

Original Article

The Impact of Asset Recovery Regulations on Corruption Cases in Indonesian: A Leap Forward?

Fithriatus Shalihah^{1*}, Bakhshillo Kamolovich Khojaev², Fitrat Umirov², Mohammad Ishaque Husain², Deslaely Putranti³

¹ Faculty of Law, Universitas Ahmad Dahlan, Yogyakarta, Indonesia.

² Tashkent State University of Law, Tashkent, Uzbekistan.

³ Darul Ihsan University, Dhaka, Bangladesh

⁴ University of Galway, Galway, Ireland.

*Corresponding author: fithriatus.shalihah@law.uad.ac.id

Abstract

The central problem lies in the structural limitations of the asset recovery regime under the Anti-Corruption Law, which requires a criminal conviction for confiscation. This restriction has hindered full recovery of state losses, particularly in cases involving hidden or transferred assets and transnational challenges. The research aims to assess the paradigmatic nature of Indonesia's asset forfeiture reform by analysing its conceptual transformation, constitutional legitimacy, and systemic coherence. This research employs a normative juridical method, relying on statutory, conceptual, and comparative approaches. The research reveals that, first, the shift from conviction-based forfeiture to non-conviction-based (NCB) forfeiture reflects an emerging transformation from offender-oriented justice toward asset-oriented justice. However, in Indonesia, this transformation remains transitional and has not yet restructured the philosophical and institutional foundations of asset recovery. Second, the comparative analysis demonstrates that the United Kingdom has successfully institutionalised civil recovery mechanisms within a strong framework of judicial oversight and proportionality, supported by human rights safeguards, thereby illustrating that effectiveness and constitutional protection are not mutually exclusive. Finally, Indonesia's reform, while normatively progressive, still depends on harmonisation with constitutional guarantees and requires clearer standards of proof, differentiated procedural safeguards, and stronger institutional coordination to ensure systemic coherence and prevent abuse of power. The research recommends adopting a hybrid-restorative constitutional model of asset forfeiture. Such a model should provide limited autonomy for non-conviction-based confiscation, integrate early asset tracking and freezing mechanisms, apply differentiated standards of proof, and embed strict constitutional safeguards through effective judicial review and proportionality principles.

Keywords: Asset Recovery; Corruption; Indonesia; Regulation;

Introduction

In addition to hurting state finances, corruption is a serious crime that undermines public institutions' credibility, impedes economic growth, and increases social inequality. Corruption has a structural issue in Indonesia, undermining the effectiveness of public policy and governance. Numerous assessments by global organisations, notably Transparency International, indicate that Indonesia's ranking on the Corruption Perception Index continues to underscore the need to strengthen its enforcement and preventive mechanisms, particularly in recovering public losses.¹

Indonesia Corruption Watch (ICW)'s report indicates that 533 corruption cases were convicted in 2021. Compared to 444 cases during the same time last year, this figure rose. State financial losses have escalated due to the growing number of corruption cases, as clearly indicated by ICW data. It shows that the potential worth of state financial damages from corruption cases was IDR 18.6 trillion in 2020 and IDR 26.438 trillion the following year. State losses from corruption increased by 47.6%. In 2021, this figure rose to 533 instances.

¹ Simeon A. Igbinedion and Anthony Osobase, 'Grand Corruption in the Global South: Legal, Political and Economic Analysis of Assets Recovery in Nigeria', *Journal of Economic Criminology*, 9 (2025), 100164 <<https://doi.org/10.1016/j.jeconc.2025.100164>>.



With 579 occurrences in 2022, the upward trend persisted. In 2023, the number of cases rose sharply to 791, the highest level in the previous five years. Even as the potential value of state losses increased significantly due to large-scale corruption cases, the number of prosecutions fell to about 364 in 2024. As 2025 approaches, a comprehensive annual report on the total number of corruption case prosecutions has yet to be released. However, several governance metrics demonstrate that the difficulties in eliminating corruption persist. Transparency International's 2025 Corruption Perception Index score for Indonesia was 34 out of 100, indicating stagnation or even a decline in the country's anti-corruption environment. Therefore, even though there may be fewer cases each year, the complexity of the cases and the size of state losses nevertheless underscore the urgency of enhancing the asset recovery system as a crucial tactic in Indonesia's fight against corruption.²

Up to this point, corruption cases in Indonesia have generally been addressed with a focus on punishing the offenders (i.e., pursuing the suspects), rather than completely optimising the recovery of assets obtained through illicit activities (i.e., pursuing the money). However, as asset recovery directly addresses the primary motivation behind corruption, and economic gain. It holds strategic importance both philosophically and practically. Additional penalties in the form of restitution are governed by national legal frameworks, such as Law Number 31 of 1999, as amended by Law Number 20 of 2001. One of the most notable aspects of the offence in Indonesia's anti-corruption law enforcement campaign is the issue of state financial loss. This is directly linked to Law Number 31 of 1999, Articles 2 paragraph (1) and (3), on the Eradication of Criminal Acts of Corruption, as modified by Law Number 20 of 2001.³ In the administration context of administering criminal penalties, specifically monetary compensation, the issue of state financial loss is a major concern, especially in the choices judges make. Nevertheless, numerous legal and technological barriers remain that hinder the effectiveness of asset recovery and monitoring efforts.⁴

Corruption is frequently raised in conversations about asset recovery. Asset recovery in corruption, however, is considered extremely challenging, with subpar outcomes. In several nations, Asset Tracking and Recovery (ATR) is one of the many issues law enforcements faces when dealing with corruption charges. Several factors, including the suspect or defendant's death or disappearance, absconding, or being found not guilty by the court, may make it difficult to recover assets stemming from corruption charges. It is more difficult for law enforcement to reclaim tainted state property. Besides, there are problems with how non-executable asset confiscations are carried out.⁵

The significance of compensatory payments in corruption-related law enforcement is to ensure restitution and justice for the financial losses incurred by the state due to the crime. The compensatory award issued by a judge should be proportional to the financial losses the state has suffered due to corruption. In this context, the legal framework that governs the obligation of corruptors to return or compensate state financial losses is established by Law Number 31 of 1999 and Law Number 20 of 2001. Consequently, a solid foundation for

² Cornelia Körthl and Imad Chbib, 'Illicit Enrichment in Germany: An Evaluation of the Reformed Asset Recovery Regime's Ability to Confiscate Proceeds of Crime', *International Review of Law and Economics*, 80 (2024), 106230 <<https://doi.org/https://doi.org/10.1016/j.irl.2024.106230>>.

³ Selamat Widodo and others, 'State Officials Asset Disclosure : Evidence from China', *Journal of Human Rights, Culture and Legal System Vol.*, 4.1 (2024), 54–74 <<https://doi.org/https://doi.org/10.53955/jhcls.v4i1.187>>.

⁴ Stergios-Aristoteles Mitoulis, Dan V. Bompa, and Sotirios Argyroudis, 'Sustainability and Climate Resilience Metrics and Trade-Offs in Transport Infrastructure Asset Recovery', *Transportation Research Part D: Transport and Environment*, 121 (2023), 103800 <<https://doi.org/10.1016/j.trd.2023.103800>>.

⁵ Ehi Eric Esoimeme, 'Institutionalising the War against Corruption: New Approaches to Assets Tracing and Recovery', *Journal of Financial Crime*, 27.1 (2020), 217–30 <<https://doi.org/10.1108/JFC-12-2018-0125>>.



preserving integrity and justice in Indonesian law enforcement is established by understanding the critical relationship among state financial losses, corruption, criminal law, and compensatory monetary sanctions. Not only is the imposition of compensatory money sanctions commensurate with state losses a form of punishment for corruptors, but it is also a tangible step toward the restoration and protection of state finances.

