

RECONSTRUCTION OF THE ASSET CONFISCATION SYSTEM IN ENFORCING CORRUPTION CRIMES IN INDONESIA: A HYBRID MODEL BASED ON STRENGTHENING THE AUTHORITY OF PROSECUTORS

REESTRUTURAÇÃO DO SISTEMA DE CONFISCO DE BENS NA REPRESSÃO AOS CRIMES DE CORRUPÇÃO NA INDONÉSIA: UM MODELO HÍBRIDO BASEADO NO FORTALECIMENTO DA AUTORIDADE DOS PROMOTORES

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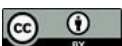
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Abstract

Corruption is an extraordinary crime that threatens economic stability and the integrity of state institutions in Indonesia. Eradication efforts are not sufficient by simply punishing perpetrators, but must be accompanied by recovery of state financial losses through asset forfeiture mechanisms. However, the current Indonesian criminal justice system, which is based on the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP), shows significant limitations in realizing effective asset forfeiture. This article examines these problems through normative legal research with a statutory and conceptual approach. The analysis shows that the existing legal framework is retributive, limits confiscation to evidence only, and creates a legal vacuum due to the lack of ratification of the Asset Forfeiture Bill. Consequently, the rate of recovery of state assets from corruption crimes remains very low. As a solution, this article offers a novelty in the form of a reconstruction of the concept of asset forfeiture through a hybrid legal model that integrates criminal (in personam) and civil/administrative (in rem) asset forfeiture in the form of Non-Conviction Based (NCB) Asset Forfeiture. The implementation of this model is supported by the strengthening of

Resumo

A corrupção é um crime grave que ameaça a estabilidade econômica e a integridade das instituições estatais na Indonésia. Os esforços de erradicação não se limitam à simples punição dos infratores, mas devem ser acompanhados pela recuperação das perdas financeiras do Estado por meio de mecanismos de confisco de bens. No entanto, o atual sistema de justiça penal indonésio, baseado no Código Penal (KUHP) e no Código de Processo Penal (KUHAP), apresenta limitações significativas na concretização de um confisco de bens eficaz. Este artigo examina esses problemas por meio de pesquisa jurídica normativa com uma abordagem estatutária e conceitual. A análise mostra que o marco jurídico existente é retributivo, limita a confiscação apenas às provas e cria um vácuo jurídico devido à falta de ratificação do Projeto de Lei de Confiscação de Bens. Consequentemente, a taxa de recuperação de bens do Estado provenientes de crimes de corrupção permanece muito baixa. Como solução, este artigo oferece uma novidade na forma de uma reconstrução do conceito de confisco de bens por meio de um modelo jurídico híbrido que integra o confisco de bens penal (in personam) e civil/administrativo (in rem) na



the role of the Prosecutor as the holder of control of the case (*dominus litis*), who is given discretionary authority to choose the most effective path for asset recovery. This reconstruction is based on progressive legal theory and the theory of legal effectiveness to achieve substantive justice and maximize the recovery of state assets.

Keywords: Asset Confiscation. Corruption. Dominus Litis. Hybrid Model. Non-Conviction Based Forfeiture. Criminal Justice System.

forma de Confisco de Bens Não Baseado em Condenação (NCB). A implementação desse modelo é apoiada pelo fortalecimento do papel do Ministério Público como detentor do controle do caso (dominus litis), ao qual é conferida autoridade discricionária para escolher o caminho mais eficaz para a recuperação de bens. Essa reconstrução baseia-se na teoria jurídica progressista e na teoria da eficácia jurídica para alcançar a justiça substantiva e maximizar a recuperação de bens do Estado.

Palavras-chave: Confisco de Bens. Corrupção. Dominus Litis. Modelo Híbrido. Confisco sem Condenação. Sistema de Justiça Criminal.

1 INTRODUCTION

Corruption has become a systemic threat to development and the rule of law in Indonesia. Its impact not only causes massive losses to state finances but also erodes public trust in the government and judicial institutions. Corruption is a criminal act categorized as a violation of social and economic rights and a threat to the nation due to its damaging impact on the system and people's lives .¹In this context, eradicating corruption can no longer be viewed solely as a punitive law enforcement effort or punishment of perpetrators. The aspect of recovering state losses (*asset recovery*) has become an integral and fundamental aspect, as important as the criminal process itself. As mandated by *the United Nations Convention Against Corruption* (UNCAC), which Indonesia has ratified, asset recovery is a fundamental principle in the fight against corruption.

