Comparative Perspectives on Asset Forfeiture as a Mechanism for Recovering State Losses from Corruption

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ABSTRACT

Corruption is an extraordinary crime that continues to increase alongside development and technological advances, causing significant social and economic harm. Despite various legislative efforts, law enforcement still faces difficulties in tracing and recovering criminal proceeds. This study employs a normative legal method using a statute approach to Law Number 31 of 1999 on the Eradication of Corruption Crimes and its amendment, combined with a comparative approach examining asset forfeiture frameworks in the Netherlands, the United States, and the United Kingdom. It analyzes how the Asset Forfeiture Bill can facilitate the recovery of state losses arising from corruption under Articles 2 and 3 of the Corruption Eradication Law. The findings indicate that following Constitutional Court Decision Number 25/PUU-XIV/2016, which removed the word may from both provisions, state financial loss must be established as an actual and certain loss. This development strengthens the relevance of asset forfeiture as a mechanism that directly targets criminal proceeds without relying solely on a criminal conviction. The comparative analysis shows that the Netherlands is developing its framework through the Asset Recovery Guide, the United States implements the Civil Asset Forfeiture Reform Act through specialized institutions, and the United Kingdom applies the Proceeds of Crime Act 2002, enabling civil recovery without a criminal conviction. Accordingly, the Asset Forfeiture Bill should be enacted promptly by reinforcing its non-conviction-based in rem mechanism, inter-agency coordination, and international cooperation to enhance anti-corruption enforcement and restore public trust in Indonesia's legal system.

Keywords: *Asset Forfeiture, Comparative Law, Corruption, Criminal Policy*

Perampasan Aset dalam Perspektif Perbandingan Hukum sebagai Mekanisme Pengembalian Kerugian Negara Akibat Korupsi

ABSTRAK

Tindak pidana korupsi merupakan kejahatan luar biasa yang terus meningkat seiring dengan kemajuan pembangunan dan teknologi, sehingga menimbulkan dampak negatif yang luas terhadap masyarakat dan perekonomian negara. Meskipun berbagai upaya legislasi telah dilakukan, termasuk pengesahan undang-undang antikorupsi, efektivitas penegakan hukum masih menghadapi tantangan, terutama dalam menindaklanjuti hasil korupsi yang diperoleh pelaku. Penelitian ini menggunakan metode yuridis normatif melalui pendekatan perundang-undangan terhadap Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi beserta perubahannya, serta pendekatan perbandingan terhadap instrumen hukum di Belanda, Amerika Serikat, dan Inggris. Penelitian ini bertujuan menganalisis bagaimana perampasan aset dalam RUU tersebut dapat berfungsi sebagai mekanisme pengembalian kerugian keuangan negara akibat korupsi berdasarkan Pasal 2 dan Pasal 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi. Hasil penelitian menunjukkan bahwa pascaputusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016 yang menghapus kata dapat dari kedua pasal tersebut, unsur kerugian keuangan negara kini harus dibuktikan secara nyata dan pasti, sehingga perampasan aset menjadi instrumen yang tepat karena menyasar langsung hasil kejahatan tanpa bergantung sepenuhnya pada putusan pemidanaan terhadap pelaku. Perbandingan dengan negara lain menunjukkan bahwa Belanda masih menyusun kerangka hukum tersendiri melalui Asset Recovery Guide, Amerika Serikat menerapkan Civil Asset Forfeiture Reform Act dengan dukungan kelembagaan terspesialisasi, dan Inggris menerapkan Proceeds of Crime Act 2002 yang memungkinkan pemulihan aset secara perdata tanpa menunggu putusan pidana. Berdasarkan temuan tersebut, RUU Perampasan Aset perlu segera disahkan dengan memperkuat mekanisme non-conviction based in rem, sinergi antarlembaga, dan kerja sama internasional guna mendukung pemberantasan korupsi yang lebih efektif dan memulihkan kepercayaan publik terhadap sistem hukum Indonesia.

Kata kunci: *Kebijakan Kriminal, Korupsi, Perampasan Aset, Perbandingan Hukum*

INTRODUCTION

Corruption is widely regarded as an extraordinary crime. This classification stems from the fact that corruption inflicts harm well beyond state finances, reaching every citizen through stalled development programs and diminished public welfare. Barda Nawawi Arief describes corruption as a highly reprehensible and condemnable act, one that is deeply despised across Indonesian society and, more broadly, among nations around the world.[1]

Efforts to combat corruption in Indonesia have struggled to keep pace with how deeply the practice has embedded itself in social and state life. Successive proposals have culminated in anti-corruption legislation that has grown increasingly stringent, arguably to the point of overreach, yet the number of corruption cases in Indonesia continues to climb. It is troubling to witness a nation in a state of corruption emergency, a condition sustained not solely by government actors but equally by private parties whose conduct erodes state finances and the broader economy. Legislation on the eradication of corruption has been revised, amended, and reformulated on multiple occasions, and legal scholars have likewise revisited the issue repeatedly through seminars, books, and academic theses, yet corruption has not subsided; it has instead spread further across various sectors.