Compensatory payments are an essential measure in the fight against corruption in Indonesia. This is because compensatory money serves as restitution for losses incurred due to corrupt actions by imprudent parties intended to enrich themselves. The imposition of financial penalties is a direct result of corruption that devastates the state's finances and economy. The state is required to endeavour to eliminate and restore state assets that have been corrupted, as outlined in Article 18 of the **Corruption Eradication Law**. Additional penalties in the form of compensatory compensation are implemented to facilitate the return of these assets. Additionally, Article 18, paragraph 1, letter b, of the **Corruption Eradication Law** stipulates that the number of compensatory payments that may be imposed on corruption defendants is limited to the assets acquired as a result of the corruption offence.⁶

The imposition of compensatory payments in corruption offences is an additional punishment intended for those convicted of corruption. This punishment aims to reimburse the state for the financial losses resulting from the convict's actions, thereby restoring the state to its rights as the victim in the court. The recovery of compensatory funds obtained through corruption is a multifaceted challenge, as the perpetrators of these crimes frequently hold prominent positions in society and are members of intellectual circles, rendering corruption an extraordinary offence. The restitution procedure is frequently complicated by their extensive access to resources and power. Nevertheless, the implementation of the proposal is further complicated by the numerous obstacles, particularly those associated with the imposition of supplementary penalties. These impediments may manifest as intricate regulations or varying interpretations among law enforcement agencies, particularly prosecutors and judges.⁷

The mechanism for compensatory fines, as outlined in Article 18 of the **Corruption Eradication Law**, has become an essential tool for recovering state losses. However, this approach does not sufficiently address the complexities of contemporary corruption crimes, which are transnational, structured, and based on cross-jurisdictional asset flows. This inadequacy is evident in the evolution of international legal practice. It is imperative to expand the perspective beyond the mere imposition of supplementary penalties in criminal determinations to a more comprehensive and progressive asset recovery regime, as is currently being implemented globally. The implementation of non-conviction-based asset forfeiture mechanisms and international cooperation across jurisdictions indicates a paradigm shift toward a more progressive asset confiscation regime, in line with global developments. Asset recovery is recognised as a fundamental principle in the fight against corruption in international conventions such as the **United Nations Convention against Corruption (UNCAC)**. As a state party, Indonesia is obligated to modify its national regulatory framework to comply with these international standards. The principle of the rule of law is a consequence of financial offences, particularly corruption, which necessitates asset recovery. It can be asserted that the state bears the responsibility for asset recovery to

⁶ George Pavlidis, 'Asset Recovery in the European Union: Implementing a "No Safe Haven" Strategy for Illicit Proceeds', *Journal of Money Laundering Control*, 25.1 (2022), 109–17 <<https://doi.org/10.1108/JMLC-11-2020-0131>>.

⁷ Jay S. Albanese, 'Corruption as the Cause, Not the Effect, of Organized Crime?', *Journal of Economic Criminology*, 7 (2025), 100137 <<https://doi.org/10.1016/j.jeconc.2025.100137>>.



promote the welfare of the populace. The UNCAC was established to address the challenge of asset recovery in corruption cases, a challenge that is not exclusive to Indonesia. Additionally, numerous countries encounter this issue.⁸

The normative design of the Indonesian legal system, which continues to adhere to a conviction-based approach to asset forfeiture, constitutes a fundamental issue within the current regulation of asset recovery and confiscation. This approach requires a final and binding criminal verdict before asset confiscation can be implemented. The successful recovery of state losses largely depends on the individual responsibility of the perpetrator in this model. Consequently, the asset recovery process can be hindered or made impossible if the defendant dies, escapes, is outside the jurisdiction, or is acquitted. Thus, the restorative objective of recouping state losses is frequently not optimally realised, despite the plain fact that the losses have occurred.⁹ Additionally, the provisions concerning compensatory sanctions in Law Number 31 of 1999, as amended by Law Number 20 of 2001, continue to pose implementation challenges, particularly during execution. In practice, judicial verdicts frequently mandate compensation payments without adequate mechanisms for asset monitoring and identification. Consequently, the state is unable to effectively recover its financial losses when convicts choose to serve subsidiary sentences rather than pay compensation. This situation illustrates a discrepancy between the regulation's normative objectives and its actual implementation.¹⁰

Another issue concerns inadequate interagency coordination during asset tracking, freezing, and confiscation, particularly when assets are located across multiple jurisdictions. The integration of international cooperation mechanisms into the national framework has not been fully optimised, despite Indonesia's ratification of the United Nations Convention against Corruption (UNCAC). The slow and inefficient asset recovery processes are often due to administrative challenges, differences in legal systems, and limited technical capacity for asset tracing. It means that the discourse on enhancing the non-conviction-based asset forfeiture regime faces both constitutional and conceptual challenges. The Indonesian legal system mandates strict adherence to due process, grounded in the presumption of innocence and the preservation of property rights. The implementation of asset confiscation without a criminal conviction contradicts the principles of legal certainty and human rights in the absence of clear norms and a proportionate evidentiary standard. Therefore, the current regulatory dilemma is not solely attributable to technical limitations, but also to the inherent conflict between the need to effectively eradicate corruption and the preservation of the fundamental principles of the rule of law.¹¹

In the meantime, the Proceeds of Crime Act (POCA) 2002 is the primary regulatory framework that governs asset confiscation and recovery in the United Kingdom. This legislation is the cornerstone of the country's contemporary asset recovery regime. This law proposes a comprehensive strategy that includes cash seizure, civil recovery (non-conviction-

⁸ Oluwafemi Adesina Oyeboji and Don John O. Omale, 'An Assessment of the Factors of Economic and Financial Corruption by Public Officials in Nigeria', *Journal of Economic Criminology*, 10 (2025), 100188 <<https://doi.org/10.1016/j.jeconc.2025.100188>>.

⁹ Firdaus Arifin and Fakultas Hukum Universitas Pasundan-bandung, 'Problematika Hukum Pengembalian Aset Tindak Pidana Korupsi Pelaku Dan Ahli Warisnya Firdaus Arifin Penyembunyian (Safe Haven) Hasil Kejahatan Tersebut Yang Melampaui Lintas Batas Dasar / Landasan Dalam Upaya Pemerintah Untuk Mengembalikan Kerugian Keuan', 3.1 (2019), 64–85.

¹⁰ Retno Dewi Pulung Sari and others, 'State Financial Losses as a Result of Environmental Damage', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 121–48 <<https://doi.org/10.53955/jhcls.v4i1.136>>.