However, asset recovery efforts in Indonesia face significant challenges rooted in the problematic nature of the existing criminal justice system. The existing legal framework, particularly the Criminal Procedure Code (KUHAP), is designed with a retributive paradigm that prioritizes proving the defendant's guilt to impose criminal sanctions. The asset confiscation mechanism in the KUHAP is primarily intended for evidentiary purposes in court, rather than as a proactive instrument for reclaiming the

¹ M Yusuf et al., "Illicit Enrichment in Corruption Eradication in Indonesia: A Future Strategy," *Legal Media Journal* 31, no. 2 (2024): 224–43.

proceeds of crime.²As a result, even when a corruptor is convicted, the assets obtained from their crimes are often not fully recovered, either because they have been diverted, hidden, or due to limitations in existing legal instruments.

This situation is exacerbated by the legal vacuum resulting from the legislative process of the Asset Forfeiture Bill, which has been ongoing for over a decade without any certainty.³The absence of this specific law leaves law enforcement without a strong foundation for implementing more progressive asset forfeiture mechanisms,⁴such as *Non-Conviction Based (NCB) Asset Forfeiture*. In fact, the NCB mechanism has proven effective in various countries in addressing situations where criminal prosecution is not possible, such as when a suspect has fled, died, or enjoys diplomatic immunity.⁵

Based on these issues, this article argues that a fundamental reconstruction of the concept and system of asset confiscation in law enforcement of corruption crimes in Indonesia is necessary. This reconstruction is realized through a new idea in the form of a hybrid legal model *that* combines the flexibility of civil/administrative-based asset confiscation with the power of criminal law enforcement. The implementation of this model requires strengthening the authority of the Prosecutor as the sole controller of the case process (*dominus litis*), who has the discretion to determine the most effective approach in each case. This article will outline the theoretical and practical framework of this model, starting with an in-depth analysis of the research method, continuing with a discussion of the problems of the current system, its implementation, and concluding with an elaboration of the new concept offered.

² Yogi Y Wedha, Made H Wijaya, and Kadek Apriliani, “Legal Analysis of Confiscation of Corruption Assets from the Perspective of Justice and State Financial Recovery,” *Litigation* 26, no. 1 (2025): 477–504, <https://doi.org/10.23969/litigasi.v26i1.21484>.

³ Ashfa Azkia, “Problems of Recovering State Losses Due to Corruption Through Asset Confiscation Mechanisms,” *Siyasah* 3, no. 1 (2023): 132–47, <https://doi.org/10.32332/siyasah.v3i1.7231>.

⁴ Maskun Umam, Khairul, “THE URGENCY OF FORMING A DRAFT LAW ON ASSET CONFISCATION AS AN EFFORT TO RESTORATIVE LEGAL REFORM,” *Journal of Syntax Literate* 10, no. 4 (2025).

⁵ Theodore S Greenberg, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank Publications, 2009).

2 METHODS

This research uses a normative legal research method , which focuses on the analysis of primary, secondary, and tertiary legal materials to address the legal issues raised. Its nature is both prescriptive and analytical, analyzing problems within the existing legal system and formulating solutions or new concepts to improve them. Three main approaches are used in this research:

- 1 *Statute Approach* : This approach is carried out by reviewing and analyzing all laws and regulations relevant to the issue of asset confiscation and corruption. This includes, but is not limited to, the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, the Prosecutor's Office Law, as well as an analysis of the draft Asset Confiscation Bill and the Draft Criminal Procedure Code. The analysis also includes international legal instruments such as the UNCAC.
- 2 *Conceptual Approach* : This approach is used to understand and build arguments from developing legal doctrines and concepts.

The sources of legal materials used in this research are secondary data, which consist of: (a) Primary legal materials, namely binding laws and regulations; (b) Secondary legal materials, in the form of all publications on law that are not official documents, such as legal textbooks, nationally and internationally accredited legal journals, scientific articles, and previous research results; and (c) Tertiary legal materials, which provide guidance or explanations to primary and secondary legal materials, such as legal dictionaries and encyclopedias. All collected legal materials are analyzed qualitatively using a systematic interpretation method to build logical and coherent arguments to answer the research problem.

3 DISCUSSION

3.1 Problems of the criminal law system and their implications for asset confiscation

3.1.1 *Legal effectiveness and corrective justice*

The effectiveness of law enforcement in eradicating corruption is measured not only by the number of perpetrators convicted, but also by the extent of state financial losses recovered. Soerjono Soekanto's theory of legal effectiveness states that the functioning of law in society is influenced by five factors: legal substance (statutes), legal structure (law enforcement officers), means or facilities, public legal awareness, and legal culture.⁶ In the context of asset confiscation in Indonesia, the main problems stem from the substance and structure of the law.

Law enforcement, including police, prosecutors, and judges, plays a crucial role in enforcing legal norms and implementing laws in practice. The effectiveness of law enforcement depends heavily on the awareness and ability of law enforcement officers to apply legal principles within the social and cultural context of society.⁷ This factor becomes more complex when considering the existing legal culture; law enforcement that is insensitive to cultural contexts can lead to public dissatisfaction with the results of such enforcement.

