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A Comparative Analysis of Asset Forfeiture Regulations in Criminal Offenses: The Case of Indonesia, the United Kingdom, and New Zealand

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Abstract

This research analyzes the regulation of asset forfeiture in criminal acts as an effort to recover state financial losses in Indonesia. Given the increasing urgency of asset recovery in corruption cases, the study evaluates the limitations of Indonesia's current legal framework, which still relies heavily on the conviction-based forfeiture model. Using a normative legal method with a comparative approach, this paper examines the regulatory models of asset forfeiture in the United Kingdom and New Zealand, particularly the application of in rem and non-conviction-based forfeiture mechanisms. The findings suggest that Indonesia's existing laws are inadequate to address the complex nature of illicit asset recovery. A shift toward non-conviction-based asset forfeiture is recommended to enhance the effectiveness of corruption eradication and align with global standards under the UNCAC. The study calls for legislative reform and the immediate ratification of Indonesia's draft law on asset forfeiture.

Keywords: Corruption, Asset Forfeiture, Efforts to Recover State Losses.

PENDAHULUAN

Criminal acts motivated by economic interests, which were initially limited to theft, embezzlement, and fraud, have evolved along with the development of technology and public knowledge. These conventional economically motivated offenses have become increasingly complex. In essence, such crimes are now committed in a structured and organized manner by groups of people and are often transnational in nature, meaning that they cross national borders and/or involve multiple countries.[1] In addition, these criminal offenses usually involve educated or well-informed individuals, as well as persons with certain authority or power who occupy specific positions or offices. Their aim is to obtain the greatest possible benefit or wealth, whether for personal interests or for the interests of certain groups or factions. Crimes with such economic motives are known as corruption offenses.

[1] I Wayan Aryya Sutia Juniartha et al., "Korupsi Sebagai Transnational Crime: Palermo Convention," *Jurnal Kertha Wicara* 9, no. 10 (2020).

Corruption is one type of economically motivated crime because it has a negative impact on economic activity and state finances. In legal terms, corruption is an act of enriching oneself or another person unlawfully, which causes losses to the state's finances or economy. This is as stated in Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. In essence, the resulting state losses are not directly felt by the public. However, gradually, corruption will erode state finances and worsen the country's economic condition.

Indonesia is one of the countries with a high level of corruption. This high level of corruption can be seen in the Corruption Perceptions Index (CPI) report published by the international anti-corruption organization known as Transparency International. According to the report, over the last two years, namely in 2022 and 2023, Indonesia's score has declined. This placed Indonesia at rank 115 out of 180 countries, positioning it as a highly corrupt country.

The high level of corruption in Indonesia is certainly concerning for the continuity of state administration, especially in relation to the economy and state finances. This is particularly so considering the very large amount of state losses caused by corruption. The amount of state losses resulting from corruption over the past five years, based on the Trend Sentence Monitoring Report conducted by Indonesia Corruption Watch (ICW), is as follows:

Table 1 Amount of State Losses in 2019-2023

No	Year	Number of Cases	Amount of State Loss
1.	2019	1019 cases	Rp. 12.002.548.977.762
2.	2020	1218 cases	Rp. 56.739.425.557.246
3.	2021	1282 cases	Rp. 62.931.124.623.511
4.	2022	2056 cases	Rp. 48.786.368.945.195
5.	2023	1649 cases	Rp. 56.075.087.787.308
Total State Losses			Rp. 236.534.555.891.022

Source: Indonesia Corruption Watch

Based on the table of state losses above, it can be concluded that over the past 5 (five) years, Indonesia has suffered losses of approximately Rp. 236,534,555,891,022 (two hundred thirty-six quadrillion five hundred thirty-four trillion five hundred fifty-five billion eight hundred ninety-one million twenty-two thousand rupiah) as a result of corruption offenses. This is an extraordinarily large amount. However, this figure does not yet include the losses suffered in previous years, considering that corruption has occurred for decades. Therefore, efforts are needed both to eradicate corruption and to restore the state losses caused by corruption.