¹¹ Hafte Gebreselassie Gebrihet, 'Slaying the Giant of Corruption in Africa: Analysing the Rhetoric-Reality Gap under Africa Agenda 2063', *International Journal of Sociology and Social Policy*, 45.13–14 (2025), 92–112 <<https://doi.org/10.1108/IJSSP-05-2025-0309>>.



based forfeiture), criminal confiscation, and unexplained wealth orders (UWOs). It is possible to establish, through civil proceedings, that the assets are the proceeds of crime; the state can seize assets suspected of being the result of criminal activity without waiting for a criminal conviction through the civil recovery mechanism. Nevertheless, the UK's system guarantees due process of law by maintaining strict judicial oversight, explicit standards of proof, and the protection of property rights and the principle of proportionality. Therefore, the UK's regime strikes a balance between safeguarding the principles of the rule of law and effectively combating economic crime.¹²

The UK is a pioneer in the development of non-conviction-based forfeiture, which has been evaluated in both practical and academic settings. Consequently, the comparison with the UK is pertinent. The UK is currently embroiled in a heated debate over the extent of the state's authority to seize assets without a criminal conviction. This provides a valuable normative laboratory for evaluating whether Indonesia's reforms truly represent a paradigmatic departure or if they may raise constitutional concerns. This research can evaluate the degree to which national regulatory designs achieve a balance between effective asset recovery and the protection of the rule of law by comparing Indonesia and the UK. Additionally, it can assess whether the proposed reforms align with global developments or deviate from modern rule-of-law standards.¹³

Previously, Frederica Celia Suwono et al.¹⁴ conducted research to develop strategies to enhance international cooperation within the asset forfeiture mechanism under the Indonesian Asset Forfeiture Bill. Indonesia has ratified the United Nations Convention against Corruption; however, cross-jurisdictional cooperation remains inadequate. They argued that the regulatory framework for corruption asset recovery in Indonesia is characterised by ambiguity and inconsistency, as evidenced by the research conducted by Adhitya Anugrah Nasution and Riswadi Riswadi.¹⁵ This ambiguity impedes implementation. The authors propose a legal reconstruction that incorporates the most effective international practices from the UNCAC to enhance asset recovery, ensure legal certainty, and improve the effectiveness of national law enforcement processes, adopting a normative approach. In addition, Erika Emilia Putri et al.¹⁶ conducted a comparative study of the Mutual Legal Assistance (MLA) mechanisms for recovering assets from corruption in Indonesia and Singapore. The results suggest that Indonesia's asset recovery practices, particularly those involving overseas assets, are less effective than Singapore's more integrated MLA system. The study underscores the significance of enhancing bilateral and multilateral cooperation and of elucidating legal procedures to improve cross-jurisdictional asset recovery rates.

¹² David Olusegun Sotola and Paul Heywood, 'Towards a Framework of Analysis for Crisis-Response and Corruption: A Study of Selected African Countries', *Transforming Government: People, Process and Policy*, 19.3 (2025), 518–34 <<https://doi.org/10.1108/TG-02-2025-0040>>.

¹³ Aisha Hassan Al-Emadi, 'The Financial Action Taskforce and Money Laundering: Critical Analysis of the Panama Papers and the Role of the United Kingdom', *Journal of Money Laundering Control*, 24.4 (2021), 752–61 <<https://doi.org/10.1108/JMLC-11-2020-0129>>.

¹⁴ Frederica Celia Suwono and others, 'Optimization Of International Cooperation in Asset Forfeiture Under Indonesia Anti-Corruption Law Draft', *Journal of Law and Policy Transformation*, 9.2 (2024), 292–307 <<https://doi.org/10.37253/jlpt.v9i2.10191>>.

¹⁵ Adhitya Anugrah Nasution and Riswadi Riswadi, 'Legal Reconstruction of Non-Conviction-Based Asset Forfeiture for State Loss Recovery from Corruption Crimes', *Return : Study of Management, Economic and Business*, 3.11 (2024), 871–80 <<https://doi.org/10.57096/return.v3i11.293>>.

¹⁶ Erika Emilia Putri, Ninne Zahara Silviani, and Tantimin Tantimin, 'Mutual Legal Assistance in Corruption Offenses' Asset Recovery: A Comparative Study between Indonesia and Singapore', *Uti Possidetis: Journal of International Law*, 6.2 (2025), 260–77 <<https://doi.org/10.22437/up.v6i2.40835>>.



In contrast to the three studies that focused on the optimisation of international cooperation, the normative reconstruction of regulations, or comparative studies of Mutual Legal Assistance (MLA) mechanisms, this research operates at a more conceptual and paradigmatic level. This research does not exclusively assess the technical efficacy of asset recovery; rather, it investigates whether the regulatory reforms for asset recovery and forfeiture in Indonesia genuinely represent a paradigmatic leap (referred to as the Indonesian Leap Forward) within the anti-corruption regime. Additionally, this research critically evaluates the equilibrium between protecting the principles of the rule of law (property rights, legal certainty, and due process of law) and the efficacy of asset recovery. This research lies in its analysis, which is not only normative-instrumental but also philosophical-structural. Specifically, it situates asset recovery reform within the broader context of legal paradigm transformation and the development of a modern rule of law in Indonesia.¹⁷

In recent years, Indonesia has demonstrated its commitment to strengthening asset recovery regulations by engaging in discussions regarding the Draft Law on Asset Forfeiture. This discourse signifies the potential for substantial change within the Indonesian criminal law system, particularly concerning the more explicit differentiation between the criminal liability of perpetrators and asset forfeiture as a means of recovering state losses. The comprehensive adoption of this regulation could represent a significant policy advancement in the recovery of state assets and the reinforcement of the deterrent effect. However, the enhancement of asset recovery regulations has also prompted constitutional and conceptual debates, particularly regarding the preservation of human rights, the presumption of innocence, and the guarantee of due process. An in-depth analysis is necessary to address the central tension between preserving individual rights and eradicating corruption. Consequently, it is crucial to evaluate the extent to which Indonesia's asset recovery regulations have improved the efficiency of corruption case resolution and whether these reforms constitute an "Indonesian Leap Forward" in the anti-corruption regime.¹⁸

Method

This research constitutes a normative juridical study that examines legal norms as a prescriptive and autonomous system of rules. The focus of the investigation is not on empirical behaviour, but rather on the regulatory structures, principles, doctrines, and conceptual constructs that influence the asset confiscation and recovery regime in the fight against corruption. The primary legal sources used are national legislation on asset confiscation, international instruments such as the United Nations Convention against Corruption, and UK regulations, including the Proceeds of Crime Act 2002. Secondary legal sources include books, reputable journal articles, and expert opinions. Relevant tertiary legal materials are also examined. To develop prescriptive arguments regarding the optimal design of asset confiscation regulations in a state governed by the rule of law, the analysis was conducted qualitatively using deductive reasoning.¹⁹ Analysis is conducted through three kinds of methodological implementations. Initially, a conceptual approach evaluates the legitimacy of asset expropriation in the absence of a criminal conviction by examining

¹⁷ Ponco Hartanto and others, 'Corruption Policy Challenges in Combating Land Mafia: Experiences from Several Countries', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 521–654 <<https://doi.org/10.53955/jhcls.v4i3.233>>.

¹⁸ Herry Ludiro Wahyono, Jati Utomo Dwi Hatmoko, and Rizal Z. Tamin, 'State Financial Losses in Public Procurement Construction Projects in Indonesia', *Buildings*, 9.5 (2019), 129 <<https://doi.org/10.3390/buildings9050129>>.

¹⁹ Reza Octavia Kusumaningtyas and Ong Argo Victoria, 'The Role of the Anti-Corruption Commission Supervisory Board in Institutionalizing Accountability', *Contrarius*, 1.1 (2025), 51–66 <<https://doi.org/10.53955/contrarius.v1i1.83>>.



fundamental concepts such as non-conviction-based forfeiture, due process of law, proportionality, and the rule of law. Secondly, a statute approach evaluates the consistency, systematicity, and harmonisation of national regulations with international instruments and the practices of other countries. Third, a comparative approach is employed to examine the Indonesian regulatory model against the English legal system, identifying discrepancies in paradigms, institutional designs, and rights protection mechanisms.

