

## CORRUPTION ASSET CONFISCATION SYSTEM BASED ON PANCASILA JUSTICE TO REALIZE THE RETURN OF STATE LOSSES AND COMMUNITY WELFARE

### *SISTEMA DE CONFISCAÇÃO DE ATIVOS DE CORRUPÇÃO BASEADO EM PANCASILA JUSTIÇA PARA REALIZAR O RETORNO DAS PERDAS DO ESTADO E DO BEM-ESTAR COMUNITÁRIO*

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**Ratna Dwi Lestari\***

\*University of Sebelas Maret, Surakarta, Central Java, Indonesia  
[ratnadwilestari@gmail.com](mailto:ratnadwilestari@sebelas.com)

**Hartiwiningsih\***

\*University of Sebelas Maret, Surakarta, Central Java, Indonesia  
[hartawiningsih@gmail.com](mailto:hartawiningsih@gmail.com)

**Adi Sulistiyono\***

\*University of Sebelas Maret, Surakarta, Central Java, Indonesia  
[adisulistiyono@gmail.com](mailto:adisulistiyono@gmail.com)

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#### **Abstract**

Corruption in Indonesia has reached the level of an extraordinary crime, causing massive state financial losses and having a systemic impact on public welfare. Although the conventional criminal law system has been implemented, the data shows a fundamental failure in creating an adequate deterrent effect and, more crucially, in recovering assets from crime. This constraint is mainly due to the conviction-based asset forfeiture approach, which requires a criminal conviction with permanent legal force, thus allowing the perpetrator to evade punishment and hide his wealth. This study examines the urgency of the system of confiscation of corrupt assets based on Pancasila justice to realize the return of state losses and public welfare by adopting the mechanism of Non-Conviction Based Asset Forfeiture (NCB) or asset forfeiture without criminalization. Using normative legal research methods, this study argues that the NCB model, which focuses on the confiscation of assets (in rem) rather than the punishment of the perpetrators (in personam), is a concrete embodiment of substantive justice rooted in the values of Pancasila, especially the Fifth Precept: Social Justice for All Indonesian People. The findings show that the system of confiscation of corruption assets based on Pancasila justice is an innovative concept that integrates the fundamental values of the Indonesian nation with modern corruption eradication mechanisms through a restorative approach that does not only

#### **Resumo**

*A corrupção na Indonésia atingiu o nível de um crime extraordinário, causando enormes perdas financeiras estatais e tendo um impacto sistêmico no bem-estar público. Embora o sistema de direito penal convencional tenha sido implementado, Os dados mostram uma falha fundamental na criação de um efeito dissuasor adequado e, mais crucialmente, na recuperação de ativos Do crime. Essa restrição se deve principalmente à abordagem de confisco de ativos baseada em condenação, que requer uma condenação criminal com força legal permanente, permitindo assim que o perpetrador evite a punição e esconda sua riqueza. Este estudo examina a urgência do sistema de confisco de ativos corruptos com base na justiça Pancasila para realizar o retorno das perdas do estado e do bem-estar público, adotando o mecanismo de Confisco de Ativos Baseados em Não Condenação (NCB) ou confisco de ativos sem criminalização. Usando métodos normativos de pesquisa jurídica, este estudo argumenta que o modelo NCB, que se concentra no confisco de ativos (in rem) em vez da punição dos perpetradores (in personam), é uma incorporação concreta da justiça substantiva enraizada nos valores de Pancasila, especialmente o Quinto Preceito: Justiça Social para todo o povo indonésio. As descobertas mostram que o sistema de confisco da corrupção Ativos baseados na justiça Pancasila é um conceito inovador que integra os valores*



punish the perpetrators, but also recovers state losses and improves people's welfare

**Keywords:** Asset Confiscation. Corruption. Justice. Pancasila. State Losses. Community Welfare.

*fundamentais dos indonésios Nação com mecanismos modernos de erradicação da corrupção através de uma abordagem restauradora que não apenas pune o Perpetradores, mas também recupera perdas estatais e melhora o bem-estar das pessoas.*

