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PUNISHING CORRUPTION OFFENDERS AND RECOVERING STATE ASSETS

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Abstract

The eradication of corruption is not solely oriented towards the criminal punishment of offenders, but also towards the recovery of state financial losses. Such recovery may be pursued through various legal instruments, including the payment of compensation equivalent to state losses, the seizure and confiscation of assets, civil proceedings in certain circumstances, the tracing of proceeds of money laundering offences, and international legal cooperation. This study examines two issues: first, the legal framework governing the recovery of state financial losses resulting from corruption offences; and second, the legal obstacles to its implementation and the prospects for strengthening the applicable legal framework. This study employs normative legal research using statutory and conceptual approaches, conducted through a literature review of relevant legal materials. The analysis indicates that the legal framework for recovering state financial losses provides several complementary instruments. However, their implementation requires clarity regarding the relationship between the various mechanisms, evidentiary accuracy, protection of third-party rights, and effective enforcement of court judgments. A comparison with the United States and South Korea indicates that both countries have more comprehensive legal frameworks for asset recovery, whereas Indonesia continues to face significant challenges, particularly in cross-border asset recovery. Asset recovery must also be assessed carefully by distinguishing between the amount of compensation ordered by the court, assets identified or seized, assets confiscated, and the value actually recovered by the state. Accordingly, optimising the recovery of state financial losses requires regulatory harmonisation, procedural clarity, stronger inter-agency coordination, and effective monitoring of the enforcement of court judgments, while safeguarding the principle of legality and the right to a fair trial.

Keywords: *Corruption offences; state financial losses; asset recovery; compensation for state losses; asset confiscation.*

INTRODUCTION

Corruption offences constitute not only violations of criminal law norms but also give rise to serious concerns regarding the protection of state finances, the administration of government, and the fulfilment of the public interest. The harm caused by corruption extends beyond the depletion of public assets or resources; it also entails the loss of opportunities for the state to utilise those resources for public services and development. Accordingly, the success of anti-corruption efforts should not be measured solely by the number of cases successfully prosecuted or the severity of the criminal penalties imposed on offenders, but also by the state's ability to recover assets and funds associated with such offences. From this perspective, punishing offenders and recovering state funds are two interrelated objectives, although they require distinct legal instruments and measures of success.

Indonesia's legal framework for combating corruption provides instruments that link criminal liability to the recovery of state finances. Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001, inter alia, provides for an additional criminal penalty in the form of payment of compensation equivalent to state losses, as well as the confiscation of certain property under Article 18. Meanwhile, Article 4 stipulates that the recovery of state financial losses or losses to

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the state economy does not extinguish the criminal liability of offenders for the offences referred to in Articles 2 and 3. These two provisions demonstrate that the recovery of state finances is not equivalent to the extinguishment of criminal liability. Recovery of losses must be regarded as part of law enforcement efforts undertaken alongside prosecution and the imposition of criminal penalties, rather than as an automatic substitute for criminal liability. The status of these provisions and their relationship with subsequent developments in criminal legislation must also be taken into account in the application of the law (Republic of Indonesia, 1999, as amended by Law Number 20 of 2001).

Although legal instruments are available, the existence of a normative legal basis does not, in itself, guarantee that assets associated with criminal offences can be identified, secured through lawful procedures, confiscated in accordance with applicable legal requirements, and optimally recovered by the state. Difficulties may arise when assets are transferred to third parties, concealed through financial transactions, held abroad, or no longer remain under the convicted person's control when a court judgment is to be enforced. These circumstances demonstrate that asset recovery requires a series of interconnected measures, ranging from asset identification and tracing, lawful preservation through appropriate legal measures, and the establishment of the connection between the assets and the criminal offence, to the enforcement of court judgments and the actual return of assets to the state.

Research by Komalasari and Mustafa identifies institutional barriers, weak institutions, and low levels of public trust in public officials as factors that impede anti-corruption efforts and asset recovery in Indonesia. A holistic approach integrating infrastructure development, social rehabilitation, community empowerment, and regulatory reform, together with the incorporation of civil asset forfeiture, is considered an important component of an effective anti-corruption strategy. Accordingly, asset recovery cannot be achieved solely through the imposition of criminal sanctions; rather, it also requires the restoration of public trust in public office as a prerequisite for its success.[1]

These issues may become increasingly complex when asset recovery instruments must be implemented while safeguarding legal certainty, property rights, and the protection of bona fide third parties. Seizure during the investigation stage, for example, must be distinguished from the confiscation of assets as a legal consequence imposed in accordance with the applicable procedures and legal authority. Similarly, the amount of compensation ordered by a court cannot automatically be equated with the amount of money actually recovered. The state may have obtained a judgment ordering the payment of compensation equivalent to state losses, yet the actual recovery and enforcement of that judgment remain dependent on the circumstances surrounding the assets and the implementation of the available legal mechanisms.

Paruntu and Sudiro argue that the conviction-based asset forfeiture mechanism currently applied is insufficiently responsive to the characteristics of complex, transnational, and difficult-to-prove white-collar crime, as asset forfeiture can only be pursued through a criminal conviction, thereby allowing offenders opportunities to conceal or transfer the proceeds of crime. The non-conviction-based asset forfeiture (NCB) paradigm is considered more effective because it focuses on *in rem* proceedings, the balance of probabilities standard of proof, and the reversal of the burden of proof onto asset owners, while continuing to protect the rights of bona fide third parties. Their analysis

[1] Rita Komalasari and Cecep Mustafa, "Strengthening Asset Recovery Efforts: A Path to Mitigating Corruption in the Public Sector," *Integritas: Jurnal Antikorupsi* 10, no. 1 (2024): 137–48, https://doi.org/10.32697/integritas.v10i1.1042.

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is relevant to assessing potential avenues for strengthening the legal framework for asset recovery, while also examining whether the proposed instruments already have a basis in applicable law or still require the enactment of new legislation or amendments to existing laws.[2] At the same time, proposals to link asset recovery with a restorative justice approach require careful examination. Although the return of assets may remedy some of the economic consequences of a criminal offence, it does not, in itself, eliminate the public interest in law enforcement or extinguish criminal liability.