Results and Discussions

The Paradigm Shift in Indonesia's Asset Forfeiture Reform

In the legal sector, a paradigm shift is also essential, particularly in the formulation of legal concepts relevant to complex problems. New systems and approaches are required when the current legal system is incapable of resolving a problem, as they are more suitable and offer more effective solutions. The “conviction-based asset forfeiture” paradigm currently being implemented in state asset recovery is deemed ineffective because assets can be seized only after a criminal court ruling.²⁰ Consequently, this paradigm is deserving of being supplanted by alternative concepts and methodologies that are better suited to addressing the current issue. Corruption has led to a paradigm shift in asset recovery, from conviction-based to non-conviction-based forfeiture.

The terms confiscation and forfeiture is used interchangeably to describe the act of confiscation. The irrevocable deprivation of property by order of a court or other competent authority constitutes “confiscation”, which includes forfeiture, where applicable. “Confiscation” refers to the permanent revocation of assets by order of a court or other competent authority, which may include the imposition of a fine where appropriate. The non-conviction-based asset forfeiture (NCB) paradigm is a concept that enables the recovery of state losses without imposing a criminal sentence on the perpetrator. This mechanism allows the state to seize or confiscate assets associated with a crime based on evidence that the assets were derived from the crime, without the need to establish the perpetrator’s culpability or criminalise them. This is consistent with Gustav Radburch’s restorative justice theory, which posits that sanctions should be imposed on perpetrators of corruption in proportion to their actions. This theory underscores the importance of just retribution for perpetrators of corruption, as the law must not only serve as a regulatory mechanism but also as a deterrent. Gustav Radburch posits that legal certainty is one of the three primary pillars of law, along with justice and expediency.²¹

The recovery of state losses, particularly in corruption cases, is believed to be maximised by implementing the non-conviction-based asset forfeiture (NCB) paradigm, which involves the prompt and effective suspension and confiscation of assets. It also functions as a solution for situations in which perpetrators are difficult to prosecute, have perished, or have fled. The implementation of this concept in Indonesia is still in development and under regulatory deliberation. However, it is deemed consistent with constitutional values and the need for more effective law enforcement to eradicate corruption and recover state losses. The NCB paradigm is a legal strategy that optimises the recovery of state losses by prioritising the

²⁰ Sotola and Heywood.

²¹ Olusola Joshua Olujobi, ‘Recouping Proceeds of Corruption: Is There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeria?’, *Journal of Money Laundering Control*, 24.4 (2021), 806–33 <<https://doi.org/10.1108/JMLC-09-2020-0107>>.



confiscation of assets derived from criminal activity, without waiting for a criminal verdict against the perpetrator.²²

The Indonesian legal system poses significant challenges to implementing the NCB asset forfeiture paradigm, particularly considering conflicts with human rights, the presumption of innocence, the protection of third parties acting in good faith, and the principle of due process. The human rights aspect of the paradigm's implementation is hindered by the potential threat to human rights in the law enforcement process. This is because the 1945 Constitution mandates the importance of upholding human rights in law enforcement. Article 28 D paragraph (1) and Article 28 I paragraph (1) of the 1945 Constitution state that everyone has the right to recognition, guarantee, protection, and fair legal certainty, as well as equal treatment before the law. Additionally, the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law are human rights that cannot be reduced under any circumstances. Law enforcement embodies human rights protection in a conceptual sense, as it ensures equitable legal protection and recognition before the law that human rights may not be diminished under any circumstances. The presumption of innocence and due process of law will impede the implementation of the non-conviction-based asset forfeiture (NCB) paradigm, which prioritises effectiveness and convenience in asset confiscation, and will also conflict with human rights. These two legal principles are indispensable to law enforcement and cannot be disregarded.²³

It is crucial to recognise that the concept of non-conviction-based asset forfeiture did not emerge in a vacuum, but rather as a component of the international legal framework that aims to address the intricacies of contemporary corruption offences, amidst these constitutional tensions. Consequently, to evaluate the extent to which this paradigm conflicts with the principles of the rule of law or, conversely, reflects the requirements of global legal evolution, it is crucial to trace its normative foundation in the international instrument that served as the foundation for its development. This instrument is the United Nations Convention against Corruption, which places asset recovery as one of the main pillars of the global anti-corruption strategy.²⁴ In contrast to the conventional approach, which is geared toward criminalising perpetrators, this convention redirects attention to the return of the proceeds of crime to the injured state. Various provisions of Chapter V of the UNCAC, particularly Article 54 paragraph (1) letter (c), normatively reflect this shift in orientation. This provision allows the application of asset confiscation mechanisms without waiting for a criminal verdict against the perpetrator. In an analytical sense, Article 54 paragraph (1), letter (c) of the United Nations Convention against Corruption represents a novel paradigm in international law that emphasises asset recovery as a critical component of the global fight against corruption. The UNCAC's recommended approach no longer exclusively emphasises the criminal aspect; it also incorporates civil and administrative legal instruments to expedite and more effectively recover assets, particularly in cross-jurisdictional cases. Consequently, the national-level implementation of this article necessitates legal reforms to

²² Muhammad Saleem Korejo and others, 'An Analysis of Pakistan's Accountability Law after June 2022 Amendments: Implications and Effectiveness of Anti-Corruption Campaign', *Journal of Financial Crime*, 30.5 (2023), 1194–1207 <<https://doi.org/10.1108/JFC-06-2022-0154>>.

²³ Jawade Hafidz and others, 'The Corruption Reduction with an Administrative Law Approach: Evidence from Australia', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), 822–41 <<https://doi.org/10.53955/jhcls.v4i3.396>>.

²⁴ Ajay Kumar, 'UNCAC Aided Information Sharing (Cooperation): An Indian Experience', *Journal of Financial Crime*, 28.4 (2021), 1244–58 <<https://doi.org/10.1108/JFC-11-2020-0231>>.



recognise ownership claims from other countries, enhance coordination among law enforcement agencies, and deploy cross-border asset-tracking technology. The effective implementation of these provisions not only reinforces Indonesia's position in international cooperation but also serves as an indicator of commitment to transparency, accountability, and justice in the eradication of corruption.²⁵

The significance of international cooperation in the monitoring and repatriation of corrupt assets held abroad is increasingly recognised. Indonesia is actively engaging in international forums and the MLA mechanism to collaborate with other countries. The public is being urged to become more involved in the monitoring of the recovery of state assets and the management of corruption cases. The prosecutor's office fails to effectuate numerous court decisions concerning compensation in an optimal manner. The implementation of substitute money continues to face a range of contemporary issues and challenges, despite significant progress. Corruptors are increasingly adept at concealing corrupt assets through intricate schemes involving cross-border jurisdictions. They frequently possess substantial resources to challenge the law, such as the ability to retain renowned attorneys and pursue a range of legal remedies. However, law enforcement agencies, such as prosecutors and investigators, often face challenges in personnel, expertise, and budgets, making it difficult to manage complex corruption cases effectively.²⁶

The term "paradigm shift" denotes a fundamental transformation in the way the law perceives objects, objectives, and enforcement mechanisms, rather than merely technical changes in regulations. There has been a transition from offender-oriented justice, which prioritises the perpetrator in the criminal process, to asset-oriented justice, which emphasises the proceeds of crime as the source of public damage in the context of asset forfeiture. This change also signifies a transition from a retributive model to a preventive and restorative model in economic justice. Therefore, the reform of asset forfeiture can be interpreted as a component of the reconstruction of modern criminal law philosophy to address transnational economic crime.²⁷