In the context of law enforcement in Indonesia, the theories of distributive and corrective justice are crucial for the recovery of state assets from the proceeds of corruption. Distributive justice focuses on the fair distribution of resources and the granting of rights to all members of society, while corrective justice emphasizes reparation, or the restoration of losses suffered by the state and individuals due to illegal acts. Prakarsa and Yulia emphasized that the recovery of assets from corruption should

⁶ Ghazwan A Faqih, "Anti-Dumping Regulations in the GATT-WTO Law and Their Implementation in Indonesia," *Jisosepol* 1, no. 2 (2024): 134–40, <https://doi.org/10.61787/w2dyfy71>.

⁷ Munawir Yusuf and Winner A Siregar, "The Development of Law Enforcement Theory in the Realization of Norm Functions in Society," *Sultra Research of Law* 5, no. 2 (2023): 58–65.

be carried out through an integration of legal methods that maximize the role of prosecutors in both criminal and civil legal processes.⁸

3.1.2 Problems of legal substance: limitations of the criminal procedure code and legal vacancies

Substantially, the current Indonesian criminal law system does not provide a solid foundation for recovery-oriented asset confiscation. The Criminal Procedure Code (KUHAP), as the primary guideline for criminal procedure, adheres to the paradigm that asset confiscation (Article 39 of the KUHAP) primarily functions as a tool to gather evidence for presentation in court (*pro justitia*). Its orientation is to prove the defendant's guilt, not to secure assets resulting from crime for the recovery of state losses. This limitation indicates that the KUHAP legal framework limits confiscation to evidentiary purposes only, thus creating a misalignment between the purpose of recovery and applicable legal provisions. As a result, law enforcement often has difficulty confiscating assets that are not directly related to the evidence in a case, even if the assets are strongly suspected of originating from corruption.⁹

The dominance of retributive justice (retribution) in the criminal justice system also poses a barrier. The primary focus is on punishing perpetrators through imprisonment and fines, while the aspects of corrective justice (restoration) and distributive justice (returning to society) are often neglected.¹⁰ Arief stated that discussions regarding criminal sanctions often focus on the dogmatic aspects of criminal law, while victims' rights and the public interest are often neglected.¹¹ Injustice in law enforcement exacerbates this situation, creating the impression that the legal process is incapable of

⁸ Aliyih Prakarsa and Rena Yulia, "Asset Recovery Model as an Alternative to Recovering State Losses in Corruption Cases," *Prioris Law Journal* 6, no. 1 (2017), <https://doi.org/10.25105/prio.v6i1.1834>.

⁹ Wedha, Wijaya, and Apriliani, "Legal Analysis of Confiscation of Corruption Assets from the Perspective of Justice and State Financial Recovery."

¹⁰ IM Wantra, Cokorde Istri Dian Laksmi Dewi, and I Wayan Putu Sucana Aryana, "A Study of the Return of Assets Proceeds of Corruption Crimes Through the Concept of Restorative Justice as an Alternative for Recovering State Losses," *Jurnal Sosial Dan Sains* 5, no. 3 (2025): 522–32, <https://doi.org/10.59188/jurnalsosains.v5i3.32083>.

¹¹ Moh. Z Arief, "Crimsonment in the Perspective of the Criminal Law System in Indonesia," *Jurnal Jendela Hukum* 3, no. 2 (2021): 15–22, <https://doi.org/10.24929/fh.v3i2.1400>.

achieving justice for the community.¹² Although Article 18 of the Corruption Eradication Law (UU PTPK) regulates additional penalties in the form of compensation and confiscation of assets, its implementation still faces many obstacles. For example, compensation equal to the value of the stolen assets often cannot be enforced because the convict's assets have been transferred to a third party or hidden abroad. Failure to enforce the compensation only results in a subsidiary prison sentence, which fails to address the goal of recovering state losses.¹³

The implication of this substantial weakness is the creation of a significant *legal vacuum*, especially in handling cases where conventional criminal proceedings cannot be implemented. The Asset Forfeiture Bill, which was expected to provide a solution through *the NCB Asset Forfeiture mechanism*, has not yet been passed. The delay in the bill's ratification hampers the effectiveness of law enforcement and slows the process of recovering state losses.¹⁴ Corruption is an act that is very detrimental to state finances and must be eradicated and processed legally.¹⁵ Asset Forfeiture as a solution faces a constitutional obstacle. Noting that the Asset Forfeiture Bill that has not been passed results in legal uncertainty, which in turn affects law enforcement efforts and the effectiveness of state asset recovery.¹⁶ Without this legal umbrella, law enforcement is powerless to seize corruption assets if the suspect dies, flees, becomes permanently ill, or there is insufficient evidence for criminal prosecution.¹⁷ This situation directly harms the public's sense of justice and weakens the deterrent effect of law enforcement itself.