Fauzi, Anditya, and Fitriana present restorative justice as an approach in criminology and criminal law that facilitates communication among offenders, victims, and communities to address victims' interests, strengthen social security, and prevent recidivism. In corruption cases, restorative justice is pursued through asset recovery mechanisms, enabling the state to recover its financial losses and the public to obtain a measure of justice. Their study offers one perspective for examining the relationship between the recovery of losses and the objectives of law enforcement. In the context of Indonesian law, however, any such approach must be assessed in light of the applicable legislation, the specific nature of corruption offences, and the principle that the recovery of state financial losses does not automatically constitute grounds for exemption from criminal punishment.[3] The need to integrate legal instruments is also evident in cases involving cross-border assets. Recovering assets located outside Indonesia's jurisdiction requires not only the capacity to trace such assets, but also cooperation with the state in which the assets are located, compliance with the legal requirements of the requested state, and coordination among relevant institutions.

Arifin, Utari, and Subondo explain that the recovery of proceeds of corruption located abroad may be pursued through formal channels involving mutual legal assistance (MLA) and informal channels through diplomatic relations. The process consists of several stages, namely asset identification and tracing, legal proceedings, and asset confiscation. The obstacles encountered include differences between legal systems, inadequate judicial decisions, the government's political will, and the application of banking secrecy laws in certain countries. Accordingly, bilateral agreements, enhanced law enforcement capacity, and strengthened legal frameworks and supporting infrastructure are necessary. The roles of the Attorney General's Office, the Indonesian National Central Bureau of Interpol (NCB Interpol Indonesia), the Corruption Eradication Commission (KPK), the Ministry of Law and Human Rights, and the Ministry of Foreign Affairs complement one another in asset recovery efforts in accordance with applicable law. The success of asset recovery therefore depends on cooperation among institutions and law enforcement authorities, both domestically and internationally. Although this study provides a useful historical foundation, subsequent regulatory developments and practices in international cooperation must be examined to determine its relevance to the current legal framework in Indonesia.[4]

[2] Natasya Klarisa Paruntu and Amad Sudiro, "Pergeseran Paradigma Pemulihan Aset Dalam Tindak Pidana Korupsi Untuk Mewujudkan Optimalisasi Pengembalian Kerugian Negara," *Jurnal USM Law Review* 8, no. 3 (2025): 1903–29, https://doi.org/10.26623/julr.v8i3.12888.

[3] Ahmad Fauzi, Ariesta Wibisono Anditya, and Mohamad Noor Fajar Al Arif Fitriana, "Recovering Justice Amid Restorative Approach: Finding the Silver Lining in Asset Recovery on Corruption Crimes," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 1 (2025): 217–38, https://doi.org/10.15294/ijcls.v10i1.5626.

[4] Ridwan Arifin, Indah Sri Utari, and Herry Subondo, "Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia: Efforts to Return Corrupt Assets Held Abroad (Asset Recovery) in Enforcing Corruption Eradication Law in Indonesia," *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, no. 1 (2016): 105–37, https://doi.org/10.15294/c2xjcb24.

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In light of these issues, research on the recovery of state financial losses must go beyond separately cataloguing the legal provisions governing compensation payments, seizure, asset confiscation, and civil proceedings. The central issue is how these instruments interact within Indonesia's legal system and how normative obstacles and challenges in law enforcement affect the actual recovery of state financial losses. Unlike previous studies that primarily examine particular asset recovery mechanisms, restorative justice approaches, or the recovery of assets located abroad, this study analyses the relationship between the legal framework governing the available recovery instruments, the legal and procedural obstacles to their implementation, and the directions for strengthening the law to optimise the actual recovery of state financial losses. This integrated analysis constitutes the specific research gap addressed by this study, without assuming that previous research has not examined related issues.

On this basis, the study addresses two research questions. First, how are the legal instruments for recovering state financial losses resulting from corruption offences regulated under Indonesian law? Second, what legal obstacles arise in the implementation of asset recovery instruments, and how can the legal framework be strengthened to support the optimal recovery of state financial losses? This study aims to analyse the legal framework governing the instruments for recovering state financial losses and to identify legal obstacles to their implementation, thereby formulating directions for legal reform that preserve the effectiveness of asset recovery, legal certainty, and the protection of the rights of interested parties.

METHOD

This study employs normative legal research using statutory and conceptual approaches. The statutory approach is used to examine the legal provisions governing instruments for recovering state financial losses, including compensation payments, the seizure and confiscation of assets, civil claims, anti-money laundering measures, and cross-border legal cooperation. The conceptual approach is used to distinguish between the concepts of state financial losses, proceeds of crime, compensation equivalent to state losses, seizure, confiscation, and the actual realisation of asset recovery.

Legal materials were collected through a literature review of relevant legislation and legal literature. The materials were analysed qualitatively by examining the legal basis, requirements, functions, and interrelationships of the various instruments, while identifying issues concerning legal certainty and regulatory consistency. This study is not intended to empirically measure the success rate of asset recovery. Accordingly, conclusions concerning the effectiveness of asset recovery practices are limited to analyses of legal materials and literature that can be substantiated.

RESULTS AND DISCUSSION

A. Regulation of Legal Instruments for Recovering State Financial Losses in Corruption Cases

The recovery of state financial losses in corruption cases must be understood as a legal process encompassing asset tracing, preservation, the establishment of evidentiary links, confiscation or payment pursuant to a court judgment, and the actual return of assets to the state. This process must not be equated with the imposition of criminal punishment on offenders. Criminal punishment serves to hold offenders accountable for their criminal conduct, whereas asset

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recovery is directed towards restoring the economic value associated with criminal offences in accordance with the applicable legal framework. These objectives are mutually supportive, but success in one area does not automatically demonstrate success in the other.