In principle, the Indonesian state has long undertaken efforts to combat corruption and recover state losses. In terms of corruption eradication, this began with the enactment of Law No. 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion, and Nepotism (CCN).[2] In addition, as a manifestation of the state's commitment to eradicating corruption, which has become

[2] Jusuf Kalla, *Korupsi Mengorupsi Indonesia*, 2009.

deeply rooted and has gradually eroded the integrity of Indonesia, a specific statutory framework on corruption crimes was enacted, namely Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, which was later amended and refined through Law No. 20 of 2001.

With regard to the recovery of state losses, one of the measures adopted by the Indonesian state is the imposition of fines as regulated under Law No. 20 of 2001. However, the problem is that, in the case of criminal fines, the amounts stipulated by the law are generally lower than the amount of state losses caused by corruption itself. In addition, the fines imposed are subsidiary in nature. This means that the offender is given the option not to pay the fine and instead serve only a term of imprisonment.[3] This is what makes the recovery of state losses difficult to carry out.

Efforts to recover state losses, in addition to the fine mechanism, may also be carried out through asset confiscation. In general, this asset confiscation mechanism is intended to seize property or assets belonging to the perpetrator of the criminal offense. In this context, confiscation is carried out against goods obtained through the criminal act or goods used to commit the criminal act.[4]

In Indonesia, the asset forfeiture mechanism regulated by law remains focused on the perpetrator of the criminal offense. In other words, the implementation of criminal asset forfeiture in Indonesia may only be carried out against a person's assets or property if the owner of such assets or property has been legally proven guilty. Such asset forfeiture is, in essence, no longer relevant. This is influenced by various factors, one of which is the development of technology and information. The convenience provided by technology has become a tool for corruption offenders to conceal their assets, for example by manipulating data, obscuring transaction trails, transferring assets, and so forth. This essentially makes the process of recovering state losses difficult. In addition, when the perpetrator of the crime flees or enjoys immunity from legal process, the application of the asset forfeiture mechanism becomes difficult. Therefore, a new approach is needed to recover state losses.

In this regard, there is a new effort or breakthrough in the recovery of state losses, initiated by the United Nations Convention Against Corruption (UNCAC), namely through in rem asset forfeiture. In rem asset forfeiture is a type of asset confiscation carried out without criminal conviction. This concept of in rem asset forfeiture has in fact been widely applied by countries that have ratified UNCAC, such as the United States, Thailand, Australia, the United Kingdom, New Zealand, and others. Meanwhile, Indonesia itself has ratified this convention long ago, as stated in Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against

[3] Anditya Sobandi, "Penerapan Pidana Denda Sebagai Pidana Subsider Dalam Penjatuhan Pidana Terhadap Terdakwa Tindak Pidana Korupsi Dihubungkan Dengan Tujuan Pemidanaan" (2020).
[4] Agus Pranoto, Abadi B Darmo, and Iman Hidayat, "Kajian Yuridis Mengenai Perampasan Aset Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Menurut Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 10, no. 1 (2019): 91.

Corruption, 2003. However, to date, Indonesia has not yet implemented the concept of in rem asset forfeiture in its national legal system.

This research aims to analyze the existing regulations concerning criminal asset forfeiture in Indonesia and to conduct a comparative legal analysis of the regulation of criminal asset forfeiture as a means of recovering state losses in Indonesia, the United Kingdom, and New Zealand.

The author compares this research with three previous similar studies. First, the undergraduate thesis written by Rizki Dwi Nugroho, entitled "Asset Forfeiture of Corruption Proceeds as a Form of Restorative Justice." The difference lies in the fact that that study uses a restorative justice approach, whereas the author's research uses a comparative legal approach. Second, the undergraduate thesis written by Pujo Wahyu Saputro, entitled "A Comparative Study of the Regulation of Asset Forfeiture in Corruption Crimes Based on Due Process of Law between Indonesia and the United States." The difference is that this study only discusses asset forfeiture as regulated in the anti-corruption law, whereas the author's research examines all laws and regulations governing asset forfeiture. In addition, the comparative legal analysis in that study is limited to the United States, while the author's research compares Indonesia with the United Kingdom and New Zealand. Third, the article written by Manguni WD Sinulingga and Jelly Levisa, entitled "A Comparative Legal Study of Asset Forfeiture of Corruption Proceeds in Indonesia, Singapore, and Hong Kong." The difference between that study and the author's research is that it examines legal systems related to asset forfeiture in Indonesia, Singapore, and Hong Kong. Meanwhile, the author's research compares Indonesia with the United Kingdom and New Zealand.