**Palavra-chave:** *Confiscação de Ativos. Corrupção. Justiça. Pancasila. Perdas do Estado. Bem-Estar Comunitário.*

## 1 INTRODUCTION

Corruption, as a transnational and organized crime, has become a serious threat to the stability, development, and welfare of the Indonesian nation. This social disease not only undermines the economic order, but also damages morale and erodes public trust in state institutions. Indonesia's Anti-Corruption Behavior Index (IPAK) in 2024, which is still at a score of 3.85 (scale 0-5), indicates that the level of anti-corruption behavior in society is still relatively low. More than just statistics, corruption has caused financial losses that reach trillions of rupiah every year, a burden that must be borne by all people. State losses due to corruption in Indonesia have experienced a very worrying upward trend in the 2022-2025 period. Based on data from Indonesia Corruption Watch (ICW), losses in 2022 were recorded at IDR 42.7 trillion, then increased to IDR 56 trillion in 2023. However, the most dramatic surge occurred in 2024 with losses reaching IDR 310 trillion, showing an increase of more than 7 times compared to 2022. This increase was mainly triggered by the emergence of mega corruption cases in strategic sectors such as energy and plantations.

Major cases that dominate in 2024 include corruption at PT Duta Palma Group with a loss of IDR 73.92 trillion and PT Pertamina's corruption case which was initially estimated to cost IDR 193.7 trillion but later grew to IDR 968.5 trillion. This phenomenon shows that corruption is no longer limited to small or medium scales, but has developed into an organized crime involving trillions of rupiah. The sectors most vulnerable to corruption are energy, oil palm plantations, and government procurement of goods/services, which are sectors with large transaction volumes and relatively weak supervision. Despite the increase in efforts to eradicate corruption, the rate of asset

recovery is still very low compared to the total losses incurred. The KPK only managed to recover state losses of IDR 259.9 billion in 2024, IDR 140.9 billion in 2023, and IDR 118.5 billion in 2022, which cumulatively was only around 0.2% of the total losses in that period. This shows that even though Indonesia's Corruption Perception Index has improved from 34 to 37 points in 2024, systemic and comprehensive efforts are still needed to strengthen the prevention, early detection, and recovery systems of assets resulting from corruption so that the economic impact of this crime can be minimized. The data will be depicted in the following diagram:

This loss has a very damaging impact on the welfare of the community. Corruption directly hinders economic growth, increases poverty and income inequality, and drastically lowers the quality of public goods and services. The phenomenon of bridge collapses, damaged roads, or poor food quality is a tangible manifestation of a corrupted budget. In addition, corruption creates a high-cost economy that burdens communities, causes prices of basic necessities to soar and limits the poor's access to vital services. This condition not only slows down poverty alleviation efforts but also erodes social bonds, triggers demoralization, and disintegration of solidarity. These impacts are fundamentally contrary to the ideals of social justice that are the pillars of the nation. Although corruption has been criminalized as a serious crime with severe penalties, there is a striking paradox in the prevailing criminal system. The prison sentences imposed on corruptors have proven to be ineffective as a deterrent effect.

The significant gap between state losses and the amount of assets successfully returned, coupled with the low average length of time served, creates a condition in which corruption indirectly becomes a low-risk but high-reward crime. Corrupt perpetrators know that they will only serve a relatively short prison sentence, and at the same time, it is likely that they will be able to keep most of their illicit wealth. This is a fundamental failure of the crime should not pay principle, a doctrine that should be at the heart of criminal law. The existing system, instead of being a barrier, actually strengthens the incentive to commit corruption, as prison sentences are seen only as "the operational cost of a lucrative crime. Therefore, a fundamental paradigm shift in the asset forfeiture system is needed to close this very damaging gap and restore state losses for the prosperity of the people.