The Draft Law on Asset Forfeiture Related to Criminal Offenses (hereinafter referred to as the Asset Forfeiture Bill) carries a lengthy legislative history, tracing back to the administration of Susilo Bambang Yudhoyono in 2003, when it was first placed on the second-term National Legislation Program (Prolegnas) list. Discussion had nearly reached completion by 2010, though it was repeatedly delayed as it moved in and out of successive Prolegnas lists. The bill resurfaced under President Joko Widodo in 2020, placed on the 2020-2024 Prolegnas agenda and later elevated to priority status after the President urged the House of Representatives (DPR) to accelerate deliberation, targeting completion by 2022. By 2022, Indonesia's Financial Transaction Reports and Analysis Center (PPATK) stated that the bill needed to be enacted promptly to prevent a legal vacuum, noting that the academic manuscript and draft text had already been finalized but remained pending approval from three of six agency heads, namely the Minister of Finance, the Attorney General, and the Chief of the National Police.[2] This protracted journey is corroborated by more recent scholarship documenting the recurring political obstacles that have prevented the bill's passage

[1] Muladi and Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: Alumni, 1992).
[2] Hajid Arrafi, "Perjalanan RUU Perampasan Aset," MetroTV, 2023, https://www.metrotvnews.com/play/NQAC28El-perjalanan-ruu-perampasan-aset.

despite its longstanding place on the national legislation agenda,[3] as well as by the official academic manuscript prepared for the bill, which laid out its conceptual and philosophical foundations as early as 2012.[4]

On this issue, Barda Nawawi Arief contends that Indonesia's approach to enforcing corruption law should not be confined to reforming statutes such as the KPK Law and the Corruption Eradication Law. He maintains that reform must extend to social welfare policy, morality, and public administration, since corruption law enforcement cannot be achieved through regulation alone and instead requires an accompanying economic, social, political, and cultural approach.[5]

The author concurs with this view, agreeing that curbing corruption in Indonesia demands an economic, social, political, and cultural approach. Even so, the author considers that such an approach is primarily oriented toward discouraging the public from engaging in corrupt conduct, whereas many present-day perpetrators are individuals holding government office. Effective legislation is therefore essential to minimizing the incidence of corruption, and asset forfeiture, a subject currently attracting considerable public attention, stands out as one such instrument.

Legal experts have urged the government and the House of Representatives (DPR) to promptly pass the Asset Forfeiture Bill. Hardjuno Wiwoho, for instance, argues that the bill would ease law enforcement efforts in upholding justice and advancing the national agenda against corruption and economic crime, while optimizing the recovery of state losses, particularly since it fulfills a mandate arising from Indonesia's ratification of the United Nations Convention Against Corruption (UNCAC) through Law Number 7 of 2006, which among other things regulates measures to identify, detect, freeze, and confiscate the proceeds and instrumentalities of crime.[6]

Motivated by these considerations, the author was compelled to examine the Asset Forfeiture Bill, recognizing that deliberation on the bill must be thoroughly resolved before its enactment so that the government, the DPR, the public, and law enforcement officials can arrive at a shared understanding from both a comparative and a criminal policy perspective.

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[3] M Ainun Najib, "Polemik Pengesahan Rancang Undang-Undang Perampasan Aset Di Indonesia," *Sosio Yustisia Jurnal Hukum Dan Perubahan Sosial* 3, no. 2 (November 23, 2023): 159–75, https://doi.org/10.15642/sosyus.v3i2.416.
[4] Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, "Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana," 2012.
[5] Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Cet. Keemp (Jakarta: Prenada Media Group, 2014).
[6] Tim detikcom, "No TitleAhli Hukum Desak RUU Perampasan Aset Disahkan: Dukung Pemberantasan Korupsi," detikNews, 2024, https://news.detik.com/berita/d-7297524/ahli-hukum-desak-ruu-perampasan-aset-disahkan-dukung-pemberantasan-korupsi.

Regulating asset forfeiture is considered capable of reducing the incidence of corruption, since the blocking or seizure of assets suspected to derive from criminal activity, not limited to corruption alone, can take place even before a court has issued a final and binding decision (*in kracht van gewijsde*).

The Asset Forfeiture Bill introduces extensive procedural provisions that are largely unfamiliar to law enforcement officials, a matter that warrants close attention across the legal community to ensure the bill functions effectively once it is jointly enacted by the DPR and the Government of Indonesia.

Building on this background, the present study seeks to examine how the concept of asset forfeiture, as formulated in the Asset Forfeiture Bill, can serve as a mechanism for recovering state financial losses arising from corruption under Article 2 and Article 3 of the Corruption Eradication Law, and to compare this concept with the asset forfeiture instruments applied in the Netherlands, the United States, and the United Kingdom. While earlier studies have largely emphasized the urgency of enacting the bill within the domestic legal system,[7] this study extends that discussion by situating Indonesia's draft framework within a comparative context, drawing lessons from jurisdictions that have already implemented non-conviction-based forfeiture mechanisms. Through this comparative lens, the study aims to offer the public and law enforcement officials a clearer picture of how asset forfeiture can function as an instrument for recovering state losses and as a component of criminal policy.

LITERATURE REVIEW

The doctrinal grounding that follows draws on established criminal law theory and is retained here solely because it constitutes foundational, grand-theory knowledge that frames the analysis in later sections.

Criminal law, in its established doctrinal sense, governs three interrelated matters, namely the criminal act, criminal liability, and criminal sanction and sentencing, each functioning as a sub-system within the broader architecture of the penal system.[8] As a branch of public law, criminal law exists to reconcile the interests of an individual who violates a legal norm with the interests of the wider community; the punishable character of an act therefore persists even where the act occurred with the consent of the party against whom it was directed, and prosecution proceeds independently of the injured party's wishes. A criminal act, in turn, is conduct prohibited by law and threatened with a specific sanction, the prohibition being directed

[7] Elvia Rahmawati and Ian Firstian Aldhi, "Urgensi Pengesahan RUU Perampasan Aset Dalam Sistem Hukum Nasional Untuk Meningkatkan Efektivitas Pemberantasan Korupsi Di Indonesia," *Jurnal Ilmu Multidisiplin* 4, no. 4 (October 1, 2025): 2137–43, https://doi.org/10.38035/jim.v4i4.1325.

