



Reach and Weaknesses of Asset Forfeiture Policy in Corruption Crimes in Indonesia

Daya Jangkau dan Kelemahan Kebijakan Perampasan Aset Tindak Pidana Korupsi di Indonesia

Arizon Mega Jaya¹, Maroni², Ahmad Irzal Fardiansyah³, Muhammad Akib⁴

¹Corresponding author: arizon.judge@gmail.com

¹²³⁴ Faculty of Law, University of Lampung, Indonesia

Abstract: This article discusses the reach and weaknesses of the policy of asset forfeiture of corruption crimes in Indonesia. The main problem lies in the lack of optimal ability of the legal system to change the normative basis of asset confiscation into real state loss recovery. This research uses normative juridical methods with legislative, conceptual, and institutional approaches. The analysis is directed at the ability of asset forfeiture policies to reach hidden assets, assets transferred through third parties or *nominees*, assets located abroad, and assets that have been disguised through money laundering crimes. The results of the study show that the asset forfeiture policy in Indonesia has a normative reach through the Law on the Eradication of Corruption Crimes, the Money Laundering Law, mutual legal assistance mechanisms, and international cooperation. However, its effectiveness is still limited by the dominance of *the conviction-based confiscation* approach, the lack of clarity of proportionality parameters, weak *beneficial ownership* arrangements, the lack of strong third-party protection, limited *asset tracing*, the suboptimal execution of replacement money, and institutional coordination that has not been integrated. This article confirms that the renewal of the asset forfeiture policy needs to be directed towards a more integrated model, oriented towards asset recovery, and still guaranteeing the protection of rights within the principle of the rule of law.

Keywords: corruption; asset recovery; asset forfeiture; proportionality; money laundering crime

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INTRODUCTION

Corruption crimes not only cause problems at the stage of criminalizing the perpetrators, but also leave further problems in the form of control of assets resulting from crimes. State losses arising from corruption are not always in the form of easy to find, as assets

can be transferred, disguised, controlled through other parties, or placed in complex financial structures. In the Indonesian legal system, the return of assets resulting from corruption has long been understood as an important part of the eradication of corruption, both through criminal and civil instruments. Haswandi (2017) emphasized that the legal apparatus for asset return still needs to be directed so that it does not stop at the perpetrators, but also is able to reach other parties who enjoy or control the proceeds of corruption.

The orientation of corruption eradication needs to move from mere punishment to real recovery of state losses. Criminalization still has a repressive and preventive function, but asset recovery is an important measure to assess the success of the state in removing economic gains from criminal acts. In the study of criminal law policy, *asset recovery* is positioned as an instrument directly related to the effectiveness of judgments, the implementation of substitute money, and the state's ability to trace and execute the proceeds of crime. Mawardi (2015) shows that the implementation of *asset recovery* in corruption cases relies on Article 18 of the Law on the Eradication of Corruption, especially through additional penalties in the form of payment of compensation and confiscation of convict property.

Normatively, Indonesia already has several legal instruments that can be used to support asset confiscation. Law No. 31 of 1999 jo. Law No. 20 of 2001 provides a basis for the confiscation of goods and the payment of compensation in corruption cases. Meanwhile, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes expands the search space for assets suspected of coming from criminal acts. Indonesia has also ratified the United Nations Convention against Corruption through Law Number 7 of 2006, which strengthens the basis for international cooperation in the return of assets.

The complexity of assets resulting from corruption is growing along with the increasing variety of ways perpetrators hide the proceeds of crime. Assets are not always recorded in the name of the main actor, but can be placed in a third party, corporation, family, or party acting as a *nominee*. The structure creates a distance between formal ownership and the possession of benefits. The concept of *beneficial ownership* is important in this context, because beneficial owners are often not visible in formal documents, but still control or enjoy the proceeds of crime. Syakur (2022) explained that the identification of beneficial owners can be done through the organizational structure of the corporation, parties outside the corporation that controls the corporation, and tracing the flow of financial transactions.