¹² Fitriyah, "Legal Injustice for the Common People in Indonesia," 2022, <https://doi.org/10.31219/osf.io/eptsj>.

¹³ Ridwan Arifin, Indah S Utari, and Herry Subondo, "Efforts to Return Corruption Assets Abroad (Asset Recovery) in Enforcing Corruption Eradication Law in Indonesia," *Indonesian Journal of Legal Community Engagement Jphi* 1, no. 1 (2017): 105–37, <https://doi.org/10.15294/ijcls.v1i1.10810>.

¹⁴ Azkia Nurul Mufti Nur Hanafiah, Dea S Rizka, and Pupung Purnamasari, "Forensic Accounting in Corruption Crimes," *Journal of Accounting* 1, no. 2 (2023): 105–13, <https://doi.org/10.37058/jak.v1i2.6719>.

¹⁵ Ihsan Asmar, Nur Azisa, and Haeranah Haeranah, "Judges' Considerations Regarding Law Enforcement of Village Fund Corruption Crimes," *Scientific Journal of Pancasila and Citizenship Education* 6, no. 1 (2021).

¹⁶ Tegar RP Jumantoro, "Analysis of the Asset Forfeiture Regulatory Framework in Ending the Practice of Corruption Impunity: A Comparative Study with Singapore, the United Kingdom, and Thailand," *J. Inspectorate* 1, no. 1 (2025): 12–26, <https://doi.org/10.64527/inspektorat.v1i1.10>.

¹⁷ Y Husein, *Legal Explanation Regarding Asset Confiscation Without Criminal Charges in Corruption Cases. PSHK. https://pshk.or.id/Wp-Content/Uploads/2019/04/Restatement_Perampasan-Aset-Tanpa-Pemidanaan_2019.Pdf* (https://pshk.or.id/wp-content/uploads/2019/04/Restatement_Perampasan-Aset-Tanpa-Pemidanaan_2019.pdf, 2019).

3.1.3 Structural problems: the weak role of the prosecutor as *dominus litis*

Structurally, the problem arises from the principle of functional differentiation in the Indonesian criminal justice system, which rigidly divides authority between investigators (the National Police), prosecutors (the Prosecutor's Office), and judges (the Judge). This weakens the position of prosecutors as *dominus litis* (case controllers). Unlike systems in the United States or the Netherlands, where prosecutors have greater control from the investigation stage, in Indonesia, prosecutors tend to passively await case files from investigators.¹⁸ This limited authority hinders prosecutors' ability to proactively conduct early asset tracing, even though speed in tracking and freezing assets is key to successful asset recovery.

In this context, the involvement of institutions such as the Corruption Eradication Commission (KPK) is highly relevant. They play a strategic role in preventing and eradicating corruption, yet often face overlapping and inefficient legal frameworks.¹⁹ From a theoretical perspective, abolitionism in corruption cases, which is the President's prerogative, can also hinder the expected deterrent effect of law enforcement. This suggests that uncoordinated legal policies can create greater legal uncertainty.²⁰

Therefore, reforming Indonesia's criminal justice system is absolutely necessary, particularly in formulating clear and firm regulations on asset confiscation to stop corruption and recover state losses. This reform must be accompanied by political consensus and full support from law enforcement institutions and the public to ensure effective recovery of state finances while upholding justice.²¹

¹⁸ Ahmad Sofian, "Strengthening Prosecutor's Capacity Through Coordination in the Investigation and Prosecution Process in the Draft Criminal Procedure Code: A Comparative Study of the United States, the Netherlands, and Indonesia," *Pampas Journal of Criminal Law* 6, no. 2 (2025): 183–217, <https://doi.org/10.22437/pampas.v6i2.42540>.

¹⁹ Ulang M Sosiawan, "The Role of the Corruption Eradication Commission (KPK) in Preventing and Eradicating Corruption," *De Jure Legal Research Journal* 19, no. 4 (2019): 517–38, <https://doi.org/10.30641/dejure.2019.v19.517-538>.

²⁰ Oki G Pamungkas, Andriana Kusumawati, and Aisha M Safitri, "Comparative Criminal Law on Corruption: A Comparative Study of Criminal Law on Corruption in Indonesia and Singapore," *HMRM* 1, no. 4 (2024): 105–9, <https://doi.org/10.37010/hmr.v1i4.30>.

