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Proportional Forfeiture of Mixed Assets: Balancing Criminal Proceeds and Security Interests

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Abstract

Indonesian prosecutors, courts, and secured creditors face an operational hurdle when a single indivisible asset is financed partly by criminal proceeds, partly by lawful funds, and partly by a legitimate secured loan. Uncertainty over whether to forfeit or release the whole object impedes asset recovery and risks arbitrary interference with third-party property rights. This article examines whether existing law provides a mechanism for allocating lawful and tainted value and formulates a rights-compatible proportional forfeiture model. It employs normative legal research using statutory, conceptual, case, and comparative approaches, supported by grammatical, systematic, and teleological interpretation. Existing rules recognize property wholly or partly connected to crime, equivalent-value recovery, seizure limits, and bona fide third-party protection, but recognition of partial criminal origin is not equivalent to an operational allocation mechanism. The article develops a rebuttable, step-by-step framework combining source-of-funds tracing, dual-date independent valuation, separation of secured claims from owner's equity, a tiered evidentiary burden, a creditor good-faith test, and reasoned distribution of enforcement proceeds. This is the first Indonesian model to translate proportionality into a measurable valuation formula for mixed assets while preserving judicial discretion. It enables effective recovery of tainted value and attributable gains without confiscating lawful equity or valid security interests.

Keywords: *Asset Recovery, Mixed Assets, Proportional Forfeiture, Security Interests, Valuation.*

A. INTRODUCTION

Asset forfeiture has evolved from a mere supplementary criminal penalty into a strategic instrument in policies aimed at combating profit-driven crime. The logic is simple: punishing perpetrators is insufficient when the economic benefits of criminal acts can still be enjoyed, transferred, inherited, or reused to finance further crimes. Therefore, asset recovery positions the elimination of illegal profits as an integral part of effective law enforcement (Brun et al., 2020). However, effectiveness must not be separated from justice. The state must distinguish assets tainted by criminal activity from those derived from legitimate sources and from the rights of third parties arising from legal transactions.

The issue of separation becomes critical when the proceeds of crime no longer exist in their original form. Illegal funds may be used as a down payment on a home, commingled with legitimate savings, supplemented by a bank loan, used for renovations, and then encumbered with a mortgage. A similar pattern can occur with vehicles or inventory encumbered by a fiduciary lien, pledged shares, or production machinery financed by financial institutions. A single asset ultimately contains multiple layers of economic interests: the value of criminal proceeds, the owner's legitimate capital, creditor financing, market price appreciation, and sometimes the rights of a spouse or heirs.

The United Nations Convention against Corruption explicitly recognizes such situations. Article 31(5) stipulates that when the proceeds of crime have been commingled with lawfully acquired assets, those assets may be forfeited up to the value of the commingled proceeds of crime. At the same time, Article 31(9) maintains the

protection of the rights of bona fide third parties (UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2003) These two norms strike an important balance. Confiscation must be effective, but its scope must not exceed the value of the illegal proceeds that can be attributed to the offender, unless the law explicitly employs a mechanism for the confiscation of an equivalent value of the offender's assets.

Existing scholarship falls into three main strands. The first emphasizes the effectiveness and substantive justice of asset recovery, particularly tracing, freezing, and returning criminal gains to the public (Brun et al., 2020; Mahmud et al., 2021). The second examines the limits of confiscation through legality, proportionality, standards of proof, and procedural safeguards (Boucht, 2017; Simonato, 2017; Marzuki et al., 2026). The third addresses the position of innocent third parties, including creditors, co-owners, victims, spouses, and other rights holders whose interests may be affected by enforcement (Farber et al., 2025). These strands establish that recovery must be effective, but they do not yet provide an integrated method for allocating economic value inside an indivisible mixed asset.

Indonesian studies on collateral generally focus on the survival of a creditor's priority right and the conflict between the state and holders of security interests (Adjie, 2023; Tiffany et al., 2023). That literature clarifies why a registered mortgage or fiduciary interest cannot be ignored, but it largely treats the dispute as a contest over the entire object. The unresolved gap is operational: no study specifies how courts should separate an illegal down payment, lawful savings, debt principal paid from different sources, passive appreciation, realization costs, and the creditor's outstanding

claim within one asset. This article addresses that gap by changing the unit of analysis from the legal status of the object to the composition of its value.

Changes to Indonesia's criminal procedure law provide a new context. Law No. 20 of 2025 on the Criminal Procedure Code permits seizure of property wholly or partly suspected of being obtained through criminal acts and limits the total value seized to the loss caused by the offense. The National Criminal Code regulates forfeiture of criminal proceeds and economic benefits and permits monetary substitution based on market value. These rules recognize partial connection and equivalent-value recovery, but neither recognition is the same as a legally established allocation mechanism for mixed assets. The statutes do not specify how to calculate the tainted portion, allocate appreciation or diminution, treat debt repayment, select a valuation date, or distribute enforcement proceeds among the state and third-party rights holders.