The reach of the asset forfeiture policy also faces problems when assets resulting from corruption are transferred abroad or have gone through the money laundering process. Mutual legal aid mechanisms can pave the way for the freezing of assets, confiscation and

return across jurisdictions. At the practical level, the process still depends on the quality of the request for legal aid, the conformity of evidentiary standards, inter-agency coordination, and the response of the country where the asset is located. Susanto's (2020) study shows that *asset recovery* in money laundering crimes is not sufficiently understood as an effort to confiscate assets for the state, but must pay attention to justice, legal certainty, and the position of the party entitled to the asset.

The main problem with asset forfeiture policy in Indonesia lies in the distance between the availability of norms and the actual ability to recover assets. Indonesia's legal system is still strongly based on a *conviction-based confiscation* approach, which is confiscation that depends on a criminal verdict against the perpetrator. This approach limits the state's space for movement when the perpetrator dies, escapes, is not found, or when criminal evidence against a person cannot be continued. Tantimin (2023) assessed that *non-conviction-based asset forfeiture* can be an important mechanism to support the return of state losses, while Nugraha et al. (2019) placed the model as a complementary instrument that needs to be continued through the judicial process so as not to injure property rights.

A number of previous studies have discussed asset return from the perspective of replacement money, *non-conviction based asset forfeiture*, money laundering crimes, and beneficial owners. Haswandi (2017) highlighted the need to expand asset return liability, Tantimin (2023) emphasized the urgency of NCB *asset forfeiture*, Susanto (2020) examined the relationship *between asset recovery* and the principle of utility in money laundering cases, while Syakur (2022) focused on the liability of beneficial owners. This article takes a different position by assessing asset forfeiture policy through two sides at once, namely its reach and weaknesses. This focus is important because the effectiveness of asset forfeiture is not only measured by the existence of norms, but also by the ability of the legal system to reach hidden assets, assets through third parties, cross-border assets, and assets that have been financially disguised.

Based on this description, this article examines two main problems. First, how is the reach of the policy of asset forfeiture of corruption crimes in Indonesia. Second, what are the weaknesses of the policy of asset forfeiture of corruption crimes in Indonesia. This research uses normative juridical methods with legislative, conceptual, and institutional approaches. The legislative approach is used to read the provisions in the Law on the Eradication of Corruption, the Law on Money Laundering, and international cooperation instruments. Conceptual approaches are used to explain *asset recovery*, *beneficial ownership*, *conviction-based*

confiscation, non-conviction-based asset forfeiture, and the principle of proportionality. The institutional approach is used to assess the role of law enforcement officials, PPATK, courts, and coordination needs in tracing and recovering assets from corruption.

RESULT AND DISCUSSION

The Reach of the Corruption Crime Asset Forfeiture Policy in Indonesia

The reach of the asset forfeiture policy in corruption can be understood as the ability of the legal system to trace, identify, freeze, confiscate, confiscate, confiscate, and recover assets derived from criminal acts. The measure of reach is not enough to be seen from the existence of norms in laws and regulations, but also from the actual capacity of the state to find assets that have been hidden, transferred, placed through other parties, or moved outside national jurisdiction. In the context of corruption eradication, asset forfeiture has a broader function than criminalization, as this instrument is directed to eliminate the economic benefits obtained by perpetrators from crime. Trinchera (2020) explained that asset confiscation and recovery are important instruments in the eradication of corruption because they can reduce economic incentives from bribery and corruption practices by withdrawing illegally obtained proceeds.

In modern corrupt practices, assets resulting from crime are rarely stored in a simple, easily identifiable form. Perpetrators can hide assets through transaction breakdown, transfer of funds between accounts, use of investment instruments, transfers to intangible assets, or disguise through a layered financial system. This condition makes the reach of asset confiscation highly dependent on the ability of law enforcement officials to follow the flow of funds. The *follow the money* approach is important because the main point of law enforcement is not only directed at criminal acts, but also on the relationship between criminal acts, financial flows, and assets obtained from crime. Sittlington and Harvey (2018) show that anti-money laundering and asset recovery approaches can strengthen law enforcement, especially when the authorities are able to link financial structures to the profits obtained from criminal activities.