RESEARCH METHOD

This research uses a normative legal research method. The approaches employed include the statutory approach, conceptual approach, and comparative approach. The legal materials used in this research consist of primary legal materials, namely the relevant statutory regulations, and secondary legal materials in the form of legal books, legal journals, theses, and legal studies related to the research topic. The legal materials were collected through literature review. Meanwhile, the legal material analysis technique used is qualitative prescriptive analysis.

A. ANALYSIS AND DISCUSSION

Existing Regulation of Criminal Asset Forfeiture in Indonesia as an Effort to Recover State Losses

Corruption is an act committed to obtain benefits through unlawful means or means prohibited by law. According to Black's Law Dictionary, corruption is "Illegality; a vicious and fraudulent intention to evade the prohibitions of the law.

The act of an official or fiduciary person who unlawfully and wrong.[5] It can therefore be concluded that corruption is an unlawful act committed by an individual who abuses the authority or power vested in them for the purpose of obtaining personal gain.

According to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, corruption is defined as an act of unlawfully enriching oneself or another person in a manner that causes losses to state finances or the national economy. Furthermore, Law Number 1 of 2004 concerning State Treasury stipulates that any person who causes financial losses to the state or regional government shall be held accountable for such losses. Consequently, any financial loss suffered by the State or Regional Government as a result of an unlawful act or negligence must be compensated by the responsible party. This provision is intended to ensure the prompt recovery of state losses.

With regard to state losses resulting from corruption offenses, one of the measures that may be employed to restore such losses is asset forfeiture. In the context of recovering state losses, asset forfeiture may be defined as an action undertaken by the government to seize assets, including property and wealth owned by an individual. Such confiscation constitutes a form of punishment or sanction imposed for unlawful acts committed by the asset owner.

The regulation of criminal asset forfeiture as a mechanism for recovering state losses in Indonesia is governed by several legislative instruments. Generally, asset forfeiture is regulated under the Indonesian Criminal Code (KUHP), specifically Article 10 letter b, which provides as follows:

"Criminal sanctions consist of:

1. Principal penalties:
    a. Death penalty;
    b. Death penalty;
    c. Confinement;
    d. Fine.
2. Additional penalties:
    a. Revocation of certain rights;
    b. Forfeiture of specific property;
    c. Publication of the court judgment."

[5] Andi Hamzah, *Korupsi Di Indonesia : Masalah Dan Pemecahannya*, Cet. 3. (Gramedia Pustaka Utama, 1991).

In addition, the regulation of asset forfeiture is also stipulated in the New Criminal Code (KUHP Baru), particularly Article 66 paragraph (1) letter b, which states:

"(1) Additional penalties as referred to in Article 64 letter b consist of:

a. Revocation of certain rights;

b. Forfeiture of specific property and/or receivables;

c. Publication of the court judgment;

d. Payment of compensation;

e. Revocation of certain licenses; and

f. Fulfillment of customary obligations applicable in the local community."

More specifically, provisions concerning asset forfeiture in corruption cases are regulated under Article 18 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which provides:

"(1) In addition to the additional penalties referred to in the Criminal Code, the following may also be imposed as additional penalties:

a. The forfeiture of tangible movable property, intangible movable property, or immovable property used in or obtained from acts of corruption, including companies owned by the convicted person in which the corruption offense was committed, as well as any assets replacing such property;

b. Payment of substitute money in an amount not exceeding the value of assets obtained through corruption;

c. Closure of all or part of a company for a maximum period of one (1) year;

d. Revocation of all or part of certain rights or the elimination of all or part of specific benefits that have been or may be granted by the Government to the convicted person."