The need for reform is immediate. As of 27 August 2026, the Asset Forfeiture Bill remained under active legislative deliberation, and the leadership of the House of Representatives publicly targeted enactment by 15 December 2026 (Media DPR RI, 2026c). Deliberations have emphasized third-party protection, preservation of asset value, and prevention of abuse of power. The proposed value-allocation model must therefore be not only doctrinally coherent but also institutionally feasible. Courts may face additional appraisal costs, expert disputes, document-heavy hearings, and pressure on already limited judicial capacity. These constraints require a rebuttable formula, proportionate use of experts, clear deadlines, and a transparent rule for allocating valuation costs.

This article addresses two focused questions. First, to what extent do Indonesian legal instruments recognize partial criminal origin in collateralized mixed assets, and what substantive and procedural gaps prevent the allocation of lawful value, tainted value, and security interests? Second, what operational model can courts use to trace, value, prove, and distribute those interests consistently with asset recovery, proportionality, and due process? The novelty lies in the first comprehensive Indonesian framework that converts value composition into a rebuttable, step-by-step calculation while retaining judicial discretion. The discussion proceeds from regulatory mapping and the ratio decidendi of relevant cases to international and human-rights standards, the valuation model, evidentiary rules, and prioritized legislative recommendations.

B. RESEARCH METHOD

This study is normative legal research that first evaluates the *ius constitutum* and then formulates the *ius constituendum* (Masnun, Muh. Ali, Prasetio, Dicky Eko, 2025). Primary legal materials include the 1945 Constitution, the National Criminal Code, the 2025 Criminal Procedure Code, the Anti-Corruption Law, the Anti-Money Laundering Law, the Human Rights Law, the Mortgage Law, the Fiduciary Security Law, PERMA No. 2 of 2022, the UNCAC, and relevant judgments. Secondary materials consist of books and peer-reviewed scholarship on asset recovery, secured transactions, confiscation, proportionality, and human rights. The analysis is prescriptive: it identifies normative inconsistencies, reconstructs the applicable principles, and proposes an ideal legal model (Marzuki, 2017).

Four approaches are combined. The statutory approach maps the relationship among seizure, forfeiture, property rights, security interests, and third-party objections. The conceptual approach distinguishes proceeds of crime, tainted value, lawful value, secured claims, object-based forfeiture, and equivalent-value confiscation. The case approach extracts the material facts, legal issue, ratio decidendi, and unresolved implications of Supreme Court Decisions No. 2701 K/Pdt/2017, No. 1731 K/Pdt/2011, and No. 2951 K/Pid/2006 rather than relying only on their outcomes. The comparative approach is functional: UNCAC and FATF standards are used to test whether the Indonesian proposal achieves effective recovery without prejudicing bona fide third parties.

The legal materials are analyzed through grammatical, systematic, and teleological interpretation. Grammatical interpretation examines phrases such as 'wholly or partly suspected' and 'all or part of the property.' Systematic interpretation reads those phrases together with constitutional property protection, third-party objection procedures, and the priority and continuity of registered security interests. Teleological interpretation tests each rule against the corrective purpose of confiscation: removing criminal gain without imposing the offender's liability on innocent parties. The resulting *ius constituendum* is evaluated through legitimate aim, suitability, necessity, and fair balance (Dicky Eko Prasetio, 2022). Because the research is normative, the numerical scenarios test legal coherence rather than predict administrative cost or case duration; those institutional effects require pilot implementation and empirical evaluation.

C. RESULT AND DISCUSSION

REGULATION OF CRIMINAL AND LAWFUL VALUE IN COLLATERALIZED MIXED ASSETS

1. Legal Anatomy of Mixed Assets and Collateral

The term "proceeds of crime" encompasses assets obtained directly or indirectly from criminal acts, including changes in form, investment returns, profits, and replacement value. In the context of money laundering, a change in form does not eliminate the illegal nature of the assets as long as the economic link can still be traced. Conversely, lawfully obtained assets stem from income, savings, inheritances, gifts, investments, or financing that have a legal basis and are not connected to criminal acts. This distinction in origin is crucial because the primary function of the forfeiture of proceeds of crime is corrective and restorative: the perpetrator must not retain profits to which they are not entitled (Trinchera, 2020). Mixed assets are assets whose economic value is derived from more than one source, including at least one illegal source and one lawful source. The mixing can occur at the time of acquisition, during ownership, or when financing payments are made. The first example is a house worth Rp10 billion purchased with Rp4 billion in proceeds from corruption, Rp1 billion in lawful savings, and a Rp5 billion bank loan. A second example is a machine purchased with a legitimate loan, but whose installments are subsequently paid from the proceeds of money laundering. A third example is land acquired legitimately, whose value later increases due to a building funded by the proceeds of a criminal act. Each scenario results in a different composition of rights.

Blending cannot always be resolved through physical separation. A plot of land and a building, a vehicle, machinery, or stocks constitute a single unit whose economic value cannot be divided according to the source of the funds. Therefore, separation must be carried out legally and based on value. The court may maintain the property under seizure to prevent transfer, then determine the portion of the value that can be forfeited and the portion that must be protected. This approach aligns with the principle that fair forfeiture must accurately measure the benefits derived from criminal activity and must not use third-party assets to compensate for shortfalls in recovery from the perpetrator (Hryniewicz-Lach, 2024).