The normative reach of hidden assets has been supported by the existence of the Law on the Eradication of Corruption and the Law on the Prevention and Eradication of Money Laundering. The Anti-Corruption Law provides a basis for the confiscation of goods and the payment of substitute money, while the Anti-Corruption Law expands the search space for assets that are suspected of being derived from criminal acts. This expansion is important because money laundering is not only related to the original criminal act, but also to the process of disguising the proceeds of crime after the crime has been committed. Through the

TPPU approach, assets resulting from corruption can be traced through financial transactions, suspicious transaction reports, asset freezes, and proof of the origin of wealth. Pavlidis (2022) emphasizes that effective asset recovery requires an integration of preventive measures, financial investigations, asset freezes, and forfeiture so that the proceeds of crime do not have a safe space in the legal system.

The next problem arises when the assets resulting from corruption are placed through a third party or *nominee*. In this scheme, assets are formally recorded in the name of another person, legal entity, family, or party that does not appear to be the main perpetrator, while economic control remains with the corrupt perpetrator. The structure creates a separation between formal ownership and beneficial ownership. The reach of asset forfeiture in such situations is highly dependent on the ability of law enforcement to prove who is the party who actually owns, enjoys, or controls the asset. The concept of *beneficial ownership* is important because formal ownership documents do not always reflect actual economic control. Sharman (2010) points out that the use of anonymous companies and corporate structures can make transactions difficult to trace, especially when the identity of the beneficial owner cannot be clearly known.

The asset forfeiture policy in Indonesia has basically opened up space to reach assets that are in third parties as long as it can be proven that the assets originate from criminal acts. The normative space has not been fully followed by a systematic evidentiary framework regarding *beneficial ownership* in corruption cases. As a result, the evidentiary process still relies heavily on the public prosecutor's construction and the judge's assessment of the relationship between the perpetrator, the third party, and the assets controlled. This situation raises two problems. First, assets that are substantively controlled by the perpetrator can fail to be confiscated because formal ownership is in the other party. Second, confiscation can touch third parties who are not involved in criminal acts if there is no clear protection mechanism. Simonato (2017) places the issue of asset forfeiture in a close relationship with the protection of fundamental rights, especially when state actions against wealth need to remain within the limits of legality, legal certainty, and proportionality.

The reach of asset forfeiture policies is also tested when the proceeds of corruption are placed abroad. The development of the global financial system allows assets to be moved through cross-border accounts, shell companies, international investments, or financial instruments that are in different jurisdictions. In such circumstances, the state's capabilities are determined not only by national law, but also by international cooperation. The *mutual*

legal assistance mechanism and the framework of the United Nations Convention against Corruption provide a basis for states to request the tracking, freezing, confiscation, and return of assets. At this stage, the reach of asset seizure no longer works solely within the boundaries of national jurisdiction, but rather depends on procedural suitability, evidence quality, intergovernmental relationships, and the response of the country where the asset is located. Pavlidis (2022) emphasized that the recovery of assets across countries requires a consistent and complementary strategy, ranging from financial investigations to recognition and implementation of freezing and forfeiture measures.

Cross-jurisdictional constraints show that normative reach is not always in line with actual reach. Requests for legal aid can be hampered by differences in legal systems, differences in evidentiary standards, lengthy administrative processes, and limited institutional capacity to prepare requests that meet the needs of the recipient country. At the same time, assets resulting from corruption are easy to move, especially when the perpetrator has access to international financial networks and professional services that can help disguise ownership. Sharman (2010) shows that anonymous corporate structures can be used to obscure the identity of the owner and the purpose of the transaction, so asset tracing requires a strong ownership transparency mechanism. In the Indonesian context, this condition shows the importance of strengthening international cooperation that does not stop at norms, but also includes technical capacity, information exchange, and the readiness of evidentiary documents.

The role of the Anti-Corruption Law is very strategic in expanding the reach of the policy of confiscating corruption assets. The Anti-Corruption Law allows law enforcement to see corruption not only as a criminal act of origin, but also as a source of wealth flows that undergo the process of disguise. With this approach, asset confiscation can be directed to the proceeds of crime that have gone through various stages of transactions, not just to goods that are directly obtained from criminal acts. Sittlington and Harvey (2018) show that asset recovery in an anti-money laundering framework can strengthen detection and prosecution, although its effectiveness is influenced by consistent law enforcement, intergovernmental coordination, and the ability to understand how perpetrators circumvent the system. In corruption cases, the TPPU approach is important because the assets resulting from crime are often not in their initial form, but have changed shape, changed hands, or are mixed with other assets.