Fundamentally, corruption offenses are closely related to other criminal offenses, one of which is money laundering. In corruption cases, perpetrators often employ various methods to obtain the greatest possible financial benefit. Subsequently, in order to protect the assets acquired through corruption, offenders frequently establish companies or other business entities as repositories for such assets, which may function as vehicles for money laundering. In essence, corruption serves as the "predicate crime" underlying the offense of money laundering. Meanwhile, money laundering functions as a means of concealing and

legitimizing the proceeds derived from corrupt activities.[6] Therefore, it is important to utilize the asset forfeiture provisions contained in the Anti-Money Laundering Law as a related criminal offense. The provisions regarding asset forfeiture in money laundering crimes are stipulated in Article 7 paragraph (2) letter e of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which provides:

"(2) In addition to the fine as referred to in paragraph (1), a Corporation may also be subjected to the following additional penalties:

a. Publication of the court judgment;

b. Suspension of part or all of the Corporation's business activities;

c. Revocation of business licenses;

d. Dissolution and/or prohibition of the Corporation;

e. Forfeiture of the Corporation's assets for the benefit of the State; and/or

f. State takeover of the Corporation."

The regulations on criminal asset forfeiture discussed above constitute the substantive legal framework governing asset forfeiture in Indonesia. In contrast, the procedural aspects of asset forfeiture are regulated under the Indonesian Criminal Procedure Code (KUHAP). Under the KUHAP, asset forfeiture is referred to as seizure (penyitaan). Pursuant to Article 1 point 16 of the KUHAP, seizure is defined as "A series of actions undertaken by investigators to take control of and/or place under their authority movable or immovable property, whether tangible or intangible, for the purposes of evidence in the processes of investigation, prosecution, and trial."In this regard, the concept of seizure under the KUHAP is essentially limited to the temporary taking of control over assets or property belonging to a suspect or convicted person for the purposes of investigation and evidentiary proceedings. Upon the completion of the evidentiary process, the seized property must generally be returned to its owner, unless otherwise determined, namely where the property is ordered to be forfeited to the State. This concept differs fundamentally from asset forfeiture as a mechanism for recovering state losses, whereby the confiscation of assets is intended to facilitate the restoration of financial losses suffered by the State as a result of criminal conduct.

Based on the foregoing discussion concerning the regulation of criminal asset forfeiture under Indonesian positive law, two principal conclusions may be drawn. First, asset forfeiture under Indonesian legislation is classified as an additional penalty. An additional penalty is supplementary in nature and serves to complement a principal penalty. Accordingly, asset forfeiture as an additional penalty cannot be imposed independently without the prior imposition of a prin-

[6] A Zulkarnain and A Muliawan, "Analisa Yuridis Penerapan Tipikor Dan Tppu Dalam Rangka Optimalisasi Pengembalian Kerugian Negara Berdasarkan Putusan …," *JCA of Law* (2021).

cipal punishment. In other words, asset forfeiture cannot stand alone as a sanction. This characteristic renders the penalty facultative, meaning that it may be imposed at the discretion of the court but is not mandatory in every case.[7]

Second, the classification of asset forfeiture as an additional penalty reflects the asset forfeiture mechanism currently employed in Indonesia, namely conviction-based asset forfeiture, commonly referred to as criminal forfeiture or in personam forfeiture. This form of asset forfeiture is predicated upon the criminal conviction of an individual through a final and binding court judgment. Consequently, the forfeiture process focuses on establishing the culpability of the offender, which must first be proven through judicial proceedings and subsequently confirmed by a court decision that has obtained permanent legal force (inkracht van gewijsde).[8]

However, this model of asset forfeiture presents significant practical challenges, particularly where the offender has absconded, passed away, or enjoys diplomatic immunity. Furthermore, because the asset forfeiture mechanism under Indonesian law is conviction-based, forfeiture can only be carried out after a final and binding court judgment has been rendered against the offender. Meanwhile, corruption proceedings themselves often require a considerable amount of time due to the complexity and highly detailed nature of the evidentiary process. The lengthy duration of corruption trials effectively provides offenders with an opportunity to conceal, transfer, or otherwise dissipate assets derived from corrupt activities, thereby complicating efforts to recover state losses and undermining the effectiveness of asset forfeiture as a mechanism for asset recovery.[9] Furthermore, this situation may provide opportunities for perpetrators of corruption offenses to transfer their assets to third parties, thereby making the process of asset tracing and recovery increasingly difficult.