Under Indonesian law, an analysis of recovery instruments must distinguish at least four concepts: seizure, namely the securing of assets for the purposes of legal proceedings; confiscation, namely the taking of assets pursuant to applicable legal authority and procedures; compensation equivalent to state losses (*uang pengganti*), namely an additional criminal penalty imposed on a convicted person in accordance with statutory provisions; and actual recovery, namely the value of assets or payments successfully returned to the state. This distinction is essential to ensure that the amount of state financial losses, the amount of compensation ordered by a court, the value of seized assets, and the amount actually returned to the state treasury are not treated as equivalent figures.

1. Legal Basis for Compensation Payments and Asset Confiscation

The principal legal basis for recovering state finances through corruption proceedings is Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001. Article 18(1) provides for additional criminal penalties, including the confiscation of movable or immovable property, whether tangible or intangible, used in or obtained from corruption offences, including property substituted for such assets; payment of compensation equivalent to state losses, capped at the value of the assets obtained from corruption offences; closure of a company for a specified period; and revocation of certain rights or benefits previously granted by the government to the convicted person. Accordingly, compensation payments and property confiscation constitute distinct legal instruments, although both may contribute to the recovery of the proceeds of corruption.

The limitation on compensation payments set out in Article 18(1)(b) is particularly significant. This provision links the amount payable to the assets obtained from corruption offences. Consequently, compensation equivalent to state losses should not be understood as a fine whose amount may be determined independently of the proceeds of the offence. An analysis of court judgments must consider the basis for determining the amount imposed, the connection between the relevant assets and the criminal offence, and the manner in which the obligation is formulated in the operative part of the judgment. At the same time, the amount of state financial losses and the value of assets obtained by an offender do not necessarily constitute identical categories. Both must be established and analysed in accordance with the relevant elements and legal provisions applicable to the case concerned.

Article 18(2) further provides that, if a convicted person fails to pay the compensation within one month after the judgment has become legally binding, the person's assets may be seized by the public prosecutor and auctioned to satisfy the payment obligation. Article 18(3) prescribes criminal consequences where the convicted person's assets are insufficient to cover the compensation, subject to the sentence specified in the judgment and the limits established by law. These provisions demonstrate that a judgment ordering compensation requires a subsequent enforcement stage.

The imposition of a payment obligation does not, by itself, establish that the state has actually recovered the amount ordered. In practice, property-based seizure is generally used for evidentiary purposes, whereas the recovery of state financial losses relies more heavily on a

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value-based confiscation model.[5] The problem is compounded by the fact that the Corruption Eradication Law does not expressly regulate the mechanism for paying compensation or provide more detailed rules concerning substitute imprisonment when a convicted person fails to pay.[6] Accordingly, the use of substitute imprisonment as a consequence of non-payment warrants reconsideration, including through the consideration of alternative sanctions that retain a substantive asset-recovery function.

Asset confiscation must also take third-party rights into account. Article 19 of the Corruption Eradication Law protects bona fide third parties, including through an objection mechanism in circumstances prescribed by law. This provision demonstrates that the effectiveness of asset recovery cannot be measured solely by the extent to which assets can be taken. Recovery must be conducted on the basis of sufficient evidence and through procedures that respect the legal rights of other parties. Strengthening recovery mechanisms without adequate safeguards risks creating legal uncertainty and further disputes, which may ultimately impede the enforcement of court judgments.

2. Civil Claims as an Asset Recovery Instrument

In addition to criminal law instruments, the Corruption Eradication Law provides for civil claims in certain circumstances. Article 32 provides for the referral of a case to the State Attorney or the injured government agency to initiate a civil claim where investigators determine that one or more elements of a corruption offence cannot be sufficiently established by evidence, although actual state financial losses have occurred. The same article also stipulates that an acquittal in corruption proceedings does not extinguish the right to seek recovery of state financial losses through civil proceedings. Articles 33 and 34 provide for the possibility of bringing civil claims against heirs where a suspect dies during the investigation stage or a defendant dies during trial proceedings, provided that actual state financial losses have occurred.

These provisions demonstrate that the recovery of state finances does not depend entirely on the successful imposition of criminal punishment. Civil proceedings may serve as an independent recovery instrument in circumstances specifically prescribed by law. However, the availability of this avenue does not authorise the state to take a person's property solely on the basis of suspicion or a finding of financial loss. A civil claim still requires a legal basis, proof of the losses, identification of the party responsible, and compliance with applicable civil procedure. Meanwhile, proposals for legal reform have also introduced other non-criminal instruments, such as a Deferred Prosecution Agreement (DPA), which may be applied to corporations subject to requirements concerning the recovery of state losses and other qualifying conditions.[7] The provisions governing claims against heirs must not be interpreted as transferring criminal liability to heirs; rather, their purpose concerns claims for financial recovery under the conditions established by law.

[5] Musfiratul Ilmi, Syamsuddin Muchtar, and Amir Ilyas, "Penyitaan Berbasis Properti Sebagai Upaya Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi," *Jurnal USM Law Review* 5, no. 2 (2022): 493–507, https://doi.org/10.26623/julr.v5i2.5197.

[6] Sintia Febriani and Sahuri Lasmadi, "Pengembalian Kerugian Negara Melalui Pembayaran Uang Pengganti," *PAMPAS: Journal of Criminal Law* 1, no. 1 (2021): 1–22, https://doi.org/10.22437/pampas.v1i1.8277.

[7] Habi Burrohim, I Gede Widhiana Suarda, and Ainul Azizah, "Pengembalian Kerugian Keuangan Negara Melalui Perjanjian Penundaan Penuntutan Dalam Tindak Pidana Korupsi Oleh Korporasi," *Jurnal Rechtens* 11, no. 1 (2022): 1–16, https://doi.org/10.56013/rechtens.v11i1.1137.