The main limit of the reach of asset confiscation in Indonesia is still related to the dominance of *the conviction-based confiscation approach*. In this approach, asset forfeiture is

highly dependent on the success of proving the perpetrator's guilt through a criminal verdict. The model provides strong legitimacy from a due process perspective, but its room for movement becomes limited when the perpetrator dies, escapes, cannot be presented at trial, or when criminal proceedings cannot be continued. Hryniewicz-Lach (2024) emphasized that the development of asset forfeiture mechanisms needs to find a balance point between the effectiveness of law enforcement and the protection of property rights. In the Indonesian context, this balance is important so that the expansion of the reach of asset confiscation is not only understood as strengthening state authority, but also as the establishment of a mechanism that is legitimate, measurable, and still respects the principles of the rule of law.

Based on this description, the reach of the policy of asset forfeiture of corruption crimes in Indonesia actually has a fairly broad normative foundation. National legal instruments and international cooperation allow countries to reach hidden assets, assets placed through third parties, assets located abroad, and assets that have gone through money laundering processes. The reach is not fully optimal because its effectiveness still depends on the ability of financial investigations, transparency of beneficial owners, quality of evidence, coordination with financial intelligence agencies, and the implementation of mutual legal assistance. Thus, the main problem does not lie in the absence of legal instruments alone, but in the extent to which these instruments can work in an integrated manner to transform normative reach into real asset recovery.

Weaknesses of Corruption Asset Forfeiture Policy in Indonesia

The weakness of the policy of asset forfeiture of corruption crimes in Indonesia cannot be understood only as a technical problem of law enforcement. These problems are layered because they are related to the design of norms, the direction of criminal policy, evidentiary standards, protection of rights, institutional coordination, and the state's capacity to transform confiscation judgments into real asset recovery. Within the framework of modern criminal law policy, asset confiscation is indeed directed to ensure that crimes do not generate economic gains. However, the expansion of the instrument of confiscation still requires clear limits so that it does not shift into actions that go beyond the principles of legality, legal certainty, and protection of property rights. Boucht (2013) emphasized that the strengthening of asset confiscation must always be placed in a balance between effectiveness, justice, and legal certainty.

The first normative weakness lies in the absence of explicit proportionality parameters in asset forfeiture policies. The provisions regarding confiscation and payment of replacement money in corruption cases do provide a basis for the state to recover assets from crimes. However, the provision does not provide detailed guidelines on how judges should assess the limits of the reasonableness of an act of confiscation. In fact, proportionality is needed to ensure that the value of the confiscated assets has a rational relationship with the crime, state losses, benefits obtained by the perpetrator, and the burden incurred on individuals. Bikelis (2020) shows that an effective asset forfeiture model must still contain a balancing mechanism so that the recovery of the proceeds of crime does not ignore the right to property and the principle of presumption of innocence.

The absence of proportionality parameters can pose two equally problematic risks. On the one hand, confiscation can move too broadly when the state withdraws assets that do not have an adequate relationship to the crime. On the other hand, confiscation can become too narrow when the state is only able to reach formally visible assets, while assets that are substantively controlled by the perpetrator cannot be proven. These risks show that effectiveness is not always synonymous with the expansion of authority. Effectiveness must be built through measurable measures, namely the relationship between assets and criminal acts, the need for action, and the balance between the interests of recovering state losses and protecting the rights of affected parties. King (2014) places the issue of *due process* as an important element in asset confiscation, especially when state action against wealth is carried out through mechanisms that do not always follow conventional criminal evidence.

The next weakness lies in the dominance of the *conviction-based confiscation* approach. In this approach, asset forfeiture is highly dependent on the success of proving individual guilt in criminal proceedings. The model provides a basis for legitimacy because the confiscation is carried out after there is a guilty verdict. However, this model becomes inadequate when faced with the modern corruption character involving the concealment of assets, the use of third parties, cross-jurisdiction, and complex proofs. Fernandez-Bertier (2016) explains that asset recovery policies evolved in response to the limitations of traditional criminal approaches that are too perpetrator-centered, while the proceeds of crime can move faster than the judicial process.