In addition, where a defendant is acquitted or discharged from all legal charges despite the existence of financial losses suffered by the State, asset forfeiture cannot be imposed. The rationale for this position is reflected in the elucidation of Article 38B of Law Number 20 of 2001, which provides that when an individual is acquitted or released from all legal claims, such individual is no longer considered a perpetrator of corruption in the case concerned. Consequently, asset forfeiture cannot be pursued against that person. This circumstance inevitably affects the recovery of state losses and, in general, may further complicate efforts to restore financial losses suffered by the State. Accordingly, it may be argued that the asset forfeiture mechanism currently recognized under Indonesian positive law remains insufficiently effective, particularly in relation to the recovery of state losses.

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[7] Arizon Mega Jaya, "Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi (Implementation of Asset Deprivation of Criminal Act of Corruption)," *Cepalo* 1, no. 1 (2019): 21.
[8] Lonna Yohanes Lengkong, "Urgensi Penerapan Perampasan Aset Dalam Tindak Pidana Pencucian Uang," *Jurnal Hukum to-ra : Hukum Untuk Mengatur dan Melindungi Masyarakat* 9, no. 3 (2023): 351–364.
[9] Marfuatul Latifah, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia," *Jurnal NEGARA HUKUM* 6, no. 1 (2015): 17–30, http://www.ppatk.go.id/.

To address these shortcomings, an alternative mechanism for recovering state losses arising from corruption offenses has been introduced under the United Nations Convention against Corruption (UNCAC). UNCAC is an international convention adopted by the United Nations (UN) that establishes comprehensive measures for combating corruption and facilitating the recovery of assets derived from corrupt activities. Indonesia has ratified this convention through Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption, 2003. One of the asset recovery mechanisms promoted under UNCAC is set forth in Article 54 paragraph (1) letter (c), which provides:

"Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases."

Based on the foregoing provision, it can be understood that one of the solutions proposed for recovering state losses resulting from corruption offenses is the implementation of asset forfeiture without criminal conviction. This mechanism is commonly referred to as in rem asset forfeiture or Non-Conviction Based (NCB) Asset Forfeiture. In general, in rem asset forfeiture or Non-Conviction Based Asset Forfeiture refers to a legal mechanism through which assets or property suspected of being derived from criminal activity, or used in the commission of a criminal offense, may be confiscated by the State without the necessity of obtaining a final and binding criminal conviction against either the offender or the owner of the assets concerned.[10] Unlike conviction-based forfeiture, which focuses on establishing the criminal liability of an individual, Non-Conviction Based Asset Forfeiture focuses primarily on the unlawful nature and origin of the assets themselves, thereby enabling the recovery of illicit assets even in circumstances where criminal prosecution cannot be effectively pursued.[11] Accordingly, asset forfeiture may be imposed upon assets suspected of being derived from criminal activity or used in the commission of a criminal offense, even where the owner of the assets has not been prosecuted, has not yet been brought to trial, or remains under investigation.

In the context of in rem asset forfeiture, an application for forfeiture is submitted to the district court with respect to assets suspected of having been acquired through acts of corruption or used in the commission of corruption offenses. Nevertheless, the concept of in rem asset forfeiture differs fundamentally from the mechanism for recovering state losses through civil actions as regulated under Articles 32, 33, 34, and 38C of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

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[10] Isnaini Nur Fadilah, "In Rem Asset Forfeiture Dalam Bandul Asset Recovery Dan Property Rights," *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing Terrorism* 1, no. 1 (2022): 87–99.