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Conceptually, civil claims and the additional criminal penalty of compensation equivalent to state losses serve different functions. Compensation is imposed within the criminal sentencing framework and is governed by the specific provisions of the Corruption Eradication Law. Civil claims, by contrast, provide a mechanism for seeking recovery on the basis of applicable civil law and its requirements. The choice of mechanism must take into account the circumstances of the case, the status of the criminal proceedings, the sufficiency of the evidence, the parties who may be held legally responsible, and the type of loss to be recovered. Selecting the appropriate instrument is also necessary to prevent overlapping claims or inconsistent calculations of recovered amounts.

3. Asset Tracing and the Anti-Money Laundering Approach

Asset recovery requires the capacity to identify and trace the proceeds of crime, including where assets have been moved, transferred, spent, or concealed through financial transactions. In this regard, Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering provides a relevant legal framework because it includes corruption among the predicate offences. Articles 3 and 4 regulate conduct involving the transfer or conversion of assets and the concealment or disguising of their origin or ownership, provided that the elements of a money laundering offence are satisfied. Accordingly, the anti-money laundering approach may assist law enforcement authorities in addressing financial flows and assets associated with corruption. Its application, however, must remain grounded in the relevant statutory elements and evidentiary requirements.

The relationship between corruption proceedings and money laundering must be understood accurately. Not every asset owned by a suspect or convicted person automatically constitutes the proceeds of crime, and not every unusual transaction, in itself, establishes money laundering. Asset tracing must be directed towards establishing an evidentially verifiable connection between the assets, transaction flows, the parties exercising control over or enjoying the benefits of those assets, and the criminal offence underlying the proceedings. This framework is important for distinguishing preliminary preservation measures from a final determination of the legal status of the assets. Any determination and confiscation of assets must remain subject to lawful procedures, including the protection of third parties who can establish a legitimate interest in the assets concerned.

In practice, corruption investigations and money laundering investigations may perform complementary functions: the former investigate corruption offences and the criminal liability of the offenders, while the latter may be used to investigate dealings in the proceeds of crime where the relevant elements are satisfied. Inter-agency coordination, access to financial information within the limits of legal authority, and documentation of asset flows are important to ensure that tracing results can be used in legal proceedings. However, the technical capacity to trace assets must not be equated with the legal authority to confiscate them. Financial intelligence, for example, may provide leads for an investigation, but coercive measures and confiscation must have a legal basis and satisfy the applicable evidentiary and procedural requirements.

4. International Cooperation in Asset Recovery

Where assets associated with corruption offences are located outside Indonesia, recovery becomes more complicated because Indonesian law enforcement authorities cannot simply exercise coercive powers within another state's territory. The tracing, freezing, seizure, confiscation, and repatriation of cross-border assets require cooperation in accordance with international

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instruments, domestic law, and the procedures of the requested state. In practice, the seizure of assets derived from corruption offences abroad is generally pursued through Mutual Legal Assistance (MLA), an international cooperation mechanism concerning investigations, prosecutions, and judicial proceedings in accordance with the law of the requested state.[8] The presence of assets abroad is therefore not merely a matter of identifying accounts or ownership, but also involves questions of legal authority, evidence, recognition of legal measures, and compliance with cooperation requirements.

Indonesia ratified the United Nations Convention against Corruption (UNCAC) through Law Number 7 of 2006. UNCAC recognises asset recovery as an important component of international cooperation against corruption. However, ratification of the Convention does not confer direct authority on Indonesian officials to seize assets in another country. Implementation remains dependent on legal cooperation mechanisms, applicable requirements, and action by the authorities of the state in which the assets are located. International cooperation must therefore be understood as a means of requesting and providing legal assistance, rather than as a substitute for domestic procedures or the legal sovereignty of the requested state.

Cross-border challenges also demonstrate the importance of initiating asset tracing at an early stage of a case. If ownership identification, the collection of transaction records, and requests for legal assistance are undertaken only after criminal proceedings have been ongoing for an extended period, the assets may already have been transferred or their ownership structures may have become increasingly complex. From a legal and regulatory perspective, the effectiveness of international cooperation therefore cannot be assessed solely by the existence of treaties or normative instruments. It is also necessary to consider the speed of coordination, the quality of submitted documentation, the compatibility of requests with the law of the requested state, and the capacity to manage assets that have been secured until the recovery process is complete.

5. The Status of the Asset Forfeiture Bill and the Limits of Existing Law

Any discussion of strengthening asset recovery must distinguish between legal instruments already in force and proposed reforms that remain within the legislative process. On 18 August 2026, Commission III of the Indonesian House of Representatives (DPR RI) announced plans to continue deliberations on the bill by holding additional public hearings to gather public input. Subsequently, on 25 August 2026, the DPR reiterated that further examination was required regarding several issues, including non-conviction-based asset forfeiture, the protection of third parties who lawfully own assets, the reversal of the burden of proof, and the governance of confiscated assets. These developments indicate that the Asset Forfeiture Bill remains a draft whose substantive provisions are under consideration and cannot yet be treated as an enacted law in force.

This distinction is important because non-conviction-based asset forfeiture (NCB) is one of the models being considered in efforts to reform the law. It must be distinguished from asset confiscation imposed as an additional criminal penalty through criminal proceedings. In reporting published by the DPR in August 2026, the mechanism for confiscating assets without a criminal conviction was identified as one of the issues requiring further examination. Concerns have also arisen regarding the need for mechanisms to review asset seizure or confiscation measures, protect

[8] Muhammad Rustamaji and Bambang Santoso, "The Study of Mutual Legal Assistance Model and Asset Recovery in Corruption Affair," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019): 155–60, https://doi.org/10.15294/ijcls.v4i2.36301.

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citizens' rights, and prevent the abuse of authority. Accordingly, any regulation of such a mechanism must clearly establish the circumstances in which it may be applied, the applicable standard of proof, procedures for notification and objections, safeguards for bona fide asset owners, and judicial oversight. These requirements are necessary to ensure that asset recovery remains consistent with property rights and the principles of due process.