²¹ Defril Hidayat, Ari BW Aji, and Muhammad I Aziz, "The Role of the Financial Services Authority in Supervising Capital Market Flows in Indonesia," *Al-Ishlah Jurnal Ilmiah Hukum* 26, no. 1 (2023): 26–38, <https://doi.org/10.56087/aijih.v26i1.368>.

3.1.4 Implementation of asset confiscation in law enforcement of corruption crimes

The current implementation of asset confiscation relies largely on mechanisms stipulated in the Anti-Corruption Law, particularly through additional penalties in the form of confiscation of assets related to the crime and payment of compensation. Although this instrument exists in practice, its implementation in practice is far from optimal. One of the biggest challenges is proving the origin of the assets to be confiscated. The Indonesian legal system still adheres to the conventional principle of proof, where prosecutors must prove that an asset originated from the corruption offense charged. This becomes especially difficult when the perpetrator has engaged in sophisticated money laundering to disguise the origin of their assets.

3.1.5 Challenges of international coordination and cooperation

Coordination between law enforcement agencies (the Corruption Eradication Commission, the Prosecutor's Office, and the National Police) and with other relevant institutions, such as the Financial Transaction Reports and Analysis Center (PPATK), also remains an issue. Despite formal memorandums of understanding and cooperation, sectoral egos and differences in internal procedures often hinder the rapid and effective exchange of information. ²²Without solid cooperation between agencies, the entire process becomes skewed, negatively impacting the entire corruption law enforcement system in Indonesia.

Tracking assets hidden abroad adds a new layer of complexity. This process requires a Mutual Legal Assistance (MLA) mechanism, a lengthy, bureaucratic procedure that relies heavily on the political will and legal system of the country where the assets are located. ²³Challenges, such as the escape of corruptors and the evasion of justice by placing assets in other countries, require legal agreements between countries to facilitate the extradition and asset recovery process, as stipulated in the United Nations

²² Zainudin Hasan et al., "Asset Confiscation as a Form of Impoverishment of Corruption Perpetrators," *Birokrasi* 3, no. 1 (2025): 68–77, <https://doi.org/10.55606/birokrasi.v3i1.1826>.

²³ Khoirur R Lutfi and Retno A Putri, "Optimizing the Role of Mutual Legal Assistance in the Return of Assets Proceeding from Corruption," *Undang Jurnal Hukum* 3, no. 1 (2020): 33–57, <https://doi.org/10.22437/ujh.3.1.33-57>.

Convention against Corruption (UNCAC) .²⁴ Through this cooperation, it is hoped that countries can overcome the problem of weak legal sovereignty often encountered when enforcing the law abroad.

Furthermore, the application of digital technology to track and monitor asset movements could be a solution to expedite the process of confiscating and recovering criminally obtained assets.²⁵ Research shows that the appropriate application of technology can increase transparency and efficiency in tracking seized assets.²⁶

3.1.6 Alternative approaches: civil lawsuits and NCB asset forfeiture

In recent years, discourse and several practices have emerged to address this impasse. One such approach is the use of civil lawsuits against corruption perpetrators based on Unlawful Acts (PMH), as stipulated in Article 1365 of the Civil Code. The Prosecutor's Office, in its role as State Attorney (JPN), can file these lawsuits to seek compensation for losses suffered by the state. This approach has the advantage of a lighter burden of proof compared to criminal law. However, it also has drawbacks, such as a lengthy process and potential difficulties in enforcing civil decisions.

Recovering state revenue losses through a restorative justice approach can be an alternative to complement the law enforcement process.²⁷ The application of restorative justice can include law enforcement that not only punishes perpetrators but also facilitates restitution to victims, in this case the state and the wider community.²⁸ In the context of distributive justice, one impact of injustice in the asset recovery system is the creation of

²⁴ Muhyi Mohas et al., "The Indonesian Government's Strategy in Arrest and Confiscation of Criminal Corruption (Corruptor) Assets Abroad," *Journal of Legal Dynamics* 21, no. 3 (2022): 432, <https://doi.org/10.20884/1.jdh.2021.21.3.2882>.

²⁵ Ronald H Sianturi, "Optimizing the Recovery of Corrupt Assets From the Perspective of Economic Rights and Human Security in Indonesia," *Khazanah Hukum* 7, no. 2 (2025): 121–39, <https://doi.org/10.15575/kh.v7i2.44974>.

²⁶ Yang Meliana, "Unraveling the Challenges of Compensation in Corruption Cases: A Legal Study and Its Implications for State Financial Recovery," *Indonesian Journal of Education* 5, no. 11 (2024): 1314–22, <https://doi.org/10.59141/japendi.v5i11.5954>.

²⁷ Andi UA Burhan and Gunadi Gunadi, "Optimizing the Authority of PPNS DGT in Seizure and Blocking of Assets for Recovery of State Revenue Losses," *Owner* 6, no. 4 (2022): 4199–4209, <https://doi.org/10.33395/owner.v6i4.1102>.