[8] Barda Nawawi Arief, *RUU KUHP Baru Sebuah Restrukturisasi / Rekonstruksi Sistem Hukum Pidana Indonesia*, Cet. Kesep (Semarang: Pustaka Magister Semarang, 2022).

at the conduct itself while the threatened sanction is directed at the person who brought that conduct about.[9] Criminal liability follows only once every element of the offense has been proven, combining an objective assessment of whether the offender's conduct violated the legal norm with a subjective assessment of the offender's psychological state at the time of the act. Simons frames criminal liability in these psychological terms, holding that a criminal provision may properly be applied from both a general and a personal standpoint once a link between the offender's mental state and the act can be established.[10]

The term corruption traces back to the Latin corruptio or corruptus, a root shared across several European languages, including English, French, and Dutch, from which the Indonesian korupsi most plausibly derives; its literal sense spans decay, dishonesty, susceptibility to bribery, and conduct that departs from moral and legal propriety.[11] State financial loss, meanwhile, differs from loss in a commercial sense, since it arises from an unlawful act rather than an ordinary business risk, and occurs at either of two stages, namely when funds are due to enter the state treasury, through tax conspiracy, fine conspiracy, or smuggling, or when funds are due to leave the state treasury, through mark-up practices, corruption, or activities inconsistent with an approved program.[12-13]

Beyond this doctrinal foundation, the more pressing task for a literature review on asset forfeiture is to situate the present study within the current scholarly conversation on the Bill itself, rather than within general criminal law doctrine. Recent Indonesian legal scholarship has increasingly approached asset forfeiture through the lens of non-conviction-based (NCB) forfeiture and its in rem mechanism. Hafid examines asset forfeiture without conviction through an economic analysis of law framework, arguing that an NCB approach recovers state losses more quickly and efficiently than mechanisms tied to a final criminal verdict.[14] Ayuningsih and Nelson, comparing Indonesia's practice with Australia's NCB regime through a responsive-law lens, conclude that Indonesia's reliance on conviction-based recovery has so far failed to accommodate the social need for state loss recovery in the way Australia's system

[9] Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002).
[10] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2018).
[11] Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional Dan Internasional* (Jakarta: Raja Grafinfo, 2015).
[12] A. Djoko Sumaryanto, *Pembalikan Beban Pembuktian : Tindak Pidana Korupsi Dalam Rangka Pengembalian Kerugian Keuangan Negara* (Jakarta: Prestasi Pustakaraya, 2009).
[13] Syafrina Aliyah Rachman and Tanudjaja, “The Responsibility Of Taxpayers Who Intentionally Use Vat Payable For The Operational Activities Of A Legal Entity,” *DE RECHT (Journal of Police and Law Enforcement)*, August 11, 2024, 53–65, https://doi.org/10.55499/derecht.v2i2.273.
[14] Irwan Hafid, “Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law,” *Jurnal Lex Renaissance* 6, no. 3 (July 1, 2021), https://doi.org/10.20885/JLR.vol6.iss3.art3.

does[15]. Najib traces the protracted political history of the Bill, concluding that its persistent delay stems less from substantive weaknesses in the draft than from resistance among DPR members who perceive it as a threat to their own interests.[16] Most recently, Rahmawati and Aldhi reaffirm the urgency of enacting the Bill, emphasizing that its in rem mechanism would allow the state to pursue offenders' assets without waiting for a criminal conviction, strengthening deterrence and accelerating loss recovery.[17]

Taken together, this body of literature converges on a shared conclusion, namely that the Asset Forfeiture Bill is urgently needed and that its NCB in rem mechanism represents a meaningful improvement over Indonesia's existing conviction-dependent framework. What remains comparatively underexplored is how Indonesia's draft mechanism measures against asset forfeiture instruments already operating abroad. Much of the existing scholarship examines the Bill in isolation or compares it only briefly to a single foreign system, leaving room for a sustained comparative analysis across multiple jurisdictions. The present study addresses this gap by placing the Bill's provisions on Article 2 and Article 3 of the Corruption Eradication Law alongside the asset forfeiture regimes of the Netherlands, the United States, and the United Kingdom, aiming to draw out lessons that can inform the Bill's eventual implementation.

RESEARCH METHODOLOGY

This study adopts a normative legal research design aimed at examining positive law, in the sense of collecting, presenting, systematizing, analyzing, interpreting, and evaluating legal norms.[18] The primary legislation examined consists of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning the Amendment of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

Given its normative character, this research follows a juridical-normative type, meaning it is directed at examining positive law. Law is frequently conceptualized here as what is written in statutory instruments, that is, law in books, or alternatively as a set of norms functioning as behavioral benchmarks that the international community regards as appropriate.[19] This normative legal research draws on primary and

[15] Irma Reisalinda Ayuningsih and Febby Mutiara Nelson, "Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Hukum Responsif," *Jurnal Ius Constituendum* 7, no. 2 (October 8, 2022): 246–61, https://doi.org/10.26623/jic.v7i2.5142.
[16] M Ainun Najib, "Polemik Pengesahan Rancang Undang-Undang Perampasan Aset Di Indonesia."
[17] Rahmawati and Aldhi, "Urgensi Pengesahan RUU Perampasan Aset Dalam Sistem Hukum Nasional Untuk Meningkatkan Efektivitas Pemberantasan Korupsi Di Indonesia."
[18] S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2001).
[19] Muladi and Arief, *Bunga Rampai Hukum Pidana*.

secondary legal materials, namely Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, alongside the Draft Law on Asset Forfeiture Related to Criminal Offenses. Secondary legal materials, which serve to explain and support the primary materials, include legal literature, law journal articles, and the opinions of legal scholars.