Asset forfeiture in Indonesian positive law remains primarily based on the conviction-based forfeiture model, as evidenced by the Criminal Code, the Corruption Eradication Law, and other relevant provisions. In general, forfeiture is an additional penalty that is administered after the defendant's admission of culpability in court. This model is subject to various constraints, particularly when the perpetrator conceals assets abroad, dies, or flees. Consequently, asset recovery efficiency is frequently impaired, and state losses cannot be optimally recovered. The need for regulatory reform that is more responsive to the dynamics of contemporary economic crime was ultimately driven by the structural limitations of the conviction-based forfeiture model. Consequently, the state determined that it was imperative to establish new legal instruments to bridge the gap between the requirements for effective asset recovery and the procedural impediments in the current system. In Indonesia, there are numerous legal grounds for the confiscation of assets. Nevertheless, not all these provisions govern asset confiscation without criminal prosecution. Indeed, these provisions are referred

²⁵ Fang Liu, Houqun Chen, and Shuwen Zhang, 'Nexus among Corruption, Political Instability and Natural Resources on Economic Recovery in Vietnam', *Resources Policy*, 85 (2023), 103743 <<https://doi.org/10.1016/j.resourpol.2023.103743>>.

²⁶ Yuliya Zabyelina and Joseph Pozsgai-Alvarez, 'From Commitment to Impact: Unpacking the Relationship between Anti-Corruption Implementation, Secrecy and Fraud', *Journal of Financial Crime*, 32.5 (2025), 1059–79 <<https://doi.org/10.1108/JFC-03-2025-0077>>.

²⁷ Thomas Duke Labik Amanquandor, 'Critical Time Points in Multi-Stage Anti-Corruption Policy Formulation: Understanding Why a Design-Reality Gap Problem Occurs', *Journal of Economic Criminology*, 11 (2026), 100209 <<https://doi.org/10.1016/j.jeconc.2026.100209>>.



to by various terms. Nevertheless, they are fundamental provisions for the confiscation of assets associated with criminal activities, the majority of which must undergo a judicial procedure, both civil and criminal. The issuance of Supreme Court Regulation of the Republic of Indonesia No. 01 of 2013 concerning Procedures for “Settling Applications for Handling Assets in Money Laundering or Other Crimes” was intended to address this legal lacuna, as the regulations are not incredibly comprehensive. Furthermore, the Asset Forfeiture Bill has been conceptualised in principle to allow for asset confiscation without criminal prosecution; however, the Indonesian House of Representatives (DPR RI) has not yet ratified the bill.²⁸

In response to the need to enhance the effectiveness of asset recovery from criminal activity, particularly corruption and other economic offences, the draft Asset Forfeiture Bill has been developed. The NCB mechanism is introduced in this measure as an alternative when criminal proceedings are not feasible. The evidentiary structure is also modified by the reforms, which include the potential to reverse the burden of proof within specific limits. Additionally, the state's authority to trace, restrict, and confiscate assets is expanded. Consequently, this measure has the potential to transform the national asset forfeiture system and introduce new instruments. There are numerous reasons for the urgency of ratifying this legislation. Firstly, the criminal law system in Indonesia has not yet established the confiscation of the proceeds and instruments of crime as a critical element in efforts to reduce crime rates. Secondly, the absence of comparable provisions complicates the enforcement of asset recovery efforts abroad, as Indonesia has not yet ratified the Asset Forfeiture Bill in accordance with the UNCAC. Thirdly, the current laws and regulations are considered to lack comprehensive and detailed provisions regarding the confiscation of assets associated with criminal activities, and they still contain numerous deficiencies (loopholes) compared to the NCB Asset Forfeiture concept recommended by the UN and other international institutions.²⁹

Constitutional tensions are exacerbated by the implementation of NCB asset forfeiture, particularly in relation to the principles of due process of law, the presumption of innocence, and the protection of property rights. The legitimacy of restrictions on individual rights and the guarantee of equitable legal protection are called into question, as confiscation can be carried out without a criminal conviction. The objective of this reform is to enhance the efficacy of corruption eradication; however, the principles of the rule of law may be compromised if oversight and rights protection mechanisms are not designed in a proportional manner. Consequently, the primary concern is not merely efficacy, but rather the balance between citizens' constitutional rights and the state's power.³⁰

The design of law enforcement authorities, including the relationship between investigators, public prosecutors, and the courts, is also influenced by asset forfeiture reform. Tracking and administering assets dispersed across multiple jurisdictions requires interagency coordination. The fundamental question is whether this reform genuinely alters the architecture of the law enforcement system or merely adds new instruments to an existing

²⁸ Rajeev K. Goel and James W. Saunoris, ‘Corrupt Thy Neighbor? New Evidence of Corruption Contagion from Bordering Nations’, *Journal of Policy Modeling*, 44.3 (2022), 635–52 <<https://doi.org/10.1016/j.jpolmod.2022.05.004>>.

²⁹ Arusha Cooray, Chandan Kumar Jha, and Bibhudutta Panda, ‘Corruption and Assortative Matching of Partners in International Trade’, *European Journal of Political Economy*, 77 (2023), 102273 <<https://doi.org/10.1016/j.ejpolco.2022.102273>>.

³⁰ Nkosingiphile Mkhize, ‘Plans without Action? Politics and Institutional Challenges of Anti-Corruption Reforms in the BRICS Countries’, *Journal of Economic Criminology*, 10 (2025), 100197 <<https://doi.org/10.1016/j.jeconc.2025.100197>>.



framework. Systemic integration is necessary for substantive transformation, rather than merely extending formal authority.³¹ Consequently, the transition from conviction-based forfeiture to non-conviction-based asset forfeiture cannot be interpreted as a mere addition of a new legal instrument, but rather as a conceptual and structural transformation in the way the state perceives, manages, and recoups the proceeds of crime. This reform is indicative of an endeavour to transform the philosophy of law enforcement from a focus on punishing perpetrators to a more effective recovery of state losses. It also necessitates a re-evaluation of the equilibrium between protecting citizens' constitutional rights and exercising state power. Consequently, the Paradigm Shift in Indonesia's Asset Forfeiture Reform is primarily rooted in the endeavour to establish an asset confiscation model that is not only instrumentally effective but also legitimate and coherent within the context of a contemporary rule of law.³²

A Comparative Constitutional Analysis of Asset Forfeiture in Indonesia and the United Kingdom

A constitutional comparison of asset forfeiture between the UK and Indonesia is pertinent because the two nations have adopted distinct strategies to combat contemporary economic crime. The UK has already institutionalised this mechanism through an established legal regime, whereas Indonesia is still in the reform phase toward a non-conviction-based forfeiture (NCB) model. This comparative analysis evaluates the constitutional legitimacy, human rights protection, and balance of state power in both legal systems, as well as the technical aspects of the regulations.³³ The POCA 2002 is the primary regulatory framework for asset forfeiture in the English legal system. This act instituted the mechanisms of criminal confiscation and civil recovery. The state is permitted to seize assets through civil proceedings without a criminal conviction under POCA, if it can be demonstrated that the assets are the proceeds of crime. This mechanism prioritises the status of the assets over the perpetrator's personal responsibility. Nevertheless, the English system continues to require rigorous judicial oversight and a standard of proof based on a balance of probabilities in civil proceedings.³⁴

In contrast to Indonesia, the UK lacks a single written constitution. Nevertheless, the protection of individual rights is ensured by the European Convention on Human Rights, the doctrine of judicial review, and the principle of the rule of law, as enshrined in the Human Rights Act 1998. In practice, English courts evaluate the proportionality of expropriation measures to the right to a fair trial and property rights. Consequently, the state's authority is extensive; however, there are limitations on liberties that are subject to the principles of proportionality and necessity. In contrast, the 1945 Constitution of the Republic of Indonesia, specifically Articles 28D and 28I, is a written constitution that explicitly guarantees human rights in Indonesia. These assurances underscore the importance of equitable legal certainty, protection of property rights, and equal treatment under the law. Therefore, the potential for constitutional debates regarding the principles of due process of

³¹ Cooray, Jha, and Panda.