Reliance on a criminal verdict can undermine asset recovery in certain circumstances, such as when the perpetrator dies, escapes, cannot be presented at trial, or when the proof of criminal guilt cannot be continued. In such a situation, assets that are factually derived from a criminal act potentially cannot be confiscated because the criminal process against the

person does not lead to a guilty verdict. Alagna (2015) assesses that *non-conviction based confiscation* can be an important instrument in asset recovery, especially when criminalization of perpetrators is not possible, although the mechanism must still be carefully regulated so as not to weaken the guarantee of fundamental rights.

The strengthening of asset-based mechanisms cannot be interpreted as a neglect of the principle of the rule of law. *Non-conviction-based asset forfeiture* does provide space for the state to target assets, not solely perpetrators. However, this model requires clear procedures, proper evidentiary standards, right of objection for affected parties, and testing by the courts. Hendry and King (2015) reminded that *non-conviction based asset forfeiture* is in a sensitive area because it uses a mechanism that is not completely criminal, but aims to support the criminal law enforcement agenda. Therefore, its application must be linked to the principles of legality, proportionality, and judicial control.

Another normative weakness is related to the lack of strong protection against third parties. In corruption cases, assets resulting from crimes are often transferred to families, corporations, business partners, or other parties who are formally recorded as owners. Not all third parties can be treated equally. Some can be parties in good faith, while others can act as intermediaries in the disguise of assets. Without a clear regulation regarding *innocent owner defense*, asset forfeiture risks harming parties who do not know the relationship between assets and criminal acts. At the same time, the absence of a strong construction regarding a third party can make assets that are actually still controlled by the perpetrator difficult to reach. Milone (2017) suggests that the expansion of asset confiscation must be read as a boundary between the effectiveness of recovery and the protection of those affected by state actions.

The problem of third parties is also related to the lack of strong beneficial *ownership arrangements* in the confiscation of corruption assets. Formal ownership often does not reflect the parties enjoying the economic benefits of the asset. Assets can be recorded in the name of another party, but are controlled, used, or enjoyed by the actor. In situations like these, asset forfeiture requires a framework of proof capable of penetrating formal ownership structures. Leasure (2016) shows that one of the important issues in the recovery of corrupt assets is the proof of the relationship between assets and the source of criminal acts, especially when the assets have gone through a complex transaction process and ownership structure.

Regulatory fragmentation is also a prominent weakness. Provisions regarding asset confiscation are spread across various legal instruments, ranging from the law on corruption eradication, money laundering law, criminal procedure law, to international cooperation

mechanisms. The spread of this kind of norm can lead to asynchronizations in the trace, freeze, seizure, confiscation, management, and return stages of assets. Maugeri (2024) shows that in a cross-jurisdictional context, the effectiveness of asset freezing and confiscation is greatly influenced by procedural alignment, recognition of authority, and protection of affected parties. This lesson is relevant for Indonesia because regulatory fragmentation can hinder the consistency of the process from the initial stage of tracing to the execution of the decision.

Implementation weaknesses can be seen from the limitations of *asset tracing* and *financial investigation*. Assets resulting from corruption can be transferred through multi-layered accounts, investment instruments, shell companies, cross-border transactions, or assets mixed with legitimate assets. The tracing process requires financial analysis skills, data access, technology, and coordination with financial intelligence agencies. Ochnio (2021) explains that the asset identification and tracking stage is often a weak point in cross-border asset recovery because the process requires integration between financial information, temporary freezing measures, and foreclosure procedures that can be recognized by other jurisdictions.

The limitations of *asset tracing* have a direct impact on the effectiveness of confiscation and execution. If assets are not successfully found and secured from the beginning, it is difficult to recover real state losses. This is where the gap between the success of obtaining a judgment and the success of recovering assets appears. Collins and King (2013) show that asset forfeiture mechanisms can serve as a tool to disrupt criminal profits, but their effectiveness is highly dependent on the state's ability to identify, freeze, and seize assets before they disappear from reach.