[11] Sudarto, Hari Purwadi, and Hartriwiningsih, "Mekanisme Perampasan Aset Dengan Menggunakan Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Hukum dan Pembangunan Ekonomi* 5, no. 1 (2017).

The general provisions concerning civil actions are set forth in Article 32 paragraph (1) of Law Number 31 of 1999, which provides:

"In the event that an investigator finds and concludes that one or more elements of a corruption offense cannot be sufficiently proven, while state financial losses have clearly occurred, the investigator shall immediately submit the case file resulting from the investigation to the State Attorney for the institution of a civil lawsuit or to the injured government agency for the filing of such claim."

The foregoing provision stipulates that the Public Prosecutor, acting as State Attorney, or the government institution that has suffered losses may file a civil lawsuit against the perpetrator of a corruption offense. Such a claim may be initiated even where the constituent elements of the corruption offense cannot be established or, in other words, where the criminal offense cannot be proven. This mechanism may be utilized provided that actual state financial losses have been identified through findings issued by the competent authority or an appointed public accountant.

Furthermore, civil actions may also be brought against assets belonging to a convicted person that are strongly suspected of originating from corruption offenses but have not been subjected to forfeiture in favor of the State following a final and binding court judgment (inkracht van gewijsde). Such claims may likewise be filed against the heirs of a defendant where the defendant dies during the investigation stage or while judicial proceedings are ongoing, provided that state financial losses have demonstrably arisen from the conduct concerned.

However, the mechanism of recovering state losses through civil litigation is not without limitations. One of its principal weaknesses lies in the evidentiary burden. Under this mechanism, two matters must be established: first, the existence of an unlawful act, and second, the precise amount of financial loss resulting from such unlawful conduct.

With respect to the unlawful act itself, proof becomes significantly easier where a final criminal judgment has already established the defendant's guilt. Conversely, where the defendant has been acquitted or discharged from liability, proving the unlawful act becomes considerably more difficult. Likewise, proving the amount of financial loss suffered by the State is often a complex undertaking that requires the involvement of experts in state finance. The calculation and verification of state losses are typically time-consuming and involve substantial costs.[12] These challenges have contributed to the infrequent use of civil litigation as a mechanism for recovering state losses, thereby reducing its overall effectiveness.

Based on the foregoing considerations, it is evident that civil litigation has not proven sufficiently effective as a mechanism for recovering state financial losses.

[12] Fitrizia Blessi Karina, "Gugatan Perdata Dalam Tindak Pidana Korupsi Menurut Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi," *Resources Policy* 6, no. 1 (2017): 1–8.

In this regard, the final alternative available to Indonesia in its efforts to recover losses resulting from corruption offenses is the implementation of in rem asset forfeiture, as contemplated under Article 54 paragraph (1) of UNCAC.

Although the Indonesian Government has already taken steps toward this objective through the preparation of a Draft Law on Criminal Asset Forfeiture, which incorporates provisions concerning in rem asset forfeiture, the implementation of such a mechanism within the national legal system should be expedited. This is particularly important given the substantial financial losses suffered by the State as a result of criminal offenses, while the amount of recovered assets remains significantly lower than the actual losses incurred. Accordingly, the adoption of an in-rem asset forfeiture mechanism within Indonesian law is expected to maximize the recovery and restoration of state financial losses.

B. Comparative Legal Analysis of Criminal Asset Forfeiture Regulations in Indonesia, the United Kingdom, and New Zealand

This comparative legal study examines the regulations governing criminal asset forfeiture in Indonesia, the United Kingdom, and New Zealand. There are several reasons underlying the selection of these jurisdictions. First, the United Kingdom and New Zealand consistently rank among countries with relatively low levels of corruption according to the Corruption Perceptions Index (CPI), whereas Indonesia remains categorized as a country with a comparatively high level of corruption. This significant disparity highlights the importance of comparative legal analysis in identifying both the similarities and differences among the legal frameworks of the three countries. Furthermore, such a comparison may provide valuable insights for Indonesia in improving its asset forfeiture regime, which, in practice, has not yet been fully effective in recovering state losses.