Based on data showing that state losses due to corruption have jumped dramatically from IDR 42.7 trillion (2022) to IDR 310 trillion (2024) with a very low asset recovery rate of only 0.13% of total losses, the implementation of a corruption asset confiscation system based on Pancasila justice is needed to realize the return of state losses and community welfare as a comprehensive transformative solution. This system must be built on the foundation of Pancasila values, especially the second precept (Fair and Civilized Humanity) and the fifth precept (Social Justice for All Indonesian People), which emphasizes that the assets of corruption that are confiscated must be returned for the benefit of the people and national development, not just entering the state treasury without a clear direction. By integrating the principles of Pancasila restorative justice, this system will ensure that every rupiah that has been recovered from corruption crimes is allocated transparently and accountably for community welfare, education, health, and basic infrastructure programs, so that people who have been victims of corruption can directly benefit from the recovery of these assets. The implementation of this system is very urgent considering the huge asset recovery gap (Rp 408.2 trillion in losses vs Rp 0.52 trillion in recovery in the 2022-2024 period) shows a systemic failure that requires a new paradigm in the eradication of corruption that not only focuses on cracking down on perpetrators, but prioritizes the recovery of state losses and the redistribution of justice for the welfare of all Indonesian people in accordance with the noble ideals of Pancasila. Based on this, the problem in this study is how urgent is the urgency of the system of confiscation of corruption assets based on Pancasila justice to realize the return of state losses and community welfare.

## **2 METHODOLOGY**

This research uses normative legal research methods. This approach was chosen because the focus is on relevant legal norms, principles, doctrines, and court decisions, rather than on empirical data on the ground. This method allows for an in-depth analysis of the applicable legal framework and comparison with the ideal legal concepts to answer existing problems. In this study, three main approaches were used, namely the statute approach, the case approach, and the theoretical approach. All collected legal materials

are analyzed prescriptively, qualitatively, and systematically to build strong legal arguments and produce recommendations based on progressive legal principles.

### **3 RESULTS AND DISCUSSIONS**

#### **3.1 Substantive justice and procedural justice in the Indonesian criminal law system**

The criminal justice system in Indonesia is currently still trapped in a paradigm that strongly prioritizes legalism and procedural justice. This paradigm places law enforcement on the fulfillment of the stages and formalities set forth in the law in a positivistic manner, an approach that, according to experts, further distances the law from the values of justice itself. As a result, even though legal processes have been passed and verdicts have been handed down, including prison sentences and fines, the community's sense of justice is often not met. This happens because the main focus is on the procedure, not on the substantive final outcome, i.e. the full return of the assets of the proceeds of the crime. Substantive justice is about ensuring that the law serves to protect and provide welfare to society, and in the case of corruption, this means restoring state losses in the public interest. A system that produces a verdict that does not return the state's losses to the maximum is one that fails to fulfill the promise of substantive justice.

This failure is very obvious in the practice of imposing punishments on corruptors. Judges' decisions that often do not restore the value of the state's losses in full and instead impose light prison sentences are considered far from substantive justice. The idea of asset confiscation should be the new goal of criminalization in anti-corruption law, because it is in line with the principle of giving the state what is its right and giving the people what is their right. Corruption itself is an act that ignores the Fifth Precept of Pancasila, Social Justice for All Indonesian People. With all its adverse effects on poverty, inequality, and public access, corruption directly oppresses basic human rights. Therefore, a system of asset confiscation that fails to return state losses is a system that fails to fulfill the philosophical promise of Pancasila. This situation requires the reformulation of formal legal categories into more functional categories, and even encourages judges to make rule breaking or make bold decisions in order to realize the justice that society wants.

### **3.2 The urgency of the corruption asset forfeiture system based on Pancasila Justice to realize the return of state losses and community welfare**

An effective asset forfeiture system, especially through the NCB mechanism, is a concrete embodiment of the values of Pancasila, which is the basic norm of all legal sources in Indonesia. The fifth precept of social justice for all Indonesian people is the most relevant philosophical foundation. Corruption, with all its impact, is a form of direct disregard for this precept. When public officials steal the state's wealth, they directly take away the basic rights of the people. Therefore, a system that manages to return state losses to the maximum is a tangible form of justice distribution and a fundamental step to reduce inequality. The return of confiscated assets will be reused for public welfare, such as infrastructure development and improvement of basic services, which will ultimately improve people's quality of life. This philosophy does not stand alone, but is integrated with other Pancasila precepts. Corruption is an act that violates the first precept of the One Godhead, which emphasizes the importance of moral integrity, ethics, and honesty in every aspect of life. Acts of corruption are a betrayal of divine values and morality. The second precept of just and civilized humanity, which mandates the spirit of care, justice, and courage to reject every form of injustice. Corruption is an uncivilized act because it is carried out by abusing power and oppressing the weak. Thus, an effective asset confiscation system and prioritizing the recovery of state losses is a form of holistic implementation of all Pancasila values in the legal system. This is not only an ideological imperative, but also an effective strategy to create a fair, inclusive, and sustainable legal system for Indonesia.