The non-optimal execution of replacement money is a very important weakness in the Indonesian context. The judgment of the substitute money is often not directly proportional to the return of the assets that actually go into the state treasury. This can happen because the asset has been transferred, hidden, mixed with legal assets, or is no longer available at the execution stage. When the compensation money is not paid and then replaced with a prison sentence, the goal of recovering state losses is not optimally achieved. King (2012) explains that the use of civil or hybrid mechanisms in asset forfeiture arises because conventional criminal proceedings are often not fast and flexible enough to pursue criminal profits. This thinking suggests that asset forfeiture policies need to link criminalization with more operational economic recovery strategies.

Implementation weaknesses also arise from institutional coordination that has not been integrated. Asset forfeiture involves many actors, such as investigators, public prosecutors, courts, financial intelligence agencies, asset management agencies, and foreign authorities.

Each agency has different mandates, procedures, and databases. Without information integration and clear division of roles, the asset recovery process can be slow and ineffective. Kuris (2015) emphasized that the success of anti-corruption institutions is not only determined by repressive authority, but also by organizational capacity, independence, coordination, and the ability to build sustainable institutional support.

At the cross-jurisdictional level, implementation weaknesses are increasingly visible as asset forfeiture has to deal with differences in legal systems, evidentiary standards, and award recognition procedures. Mutual legal aid can be an important instrument, but its effectiveness depends heavily on the quality of the request documents, the clarity of the asset's relationship to the crime, and the ability of the authorities to meet the standards of the country being requested for assistance. Ochnio (2018) assessed that the recognition of freezing orders and seizures across countries requires a balance between the need for efficiency and legal protection. In the Indonesian context, this shows that strengthening international cooperation is not enough through the ratification of instruments, but must be accompanied by technical capacity to formulate strong and executable demands.

The asset forfeiture policy also faces the issue of legitimacy when the mechanism used moves between criminal law, procedural law, and civil instruments. Hybrid mechanisms can help states pursue assets more effectively, but they also raise questions about evidentiary standards, rights of defense, and protection of affected parties. Hendry and King (2017) stated that hybrid procedures between civil and criminal require strong legitimacy because effectiveness should not stand alone without adherence to the principle of the rule of law. Therefore, the reconstruction of the asset forfeiture policy needs to build a design that is not only fast, but also transparent, testable, and has an adequate objection mechanism.

Based on this description, the weakness of the policy of asset forfeiture of corruption crimes in Indonesia lies in two layers of interconnected problems. Normatively, these weaknesses can be seen in the unclear parameters of proportionality, the dominance of *conviction-based confiscation*, the lack of strong asset-based mechanisms, weak third-party protection, and regulatory fragmentation. Implementively, these weaknesses arise in the limitations of *asset tracing*, weak financial investigations, suboptimal execution of replacement money, unintegrated institutional coordination, and obstacles to cross-jurisdictional cooperation. Thus, asset forfeiture reform is not only directed at expanding state authority, but must also build a system capable of linking the effectiveness of asset recovery with proportionality, legal certainty, and protection of rights.

CONCLUSION

The policy of asset forfeiture of corruption crimes in Indonesia has a fairly broad normative reach through the provisions in the Law on the Eradication of Corruption Crimes, the Money Laundering Law, the mechanism of mutual legal assistance, and the framework of international cooperation in the return of assets. This reach allows the state to trace and seize assets that are hidden, transferred through third parties or *nominees*, placed abroad, and disguised through money laundering processes. At the practical level, the range is not fully effective because it still relies on financial investigation capabilities, proving the relationship between assets and criminal acts, transparency of beneficial owners, and coordination between law enforcement agencies. The weaknesses of the asset forfeiture policy are also seen in the absence of clear proportionality parameters, the dominance of *the conviction-based confiscation* approach, the lack of strong asset-based mechanisms, weak protection of third parties in good faith, regulatory fragmentation, limited *asset tracing*, non-optimal execution of substitute money, and obstacles to cross-jurisdictional cooperation. Thus, the renewal of the asset forfeiture policy needs to be directed towards a more integrated model, oriented towards asset recovery, supported by strong institutional capacity, and still ensuring a balance between the state's interests in recovering state financial losses and the protection of rights in the principle of the state of law.

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