²⁸ Dina Mariana, Bintang ON Saragih, and Qemal C Maulana, "Asset Confiscation as an Asset Recovery Effort in the Context of Recovering State Financial Losses," *Jiip - Scientific Journal of Educational Sciences* 5, no. 8 (2022): 2928–35, <https://doi.org/10.54371/jiip.v5i8.772>.

economic disparities within society. Non-inclusive policies in asset recovery can lead to growing social discontent, which is detrimental to social stability.²⁹

Amid these limitations, the concept of *Non-Conviction Based (NCB) Asset Forfeiture* offers hope as a breakthrough. This concept allows the state to seize assets strongly suspected of being the proceeds of crime without having to wait for a criminal conviction. The process is *in rem* (aimed at the asset itself), not *in personam* (aimed at the person). Several Indonesian regulations, such as the Money Laundering Law (TPPU), have adopted a similar principle to a limited extent. However, for its widespread application to corruption cases, a specific law is required, namely the Asset Forfeiture Bill.

Research shows that NCBs can be an effective alternative for asset recovery. Researchers emphasize the need for clearer regulations regarding the authority to implement NCBs, following the constitutional framework that regulates the right to property and human rights protection.³⁰ While NCBs provide flexibility in asset recovery, challenges often arise from a lack of understanding of legal procedures and a lack of communication between law enforcement agencies.³¹ The implementation of asset forfeiture laws in Indonesia is not yet optimal, often due to ambiguity and fragmentation in existing regulations.³²

The implementation of NCB, while having great potential, must also be carefully designed to protect human rights, especially property rights, to prevent abuse of authority.³³ The potential for implementing *Non-Conviction Asset-Based Forfeiture* is a new strategy for addressing losses from corruption, offering an alternative to the current legal

²⁹ Mega A Zona, "The Influence of Transformational Leadership on Cynicism Towards Organizational Change with Distributive Justice as a Moderator," *Management Insight Scientific Journal of Management* 9, no. 1 (2014): 1–15, <https://doi.org/10.33369/insight.9.1.1-15>.

³⁰ Wulandari Wulandari et al., "Asset Forfeiture of Corruption Proceeds Using the Non-Conviction Based Asset Forfeiture Method: A Review of Human Rights," *Indonesian Law Reform Journal* 3, no. 1 (2023): 15–25, <https://doi.org/10.22219/ilrej.v3i1.24496>.

³¹ Pedro RT Estrada et al., "Public Policies Against Criminal Assets in Mexico: Challenges and Opportunities From the North Border States," *Crime Law and Social Change* 76, no. 4 (2021): 387–407, <https://doi.org/10.1007/s10611-021-09960-3>.

³² Oly V Agustine, "The Asset Confiscation Bill as an Opportunity and Challenge in Eradicating Corruption in Indonesia," *Criminal Law and Legal Development* 1, no. 2 (2019), <https://doi.org/10.25105/hpph.v1i2.5546>.

³³ Wulandari et al., "Asset Forfeiture of Corruption Proceeds Using the Non-Conviction Based Asset Forfeiture Method: A Review of Human Rights."

system.³⁴The urgency of progressive law enforcement to encourage the recovery of corrupt assets demonstrates that simply enforcing existing laws is insufficient; it requires adaptation to the reality that state losses from corruption often far exceed those recovered.³⁵

3.1.7 Conceptual reconstruction through a hybrid model and strengthening the role of prosecutors

Strengthening the role of prosecutors as *dominus litis* requires that their prosecution power be optimally utilized for asset recovery purposes.³⁶This model also aligns with progressive legal theory, which encourages law enforcement to overcome procedural legal barriers to achieve substantive justice, namely the return of state assets for the greatest possible prosperity of the people.³⁷By granting prosecutors greater authority and flexibility in selecting legal instruments, the state is no longer held hostage by rigid and often ineffective criminal procedures for asset recovery purposes.

Substantive justice in the enforcement of asset confiscation laws must prioritize progressive principles to ensure the welfare of society as a whole. Research highlights that the application of laws based on substantive justice, which includes rehabilitation for perpetrators and reparation for victims, is considered more effective in creating a better social balance than legal approaches that prioritize solely punitive sanctions.³⁸Strategies to support the implementation of NCB in Indonesia also include training for law

³⁴ Tantimin Tantimin, "Confiscation of Proceeds of Corruption Through Non-Conviction Based Asset Forfeiture as an Effort to Recover State Losses," *Indonesian Journal of Legal Development* 5, no. 1 (2023): 85–102, <https://doi.org/10.14710/jphi.v5i1.85-102>.