Another reason is that both the United Kingdom and New Zealand, like Indonesia, have ratified UNCAC. However, a fundamental distinction exists among these jurisdictions with regard to the implementation of Article 54 paragraph (1) letter (c) of UNCAC. While the United Kingdom and New Zealand have incorporated the provisions of that article into their respective domestic legal systems, Indonesia has yet to do so:

Tabel 2 A Comparative Analysis of Laws Governing the Forfeiture of Criminal Assets in Indonesia, the United Kingdom, and New Zealand

No	Hal	Indonesia	Inggris	Selandia Baru
1.	Legal Basis	• KUHP • KUHAP • UU 31/1999 jo. UU 20/2001 • UU 8/2010	*Proceeds of Crime Act 2002*	*Criminal Proceeds (Recovery) Act 2009*
2.	Types of asset seizures used	In personam asset seizure	Expropriation of assets in personam and expropriation of as-	Expropriation of assets in personam and expropriation of as-

			sets in rem	sets in rem
3.	Items that can be confiscated	•Movable goods, both tangible and intangible •Immovable goods • Goods that replace goods used or obtained from criminal acts	•Goods located anywhere (in England or in another country) •Real property • Personal property • Tangible or intangible goods	• *Real property* • *Personal property* • *Goods located in New Zealand or in other countries* • *Tangible and intangible goods* • *Movable and immovable goods*
4.	Authority of confiscation	• Prosecutor's Office • Corruption Eradication Commission (KPK)	• Police • *National Crime Agency (NCA)* • *Crown Prosecution Service (CPS)* • *Serious Fraud Office (SFO)*	• Police • *Official Assignee for New Zealand* (OANZ)
5.	Request for asset seizure	Asset confiscation as part of a court ruling in corruption crimes. Applications for asset confiscation are submitted by the public prosecutor in the indictment.	Asset seizure can be filed in the criminal court process against the perpetrator or in other cases can be requested to the District Court or High Court civilly.	Asset seizure can be filed in the criminal court process against the perpetrator or in other cases can be requested to the District Court or High Court civilly.

Based on the comparative analysis, one of the primary differences among the three countries concerns the unification of asset forfeiture regulations. In Indonesia, provisions relating to asset forfeiture are dispersed across various legislative instruments, including the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), the Anti-Corruption Law, and the Anti-Money Laundering Law. In contrast, both the United Kingdom and New Zealand have enacted comprehensive and independent legislation governing criminal asset forfeiture. In the United Kingdom, asset forfeiture is regulated under the Proceeds of Crime Act (POCA) 2002, while in New Zealand it is governed by the Criminal Proceeds (Recovery) Act 2009.

The existence of a unified asset forfeiture framework is largely influenced by the type of forfeiture mechanism employed. In the case of in personam forfeiture, asset forfeiture forms an integral part of criminal proceedings and therefore depends upon the substantive and procedural criminal laws governing the offense concerned.

By contrast, in rem or Non-Conviction Based (NCB) Asset Forfeiture requires a separate legal framework because its procedures differ substantially from those applicable to conviction-based forfeiture. Moreover, according to the guidance document *Asset Recovery Powers for Prosecutors: Guidance and Background Note 2009*, the in rem forfeiture mechanism under the POCA may be utilized where criminal conduct has been identified but a criminal sanction cannot be imposed, or where the offender has already been punished but no confiscation order has been sought.

Another justification for establishing a separate asset forfeiture regime is to ensure legal certainty, justice, and legal utility.

The existence of a unified asset forfeiture framework is largely influenced by the type of forfeiture mechanism employed. In the case of in personam forfeiture, asset forfeiture forms an integral part of criminal proceedings and therefore depends upon the substantive and procedural criminal laws governing the offense concerned.

By contrast, in rem or Non-Conviction Based (NCB) Asset Forfeiture requires a separate legal framework because its procedures differ substantially from those applicable to conviction-based forfeiture. Moreover, according to the guidance document *Asset Recovery Powers for Prosecutors: Guidance and Background Note 2009*, the in rem forfeiture mechanism under the POCA may be utilized where criminal conduct has been identified but a criminal sanction cannot be imposed, or where the offender has already been punished but no confiscation order has been sought.