Collateral adds another layer of analysis. A secured creditor is not necessarily the owner of the property but holds a limited real right attached to the asset, granting priority over the proceeds of enforcement. This right arises from the underlying agreement, the encumbrance deed, and registration. Because it is a real right, it is enforceable against third parties and follows the asset regardless of who holds it (Usman, 2008). In a fiduciary security interest, the fiduciary beneficiary also holds a privileged position, and the bankruptcy or liquidation of the fiduciary grantor does not extinguish their rights (Law Number 42 of 1999 on Fiduciary Guarantees, 1999).

The separation of value must distinguish three components. First, the debtor's net ownership value, or owner's equity, which is the market value of the collateral after deducting the balance of the secured debt. Second, the creditor's secured claim, which consists of the secured debt along with components that are valid under the agreement and registration. Third, the commingled value held by the debtor, whether as an initial contribution, principal debt payments from illegal funds, asset appreciation costs, or traceable profits. A major error occurs when the entire market value is treated as

belonging to the perpetrator, even though part of it constitutes the creditor's property interest.

The nature of money laundering also requires a distinction between asset tracing and the determination of rights. Tracing shows where the proceeds of crime flow. The determination of rights answers who is legally entitled to a specific value. A bank may hold a valid security interest even if the collateral involves illegal down payments, provided that the bank provides value, is unaware of the crime, conducts reasonable due diligence, and does not collude. Conversely, the registration of a security interest does not automatically protect a creditor who is aware of the illegal source or who intentionally ignores strong indicators of money laundering (Sjahdeini, 2007).

2. Overview of Indonesia's Regulatory Framework and Regulatory Gaps in Asset Separation

Indonesia's regulatory framework is scattered across criminal law, criminal procedure law, security interests law, and special laws on combating corruption and money laundering. This fragmentation provides existing protections but does not form a single integrated procedure. Table 1 shows the main contributions and gaps in each instrument.

Table 1 Regulatory Landscape and Regulatory Gaps Regarding Mixed Assets

Instrument	Normative Contributions	Key Gaps
2025 Criminal Procedure Code	Recognizes property that is wholly or partially suspected of being derived from a criminal offense; limits the total value of seized property; allows third parties to file objections through pretrial proceedings.	Does not yet regulate tracing techniques, valuation dates, value composition, and the distribution of proceeds from enforcement.
National Criminal Code	Regulates the forfeiture of proceeds and economic gains from criminal offenses; allows	Does not yet distinguish between the forfeiture of the object and the forfeiture of

	for the substitution of property with cash based on market value.	value when a third party's property rights encumber the object.
The Anti-Corruption Law and PERMA 2/2022	Protects the rights of third parties acting in good faith and provides for an objection procedure.	Still focuses on the ownership status of property, limited to corruption offenses, rather than the composition of value and secured interests in mixed assets.
Anti-Money Laundering Law	Supports tracing, halting transactions, seizure, and handling of assets with no known owner.	Does not yet provide a method for allocating legitimate and illicit value within an indivisible object.
Mortgage Law and Fiduciary Security Law	Grant creditors preferential rights and the right of the security to follow the asset.	Does not regulate the priority ranking in relation to the state's claims on proceeds of crime or equivalent value

Source: Compiled by the authors based on applicable laws and regulations.

The 2025 Criminal Procedure Code represents progress because Article 123(1) uses the phrase 'wholly or partly suspected of being derived from a criminal offense.' Grammatically, the provision permits seizure when only a portion of an asset is suspected of criminal origin. Article 123(3) limits the total value seized to the loss caused by the offense. Systematically and purposively, these provisions support proportional restraint, but they operate at the provisional seizure stage and do not themselves allocate title or sale proceeds. If an indivisible asset must remain under full physical control to prevent transfer, the court must expressly separate the scope of temporary control from the value that may ultimately be forfeited.

The National Criminal Code expands forfeiture to property obtained from criminal acts and direct or indirect economic gains. Article 92 permits property that was not physically seized to be replaced by a monetary amount based on estimated

market value. Teleologically, this is a basis for equivalent-value recovery when the original proceeds are unavailable. It is not, however, a formula for allocating a mixed asset. The law does not select the relevant valuation date or explain how a value order interacts with earlier security interests, passive market appreciation, or lawful owner equity.

The Anti-Corruption Law provides explicit protection in Article 19. The court may not confiscate property not belonging to the defendant if such action would harm the rights of a third party acting in good faith. A third party may file an objection within two months after the judgment is read, although the objection does not suspend enforcement (Law Number 31 of 1999 on the Eradication of Corruption Crimes, 1999). PERMA No. 2 of 2022 clarifies the objection procedure and acknowledges that a petition may be directed against all or part of the property (Supreme Court Regulation Number 2 of 2022 on Procedures for Resolving Objections by Good-Faith Third Parties Against Rulings on the Confiscation of Property Not Owned by the Defendant in Corruption Criminal Cases, 2022). The phrase "part of the property" may be interpreted to include a portion of the value. However, existing procedures do not yet require the determination of the value composition prior to enforcement.