³⁵ Dedy C Sihombing et al., "Strengthening the Authority of Prosecutors as Dominus Litis as an Effort to Optimize Restorative Justice-Oriented Criminal Law Enforcement," *Locus Journal of Legal Science Concepts* 3, no. 2 (2023): 63–75, <https://doi.org/10.56128/jkih.v3i2.42>.

³⁶ Raden N Setiawan et al., "Prosecutors as Dominus Litis in the Perspective of Economic Analysis of Law in Handling Corruption Crimes in Indonesia," *Sejarah Educational Journal of History and Humanities* 8, no. 4 (2025): 5412–27, <https://doi.org/10.24815/jr.v8i4.49127>.

³⁷ Vincentius P Setyawan and Chandera Halim, "The Importance of Law Enforcement Based on Progressive Law in Realizing Community Welfare," *Unes Law Review* 6, no. 3 (2024): 8987–91, <https://doi.org/10.31933/unesrev.v6i3.1797>.

³⁸ Lapatawe B Hamka, Muhammad Basir-Cyio, and Aminuddin Kasim, "Reevaluation of the Concept of State Losses in Corruption (Analysis in the Perspective of Restorative Justice)," *International Journal of Research and Innovation in Social Science* 06, no. 12 (2022): 513–19, <https://doi.org/10.47772/ijriss.2022.61229>.

enforcement officials such as prosecutors and judges, and increasing transparency in implementation procedures.³⁹

The importance of community participation and social understanding is also recognized in the implementation of restorative justice alongside asset confiscation. Community involvement in the justice process can support broader effectiveness goals, creating harmonious social interactions while maintaining strong traditional values.⁴⁰ Therefore, the integration of local values into legal arrangements is expected to bridge the gap between positive law and social justice, potentially increasing public trust in the justice system.⁴¹

To address the various problems and impasses in the current asset confiscation system, a bold and innovative reconstruction is needed. The novelty offered in this article is a hybrid legal model. (*hybrid model*) for asset confiscation, which is operationalized through strengthening the role of the Prosecutor as a true *dominus litis* in the criminal justice system.

This hybrid model essentially integrates two main avenues of asset confiscation: (1) Criminal Avenue (*Criminal Forfeiture*), which is *in personam* and requires a guilty verdict from a criminal court; and (2) Civil/Administrative Path (*Civil/Administrative Forfeiture*), which is *in rem* and does not require a criminal conviction (NCB). These two paths are not mutually exclusive, but rather operate in parallel and complement each other. The strength of this model lies in its flexibility. In handling a single corruption case, law enforcement can choose the most strategic and effective path to maximize asset recovery.

³⁹ Estrada et al., “Public Policies Against Criminal Assets in Mexico: Challenges and Opportunities From the North Border States.”

⁴⁰ Nurul PA Nasution, Jubair Jubair, and AMY Wahid, “The Restorative Justice: Ideality, Reality, and Problems in the Indonesian Criminal Justice System,” *Rechtsidee* 10, no. 2 (2022), <https://doi.org/10.21070/jihr.v11i0.775>.

⁴¹ Suprijati Sarib, Syarifuddin Syarifuddin, and Sabil Mokodenseho, “Comparison Between Islamic Law and Positive Law in a Judicial Context,” *WSiSS* 1, no. 01 (2023): 34–41, <https://doi.org/10.58812/wsiss.v1i01.284>.

3.1.8 Operationalization of the model: strengthening the role of the prosecutor as *dominus litis*

To operationalize this model, the role and authority of prosecutors must be reconstructed and strengthened. Prosecutors must be positioned as *dominus litis* in the true sense, that is, the primary controller of cases from the investigation stage to execution. Research shows that there are obstacles in implementing the prosecutor's role as *dominus litis*. Sofian (2025) argues that the principle of functional differentiation in the Criminal Procedure Code results in limited prosecutorial authority in Indonesia compared to legal systems in other countries, such as the United States and the Netherlands, where prosecutors have greater dominance in collecting and prosecuting cases. This situation weakens the prosecutor's capacity to carry out asset recovery actions, especially in cases of corruption and economic crimes.