Beyond the statute approach applied to Indonesian primary law, this study also employs a comparative approach, examining asset forfeiture instruments in the Netherlands, the United States, and the United Kingdom, three jurisdictions selected because each represents a distinct stage and legal tradition relevant to Indonesia's own position. The Netherlands, sharing Indonesia's civil law heritage, is currently deliberating its own asset forfeiture bill and so faces legislative challenges similar to Indonesia's. The United States represents a common law jurisdiction with one of the most established NCB forfeiture frameworks, structured around the Civil Asset Forfeiture Reform Act and dedicated enforcement bodies, while the United Kingdom, also common law, has operated a comprehensive statutory regime since the Proceeds of Crime Act 2002. Together, these three countries allow the comparison to span both civil and common law traditions, as well as a still-pending regime and two long-established ones.[20]

The comparative analysis follows a functional comparative method, in which the forfeiture mechanisms of each jurisdiction are examined against a shared set of criteria, namely the legal basis of the mechanism, whether the process operates in rem or in personam, the applicable burden of proof, and the institutional bodies responsible for enforcement. This structured comparison allows each country's regime to be assessed on comparable terms rather than described in isolation, and the resulting findings inform the analysis of the Asset Forfeiture Bill's provisions in the Results and Discussion section.

Secondary sources for the comparative analysis were drawn from official legal databases and peer-reviewed publications, namely government and ministry publications, official legislative texts accessed through each country's legislation portal, and indexed law journal articles, each cross-checked against at least one official or primary document to verify its accuracy before incorporation into the analysis.

[20] Zaiton Hamin et al., "The Legal Framework of Asset Forfeiture for Money Laundering in the United Kingdom and Malaysia," *International Journal of Research and Innovation in Social Science* IX, no. II (2025): 4404–14, https://doi.org/10.47772/IJRISS.2025.9020345; Rismawati Nur, Alfin Dwi Novemyanto, and Muhammad Rosyid Ridlo, "The Application of Civil Forfeiture as a Restorative Mechanism in Returning State Financial Losses Due to Corruption Crime," *Jurnal Kebijakan Publik* 16, no. 2 (June 16, 2025): 92, https://doi.org/10.31258/jkp.v16i2.8806; Orrisa Firsta Graviddita and Indung Wijayanto, "Non-Conviction Based Asset Forfeiture as an Instrument for Recovering State Losses in Corruption Crimes in Indonesia," *Law Research Review Quarterly* 11, no. 4 (November 30, 2025): 1089–1117, https://doi.org/10.15294/llrq.v11i4.40783.

RESULT AND DISCUSSION

Asset Forfeiture and Comparative Study of Other Countries

Before turning to the statutory analysis, it is useful to establish what the term asset covers, namely any movable or immovable property, tangible or intangible, that carries economic value. Asset forfeiture, in turn, refers to the coercive measure by which the state assumes control over, or ownership of, an asset connected to a criminal offense, based on a court decision with final and binding legal force, without that measure being conditioned on the offender's criminal conviction.

The Corruption Eradication Law contains only two articles that relate directly to state financial loss. The discussion of asset forfeiture as a mechanism for recovering such losses therefore centers on the offenses formulated in Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law.

1. Article 2 Paragraph (1) of the Corruption Eradication Law

   Article 2 paragraph (1) of the Corruption Eradication Law reads as follows. Any person who unlawfully enriches himself, another person, or a corporation in a manner that harms state finances or the state economy shall be sentenced to a minimum of four years and a maximum of twenty years of imprisonment, together with a fine of no less than two hundred million rupiah and no more than one billion rupiah.

   The essential elements (*bestanddelen*) of Article 2 paragraph (1) therefore consist of an unlawful act, the enrichment of oneself, another person, or a corporation, and harm to state finances or the state economy.

   Under Constitutional Court Decision Number 25/PUU-XIV/2016, the Court held that the word "may" (*dapat*) in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001, conflicts with the 1945 Constitution and carries no binding legal force. As a result, the corruption offense, previously treated as a formal offense, became a material offense, one that requires an actual consequence, namely that the element of harm to state finances must be calculated as a real and certain loss.

   In its decision, the Constitutional Court held that the application of the element of harming state finances under Article 2 paragraph (1) and Article 3 had shifted toward requiring a demonstrated consequence, that is, a material offense. The element of harming state finances is therefore no longer understood as a mere projection, or potential loss, but must instead be understood as a loss that has genuinely occurred, that is, an actual loss arising from the corruption offense.

The Court reasoned that including the word "may" turned the offense under both articles into a formal one, and that in practice this had often been misused to capture a wide range of conduct merely suspected of harming state finances, including discretionary policy decisions or the exercise of the freies ermessen principle taken under urgent circumstances without a clearly established legal basis, a situation the Court considered capable of producing criminalization based on a mere allegation of abuse of authority.

The Court further held that including the word "may" in Article 2 paragraph (1) and Article 3 created legal uncertainty and directly conflicted with the guarantee, under Article 28G paragraph (1) of the 1945 Constitution, that every person is entitled to a sense of security and protection from the threat of fear. The word "may" was also found to conflict with the principle that the formulation of a criminal offense must satisfy the requirements that the law be written (*lex scripta*), interpreted strictly (*lex stricta*), and free of ambiguity (*lex certa*).

The element of unlawfulness (*wederrechtelijkheid*) in Article 2 paragraph (1) was originally explained in the elucidation of the article as covering unlawful conduct in both a formal and a material sense, meaning that even where an act is not regulated by statute, it may still be deemed unlawful and punishable if it is considered reprehensible for failing to conform with the community's sense of justice or its social norms.