The establishment of a more comprehensive asset forfeiture mechanism should therefore be regarded as an agenda of *ius constituendum*, meaning law that is envisaged or proposed for future enactment, rather than *ius constitutum*, meaning positive law already in force. Although a dedicated asset forfeiture statute remains under deliberation, Indonesia already has several legal instruments supporting the recovery of assets derived from criminal offences. The Corruption Eradication Law provides, among other things, for the additional criminal penalties of compensation payments and the confiscation of certain property, as well as civil claims in circumstances prescribed by law. Meanwhile, the Law on the Prevention and Eradication of Money Laundering provides legal mechanisms for dealing with assets associated with money laundering offences.

At the preliminary stage of a case, the recovery of state losses may even extinguish the criminal offence if it occurs before the investigation stage, on the reasoning that the element of state financial loss, which constitutes one of the elements of corruption, has ceased to exist.[9] However, the criminal law policy governing the recovery of state financial losses arising from corruption has been considered insufficiently effective, creating a need for regulatory simplification and specific legal provisions from the earliest stages of case handling.[10] Limitations in criminal procedural law have also been considered an obstacle to maximising the recovery of state assets, indicating the need for alternative solutions.[11] Accordingly, the legal problem does not lie solely in the absence of asset recovery instruments, but also in the effectiveness of existing provisions and the need to address regulatory limitations and gaps through lawful legal reform.

Based on the foregoing, the recovery of state financial losses under Indonesian law does not rely on a single instrument. The existing framework combines criminal law instruments, including compensation payments and property confiscation; civil claims in circumstances prescribed by law; and instruments relating to the tracing and handling of proceeds of money laundering offences. For cross-border assets, these mechanisms must be supported by international cooperation consistent with the laws and procedures of the relevant states.

Thus, Indonesian law provides several legal bases for recovering assets associated with corruption, but the existence of these instruments does not, in itself, guarantee optimal recovery. This mapping demonstrates that the recovery of state financial losses in corruption cases involves instruments with different legal bases, functions, and implementation mechanisms. Compensation payments, seizure, confiscation, civil claims, anti-money laundering measures, and cross-border cooperation cannot be treated as mechanisms that simply substitute for one another. The analysis

[9] Piatur Pangaribuan and Agus Fitriadi, "Analisis Yuridis Pengembalian Kerugian Keuangan Negara Dalam Tahap Penyelidikan Dugaan Tindak Pidana Korupsi," *Journal De Facto* 7, no. 2 (2021): 194–213, https://jurnal.pascasarjana.uniba-bpn.ac.id/index.php/jurnaldefacto/article/view/90.
[10] Sugeng Wahyudi, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia," *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 45–72, https://doi.org/10.15294/jils.v4i01.28224.
[11] Fira Saputri Yanuar Andri, Amarru Muftie Holish, and Aditya Wicaksono, "Efforts to Recover State Financial Losses Through Criminal Cases Case Study Against Corruption," *Law Research Review Quarterly* 5, no. 1 (2019): 19–24, https://doi.org/10.15294/snh.v5i01.29701.

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must distinguish the existence of a legal basis, satisfaction of the requirements for applying the relevant instrument, and the actual realisation of asset recovery. This mapping provides the foundation for examining legal obstacles and potential avenues for strengthening the legal framework in the following section.

B. Legal Obstacles and Legal Reform to Optimise the Recovery of State Financial Losses

The regulation of various asset recovery instruments does not, in itself, guarantee that state financial losses will be recovered in full. Legal problems arise when asset tracing, proof of the relationship between assets and criminal offences, the imposition of additional criminal penalties, and the enforcement of court judgments do not operate effectively as an integrated process. Legal obstacles must be analysed by distinguishing between substantive legal issues, procedural difficulties in applying the available instruments, and the enforcement of final and binding court judgments.

This analysis must also take account of developments in Indonesia's national criminal law. The entry into force of the national Criminal Code and the Criminal Penalties Adjustment Law requires a reassessment of the relationship between general criminal law provisions and special criminal law provisions. Legal reform must be based on a comprehensive examination of the applicable legislation, rather than relying solely on provisions that have traditionally served as references in corruption eradication efforts.

1. Legal Certainty and Regulatory Harmonisation

One of the fundamental issues in recovering state financial losses is the need for legal certainty regarding the legal basis, requirements, and legal consequences of each instrument. Compensation for state losses, seizure, asset confiscation, civil claims, and the handling of money laundering offences each have distinct characteristics and procedures. If the relationship between these instruments is not properly understood, their application may create uncertainty regarding the stages to be followed, the legal status of assets under consideration, and the mechanisms available to achieve actual recovery.

In the literature, provisions governing the recovery of state financial losses resulting from corruption offences are classified into criminal law norms and civil law norms.[12] Criminal law norms are implemented through asset confiscation and compensation payments, whereas civil law norms operate through claims against convicted persons or their heirs. This classification clarifies the types of instruments available, but does not, in itself, explain the relationship between procedural stages, the status of assets, and the mechanisms for implementing recovery. The issue becomes more complex because Article 4 of the Corruption Eradication Law (*UU Tipikor*), which provides that the recovery of state financial losses does not extinguish criminal liability, has been considered in need of reconstruction to accommodate restorative justice principles and legal incentives for offenders who cooperate with the authorities.[13]

In determining judgments concerning the recovery of state financial losses, the relationship between relevant provisions also requires a clear connecting principle. The principle of *systematic lex specialis*, for example, may serve as a reference for judges to ensure that judgments remain

[12] Sakinah Agustina and Suryani Yusni, "Analisis Yuridis Terhadap Ketentuan Upaya Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi," *Justici* 18, no. 2 (2025): 26–41, https://doi.org/10.35449/justici.v18i2.1045.
[13] Mohamad Qosim Thalib, Fence M Wantu, and Dian Ekawaty Ismail, "Restitution of State Financial Losses Under the Anti-Corruption Law: A Progressive Legal Reconstruction Approach," *International Journal of Law, Crime and Justice* 2, no. 1 (2025): 306–16, https://doi.org/10.62951/ijlcj.v2i1.556.