³² Gloria Perez Torres, 'The Effectiveness of the International Anti-Corruption Legal Framework in the Context and Practice of Colombia', *Journal of Financial Crime*, 27.2 (2020), 437–76 <<https://doi.org/10.1108/JFC-09-2019-0126>>.

³³ Sethuraman Kalyanakrishnan and others, 'Bribery and Corruption in Venezuela: An American Business Perspective', *SSRN Electronic Journal*, 2020 <<https://doi.org/10.2139/ssrn.3541990>>.

³⁴ Argyro Elisavet Manoli and others, 'Does Corruption in Sport Corrode Social Capital? An Experimental Study in the United Kingdom', *Managing Sport and Leisure*, 29.6 (2024), 960–76 <<https://doi.org/10.1080/23750472.2022.2134913>>.



law and the presumption of innocence exists in any form of asset forfeiture that does not involve a criminal conviction.³⁵

The burden of proof is constructed differently, which represents another fundamental distinction. In certain contexts, such as Unexplained Wealth Orders, a reversal of the burden of proof within the English model is considered legitimate; it still provides an adequate opportunity for defence. The concept of reversal of the burden of proof is constitutionally sensitive in Indonesia, as it is directly related to the presumption of innocence, which is the cornerstone of national criminal law. This distinction indicates the disparity in how the two legal systems balance the protection of rights with the efficacy of their respective systems.³⁶ From an institutional standpoint, the UK maintains a relatively cohesive coordination system among investigative agencies, prosecutors, and courts for the management of assets derived from criminal activity. Efficient cross-jurisdictional asset tracing is enabled by its legal and administrative infrastructure. In contrast, Indonesia continues to encounter obstacles in international asset tracing due to its limited technical capacity and weak interagency coordination, despite its active participation in the Mutual Legal Assistance mechanism.³⁷

The comparative analysis also reveals discrepancies in the foundation of normative legitimacy. NCBs are positioned in the UK as instruments that safeguard the integrity of the financial system and the public interest. In contrast, the discourse surrounding NCB in Indonesia is frequently linked to the urgent need to eliminate corruption. The moral and constitutional justification for asset confiscation without conviction is influenced by this context, shaping public and legislative perceptions. Nevertheless, the two nations share the view that asset recovery is a critical component of contemporary strategies to eradicate economic crime. The complexities of transnational asset concealment are not adequately addressed by a solely criminalisation-based approach, as both the UK and Indonesia recognise. This similarity illustrates the global convergence of the asset-oriented justice paradigm. This comparison also illustrates that the UK model's success depends on the consistent application of the principle of proportionality, strong judicial oversight, and written norms. This implies that the Indonesian legal system may become imbalanced due to normative transplantation in the absence of institutional strengthening. Consequently, Indonesia's constitutional framework requires contextual adaptations to incorporate lessons from the UK. In conclusion, this comparative constitutional analysis illustrates that Indonesia's transition to NCB has the potential to be a paradigmatic advance; however, its success depends on the design of rights protections and mechanisms to control state power. The UK model illustrates that NCB can be consistent with the rule of law, if it is balanced with effective judicial oversight, procedural transparency, and explicit standards of proof. Consequently, the future of asset forfeiture reform in Indonesia will be determined not only by its efficacy in recovering state losses but also by its capacity to preserve constitutional legitimacy within the contemporary rule of law.³⁸

Consequently, the significance of comparing Indonesia and the UK lies not merely in replicating the UK model, but to determine how the legal framework can be reconstructed to more effectively recover state losses resulting from corruption without compromising the

³⁵ Domenico Marino, 'Dynamics of Corruption: Theoretical Explanatory Model and Empirical Results', *Physica A: Statistical Mechanics and Its Applications*, 658 (2025), 130288 <<https://doi.org/10.1016/j.physa.2024.130288>>.

³⁶ Sam Hickey, 'Compensating the Victims of Foreign Bribery', *Transnational Criminal Law Review*, 3.2 (2025) <<https://doi.org/10.22329/tclr.v3i2.8986>>.

³⁷ Perez Torres.

³⁸ Yiwen Yang, Shu-Hwa Chih, and Ching-Ren Chiu, 'Association between the Environmental Efficiency and Corruption Perception Index: A Dynamic Alternative Metafrontier SBM Approach', *Journal of Environmental Management*, 374 (2025), 124046 <<https://doi.org/10.1016/j.jenvman.2025.124046>>.



principle of the rule of law. This comparison provides an answer to a fundamental question: should the Indonesian system continue to rely on the paradigm of punishment as a prerequisite for recovery, or should it transition to a more autonomous, preventive model of asset forfeiture? Thus, Indonesia must transition to a more preventative and autonomous model of asset forfeiture, while simultaneously maintaining the criminal mechanism. This method establishes asset recovery as an independent objective, rather than a trivial byproduct of punishment. The efficacy of asset recovery can be significantly improved in complex and transnational economic crime cases by distinguishing the legal status of assets from the punishment of perpetrators, as evidenced by the UK's experience with the Proceeds of Crime Act 2002. Nevertheless, any paradigm shift in Indonesia must adhere to the principles of the rule of law, as outlined in the 1945 Constitution of the Republic of Indonesia, with a particular emphasis on the preservation of property rights, due process, and the principle of proportionality. Therefore, the optimal course of reform is not to displace the criminal system but to create a hybrid model that effectively and constitutionally integrates the functions of punishment and recovery.³⁹

Is Indonesia's Asset Forfeiture Reform a Genuine Paradigmatic Leap?

The Corruption Eradication Law's asset confiscation design is fundamentally rooted in the forfeiture paradigm that is based on convictions. Confiscation is implemented because of the defendant's culpability being established in a final and legally binding criminal judgment. Additional punishment in the form of compensation for the state losses incurred, as well as the confiscation of items used or obtained from the offense, is the primary instrument. Consequently, the status of assets depends on the effective demonstration of the perpetrator's personal culpability. This model prioritises individual liability and retributive aims; however, it often fails to ensure the full recovery of state losses, particularly when assets have been transferred, concealed, or are no longer in the defendant's possession.⁴⁰

One form of law enforcement is the imposition of criminal penalties, including the subsidiarity of compensation. Law enforcement frequently encounters numerous obstacles and barriers, which are important factors in determining its success. State financial losses resulting from malfeasance necessitate compensation, and the perpetrators responsible for these losses must be held accountable. Frequently, obstacles arise when attempting to recover compensation for state financial losses resulting from corruption. Among these are substantive, structural law enforcement, and cultural factors.⁴¹

Compensatory penalties are not novel. Regulations regarding compensatory sanctions were established in 1960, specifically through Law No. 24 Prp. 1960. Law No. 3 of 1971, Law No. 31 of 1999, and Law No. 20 of 2001 subsequently amended these provisions. The concept of subsidiarity is essential in determining how the convict must pay the compensation when compensatory penalties are applied. Nevertheless, the practical application of subsidiarity to compensatory penalties often raises a variety of issues. The ineffectiveness of payment execution is a significant concern.⁴² Numerous convicted corruptors assert they are unable to pay the compensation due to a lack of assets or wealth, despite having diverted or concealed the proceeds of their crimes before legal proceedings commenced. Consequently, judges frequently impose compensatory prison sentences as an

³⁹ Roua Radhouani and Aymen Ajina, 'A Scientometric Analysis of Anti-Corruption Disclosure and Corporate Governance: An Agenda for Future Research', *Journal of Financial Crime*, 32.4 (2025), 896–918 <<https://doi.org/10.1108/JFC-09-2024-0280>>.