Within criminal law scholarship, the doctrine of material unlawfulness serves two functions. In its positive function, an act may still be regarded as unlawful based on the community's assessment, even where statute does not designate it as such. In its negative function, conversely, an act that statute designates as unlawful may nonetheless be treated as lawful if the community's assessment does not regard it as unlawful.

Drawing on this discussion of the concept of unlawfulness, and applying the principle that a later law overrides an earlier one (lex posterior derogat legi priori), Constitutional Court Decision Number 003/PUU-IV/2006 supports the conclusion that Article 2 paragraph (1) applies the formal concept of unlawfulness rather than the material one set out in the article's original elucidation. This shift toward formal unlawfulness was intended to provide clearer legal certainty, since the formal concept refers strictly to written criminal statutes, whereas the material concept extends to unwritten legal norms as well, a scope that risks conflicting with the principle of legality.

Article 3 of the Corruption Eradication Law essentially provides as follows. Any person who, with the intention of benefiting himself, another person, or a corporation, abuses the authority, opportunity, or means available to him because of his position or standing, in a manner that harms state finances or the state economy, shall be sentenced to life imprisonment, or a minimum of one year and a maximum of twenty years of imprisonment, together with a fine of no less than fifty million rupiah and no more than one billion rupiah.

The essential elements of Article 3 therefore consist of an intention to benefit oneself, another person, or a corporation, the abuse of authority, opportunity, or means arising from one's position, and harm to state finances or the state economy. Article 3 closely resembles Article 2, yet closer examination reveals significant differences that warrant direct comparison. In practice, these two provisions are the ones most frequently applied, with public prosecutors commonly framing them as alternative charges, Article 2 as the primary charge and Article 3 as subsidiary.

As with Article 2 paragraph (1), Constitutional Court Decision Number 25/PUU-XIV/2016 also shifted the application of the element of harming state finances under Article 3 toward a material offense requiring a demonstrated consequence, resulting in the removal of the word "may" from this provision as well.

The core element (*bestanddeel delict*) of Article 3 lies in the phrase abusing authority because of one's position, while the element of intending to benefit oneself, another person, or a corporation functions merely as an element delict and therefore does not on its own determine whether the conduct qualifies as a punishable act (*strafbare handeling*).

According to Andi Hamzah, the element of intending to benefit oneself, another person, or a corporation corresponds to first-degree intent, that is, intent as purpose (*opzet met oogmerk*), differing from Article 2, where enriching oneself, another person, or a corporation encompasses three forms of intent, namely intent as purpose, intent as certainty, and intent as possibility, or dolus eventualis.

The following discussion turns to how other countries regulate and implement asset forfeiture, examining the applicable legislation and the mechanisms used, even in jurisdictions that have yet to adopt dedicated asset forfeiture statutes.

2. The Netherlands

The Netherlands finds itself in essentially the same position as Indonesia, still working to formalize dedicated asset forfeiture legislation. Grapperhaus, the Dutch Minister of Justice and Security, has been pursuing a bill titled the Criminal Justice Approach to Subversive Crime II, which introduces an asset forfeiture instrument that does not depend on a criminal conviction, thereby supporting a forfeiture process that would otherwise be difficult to complete given how long criminal proceedings typically take.

Indonesia stands to learn a great deal from the Dutch experience, since not yet having enacted a dedicated asset forfeiture law is no reason to delay applying its underlying principles in the meantime. This is particularly true given that Indonesia has already ratified the United Nations Convention Against Corruption, which contains a comprehensive set of asset forfeiture instruments covering both in personam and in rem mechanisms. Indeed, Indonesia's existing legal framework already provides a tool for combating corruption even without a dedicated forfeiture statute. Article 98 of the Criminal Procedure Code recognizes a claim for compensation that can be joined with a criminal prosecution, allowing the state, through its State Attorney, to pursue such a claim to cover losses suffered. Data reported by Erdianto Effendi indicate, however, that among sixteen prosecutors surveyed across several provinces, not a single one had applied Article 98 in practice. The Netherlands also maintains a dedicated asset recovery guide that shares substantial conceptual common ground with Indonesia's own Asset Forfeiture Bill.

3. The United States

In the United States, the asset forfeiture system for corruption cases is anchored in the Civil Asset Forfeiture Reform Act, involving the institutional components summarized in the comparison table below and proceeding through three distinct pathways, criminal, civil judicial, and administrative forfeiture, each intended to strip offenders of their criminal gains, disrupt criminal organizations, and dismantle ongoing criminal activity.

Measured against Indonesia's draft framework, the American model offers an instructive comparison precisely because it distributes forfeiture responsibility across several specialized institutions rather than concentrating it within a single prosecutorial body. Indonesia's Bill likewise anticipates a central role for the State Attorney in initiating forfeiture applications, yet does not currently propose an equivalent inter-agency structure. This suggests that Indonesia's implementing regulations could usefully draw on the American experience of institutional specialization to strengthen coordination between the Attorney General's Office, the Corruption Eradication Commission, and the Financial Transaction Reports and Analysis Center.

4. The United Kingdom

The Proceeds of Crime Act 2002, widely known as POCA, stands as one of the United Kingdom's most significant statutes for addressing crime and ensuring that offenders cannot enjoy the benefits of their criminal conduct. POCA introduced a more systematic and comprehensive approach to seizing criminal proceeds, empowering law enforcement to seize property connected to a criminal offense without always proceeding directly through the courts.