Another justification for establishing a separate asset forfeiture regime is to ensure legal certainty, justice, and legal utility. In addition to regulatory unification, another notable difference concerns the scope of assets that may be subject to forfeiture. The United Kingdom and New Zealand provide a broader jurisdictional reach than Indonesia. Under the Proceeds of Crime Act 2002 and the Criminal Proceeds (Recovery) Act 2009, asset forfeiture may extend to assets and property located both within and outside national territory. This broader reach is facilitated through provisions concerning foreign restraining orders. A foreign restraining order refers to an order issued under foreign law or by a foreign court or judicial authority directing the restraint of persons, property, or instrumentalities of crime. Such orders enable one state to request another state to restrain individuals or assets suspected of being connected to criminal activity. This mechanism is particularly significant in corruption cases, as offenders frequently attempt to conceal or transfer their assets abroad. Where assets are hidden or transferred to another jurisdiction, asset tracking and recovery become substantially more difficult, especially for countries lacking a legal basis for cross-border restraint measures. Consequently, the availability of foreign restraining orders plays a crucial role in facilitating asset tracing, asset recovery, and the overall restoration of state losses.

Based on the foregoing comparative analysis, it may be concluded that the implementation of in rem asset forfeiture provides significant advantages with respect to asset tracing, asset confiscation, and the recovery of financial losses resulting from criminal activity. This is because the scope of in rem forfeiture is considerably broader than that of in personam forfeiture, enabling authorities to address circumstances that fall beyond the reach of conviction-based mechanisms. Such circumstances include cases where offenders have absconded, died prior to trial, or where confiscation orders cannot otherwise be imposed despite the existence of criminally derived assets. In these situations, in rem forfeiture serves as an effective alternative mechanism for recovering illicit assets. Furthermore, the unifica-

tion of asset forfeiture regulations contributes to the enhancement of legal certainty, justice, and legal effectiveness, particularly in relation to the recovery of state financial losses.

CONCLUSION

Based on the foregoing discussion, the following conclusions may be drawn:

First, the regulation of criminal asset forfeiture as a mechanism for recovering state losses in Indonesia is governed by several legislative instruments, including the Criminal Code (KUHP), Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 8 of 2010, and the Criminal Procedure Code (KUHAP). Under Indonesian positive law, asset forfeiture is classified as an additional and discretionary penalty. Its status as an additional punishment reflects the conviction-based (in personam) asset forfeiture mechanism currently employed. The principal challenge associated with this mechanism is that asset forfeiture can only be imposed after a final and binding court judgment has been rendered against the offender. Given that criminal proceedings often require considerable time, offenders are afforded ample opportunity to transfer, conceal, or dissipate their assets through third parties. Accordingly, an alternative mechanism is required, namely non-conviction based or in rem asset forfeiture.

Second, the comparative legal analysis of criminal asset forfeiture regulations in Indonesia, the United Kingdom, and New Zealand demonstrates that Indonesian asset forfeiture provisions remain fragmented across multiple legislative instruments. In contrast, the United Kingdom and New Zealand have adopted unified asset forfeiture frameworks through the Proceeds of Crime Act 2002 and the Criminal Proceeds (Recovery) Act 2009, respectively. The unification of asset forfeiture legislation in those jurisdictions is closely linked to the incorporation of in rem asset forfeiture mechanisms into their domestic legal systems, whereas Indonesia has yet to adopt such a framework.

As a recommendation, this study proposes that the in rem asset forfeiture mechanism be promptly incorporated into Indonesian positive law. Such reform is necessary because the current asset forfeiture framework has not yet proven fully effective in recovering state losses. Furthermore, considering that a Draft Law on Criminal Asset Forfeiture has already been prepared, it would be highly beneficial for the legislation to be enacted without delay. The adoption of such legislation would strengthen Indonesia's capacity to recover state financial losses and enhance the effectiveness of asset recovery efforts.

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