⁴⁰ Liu, Chen, and Zhang.

⁴¹ Hannah Harris, 'Corporate Liability for Bribery—in Favour of Systematic Approach', *Current Issues in Criminal Justice*, 32.3 (2020), 309–29 <<https://doi.org/10.1080/10345329.2020.1813384>>.

⁴² Hartanto and others.



alternative if compensation is not received. Regrettably, the penalties imposed by these surrogate prison sentences are frequently out of proportion to the harm that corruption has inflicted. A relatively brief additional prison sentence can be substituted for a convict who has embezzled billions of rupiah, but this ultimately fails to achieve the maximum deterrent effect. Additionally, the absence of a clear mechanism for monitoring and confiscating assets prior to a final and binding verdict is a significant impediment to the implementation of substitute prison sentences. It is evident from this description that the provisions of current corruption laws, including Law No. 24/Prp./1960, Law No. 3 of 1971, Law No. 31 of 1999, and Law No. 20 of 2001 do not explicitly establish regulations regarding substitute prison sentences, particularly regarding their implementation. Subsequently, their implementation has generated numerous challenges, and policies such as Circular Letter No. 4 of 1988 have yet to offer a solution to the restitution of substitute prison sentences.⁴³

Additionally, the effectiveness of verdict execution is a factor in the challenges associated with implementing substitute prison subsidiarity. Despite the court's imposition of a specific restitution amount, prosecutors frequently encounter challenges in enforcing the payment. A more stringent mechanism for asset monitoring is required to address this issue, beginning with the investigation stage. The authority outlined in Article 30A of Law Number 11 of 2021 provides public prosecutors with substantial opportunities to recover state financial losses resulting from corruption through asset tracking and even confiscation.⁴⁴

An additional factor is cultural, alongside substantive and structural factors. In practice, implementing the principle of subsidiarity in compensation frequently encounters obstacles because of the low level of legal awareness among perpetrators of corruption, including some law enforcement officials. Numerous instances demonstrate that corruption can convict those who possess a comprehensive understanding of the law and exploit deficiencies in the judicial system, such as the determination of compensation. In the event that they are unable to pay, they comprehend that compensation is a subsidiary matter, and that imprisonment may be substituted. Many convicts opt to serve a comparatively light substitute prison sentence rather than return the money they obtained through their crimes, aware of this loophole. To enhance the effectiveness of compensation implementation, it is necessary to increase legal awareness across all levels, including among perpetrators of corruption, law enforcement officials, and the public.⁴⁵

The Indonesian system's asset-tracing and freezing mechanisms serve as preventive measures to prevent the loss or diversion of assets during the investigation and prosecution process. Investigators can seize assets suspected of being the result of criminal activity and work with financial institutions to monitor the movement of funds. A paradigm shift is the transition to non-conviction-based forfeiture, which not only broadens the scope of procedures but also alters the philosophical underpinnings of asset forfeiture. The primary focus of the conviction-based model is on individual culpability, while the non-conviction-based model shifts to the status and legitimacy of the asset's origin. This change can be regarded as a paradigmatic shift if Indonesian reforms genuinely decouple forfeiture from

⁴³ Fendi Nugroho, Hartiwiningsih Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, 'Rethinking Subsidiary in Corruption Cases: Indonesian Experiences', *Journal of Human Rights, Culture and Legal System*, 5.2 (2025), 686–713 <<https://doi.org/10.53955/jhcls.v5i2.714>>.

⁴⁴ Simplice A. Asongu and Juste Somé, 'Corruption, Terrorism and Illicit Financial Flows Related to Extractive Commodity Trade in Africa', *Resources Policy*, 103 (2025), 105569 <<https://doi.org/10.1016/j.resourpol.2025.105569>>.

⁴⁵ Ahmed A. Sarhan, Mohamed H. Elmagrhi, and Emad M. Elkhassen, 'Corruption Prevention Practices and Tax Avoidance: The Moderating Effect of Corporate Board Characteristics', *Journal of International Accounting, Auditing and Taxation*, 55 (2024), 100615 <<https://doi.org/10.1016/j.intaccudtax.2024.100615>>.



its complete reliance on criminal convictions, alter the standard of proof, and establish asset recovery as a standalone objective. Nevertheless, if the reform merely introduces new procedures without conceptual or institutional restructuring, it is more accurately described as an incremental reform rather than a paradigmatic transformation.⁴⁶

The constitutional legitimacy of forfeiture may be called into question if it is implemented without robust judicial supervision or adequate opportunity for defence. Consequently, asset forfeiture reform must prevent the compromise of essential procedural guarantees while ensuring efficiency. Tensions arise in the non-conviction-based forfeiture model because forfeiture can be imposed without a criminal conviction against an individual. To preserve systemic coherence, confiscation must be characterised as an action against assets rather than a punishment of individuals. This implies that the evidence must concentrate on the asset's association with the crime, rather than the owner's moral responsibility. A presumption of innocence is maintained by a clear normative design that differentiates between criminal sanctions and civil actions against assets.

The UK model, as previously described, established a relatively autonomous regime between criminal proceedings and civil remedies through the Proceeds of Crime Act 2002. In this system, the state may file civil suits to confiscate assets suspected of being the result of criminal activity, provided the state meets a civil standard of proof (balance of probabilities). Additionally, there is a mechanism for early asset freezing (restraint orders) and stringent judicial oversight to guarantee proportionality. This comparison illustrates that individual rights can be fully protected while the efficacy of confiscation is maintained, provided that appropriate controls and remedial mechanisms are in place.⁴⁷

If not designed proportionately, the potential exists to restrict constitutional rights while enhancing the effectiveness of asset recovery. Especially if the standard of proof is lowered without clear safeguards, the state's authority to suspend and confiscate assets could be expanded, potentially leading to opportunities for abuse of power. Nevertheless, protecting rights and enhancing efficacy are not mutually exclusive objectives. The state can improve the recovery of losses without violating constitutional principles by implementing an appropriate design that includes judicial supervision, time limits for freezing, protection of good-faith third parties, and compensation mechanisms for wrongful confiscation.⁴⁸

A hybrid model that balances repressive and restorative functions is the optimal asset-confiscation model for a contemporary rule-of-law state. A system of this nature should permit forfeiture based on criminal convictions to support individual accountability, while simultaneously establishing an autonomous non-conviction-based mechanism to guarantee asset recovery is feasible in the event of a stalled criminal process. Its normative foundation should be based on the principles of transparency, accountability, proportionality, and the preservation of property rights. Therefore, asset confiscation should serve as both a form of sanction and a mechanism for safeguarding the public interest and restoring economic justice in a democratic, rule-of-law-based state. The asset forfeiture reform in Indonesia can be interpreted as a transitional step toward a paradigm shift, but it has not yet fully achieved one, given the normative design, which still relies on the conviction-based forfeiture regime

⁴⁶ Jabir Ali, 'Does Religiosity Influence Corruption and Sustainable Development across Countries?', *International Journal of Social Economics*, 53.2 (2026), 197–214 <<https://doi.org/10.1108/IJSE-01-2025-0083>>.