One of POCA's central features is its capacity to authorize the seizure of criminal assets, whether through a court-based procedure or through a more direct route that bypasses trial altogether. Seizure without trial proceeds on the basis of a strong suspicion that the asset derives from criminal activity, aimed at preventing offenders from enjoying the proceeds of their conduct. Although this mechanism appears effective, it has also generated controversy, particularly around potential human rights violations, such as seizures carried out without a court decision or without sufficient evidence.

For Indonesia, POCA's civil recovery mechanism offers the clearest illustration among the three comparators of what a mature non-conviction-based forfeiture regime can achieve once fully operationalized, since it demonstrates that asset seizure without a prior conviction is workable at scale. At the same time, the controversy POCA has generated around due process protections serves as a caution for Indonesia's own drafters, underscoring the importance of building clear evidentiary thresholds and judicial oversight into the Asset Forfeiture Bill so that the same human rights concerns raised against the British model do not later resurface in Indonesian practice. To bring these three comparators together on consistent terms, the table below summarizes each jurisdiction's forfeiture mechanism against a shared set of criteria.

Tabel 1. Comparative Overview of Asset Forfeiture Mechanisms in the Netherlands, the United States, the United Kingdom, and Indonesia

Country	**Legal basis**	**Mechanism**	**Burden of proof**	**Institutional responsibility**
Netherlands	Criminal Justice Approach to Subversive Crime II (pending); Article 98 KUHAP	Conviction-based compensation claim joined with prosecution; proposed non-	Prosecution bears the burden under the pending bill	Public Prosecution Service; State Attorney (Indonesia)

Country	Legal basis	Mechanism	Burden of proof	Institutional responsibility
	(Indonesia's comparator provision)	conviction forfeiture		
United States	Civil Asset Forfeiture Reform Act	Criminal forfeiture, civil judicial forfeiture, administrative forfeiture (in rem and in personam)	Preponderance of evidence in civil forfeiture	AFMS, ATF, OCDETF
United Kingdom	Proceeds of Crime Act 2002	Civil recovery without conviction (in rem), criminal confiscation (in personam)	Balance of probabilities in civil recovery	National Crime Agency; Crown Prosecution Service
Indonesia (draft)	Asset Forfeiture Bill (proposed)	Non-conviction-based in rem forfeiture	State Attorney establishes the claim; the asset holder bears the burden of proving lawful ownership	State Attorney's Office, with coordination envisaged among KPK, Attorney General's Office, Polri, and PPATK

Asset Forfeiture as an Aspect of Criminal Policy and International Cooperation

Criminal policy, or politik kriminal, is defined by Marc Ancel as the rational organization of the control of crime by society. Muladi similarly defines criminal policy as a rational and organized societal effort to control crime, one that can be pursued either repressively through the criminal justice system, that is, the penal approach, or through non-penal means such as public mental health initiatives, legal education, and reform of civil and administrative law. Crime prevention, in this framing, stands as the primary objective of criminal policy.

Marc Ancel further observes that between the study of criminological factors and legal technique lies a discipline examining legislative phenomena as a rational art, in which scholars, practitioners, criminologists, and legal experts work not as opposing camps but as collaborators producing a realistic, humane, and progressively sound criminal policy.

On this basis, criminal policy can be understood as both a science and an art, reflected in the drafting of criminal legislation across its principles, norms, and institutional design, and is therefore bound up with the legislative process that ultimately yields good legislation.

Examined through the lens of criminal policy, the political and legal direction of the Asset Forfeiture Bill can be traced through its considerans. The Bill's academic manuscript sets out its philosophical foundation in the principle that, as a state grounded in law (*rechtsstaat*) rather than mere power (*machtsstaat*), the government bears an obligation to align law enforcement rooted in justice with the pursuit of national goals aimed at public welfare. On this reasoning, offenses driven by economic motives must be addressed through an approach that serves public justice by returning the proceeds and instrumentalities of crime to the state for the community's benefit, an aim that can only be achieved by advancing the national economy.

From a juridical standpoint, the Bill's considerans draws on the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and Law Number 17 of 2003 concerning State Finances.

From a sociological standpoint, the Bill's considerans recognizes that economically motivated offenses in Indonesia, corruption among them, have grown increasingly complex as they come to involve educated perpetrators and increasingly transnational conduct. The entrenched and pervasive spread of corrupt practice across Indonesia's bureaucracy has caused substantial harm to state finances and the broader economy. The principal aim of those who commit corruption, or other economically motivated offenses, is to obtain and enjoy the proceeds of their crime. Since the proceeds of crime function as the lifeblood sustaining economically motivated offenses, the most effective way to prevent and combat them is to cut off that lifeblood by seizing and forfeiting the proceeds and instrumentalities involved, an approach that both reduces the economic motive driving offenders and enables the state to gather funds supporting further prevention and enforcement efforts. This approach aligns with the principle of a fast, simple, and low-cost justice system and increases the likelihood of recovering criminal proceeds regardless of whether the prosecution ultimately succeeds or fails.

Taken together, the Bill's considerans reflects an intent to forfeit the assets of anyone who commits a criminal offense for the sake of public welfare. Given the scale of harm corruption inflicts on state finances and, by extension, on the Indonesian public, the enactment of the Asset Forfeiture Bill takes on considerable urgency. Since criminal conduct increasingly transcends national borders, strong international cooperation becomes essential to recovering the proceeds of crime. Several forms of cooperation have emerged among states pursuing this goal.

1. Mutual Legal Assistance in Criminal Matters

   The global fight against corruption has steadily climbed toward the top of the political agenda, driven forward through international consensus and negotiation on anti-corruption measures. According to Siswanto Sunarso, mutual legal assistance refers to an agreement directed at requests for assistance concerning investigation, prosecution, court examination, and related matters, exchanged between a requested state and a requesting state. Mutual legal assistance in criminal matters is thus a request for assistance concerning investigation, prosecution, and court examination, carried out in accordance with the requested state's own legal provisions.