The definition of a bona fide third party in PERMA No. 2 of 2022 centers on a party that holds lawful rights and can prove that the property is not related to a corruption offense. This formulation faces difficulties with mixed assets because the property is indeed related to a criminal offense, but not its entire value is tainted. Creditors holding a mortgage right also do not always claim full ownership; rather, they claim priority rights to the proceeds of the sale. Therefore, the test of the asset's

connection to a criminal act must not replace a separate test regarding the validity of the security right and the creditor's good faith.

The Anti-Money Laundering Law strengthens the state's ability to trace and secure assets. Article 67 provides a mechanism for handling assets whose owners are unknown. In contrast, Article 69 stipulates that for investigations, prosecutions, and trials related to money laundering, the underlying criminal offense need not be proven first (Law Number 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering, 2010). A mechanism for third-party claims must still accompany this effectiveness. Without an assessment of the composition of assets, proving money laundering may secure assets but does not necessarily result in a fair distribution of value.

The Law on Mortgages and the Law on Fiduciary Security operate based on the principles of specialty, publicity, priority, and the right of pursuit (Usanti, 2012). The state cannot disregard these rights merely because the perpetrator has a connection to the subject matter. On the other hand, security rights must not be used as a means to conceal the proceeds of crime. The proper question is not whether the state's claim always takes precedence over that of creditors or vice versa but rather which assets are the subject of the state's claim and whether the creditors' rights were established and exercised in good faith.

FATF Recommendation 4 requires that states be able to seize and forfeit the proceeds of crime, instruments, laundered assets, and equivalent value, without prejudice to the rights of bona fide third parties (Financial Action Task Force, 2025). The FATF's evaluation of Indonesia assesses the effectiveness of asset recovery as a key component of Immediate Outcome 8. It highlights the need for a more consistent

framework for the forfeiture of equivalent value as well as the protection of third parties (Financial Action Task Force, 2023). This standard reinforces the need to distinguish between personal claims against the perpetrator and in rem claims against specific assets.

The existing instruments therefore supply separate building blocks: authority to restrain property partly connected to crime, forfeiture of proceeds and gains, equivalent-value recovery, third-party objections, and recognition of creditor priority. They do not create a unified procedure for identifying the source of each contribution, valuing an indivisible asset at relevant dates, allocating appreciation or loss, ranking claims, and distributing net proceeds. Recognition that an asset may have a partial criminal origin is thus not equivalent to a legally established mechanism for allocating the value of a mixed asset.

The same distinction explains the limits of the Anti-Corruption Law, PERMA No. 2 of 2022, the Anti-Money Laundering Law, and security-interest legislation. These rules protect bona fide parties, strengthen tracing, or preserve preferential rights, but none specifies how lawful and unlawful value coexist within one indivisible object. A coherent framework must distinguish physical control from final forfeiture and connect five determinations: tracing, valuation, good faith, priority, and proportional distribution.

3. Inconsistencies in Judicial Practice and Lessons from Cases

Supreme Court Decision No. 2701 K/Pdt/2017 is important for its reasoning, not merely its result. The mortgage holder relied on a registered security interest and proof that value had actually been advanced to finance the purchaser. The Court rejected the state's cassation challenge because the *judex facti* had not misapplied the law: the

property was registered to the purchaser, the financing and mortgage were legally documented, and the state failed to prove that the object itself constituted Subchan's corruption proceeds. The ratio decidendi therefore combined evidentiary failure on the criminal nexus with the continuity and preferential character of a valid registered mortgage. It protected the creditor and purchaser, but it did not calculate a proven tainted down payment or allocate mixed equity; its value for the present model is analogical rather than a complete precedent for proportional allocation (Supreme Court Decision Number 2701 K/Pdt/2017, 2017; Tiffany et al., 2023).

Supreme Court Decision No. 1731 K/Pdt/2011 supplies a related but narrower proposition. Its decisive premise was that criminal seizure and subsequent forfeiture do not, by themselves, extinguish a mortgage that was lawfully created and registered. The secured debt remains the debtor's responsibility; upon default, the mortgage holder retains the right to sell the collateral and obtain priority payment. This reasoning is consistent with the closed statutory grounds for extinguishing a mortgage and with the principles of droit de suite and droit de preference. Yet the decision also stops short of deciding how much of the debtor's residual equity is tainted when lawful financing and criminal proceeds are commingled (Supreme Court Decision Number 1731 K/Pdt/2011, 2011).

Supreme Court Decision No. 2951 K/Pid/2006 reflects the opposite enforcement direction. The criminal court treated the land and building as assets proven to originate from the offense and ordered confiscation and auction to satisfy replacement money, while the mortgage holder was left to pursue repayment through another route (Supreme Court Decision Number 2951 K/Pid/2006, 2007; Adjie, 2023). The operative premise was the proven criminal origin of the object and the public interest

in recovering state loss. The decision did not conduct a separate adjudication of the creditor's good faith, the date and validity of the security interest, or the share of sale proceeds corresponding to the secured claim. Its weakness is therefore not that asset recovery was pursued, but that the judgment did not reconcile recovery with the pre-existing property interest through a reasoned priority and value analysis.