In this regard, reforms are needed that focus on strengthening the role of prosecutors through a hybrid legal model that integrates criminal and administrative aspects. The implementation of restorative justice policies and the imposition of settlement fines could be a solution to expand the role of prosecutors in handling economic cases. With this model, prosecutors function not only as public prosecutors but also as controllers of broader legal processes that can include asset recovery from criminal acts.⁴²

This strengthening includes granting discretionary authority to the Prosecutor to:

- 1 Leading and Controlling Asset Tracking (*Asset Tracing*): Prosecutors must have the authority to lead a joint asset tracing team consisting of investigators, intelligence officers, and PPATK analysts from the outset of a case. This will break down institutional silos and expedite the process of identifying and freezing assets.
- 2 Choosing a Law Enforcement Path: Based on the results of asset tracking and initial evidence, the Prosecutor is given discretion to determine the most optimal asset recovery strategy. If the criminal evidence is strong and the perpetrator is

⁴² Rolando Ritonga, "Manifestation of the Prosecutor's Authority in the Application of Peace Fines in Economic Crimes to Change the Social Order of Society," *The Prosecutor Law Review* 1, no. 2 (2023): 20–35, <https://doi.org/10.64843/prolev.v1i2.11>.

reachable, the Prosecutor can pursue a criminal *forfeiture path*. However, if the perpetrator has fled, died, or the criminal evidence is difficult to provide while the evidence of improper asset ownership is very strong, the Prosecutor can immediately pursue a civil/administrative path (*civil forfeiture* or NCB) to seize the assets.

- 3 Representing the State in All Legal Proceedings: Prosecutors act as the sole representatives of the state in all legal proceedings related to asset forfeiture, whether in criminal, civil, or administrative courts. This will create strategic consistency and prevent overlapping or even conflicting decisions.

3.1.9 Practical implications and legislative needs

Implementing this hybrid model will undoubtedly require significant legislative changes, particularly through the ratification of the Asset Forfeiture Bill, which explicitly regulates the NCB mechanism, and the Criminal Procedure Code Bill, which strengthens the position of prosecutors. It is crucial for the government to immediately ratify the Asset Forfeiture Bill. This bill aims to provide a legal basis for asset forfeiture without a court decision, which is considered to increase the accuracy and speed of recovering state losses due to corruption.⁴³ Overall, law enforcement against corruption through asset forfeiture requires a comprehensive approach involving strengthened regulations, inter-agency cooperation, and the integration of technology to facilitate the recovery process.

This approach aligns with a more comprehensive legal concept, where prosecutors can collaborate with other institutions to create an integrated and responsive system that addresses community needs in the context of asset recovery. For example, by adopting the principle of *dominus litis*, prosecutors are expected to strengthen asset forfeiture policies that take into account the social and economic context and focus on effective asset recovery.⁴⁴ This is crucial given the challenges faced in recovering corrupt assets, which are often hampered by minimal cooperation between law enforcement agencies.

⁴³ Fauzan Akbar and Khaerul A Syaekh, "Juridical Analysis of Corruption Crime Asset Confiscation as an Effort to Return State Losses Using Non-Penal Approach in Indonesia," *Asian Journal of Social and Humanities* 2, no. 1 (2023): 1326–34, <https://doi.org/10.59888/ajosh.v2i1.142>.

⁴⁴ Wulandari et al., "Asset Forfeiture of Corruption Proceeds Using the Non-Conviction Based Asset Forfeiture Method: A Review of Human Rights."

Ultimately, to strengthen the prosecutor's position as *dominus litis*, regulatory revisions are needed to allow prosecutors to exercise broader authority in handling and recovering assets from criminal acts. This includes increasing prosecutors' capacity through training on hybrid legal procedures and collaboration with other institutions to create an effective system for law enforcement and asset recovery.⁴⁵ However, with strong political will, this reconstruction is not only inevitable but also an urgent necessity for winning the war against corruption in Indonesia.

4 CONCLUSION

Corruption eradication in Indonesia faces serious challenges in asset recovery due to the limitations of the existing criminal law framework. The retributive-oriented system, rigid procedures under the Criminal Procedure Code (KUHAP), and legal vacuum regarding asset confiscation without criminal prosecution have resulted in suboptimal recovery of state losses. Analysis based on Soerjono Soekanto's theory of legal effectiveness indicates that these weaknesses lie in inadequate legal substance and a poorly integrated law enforcement structure. The dominance of retributive justice in the criminal justice system neglects corrective and distributive justice, which should be prioritized in recovering state losses. To address this impasse, this article proposes an innovative and progressive reconstruction model: a hybrid legal model that combines criminal forfeiture *and* civil/administrative forfeiture . The key to operationalizing this model is strengthening the role of the prosecutor as *dominus litis* , who is empowered to lead asset tracking and select the most effective legal pathway to maximize state asset recovery. This model offers strategic flexibility not available in the current system, allowing the state to seize the proceeds of corruption even when conventional criminal proceedings are impractical. The novelty of this model lies in its integration with progressive legal theory and restorative justice theory, which emphasize the importance of redressing state losses as a top priority, rather than simply punishing perpetrators.

⁴⁵ Sihombing et al., "Strengthening the Authority of Prosecutors as *Dominus Litis* as an Effort to Optimize Criminal Law Enforcement Oriented to Restorative Justice."

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