Under the United Nations Convention Against Transnational Organized Crime, also known as the Palermo Convention of 2000, mutual legal assistance covers obtaining evidence and statements, providing legal documentation, conducting searches and seizures, examining objects and locations, supplying information, evidence, expert assessments, documents, and records, and identifying or tracing the proceeds, property, or instruments of crime for purposes of evidence and forfeiture.

Article 13 of the Convention facilitates the appearance of witnesses and various other forms of assistance not prohibited under national law, and assistance is not confined to the categories listed above, since further assistance may be provided so long as it does not conflict with the requested state's domestic law.

To operationalize mutual legal assistance, states establish bilateral, multilateral, or regional agreements that set out the mechanisms for providing assistance and designate the authorities responsible for handling requests, including assistance in identifying individuals, obtaining evidence, and securing the appearance of witnesses.

2. Extradition

In practice, offenders who commit crimes within one country's territory sometimes flee to another country and remain there for extended periods to evade prosecution in the country where the offense occurred. In such cases, the state holding criminal jurisdiction faces obstacles in processing the offender, from the initial investigation by police and prosecutors through to trial.

Extradition is the process of surrendering a suspect or convicted person from one state to another for trial or punishment. Although extradition primarily concerns the person, assets connected to the suspect may in some cases be extradited as well. Extradition has therefore become relevant to law enforcement in corruption cases, since corruption suspects who flee beyond their home jurisdiction can subsequently be apprehended on extradition grounds. The term itself derives from the Latin extradere, combining ex, meaning out, with tradere, meaning to hand over, with the corresponding noun extradio meaning surrender.

The procedure for extradition is set out in Extradition Law Number 1 of 1979. Where Indonesia is the requested state, the requesting state submits a request to search for, arrest, and provisionally detain the person sought to the Chief of the National Police or the Attorney General of the Republic of Indonesia. The police or the prosecution service then carries out the search, arrest, and provisional detention in accordance with the requesting state's request. The Minister of Law of the Republic of Indonesia subsequently verifies the completeness of the extradition request file, after which the President of the Republic of Indonesia makes the final decision and issues a Presidential Decree either granting or denying the request.

3. Law Enforcement Cooperation

The international community has widely regarded the establishment of the Jakarta Centre for Law Enforcement Cooperation (JCLEC), opened in Semarang in 2004 as a joint initiative between the Australian and Indonesian governments, as a major counter-terrorism innovation. Managed collaboratively by the Australian Federal Police and the Indonesian National Police, JCLEC continues to serve as an effective facilitator of professional networks and cooperation, delivering courses annually on themes including leadership, cross-border cooperation, and counter-terrorism, with an alumni network spanning ten of thousands of law enforcement participants worldwide. This form of cooperation encompasses information exchange, coordinated investigations, and joint operations among law enforcement agencies from different countries.

JCLEC's alumni network now spans more than 31,000 participants and over 6,500 instructors and subject-matter experts. This form of cooperation encompasses information exchange, coordinated investigations, and joint operations among law enforcement agencies from different countries.

4. International Forums and Networks

States frequently join international forums and networks to discuss asset recovery issues, share experience, and agree on common standards, among them the following.

The United Nations Convention Against Corruption regulates various aspects of the fight against corruption, including international cooperation on asset recovery. By signing this convention in 2003 and subsequently ratifying it, Indonesia achieved several outcomes. First, it demonstrated its commitment and seriousness to the international community in preventing and combating corruption. Second, it gained the ability to apply international standards in its anti-corruption efforts, both in terms of legal framework and strategy. Third, it gained standing to press the international community on issues connected to combating corruption, including extradition of corrupt offenders, the application of mutual legal assistance, and asset recovery.

The Egmont Group, a network of financial intelligence units, offers a widely used definition of a financial intelligence unit as a central national agency responsible for receiving, and where permitted requesting, analyzing, and disseminating to competent authorities disclosures of financial information, whether concerning suspected proceeds of crime or information required under national legislation or regulation, for the purpose of countering money laundering.

This definition captures three functions shared by financial intelligence units of every kind. The first is a repository function, meaning the unit serves as a central point for information on money laundering, not merely receiving information on financial transactions but also exercising a degree of control over that information. The second is an analytical function, through which the unit adds value to the information it receives, with the extent of that value depending on the range of sources the unit can access.

The Stolen Asset Recovery Initiative, launched by the United Nations under then Secretary-General Ban Ki-moon, represents a joint effort between the United Nations and the World Bank aimed at helping developing countries trace funds misappropriated by their own leaders while in power. Ten prominent cases have been cited under this initiative, including that of Suharto, who is alleged to have misappropriated between fifteen and thirty-five billion United States dollars.

As discussed earlier in this study, the gap between state losses attributable to corruption and the amounts subsequently recovered through compensation payments (*uang pengganti*) between 2020 and 2022 remains substantial. In 2022 alone, state losses from corruption reached Rp48.786 trillion, while recovery through compensation payments amounted to only Rp3.821 trillion, representing roughly 7.83 percent of the total loss. This significant shortfall between loss and recovery reflects a weakness in the existing legal framework, one in which forfeiture of criminal proceeds has yet to become a primary enforcement focus.