The three cases reveal two incomplete judicial logics. One protects a formally valid security interest when the state cannot prove the criminal nexus; the other prioritizes recovery when criminal origin is proven. Neither logic answers the genuinely mixed case in which both a tainted contribution and a bona fide secured claim are established. Constitutionally, the state may pursue the legitimate public aim of depriving offenders of criminal gain, but Article 28H(4) does not permit arbitrary deprivation of lawful property (Via Dianti et al., 2024). Philosophically, confiscation remains corrective only while it removes the offender's gain; taking a creditor's or lawful owner's value converts it into an excessive burden on a non-offender. The ratio decidendi of future cases must therefore identify the competing rights first and allocate value second (Dicky Eko Prasetio, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, 2024).

National studies also indicate that the forfeiture of assets derived from money laundering stemming from corruption still faces procedural ambiguities, as well as uncertainties regarding asset management and the identification of assets that can be used for restitution (Lasmadi et al., 2023). Another study underscores the urgency of specialized legislation to ensure that forfeiture mechanisms operate effectively and fairly (Sitompul & Hasibuan, 2023). Nevertheless, the new draft legislation will

perpetuate old conflicts if it fails to provide norms for mixed assets and secured creditors.

Table 2 Judicial Treatment of Collateralized Assets and Unresolved Questions

Decision	Ratio Decidendi	Protected Interest	Remaining Gap
Supreme Court Decision No. 1731 K/Pdt/2011	Criminal seizure or forfeiture does not by itself extinguish a valid registered mortgage; the creditor retains priority on default.	Continuity and priority of the security right.	No allocation of tainted and lawful owner equity.
Supreme Court Decision No. 2701 K/Pdt/2017	The state failed to prove the criminal origin of the object, while the purchaser's title, financing, and registered mortgage were legally documented.	Purchaser and bona fide mortgage holder.	No formula for a proven mixed contribution, appreciation, or loan balance.
Supreme Court Decision No. 2951 K/Pid/2006	Proven criminal origin and recovery of state loss justified confiscation and auction for replacement money.	Public recovery interest.	No separate good-faith, priority, or proceeds-allocation analysis for the creditor.

Source: Compiled by the authors from court decisions and related literature.

4. International Standards: From the Confiscation of Property to the Confiscation of Measurable Value

The UNCAC provides the clearest starting point. When the proceeds of crime are commingled with legitimate assets, forfeiture is limited to the value of the commingled proceeds of crime (UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2003). This norm does not require the return of the entire property to the owner merely because there is a legitimate contribution. Nor does this norm justify the forfeiture of the entire property without calculation. States may seize and

sell indivisible property, but the proceeds must be allocated according to the proven composition of value and rights.

The FATF adopts a broader approach by recognizing "property of corresponding value" or equivalent value (Financial Action Task Force, 2025). Confiscation of equivalent value is necessary when the original asset has been consumed, transferred, concealed, or has lost its value. However, this mechanism constitutes a claim against the offender's assets, not a basis for seizing the property rights or security interests of third parties. Therefore, the two approaches must be distinguished. Object-based confiscation targets tainted assets. Value-based confiscation targets the value for which the offender is liable and may be enforced against the offender's equity in other assets.

Comparative literature reveals variations in models. Non-conviction-based forfeiture systems in some countries use civil or hybrid proceedings to target assets, while other systems maintain post-conviction forfeiture. Campbell cautions that the use of civil proceedings for criminal conduct must be accompanied by adequate safeguards, as the civil label does not eliminate the coercive nature of state action (Campbell, 2010). Tran and de Koker also note that the effectiveness of forfeiture requires clear definitions, standards of proof, mechanisms for determining equivalent value, and protections for third parties (Tran & De Koker, 2021).

The StAR Guidelines identify the "innocent owner" or "bona fide purchaser" as a key protection. Third parties must be given notice, an opportunity to file a claim, access to relevant evidence, and a ruling before their rights are forfeited (Greenberg, 2009). In U.S. law, the innocent owner defense was developed to distinguish owners or interest holders who were unaware of the violation from those who willfully

looked the other way or failed to take reasonable steps after becoming aware of the risk (Cassella, 2012). This principle can be adapted without copying foreign legal constructs in their entirety.

European experience shows that aggressive forfeiture systems must be controlled through legality, proportionality, and judicial review (Vettori, 2010). Simonato emphasizes the importance of a fair balance between the public interest and individual rights, particularly in third-party forfeiture and non-conviction-based confiscation (Simonato, 2017). Trinchera argues that confiscation is more easily justified constitutionally when it is aimed at restoring the economic position prior to the crime, rather than imposing unlimited financial penalties (Trinchera, 2020).

