, which emphasizes that the law must be "alive" and side with the interests of the wider community, not be constrained by procedures that actually hinder the achievement of justice.

The application of NCB in eradicating corruption reflects the implementation of progressive law, which rejects the status quo and encourages legal innovation for social benefit. In Satjipto Rahardjo's paradigm, progressive law demands that law enforcement officers act creatively, responsively, and boldly make breakthroughs when the existing legal system is no longer able to meet the needs of society.³⁷ The NCB mechanism provides the law with the capacity to act preventively and correctly against abuses of power, while ensuring that public wealth is not continuously controlled by corrupt actors who often hide behind procedural weaknesses. By ensuring individual rights through a transparent and fair process, this approach makes the law a dynamic instrument in realizing the ideals of public welfare and social justice.

4. Conclusion

The implementation of asset recovery in corruption cases in Indonesia shows that although a regulatory framework is in place through the Corruption Eradication Law, the Money Laundering Law, the Corruption Eradication Commission Law, the new Criminal Code, and the UNCAC, law enforcement remains focused on imprisonment, resulting in suboptimal recovery of state losses. This is evident in the significant disparity between the value of losses and the assets recovered in several major cases. To achieve justice and benefit, Indonesia needs to shift from a retributive approach to criminalization that prioritizes asset recovery, including through the implementation of Non-Conviction Based Asset Forfeiture (NCB), which allows for the confiscation of assets without relying on criminal convictions and using more flexible standards of proof. NCB, as successfully implemented in the Philippines, is relevant for Indonesia because it is more effective in impoverishing corruptors, returning public assets, strengthening public trust, and reflecting progressive legal values that are adaptive, recovery-oriented, and pro-social as long as they are implemented with clear regulations and protection of civil rights.

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