The legal basis for confiscation of corruption assets in Indonesia begins with the constitutional mandate in Article 23 of the 1945 Constitution which regulates the management of state finances. Specifically, Article 18 paragraph (1) letters a and b of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended several times recently by Law Number 30 of 2002 concerning the Corruption Eradication Commission (Corruption Crime Eradication Act) states that in addition to additional crimes as referred to in the Criminal Code, an additional crime is the confiscation of tangible or intangible movable goods or immovable goods used for or that obtained from corruption crimes, including convict-owned companies where corruption crimes were

committed. Article 18 paragraph (1) letter b also regulates the payment of compensation which amounts to a maximum amount equal to property obtained from the crime of corruption, with the provision that if the convict does not pay the compensation money, it will be replaced with imprisonment for a maximum of 1 year.

Article 66 paragraph (1) b of Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional) expressly regulates the confiscation of certain goods and/or bills as one of the additional criminal forms that can be imposed on convicts. This provision is strengthened by Article 76 paragraph (1) which states that convict property obtained from a criminal act or that is deliberately used to commit a criminal act can be confiscated. Article 76 paragraph (2) emphasizes that in the case of criminal punishment for a criminal act of culpa or violation, confiscation can be imposed in the case specified by law. Article 77 of the National Criminal Code adds a provision that goods that can be confiscated include goods belonging to the perpetrators of criminal acts, goods that are wholly or partially obtained from criminal acts, goods used to commit criminal acts, and goods whose use may endanger the public interest. Meanwhile, Article 46 paragraph (2) of the Criminal Procedure Code gives the authority to investigators, public prosecutors, or judges to order the holders of goods to hand over evidence to them.

Article 67 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which allows non-conviction based asset forfeiture. Article 67 states that for the purpose of examination, investigators are authorized to ask PPATK for information about each person's assets that have been reported by financial service providers. Article 69 stipulates that in the event that the investigator finds sufficient preliminary evidence of the property that is suspected to have originated from a criminal act, the investigator may request a court determination in the form of confiscation of property originating or suspected to be originating from a criminal act. This provision is strengthened by Government Regulation No. 43 of 2018 which regulates the procedures for carrying out asset confiscation without criminal penalty, where the state can confiscate assets even if the perpetrator cannot be punished because he dies, his whereabouts are unknown, or he is permanently ill. Article 4 of the Corruption Law stipulates that the return of state financial losses or the state economy does not abolish the conviction of the perpetrators of corruption crimes. This means that asset confiscation and the return of state losses are cumulative with the principal penalty. In addition,

Article 47 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission as amended several times last time by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK Law) explains that in the investigation process, investigators can conduct searches and seizures with written permission from the Supervisory Board.

The provisions of the National Criminal Code Article 66 paragraph (1) letter d which regulates the payment of compensation as an additional crime create synergy with the Corruption Law in terms of the return of state losses. Article 4 of the Corruption Law stipulates that the return of state financial losses or the state economy does not abolish the conviction of the perpetrators of corruption crimes, meaning that the confiscation of assets and the return of state losses are cumulative with the principal crime. This mechanism ensures that corrupt perpetrators cannot avoid asset confiscation by hiding their wealth in other jurisdictions, and is in line with the provisions of the National Criminal Code Article 78 which stipulates that confiscation is carried out on the order of the prosecutor by paying attention to the rights of a third party in good faith.