The proposed model directly operationalizes the international standards. UNCAC Article 31(5) supplies the substantive ceiling: when proceeds are commingled, forfeiture is limited to the value of the criminal proceeds. Article 31(9) requires preservation of bona fide third-party rights. The tainted-ratio calculation translates that ceiling into a measurable share of the offender's equity, while the prior deduction of a valid secured claim protects third-party rights. FATF Recommendation 4 is implemented by allowing equivalent-value recovery when the original proceeds are unavailable, but only against the offender's property or equity. The model therefore does not diverge from UNCAC by expanding the confiscable amount; it goes beyond the Convention only by supplying valuation dates, evidentiary burdens, and a distribution sequence that make its principles operational.

5. Proportional Asset Forfeiture and Human Rights Protection

The protection of lawful value is a human-rights safeguard, not merely a commercial concession. Article 17 of the Universal Declaration of Human Rights

protects ownership and prohibits arbitrary deprivation of property. Article 28H(4) of the 1945 Constitution similarly protects private property from arbitrary taking, while Article 36 of the Human Rights Law protects individual ownership. Although property rights may be restricted for a lawful public purpose, the state must identify the legal basis, the criminal nexus, and the precise value taken. Protection of a bona fide creditor or lawful co-owner therefore prevents the economic consequences of an offender's conduct from being transferred to a non-offender (Universal Declaration of Human Rights, 1948; The 1945 Constitution of the Republic of Indonesia; Law Number 39 of 1999 on Human Rights, 1999; Samsithawrati et al., 2025).

Proportionality functions as a four-stage human-rights test rather than only a calculation technique. First, forfeiture must pursue the legitimate public aim of depriving offenders of criminal gain and restoring loss. Second, control or sale of the asset must be suitable to secure that value. Third, the court must consider a less restrictive but equally effective measure, such as a value order, partial payment, escrow, temporary management, or sale subject to distribution, instead of automatically forfeiting the entire object. Fourth, the public benefit must not be outweighed by the burden placed on lawful owners and bona fide creditors. A measure fails the fair-balance stage when the state receives value that was never attributable to the offender (Simonato, 2017; Marzuki et al., 2026).

Due process is equally substantive. Article 28D(1) of the Constitution, Articles 8 and 10 of the Universal Declaration, and Article 17 of the Human Rights Law support effective remedy, equal legal protection, and a fair hearing. In mixed-asset proceedings, these guarantees require timely notice, access to the evidence used to

attribute value, a meaningful opportunity to submit tracing and appraisal evidence, the ability to question experts, judicial review, and a reasoned decision showing the calculation. A post-execution objection is not an effective primary remedy when an avoidable sale destroys a home, business, or security position.

The good-faith inquiry is therefore a rights-compatible limitation on state power. It prevents sham creditors and deliberate blindness from shielding criminal proceeds, but it also prevents formal association with a suspect asset from becoming a substitute for proof. The state may restrain the whole indivisible object temporarily, yet permanent deprivation must remain confined to the tainted value and attributable gains that are established through a fair process. This framework aligns the public interest in asset recovery with substantive justice, an approach also emphasized in Jurnal Suara Hukum scholarship (Mahmud et al., 2021).

A PROPORTIONAL MODEL FOR MIXED-ASSET FORFEITURE

1. Reformulation of the Proportional Asset Forfeiture Model

The proposed reformulation is based on the proposition that an asset may remain under full control to safeguard the interests of the legal process, but the economic value contained therein must be separated according to its origin. This separation of value must be carried out through a specific procedure involving the determination of the composition of the asset's value. This determination may be set forth in a criminal court ruling, a ruling on a third-party objection, or within a separate asset forfeiture mechanism. In their rulings, judges must provide clear reasoning regarding which portion of the asset's value stems from criminal activity and which portion has a legitimate source, including identifying creditors' rights, the basis for asset valuation, and the distribution mechanism. Thus, the division between assets forfeited by the state

and those that must be returned to rightful owners can be carried out fairly and proportionally.

This model is based on the following seven principles.

1) **The principle of traceability.** The state must demonstrate a verifiable link between the criminal act and the value of the assets. Evidence may include account transaction histories, purchase documents, tax data, contracts, sources of income, proof of installment payments, financial transaction reports, and forensic expert testimony. The identity of the perpetrator as the owner is not sufficient to presume that all assets are commingled. Conversely, a change in the form of an asset does not sever the connection if the value can be traced economically (United Nations Office on Drugs and Crime, 2012).
2) **The principle of separation of rights and property.** Physical seizure is not synonymous with the forfeiture of all rights. The judge must identify ownership, security interests, joint ownership, long-term leases, retention of title, and victims' claims. Valid liens and fiduciary security interests remain attached to the property and are not extinguished merely by seizure (Mortgage Rights on Land and Objects Related to Land, 1996).
3) **The principle of proportionality of value.** The value forfeited from mixed property is limited to the illegal contribution and the attributable profits. If the assets are indivisible, a sale may be conducted, but the distribution of proceeds must reflect the composition of the value. If the state employs forfeiture of equivalent value, enforcement is directed at the portion of the convicted person's assets after deducting third-party rights (Hernoko, 2019).