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consistent with the legal system as a whole.[14] Legal uncertainty also arises at the investigation stage, particularly because no specific provision is said to regulate the voluntary repayment of state financial losses by a suspect to a prosecutor exercising investigative authority.[15] Accordingly, legal certainty requires not only clarity in the relationship between the various instruments, but also a restructuring of the legal norms that underpin asset recovery itself.

Legal certainty is also affected by legislative changes. The entry into force of the national Criminal Code and the Criminal Penalties Adjustment Law requires an examination of provisions that have been amended, repealed, or adjusted, including provisions contained in special criminal legislation. Harmonisation cannot be achieved merely by comparing the wording of statutory provisions. The analysis must also consider the relationship between provisions, transitional rules, the scope of their application, and the consistency of their legal consequences.

Legal reform should therefore focus on systematically mapping the applicable legal norms and ensuring consistency across legislation. Each instrument must have a clear legal basis, an applicable procedure, and a defined relationship with the subsequent stages of recovery. This approach may reduce the risk of divergent interpretations while safeguarding the principles of legality and legal certainty.

2. Obstacles to Asset Tracing, Proof, and the Protection of Third-Party Rights

Asset recovery depends on the ability to identify relevant property, trace ownership and transaction flows, and establish the legal relationship between the assets and the criminal offence. The problem becomes more complex when assets have been transferred, registered in another person's name, or converted into forms that are difficult to trace.[16] In practice, investigators and public prosecutors often encounter difficulties in seizing assets because offenders attempt to conceal them through money laundering or transfers of ownership to other persons. However, difficulty in locating assets does not necessarily indicate a legal vacuum. For example, in practice at the Purbalingga District Prosecutor's Office, the obstacles have reportedly arisen from a lack of supporting witnesses, limited facilities and infrastructure, and lengthy forensic audit and state-loss calculation processes.[17] Accordingly, some asset recovery obstacles are more appropriately understood as problems of investigative capacity, access to information, and institutional coordination.

From a legal perspective, action against assets must have a proper legal basis and satisfy the applicable legal requirements. Financial intelligence, transaction records, or indications of a relationship between assets and an offender may provide leads for tracing activities, but they do not, by themselves, replace the evidentiary requirements applicable to seizure or confiscation.

[14] Wilda Amalia, "Sanksi Pengembalian Kerugian Keuangan Negara Bagi Koruptor Berdasarkan Asas Lex Specialis Sistematis: Penalties for the Restitution of Financial Losses to the State Imposed on Corrupt Officials Based on the Principle of Systematic Lex Specialis," *SIYASI: Jurnal Trias Politica* 1, no. 2 (2023): 139–50, https://doi.org/10.15575/sjtp.v1i2.31005.

[15] Herianto Herianto et al., "Penyitaan Dalam Rangka Pengembalian Kerugian Keuangan Negara Pada Proses Penyidikan Di Kejaksaan Negeri Toba Samosir," *Locus Journal of Academic Literature Review* 2, no. 6 (2023): 549–59, https://doi.org/10.56128/ljoalr.v2i6.189.

[16] Tumbur Ompu Sunggu, "Sistem Hukum Dalam Mengembalikan Kerugian Keuangan Negara Dari Hasil Tindak Pidana Korupsi Dalam Perspektif Peraturan Perundang-Undangan Di Indonesia," *Yuriska: Jurnal Ilmiah Hukum* 17, no. 2 (2025): 279–96, https://doi.org/10.24903/yrs.v17i2.3710.

[17] Danif Zainu, Hibnu Nugroho, and Budiyono Budiyono, "Efektivitas Kejaksaan Negeri Purbalingga Dalam Upaya Penegakan Hukum Pengembalian Kerugian Keuangan Negara Dari Tindak Pidana Korupsi," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 6 (2025): 4800–4809, https://doi.org/10.38035/jihhp.v5i6.5143.

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Separating the stages of identification, securing assets, establishing proof, and determining the assets' final legal status is necessary to prevent disproportionate action or measures lacking an adequate legal basis.

Where assets are controlled by third parties, law enforcement authorities must assess the origin of the assets, the relationship between the person controlling them and the criminal offence, and the legal basis for taking action against the property. The protection of bona fide third parties is an integral part of legal certainty. Legal reform should prioritise clear procedures for tracing and securing assets, evidentiary standards appropriate to the type of legal proceeding, and adequate mechanisms through which affected parties may challenge or seek judicial review of measures affecting their rights.

3. Obstacles to the Enforcement of Compensation Orders and the Realisation of Asset Recovery

The imposition of an additional criminal penalty requiring compensation for state losses does not necessarily result in recovery equivalent to the amount ordered by the court. Although prosecutors have been granted powers relating to asset tracing, seizure, and recovery under Article 30A of Law No. 11 of 2021, the implementation of asset recovery continues to face various obstacles, limiting the results achieved.[18] The policy governing compensation penalties has also been considered ineffective because of limitations in law enforcement capacity, insufficient inter-agency coordination, difficulties in tracing and seizing offenders' assets, and offenders' inability to repay state losses at the enforcement stage.[19]

As an alternative strategy, a coercive monetary penalty (*dwangsom*) may serve as psychological pressure to encourage voluntary compliance with a judgment through the threat of an obligation to pay a specified amount for each day of delay.[20] Another obstacle may arise from legal events beyond the parties' control. For example, the death of a defendant while an appeal is pending may complicate the public prosecutor's enforcement of a compensation order.[21] Differences between the amount ordered and the amount actually recovered may arise because the convicted person fails to pay, executable assets cannot be located or are insufficient, or the realisable value of the assets differs from their previously assessed value.