The system of confiscation of corruption assets based on Pancasila justice is an innovative concept that integrates the fundamental values of the Indonesian nation with modern corruption eradication mechanisms. This system does not only focus on the punitive or punitive aspects, but adopts a restorative approach that is in line with the precepts of Pancasila. The One Godhead provides a moral and spiritual foundation in the eradication of corruption, while a Just and Civilized Humanity ensures that the legal process still respects human dignity and dignity. Indonesian unity is the spirit of mutual cooperation in eradicating corruption as a common enemy, while the People's Party presents transparency and accountability in every stage of the process. Most crucially, Social Justice for All Indonesian People is the main goal of redistributing confiscated assets to realize equitable and equitable welfare.

The architecture of this system is designed with a comprehensive approach that involves synergy between law enforcement agencies, ranging from the KPK, the Prosecutor's Office, the Police, to PPATK in the identification, tracking, and asset confiscation stages. The forfeiture mechanism does not only rely on the conventional approach in personam (through the convict), but also adopts modern methods such as in

rem (direct to the asset) and non-conviction based asset forfeiture which allows forfeiture without having to wait for a criminal verdict that has permanent legal force. The system is equipped with cutting-edge technologies such as blockchain for transparency, artificial intelligence for the detection of corruption patterns, and big data analytics to predict potential corruption crimes. The entire process is carried out with the principles of due process and human rights protection, ensuring that justice is not only felt by victims of corruption but also respects the rights of suspects and defendants.

The aspect of state loss reimbursement in this system is not limited to financial restitution alone, but includes a comprehensive calculation that includes direct, indirect, and social losses caused by corruption crimes. The asset recovery strategy is carried out through two main channels: domestic through the optimization of assets seized domestically, and internationally through bilateral and multilateral cooperation to repatriate assets hidden abroad. Pancasila values are implemented through a deliberation mechanism and community participation in determining the priority allocation of confiscated assets, ensuring that every decision reflects the will of the people and national interests. Transparency and accountability are fundamental principles in every stage, from the forfeiture process to asset management and redistribution.

The Non-Conviction Based Asset Forfeiture (NCB) mechanism, or the forfeiture of assets without penalty, emerged as an answer to the failure of the current conviction-based system. This concept has its roots in the common law legal system and has been accommodated by the United Nations Convention Against Corruption (UNCAC) in 2003, which encourages states parties to maximize efforts to confiscate assets resulting from crime without going through the criminal prosecution process. The main reason behind the adoption of this model is its effectiveness in recovering assets that are difficult to reach by conventional criminal processes. The NCB fundamentally shifted the focus from the perpetrators of the crime to the assets themselves. The lawsuit is not directed at the individual (in personam) but at the property (in rem). Thus, asset confiscation can be carried out without having to wait for a criminal verdict punishing the perpetrator. This approach has become a proactive instrument that allows the state to take over assets suspected of being the proceeds of crime even before a court ruling has permanent legal force.

The main advantages of the NCB model in the context of eradicating corruption are significant:

1) **Efficiency and Effectiveness:** This approach allows for faster and more effective asset recovery. He overcomes obstacles that often make the criminal process stop, such as perpetrators who die, flee (fugitive), or have immunity.

2) **Unexplained Wealth:** The *in rem* mechanism allows the application of the principle of reverse proof or unexplained wealth, where the owner of assets whose wealth is not balanced with his legitimate income is required to prove the origin of the wealth. This is a crucial step that is in line with the principle of follow the money, which is to pursue the flow of funds from crime.

3) **Breaking the Cycle of Criminality:** The main goal of the NCB is not only to punish, but also to break the cycle of abuse of power and wealth. By confiscating assets, the state prevents the use of the assets to fund other criminal activities, thereby reducing crime rates broadly.

Aspects	<i>Conviction-Based (In Personam)</i>	<i>Non-Conviction Based (In Rem)</i>
Legal Basis	Criminal Code and the Anti-Corruption Law	Draft Asset Forfeiture Law
Subject of the Lawsuit	Aimed at the perpetrators of criminal acts	Aimed at assets or property
Standards of Proof	Criminal standard of proof (involving proving the perpetrator's guilt)	Civil evidentiary standards (focus on the origin of assets)
Legal Process	Criminal proceedings	Civil proceedings
Perpetrator Status	The perpetrator must be proven guilty and punished	The perpetrator does not have to be punished; can be applied to perpetrators who are fugitives, dead, or immune from the law
Main Objectives	Punishing the perpetrator	Recovering state losses and eliminating profits from crime