4) **The principle of protection for bona fide creditors.** Creditors must prove the basis of the debt, the provision of real value, the encumbrance and registration of security interests, the outstanding balance, and compliance with due diligence. Protection is denied or reduced if the creditor was aware of the criminal act, colluded, accepted collateral without fair value, ignored serious red flags, or allowed debt repayment to serve as a means of money laundering (Farber et al., 2025).
5) **The principle of transparent valuation.** Valuations are conducted by independent appraisers and are subject to review by the parties. At least two dates are required. The acquisition date is used to determine the initial contribution. The execution date is used to determine the net realizable value. Additional investments and principal debt payments are traced based on their source and date.
6) **The principle of recovery without state enrichment.** The state may not receive more than the value of the proceeds of crime, traceable profits, losses, or the equivalent value mandated by law. Forfeiture may not take value from creditors or co-owners who were not involved. The corrective purpose loses its legitimacy if the state obtains value that never benefited the perpetrator (Boucht, 2017)**.**
7) **The principle of an effective forum and a reasoned decision.** Third parties must receive advance notice, have access to present evidence, have the right to call expert witnesses, and receive a decision that includes a calculation. Objections after execution may only serve as a corrective mechanism, not the primary approach. The 2025 Criminal Procedure Code has established a pretrial

hearing for third parties regarding seizures, but technical regulations regarding the suspension of execution and temporary protection of assets are still needed (Law Number 20 of 2025 on the Criminal Procedure Code, 2025).

Operationally, value composition is determined in five steps. First, the acquisition cost is separated into illegal funds, lawful owner funds, and third-party financing. Second, post-acquisition changes are traced, including principal payments, renovations, taxes, major maintenance, income, and compensation linked to the asset. Third, the validity, priority, and good faith of each third-party claim are tested. Fourth, independent appraisal determines fair market value and net realizable value. Fifth, the judgment allocates enforcement proceeds according to the established rights and explains every material assumption.

To control costs and delays, the prosecutor should file a provisional tracing schedule and valuation with the application. A court-appointed appraiser or forensic accountant is necessary only when the disputed difference is material or attribution cannot be resolved from documents. A single jointly instructed expert should be preferred; if party valuations diverge materially, the court may order a third appraisal and must explain the figure adopted. The state initially advances the neutral appraisal cost when it seeks forfeiture, subject to final deduction as a reasonable audited realization cost. A third party's access to review cannot depend on an ability to prepay expert fees. Written expert questions, fixed disclosure periods, and consolidated hearings can reduce the burden on courts.

The formula is a rebuttable default, not a mechanical rule. Net realizable value (NRV) equals fair market value (FMV) minus reasonable and verified realization costs (RC). A valid secured claim (VSC) is the lowest of the proven receivable balance (PB),

the registered collateral value (RCV), and the available asset value (AV). Owner's equity (OE) is NRV minus VSC and other third-party rights (OTR). The tainted ratio (TR) is the tainted value contribution (TVC) divided by total equity contributions (TEC), recalculated for traceable post-acquisition payments and improvements. Recoverable value from the object (RVO) equals the tainted share of owner's equity plus separately traceable illegal income or gains (STI), subject to the ceiling of owner's equity. A judge may depart from the default where attribution evidence is stronger, but the reasons and alternative calculation must be stated.

1. **Net Realizable Value (NRV)**

   Determines the asset value available for allocation after reasonable and verified realization costs.

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NRV = FMV - RC
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↓

2. **Valid Secured Claim (VSC)**

   Determines the amount of the proven, registered, and available creditor claim that receives priority.

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VSC = min(PB, RCV, AV)
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↓