Enforcement obstacles do not arise solely from a convicted person's inability to pay or the failure to locate assets. In practice, the performance of the prosecution service and the courts has also been considered insufficiently optimised because the prosecution service's role is often perceived as ending with the exercise of prosecutorial authority and the delivery of a court judgment, without adequate follow-up on subsequent processes. These may include collecting fines

[18] Andika Demto Butarbutar, Ridwan Ridwan, and Reine Rofiana, "Pelaksanaan Pemulihan Aset Oleh Jaksa Pada Tindak Pidana Korupsi Berdasarkan Undang-Undang Nomor 11 Tahun 2021 Tentang Kejaksaan Republik Indonesia," *MATAKAO Corruption Law Review* 2, no. 2 (2024): 74–86, https://doi.org/10.47268/matakao.v2i2.14356.

[19] Artha Kariasmarico, Maroni Maroni, and Emilia Susanti, "Upaya Pengembalian Kerugian Negara Melalui Kebijakan Pidana Uang Pengganti Tindak Pidana Korupsi," *Jurnal Nakula: Pusat Ilmu Pendidikan, Bahasa Dan Ilmu Sosial* 3, no. 6 (2025): 171–83, https://doi.org/10.61132/nakula.v3i6.2326.

[20] Andi Hakim Lubis, Rismanto J Purba, and Muazzul, "Penerapan Uang Paksa (Dwangsom): Strategi Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi," *Judge: Jurnal Hukum* 6, no. 5 (2025): 1631–43, https://doi.org/10.54209/judge.v6i05.1808.

[21] Emil Brunner et al., "Analisis Hukum Pengembalian Kerugian Keuangan Negara Melalui Uang Pengganti Dalam Putusan Pengadilan Tipikor Pada Pengadilan Negeri Medan No. 41/Pid.Sus-K/2011/PN.Mdn," *Locus Journal of Academic Literature Review* 3, no. 3 (2024): 266–82, https://doi.org/10.56128/ljoalr.v3i3.293.

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or compensation payments, auctioning seized property belonging to convicted persons, and using State Attorneys (*Jaksa Pengacara Negara*) to bring civil claims against the assets of convicted persons or their heirs.[22] This issue underscores the need for continuity between case handling, asset information management, judgment enforcement, and the recording of state revenue.

The provisions governing compensation for state losses, together with the legal consequences of non-compliance, should be examined in terms of the relationship between criminal accountability and the objective of recovering state financial losses. The enforcement of a substitute term of imprisonment must not automatically be treated as evidence that the state losses have been recovered, because the enforcement of a criminal penalty and the recovery of assets are distinct matters.

Legal and operational reform should therefore ensure continuity between case handling, asset information management, judgment enforcement, and the recording of actual recovery. Evaluation should distinguish between the amount of compensation ordered by the court, the amount paid, the value of assets successfully realised through enforcement, and the net amount actually received by the state.

4. Obstacles to Cross-Border Asset Recovery and Institutional Coordination

The recovery of assets located abroad presents additional challenges because legal proceedings involve more than one jurisdiction. Requests for assistance from other countries must comply with the applicable cooperation instruments and the legal requirements of the requested state. A comparison with the United States and South Korea indicates that both countries have more comprehensive asset recovery frameworks, while Indonesia continues to face significant challenges.[23] The relevant cooperation framework is provided by Law No. 1 of 2006 on Mutual Legal Assistance in Criminal Matters and the ratification of the 2003 United Nations Convention against Corruption (UNCAC) through Law No. 7 of 2006.[24] These instruments facilitate asset recovery through criminal, civil, and administrative channels. Differences in legal systems, evidentiary requirements, freezing and confiscation procedures, and the enforcement of judgments may affect the time required for recovery and the likelihood of its successful realisation.

Mutual legal assistance in criminal matters is a cooperation mechanism, not a legal basis authorising Indonesian law enforcement officials to undertake unilateral coercive action within another state's territory. Recovery requires coordination between the relevant authorities and compliance with the procedures applicable in the jurisdiction where the assets are located. Consequently, delays or failures in cross-border recovery cannot automatically be attributed to a legal vacuum in Indonesian law.

At the national level, inter-agency coordination affects the continuity of the recovery process. Asset tracing, investigation, prosecution, the management of seized property, judgment enforcement, and the recording of state revenue may involve institutions with different duties and powers. Reform should therefore focus on clarifying the allocation of authority, establishing

[22] Puteri Erlangga, Mulyono Suwerjo, and Fauziah Fauziah, "Efektifitas Peran Kejaksaan Dalam Pengembalian Kerugian Keuangan Negara Dalam Perkara Korupsi Melalui Pelaksanaan Putusan Pengadilan," *Jurnal Hukum Jurisdictie* 5, no. 2 (2023): 137–56, https://doi.org/10.34005/jhj.v5i2.132.

[23] Jesella Ramayanti Nainggolan, July Esther, and Debora Debora, "Asset Recovery in Eradication Illicit Enrichment: Indonesia with the United States and South Korea," *Formosa Journal of Science and Technology* 3, no. 12 (2024): 2809–24, https://doi.org/10.55927/fjst.v3i12.13068.

[24] Gomgom T P Siregar, "Pengembalian Aset (Aset Recovery) Pelaku Tindak Pidana Korupsi," *UNES Law Review* 6, no. 2 (2023): 4560–71, https://doi.org/10.31933/unesrev.v6i2.1212.

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coordination procedures, facilitating lawful information exchange, and ensuring administrative continuity throughout the asset recovery process.

5. Directions for Legal Reform to Optimise Asset Recovery

First, regulatory harmonisation must ensure consistency between general criminal law provisions, corruption offences legislation, anti-money laundering legislation, criminal procedural law, and the rules governing the enforcement of criminal penalties. This process must be based on a comprehensive examination of the legislation in force, including amendments and transitional provisions, to ensure that legal reform proposals do not rely on provisions that have been repealed, amended, or adjusted. Harmonisation should also clarify the relationship between the various asset recovery instruments, the legal requirements governing their application, and the safeguards available to third parties whose rights may be affected.