The case of Harvey Moeis illustrates this shortfall concretely. The Corruption Crimes Court at the Jakarta Central District Court found Moeis guilty of causing state financial losses in connection with the tin commodity trade case, sentencing him to six years and six months of imprisonment along with a fine of one billion rupiah, with a substitute sentence of six months' confinement if the fine went unpaid, and an additional compensation payment of Rp210 billion for state financial losses, under Decision Number

70/Pid.Sus-TPK/2024/PN Jkt.Pst of 23 December 2024. On appeal, the Jakarta High Court substantially increased both the prison term and the compensation amount, a decision the Supreme Court subsequently upheld on cassation under Decision Number 5009 K/PID.SUS/2025. Even accounting for the appellate increase, the amount recoverable through compensation payments remains modest relative to the scale of loss, underscoring that state financial loss in such cases is rarely recovered in full through the existing conviction-based framework.[21]

The Asset Forfeiture Bill offers a paradigm shift in criminal law enforcement by emphasizing civil proceedings and directing attention toward the assets derived from crime rather than solely toward the offender. This approach allows forfeiture to proceed without waiting for criminal proceedings against the offender to conclude, thereby accelerating the recovery of state losses and easing the burden on law enforcement in pursuing corruption offenders. Absent a robust legal framework of this kind, offenders retain considerably greater latitude to conceal the proceeds of their crimes, ultimately harming the state both materially and immaterially.

The Bill regulates the blocking or seizure of assets suspected to derive from criminal activity, and it further allows an application for asset forfeiture to be filed before criminal proceedings against the suspected offender have concluded. This arrangement enables law enforcement to act preemptively to prevent an offender from transferring the asset in question.

In filing an application for asset forfeiture, the State Attorney bears the burden of presenting the grounds for the application and proving that the asset sought for forfeiture derives from a criminal offense. Any party objecting to the application then bears the burden of proving that the blocked or seized asset is lawfully theirs, or that the asset in question does not in fact derive from a criminal offense.

In the author's view, this application mechanism closely resembles the concept of a reversal of the burden of proof, under which a defendant or defense counsel may seek to prove the defendant's innocence of the corruption charge brought by the public prosecutor. In an asset forfeiture application, the State Attorney asserts that a given asset derives from a

[21] Benyamin Steven Napitupulu et al., "PERTIMBANGAN ASPEK FILOSOFIS, SOSIOLOGIS, SERTA NORMATIF DALAM PENJATUHAN PIDANA DENGAN MENGEDEPANKAN ASAS OBYEKTIFITAS DAN PROPORSIONALITAS KESALAHAN TERDAKWA (Analisa Putusan Nomor: 813 K/Pid/2023 Tentang Kasus Ferdy Sambo)," *DE RECHT (Journal of Police and Law Enforcement)*, February 7, 2025, 34–49, https://doi.org/10.55499/derecht.v3i1.272.

criminal offense, after which the objecting party must assert or prove that the asset does not.

Given that the recovery of assets derived from corruption still relies on a reversed burden of proof that has, so far, proven less than optimal in addressing state financial loss, the author considers it important for the Asset Forfeiture Bill to be enacted without further delay. Once enacted, several conditions will need attention for the Bill to be implemented effectively. First, the regulation must be paired with a transparent and accountable mechanism for identifying, tracing, and forfeiting assets, and law enforcement officers will need adequate training and resources to carry out these tasks effectively. Second, the system for managing forfeited assets must be well designed, so that funds returned to the state can be directed toward public purposes such as infrastructure development or community empowerment programs.

Third, building synergy among institutions, including the Corruption Eradication Commission, the Attorney General's Office, the National Police, and the Financial Transaction Reports and Analysis Center, will be essential to ensuring that implementation proceeds smoothly and without overlapping authority. Fourth, oversight by civil society and independent bodies will need to be strengthened to guard against any abuse of authority in applying the law.

With implementation that is well directed and conducted with integrity, the Asset Forfeiture Law has the potential to become an effective instrument for reducing the state losses caused by corruption, restoring public trust in law enforcement, and realizing a fair and just approach to combating corruption in Indonesia.

CONCLUSION

The discussion presented throughout this study supports several conclusions. Interpretation holds a particularly important place in criminal law, all the more so for law enforcement officials tasked with applying it. Asset forfeiture arising from corruption offenses stands out as a critical instrument for overcoming the obstacles Indonesia faces in combating corruption, most notably the recovery of state financial losses under Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law. Following the Constitutional Court's removal of the word "may" from both provisions, the element of harming state finances now requires proof of an actual, calculable loss rather than a merely projected one, a shift that places greater weight on mechanisms capable of recovering losses once they have been established as real rather than potential. Asset forfeiture answers precisely this need, since it targets the proceeds of crime directly rather than depending solely on the outcome of a criminal prosecution against the offender.

Comparing this domestic framework against the practice of other jurisdictions further clarifies where Indonesia's draft law stands. The Netherlands relies on its Asset Recovery Guide while continuing to develop dedicated forfeiture legislation of its own; the United States operates under the Civil Asset Forfeiture Reform Act, drawing on several specialized institutions to carry out its forfeiture regime; and the United Kingdom applies the Proceeds of Crime Act 2002 (POCA), which established a systematic and comprehensive framework for seizing the proceeds of crime. Taken together, these three jurisdictions illustrate a range of institutional and procedural choices that Indonesia's own Bill can draw upon as it moves toward enactment.

Indonesia's Asset Forfeiture Bill is itself grounded in a criminal policy approach aimed at building a legal system that is both fair and effective. Because criminal conduct, corruption included, increasingly transcends national borders, international cooperation on asset recovery takes on particular importance in addressing transnational crime. The forms of cooperation most relevant to combating corruption in this context consist of mutual legal assistance agreements, extradition, law enforcement cooperation, and participation in international forums and networks.

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