⁴⁷ António Cardoso Marques and Rui Matos, 'The Repercussions of Corruption on Green Growth: Evidence from BRICS+ Countries', *Sustainable Futures*, 9 (2025), 100542 <<https://doi.org/10.1016/j.sftr.2025.100542>>.

⁴⁸ Giovanni B. Pittaluga, Elena Seghezzeza, and Pierluigi Morelli, 'Media Fabrication of Corruption and the Quality of the Political Class: The Case of Italy', *European Journal of Political Economy*, 84 (2024), 102461 <<https://doi.org/10.1016/j.ejpolco.2023.102461>>.



in the Corruption Eradication Law, and the push toward more autonomous and preventive mechanisms.⁴⁹

Conceptually, there are signs of a transition from a focus on punishing perpetrators to the recovery of state losses as an autonomous objective. Nevertheless, the protection of property rights, due process, and the presumption of innocence remains contingent upon harmonisation with the principles of the rule of law as enumerated in the 1945 Constitution of the Republic of Indonesia, with respect to systemic and constitutional coherence. As a result, the constitutional legitimacy of this reform is not exclusively determined by its efficacy in enhancing asset recovery; rather, it is determined by its capacity to establish a balance between the protection of fundamental rights and the exercise of state power. If this reform introduces an asset forfeiture model that is not only more instrumentally effective but also systemically consistent and constitutionally legitimate within the context of a contemporary rule of law, it will truly represent a paradigmatic departure. It is more effective for Indonesia to develop a hybrid, integrated, preventive, and constitutional model rather than to choose between conviction-based and non-conviction-based forfeiture. This model must conceptually distinguish between the legal status of assets and individual criminal liability, while simultaneously integrating both into a cohesive system.⁵⁰

Initially, a dual-track system is necessary for effectiveness. The Corruption Eradication Law maintains the conviction-based forfeiture mechanism to underscore personal accountability and deterrent effects. Nevertheless, if criminal proceedings cannot proceed (e.g., the perpetrator dies, flees, or the evidence of personal culpability is insufficient), the state must be able to use non-conviction-based forfeiture as an alternative to pursue assets confirmed to have no legitimate origin. Secondly, an effective model must be founded on integrated asset tracking and early asset freezing. It is imperative to freeze assets during the investigation phase to prevent their loss or diversion. Therefore, to preserve a balance between protecting rights and the efficacy of temporary freezing, it is necessary to enhance the authority for rapid judicial review (both periodic and swift).⁵¹

Third, it is imperative to establish a distinct differential standard of proof. The “beyond a reasonable doubt” standard continues to govern criminal proceedings. In civil or non-conviction-based proceedings, a more lenient standard of proof (e.g., the balance of probabilities) may be applied; however, the state retains the initial burden of proof. The burden of proof may only be reversed in a limited and proportional manner. The fourth requirement of an effective model is the establishment of robust constitutional safeguards that are consistent with the principle of the rule of law, as enumerated in the 1945 Constitution of the Republic of Indonesia. Fifth, the significance of segregating the criminal and civil recovery regimes, as well as enhancing the capacity of specialised institutions for asset management and recovery, is illustrated by lessons from the UK's Proceeds of Crime Act 2002. Indonesia can adopt these principles without physically replicating them, while incorporating them into the national constitutional framework.⁵²

⁴⁹ Adeline-Cristina Cozma and others, ‘Corruption, Deforestation, and Tourism – Europe Case Study’, *Heliyon*, 9.8 (2023), e19075 <<https://doi.org/10.1016/j.heliyon.2023.e19075>>.

⁵⁰ Rui Huang and others, ‘The Impact of Local Corruption on Firms’ Narrative Disclosures’, *Journal of Corporate Finance*, 94 (2025), 102841 <<https://doi.org/10.1016/j.jcorpfin.2025.102841>>.

⁵¹ Lamar Crombach, ‘Electoral Corruption Cycles: Separating Perceptions and Experiences across Households and Experts’, *European Journal of Political Economy*, 2025, 102675 <<https://doi.org/10.1016/j.ejpoleco.2025.102675>>.

⁵² Yu Liu, Jian Xu, and Yifan Zhou, ‘Quantifying the Legacy of Trauma: The Long-Term Impact of the African Slave Trade on Contemporary Firm Corruption’, *Journal of Corporate Finance*, 96 (2026), 102884 <<https://doi.org/10.1016/j.jcorpfin.2025.102884>>.



Consequently, a constitutionally based hybrid-restorative model would constitute a more effective approach for Indonesia. This model would incorporate an asset confiscation regime that is not wholly dependent on criminal convictions and that adheres to the rule-of-law framework. Such a model facilitates the recovery of state losses even if the criminal process is impeded, while maintaining the distinction between individual punishment and action against assets derived from criminal acts. It also provides limited autonomy for the confiscation of assets within the criminal process. Simultaneously, its efficacy is enhanced by a comprehensive asset-monitoring, freezing, and management system integrated from the outset of the investigation, thereby preventing the diversion or concealment of assets. Nevertheless, it is imperative that all these mechanisms are implemented with strict guarantees of fundamental rights protection in accordance with the principles of the rule of law as outlined in the 1945 Constitution of the Republic of Indonesia. These principles include respect for due process, the presumption of innocence, the principle of proportionality, and protection for third parties engaging in good faith. Asset confiscation is not solely a repressive instrument within this construction; it also serves as a method of restoring economic justice that is constitutionally legitimate and coherent within the national legal system.⁵³

Conclusion

Indonesia processes a legal instrument in the form of compensatory monetary penalties under the Corruption Eradication Law, serving as a mechanism for recovering state losses. However, the normative design, which continues to rely on a conviction-based forfeiture approach, has not effectively addressed the complexities of contemporary corruption, which is often structured and transnational. The need to enhance an effective, integrated, and adaptive asset recovery regime in response to global developments is underscored by the growing number and value of state losses caused by corruption, as emphasised by the United Nations Convention against Corruption. Nevertheless, this transformation is not without constitutional tensions. The principles of due process of law, the presumption of innocence, and the protection of human rights and property, as guaranteed by the 1945 Constitution, seem to conflict with the implementation of NCB. Consequently, the primary concern extends beyond the mere efficacy of asset recovery to the preservation of citizens' fundamental rights while simultaneously expanding state authority. In the UK, the Proceeds of Crime Act 2002 has effectively established a non-conviction-based forfeiture mechanism within a robust rule-of-law framework. This mechanism is characterised by stringent judicial oversight, clear standards of proof, and consistent proportionality tests for property rights and fair trials. The Human Rights Act 1998, which assimilated the principles of the European Convention on Human Rights into national judicial practice, enhances the legitimacy of this system by preserving human rights and following the tradition of judicial review. Consequently, the constitutional legitimacy of this reform is assessed not only by its capacity to enhance the efficacy of asset recovery, but also by its capacity to preserve an equilibrium between the fundamental rights of citizens and the authority of the state.

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⁵³ Taryn Vian and Erika L. Crable, 'Corruption and the Consequences for Public Health', in *International Encyclopedia of Public Health* (Elsevier, 2025), pp. 443–53 <<https://doi.org/10.1016/B978-0-323-99967-0.00031-4>>.



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