Source: Data processed by researchers, 2025

The comparison table above shows the fundamental differences between the two approaches to asset forfeiture that reflect the evolution of the legal paradigm from a sentencing orientation towards asset recovery. The Conviction-Based (*In Personam*) approach based on the Criminal Code and the Corruption Law applies a retributive philosophy with a focus on punishing perpetrators through a criminal process that requires a standard of proof beyond reasonable doubt. This system requires the perpetrator to be proven guilty and convicted before assets can be confiscated, which

creates legal certainty but is often an obstacle in complex cases. On the other hand, the Non-Conviction Based (In Rem) approach regulated in the Draft Law on Asset Forfeiture adopts a restorative philosophy with an orientation on objects or assets, applies more flexible civil evidentiary standards and does not require a criminal verdict against the perpetrator.

The most significant difference lies in the flexibility and scope of application of the two approaches. Conviction-Based has fundamental limitations because it depends on the success of the criminal process, so it cannot be applied when the perpetrator is in fugitive status, has died, or has legal immunity. This condition creates a legal loophole that is detrimental to the state's financial recovery efforts, especially in the case of transnational corruption or hard-to-reach perpetrators. In contrast, Non-Conviction Based offers a solution to these limitations by allowing the seizure of assets based on suspicious origins without being tied to the legal status of the perpetrator. This flexibility allows authorities to focus on the substance of the loss and eliminate the profit from the crime, even in situations where conventional criminal routes are not feasible.

The implementation of these two approaches has different implications for the effectiveness of asset recovery and the protection of fundamental rights. Conviction-Based provides maximum protection of human rights through strict due process, but often sacrifices the effectiveness of asset recovery due to the complexity and length of criminal proceedings. Non-Conviction Based offers higher effectiveness in asset recovery with a faster, object-focused civil process, but has the potential to raise concerns about the protection of property rights if not implemented with care. To optimize the asset forfeiture system in Indonesia, a hybrid approach is needed that integrates the strengths of both models, giving law enforcement a procedural choice to choose the approach that best suits the characteristics of the case, while maintaining a balance between the effectiveness of asset recovery and the protection of citizens' fundamental rights.

Although the urgency and advantages of the Asset Forfeiture Bill are very clear, the ratification process faces severe challenges, especially from the political side. The main obstacle is the lack of political will from policymakers. This bill has been in and out of the National Legislation Program (Prolegnas) since the era of President Susilo Bambang Yudhoyono's administration, a fact that shows how difficult it is to interpret the political will of the government and the DPR. Debates about substance, such as the

terms confiscation versus asset recovery, are often a semantic barrier that masks political aversion. This lack of commitment is not merely legislative negligence, but can be interpreted as structural resistance rooted in a deep conflict of interest. The Asset Forfeiture Bill, which includes unexplained wealth and reverse proof mechanisms, implicitly targets the unnatural wealth of public officials and politicians. Therefore, the reluctance to pass this bill can be seen as an attempt to protect oneself or a group from stronger law enforcement. This phenomenon shows a misalignment between elite interests and public aspirations for justice.

#### **4 CONCLUSION**

The system of confiscation of corruption assets based on Pancasila justice is an innovative concept that integrates the fundamental values of the Indonesian nation with modern corruption eradication mechanisms through a restorative approach that does not only punish the perpetrators, but also recovers state losses and improves people's welfare. This system implements the precepts of Pancasila as a moral and spiritual foundation (Godhead), upholds the dignity of human dignity in the legal process (Humanity), builds the spirit of mutual cooperation to eradicate corruption (Unity), presents transparency and accountability through community participation (People), and makes the redistribution of confiscated assets an instrument of social justice (Social Justice). The architecture of this system is designed comprehensively with synergy between law enforcement agencies (KPK, Prosecutor's Office, Police, PPATK) which is equipped with cutting-edge technology such as blockchain, artificial intelligence, and big data analytics for the identification, tracking, and seizure of assets through *in rem*, *in personam*, and non-conviction based asset forfeiture mechanisms, while maintaining the principles of due process and human rights protection.

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