Second, asset tracing and preservation mechanisms must be supported by clear procedures governing legal authority, information exchange, record-keeping, oversight, and the protection of third-party rights. Clear procedures are necessary to ensure that action against assets can be taken in a timely manner while remaining subject to legal scrutiny. Reform should not be limited to expanding the powers of law enforcement authorities. It must also ensure that those powers are exercised for legitimate purposes, through proportionate procedures, and under effective oversight. Coordination and lawful information exchange between relevant institutions should strengthen continuity from asset identification and investigation through prosecution and the securing of property.

Third, the enforcement of compensation orders should be more systematically integrated with asset information management and the execution of court judgments. The legal framework governing compensation payments should clarify the procedures for payment and the legal consequences of non-compliance, thereby reducing the risk of inconsistent interpretation during enforcement. The assessment of asset recovery performance should not be based solely on the amount of compensation ordered by the court. It should distinguish between the amount ordered, the amount paid, the value of assets successfully realised through enforcement, and the net amount actually received by the state. These indicators would provide a more accurate basis for evaluating the practical effectiveness of recovery measures.

Fourth, institutional strengthening should focus on coordination in accordance with each institution's legal authority, lawful data exchange, and administrative continuity throughout the recovery process. This includes coordination between asset tracing, investigation, prosecution, the management of seized property, judgment enforcement, and the recording of state revenue. In cross-border cases, cooperation through Mutual Legal Assistance must be strengthened by ensuring compliance with the applicable international instruments and the legal requirements of the requested state. Secured assets must also be managed appropriately throughout the process until their return or transfer to the state has been completed.

Fifth, proposed legal reforms concerning asset confiscation, including models that do not invariably depend on a criminal conviction, must be carefully assessed in light of legal necessity, due process, and the protection of property rights. The paradigm of non-conviction-based asset forfeiture offers a potentially complementary approach through *in rem* proceedings and evidentiary mechanisms that may differ from those applicable in criminal proceedings.[25] However, any such

[25] Paruntu and Sudiro, "Pergeseran Paradigma Pemulihan Aset Dalam Tindak Pidana Korupsi Untuk Mewujudkan Optimalisasi Pengembalian Kerugian Negara."

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model must be supported by a clear legal basis and carefully designed safeguards. These should specify the scope of assets subject to confiscation, the required connection between the assets and unlawful conduct, the applicable standard of proof, the position of bona fide third parties, procedures for challenging confiscation, judicial oversight, and mechanisms for restoring rights where the measures are found to have been unlawful. Proposals involving a reversal of the burden of proof must likewise be assessed against the principles of legality, proportionality, and fair trial rights.[26]

A restorative approach to asset recovery may also emphasise the restoration of the state's financial interests and the public interest through transparent and accountable mechanisms. Asset recovery may involve a combination of criminal and civil procedures, including *in rem* and *in personam* mechanisms, where permitted by the applicable law.[27] Nevertheless, neither restorative approaches nor alternative confiscation models should be treated as automatic solutions to all recovery obstacles. Their adoption requires a clear legal framework, effective institutional capacity, and adequate protection for the rights of affected parties.[28] Overall, legal reform cannot be achieved merely by introducing additional instruments or expanding the powers of law enforcement authorities. More fundamentally, each instrument must have a clear legal basis, be capable of consistent application, and be connected to an effective enforcement process. Its implementation must also provide adequate protection for the rights of interested parties. The optimisation of state financial loss recovery therefore requires a coherent and accountable legal system, effective institutional coordination, and a reliable method of measuring actual recovery. Further empirical research into judgment enforcement and the actual realisation of recovered assets would help assess the effectiveness of the existing legal instruments more systematically.

CONCLUSION

The recovery of state financial losses resulting from corruption offences in Indonesia is supported by several legal instruments, each with a distinct legal basis, function, and implementation mechanism. These instruments include compensation payments, the seizure and confiscation of assets, civil claims in circumstances prescribed by law, the handling of money laundering offences, and cross-border legal cooperation. The application of each instrument must take account of the legal basis for the action, the applicable legal requirements, evidentiary procedures, and the protection of third-party rights. The existence of legal instruments does not, in itself, guarantee the recovery of all state financial losses. The amount ordered by a court, assets identified or seized, and the amount actually returned to the state are distinct matters and must be assessed separately. A comparison with the United States and South Korea indicates that both countries have more comprehensive asset recovery frameworks, while Indonesia continues to face significant challenges, particularly in cross-border cooperation.

[26] Fauzi, Anditya, and Fitriana, "Recovering Justice Amid Restorative Approach: Finding the Silver Lining in Asset Recovery on Corruption Crimes."
[27] Khairunnisa Dhiavella Asy'ari and Nathalina Naibaho, "Perampasan Aset Dalam Upaya Pemulihan Aset Hasil Tindak Pidana Korupsi Di Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 5 (2024): 1966–73, https://doi.org/10.38035/jihhp.v4i5.2792.
[28] Duwi Handoko, "Titik Awal Pemberantasan Tindak Pidana Korupsi," *Riau Law Journal* 3, no. 2 (2019): 180–208, https://garuda.kemdiktisaintek.go.id/documents/detail/3047890.

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Legal obstacles to asset recovery relate to the need for legal certainty and regulatory harmonisation, compliance with evidentiary requirements, determination of the legal status of assets, enforcement of compensation orders, and cross-border cooperation procedures. Optimising recovery requires consistency across the applicable legislation, clear procedures for tracing and securing assets, continuity between court judgments and enforcement, and inter-agency coordination in accordance with the respective legal powers of the institutions involved. Legal reform should also clarify compensation payment procedures, strengthen lawful information exchange, and improve the measurement of actual recovery. Proposed reforms, including the development of asset confiscation mechanisms that do not depend on a criminal conviction, must establish clear rules concerning their scope, evidentiary standards, judicial oversight, and the protection of the rights of interested parties. Such mechanisms remain within the realm of *ius constituendum*, meaning proposed future law, and cannot serve as a basis for existing legal authority unless and until the relevant legislation is enacted.

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