3. **Owner's Equity (OE)**

   Determines the residual value attributable to the owner after valid third-party rights.

```
OE = max(0, NRV - VSC - OTR)
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↓

4. Tainted Ratio (TR)

Determines the proportion of owner contributions derived from criminal proceeds.

TR = TVC / TEC

(Recalculated for traceable post-acquisition payments, improvements, income, and losses.)

5. Recoverable Value from the Object (RVO)

RVO = min[OE, (TR x OE) + STI]

where STI is separately traceable illegal income or gains, subject to:

0 <= RVO <= OE

The formula treats bank loans as claims to be tested, not as owner contributions. Principal paid with criminal proceeds increases tainted owner equity; principal paid with lawful income increases lawful equity. Direct repayment to a creditor from illegal funds is a separate tracing question. If the creditor received payment with actual knowledge, collusion, or culpable disregard of serious red flags, the payment may be recovered and protection reduced. Ordinary negligence does not automatically convert the entire secured claim into criminal property; the remedy must correspond to the creditor's proven conduct and benefit.

Market appreciation and diminution must be attributed rather than assumed. Passive market movement is allocated proportionally through the current tainted ratio. Value created by a specific renovation, development, insurance payment, or compensation award follows the proven source and legal beneficiary. A natural

disaster reduces NRV before distribution, so passive loss is shared proportionally; a government infrastructure project that passively raises surrounding land values is treated as market appreciation unless the evidence links a payment or subsidy to a specific rights holder. Material valuation uncertainty should be shown as a range, with the judgment explaining the selected date, method, comparable data, and sensitivity to alternative assumptions.

The order of distribution must be specified in the judgment. First, necessary, reasonable, and audited management and realization costs are paid. Second, victim claims and valid security interests are ranked under applicable law; absent an express norm displacing property rights, an earlier bona fide security interest is preserved before the state's residual claim on the offender's equity. Third, tainted value and attributable gains are transferred to the state or applied to restitution under the judgment. Fourth, the remaining lawful value is returned to the rightful owner or third party. The court must identify any conflict between victim priority and secured-creditor priority rather than hiding it in a generic order to forfeit the object.

This model does not grant absolute immunity to financial institutions. Professional creditors possess greater capacity and regulatory duties to identify risk. The inquiry covers the beneficial owner, income profile, reasonableness of the transaction, source of the down payment and installments, purpose of the loan, related-party relationships, customer due diligence, enhanced due diligence where required, and the documented response to suspicious activity. A mortgage certificate proves registration, not substantive good faith.

2. Application of the Model to Cases and Numerical Illustrations

Applied to the factual pattern surrounding Decision No. 2701 K/Pdt/2017, a binary approach produces two extremes: forfeiture of the entire house while relegating the bank to recovery from other assets, or release of the entire house because a mortgage exists. The proportional model offers a third route if a mixed contribution is actually proven. The house may remain restrained and may be sold if necessary; the valid bank claim is paid according to its priority; equity formed by criminal proceeds and attributable gains is forfeited; and the remaining lawful equity is returned. This hypothetical application extends beyond the decision's actual ratio, which turned substantially on the state's failure to prove the criminal origin of the object.

As a hypothetical illustration, a house is purchased for Rp10 billion. The perpetrator uses Rp3 billion in corrupt proceeds, Rp1 billion in legitimate savings, and a bank loan of Rp6 billion. After several years, the remaining principal balance is Rp4 billion. Of the Rp2 billion principal reduction, Rp1.5 billion was paid with legitimate business proceeds, and Rp500 million was paid with proceeds from money laundering. The net market value of the house at the time of foreclosure is Rp15 billion.

The first step is to protect the bank’s claim of Rp4 billion once the validity of the loan, registration, and good faith have been proven. The owner’s equity amounts to Rp11 billion. The tainted equity contribution consists of an illegal down payment of Rp3 billion and an illegal principal payment of Rp500 million. The legitimate equity contribution consists of initial savings of Rp1 billion and legitimate principal payments of Rp1.5 billion. Assuming passive appreciation and no evidence of other attributions, the ratio of tainted equity to total equity is 3.5 to 6, meaning that approximately 58.33 percent of the owners’ equity can be categorized as tainted. The indicative forfeiture amount is approximately Rp6.416 billion, while approximately Rp4.584 billion

constitutes legitimate equity. The final calculation remains subject to evidence, realization costs, legitimate interest, and victim claims.

This illustration demonstrates two benefits. First, the state recovers the illicit value along with its appreciation. Second, the bank does not bear losses that should be the perpetrator's burden. If the entire Rp15 billion is forfeited, the state takes Rp4 billion, which, economically speaking, remains a secured claim of the bank, and Rp4.584 billion derived from the legitimate value. If all assets are released, the perpetrator or owner benefits from the illicit value of approximately Rp6.416 billion. Separating the values avoids both of these outcomes.

The scenario changes if the bank knows that the down payment came from corruption or that the loan was used for layering. In such circumstances, the bank fails the good faith test. Its security interest may be rejected, reduced, or treated as part of a money laundering scheme, depending on the bank's involvement and the basis for liability. The scenario also changes if the entire loan has been repaid with proceeds of crime. Although the security interest is extinguished because the debt is paid off, the equity formed from the illegal payments becomes tainted assets and may be forfeited.

Another example involves land owned by a couple that was acquired before the criminal act, on which a hotel was later built using mixed funds. Seizure of the entire land and building would diminish the value of the original, legitimate land. Separation can be achieved by assessing the land's value prior to construction, determining the contribution of construction funds, and accounting for any increase in value. If physical separation is not feasible, sale and distribution are options. However, if the business remains productive and seizure would destroy its value, the court may consider

temporary management, a transfer of shares, or payment of the forfeiture amount without selling the assets.

A more complex stress test confirms that the formula is not rigid. Suppose a mixed-financed factory worth Rp20 billion suffers disaster damage that lowers its market value to Rp14 billion, and a later public infrastructure project raises it to Rp18 billion before enforcement. The appraiser first determines whether insurance proceeds, public compensation, repairs, or owner-funded improvements belong to a specific party. Residual passive loss and appreciation are then reflected in NRV and allocated through the updated ratio. If two independent appraisals differ by more than ten percent, the court should identify the disputed assumptions, permit written expert challenge, and appoint a neutral third appraiser only when the difference would materially change distribution.

3. Standard of Proof and the Good Faith Test

Value separation requires a tiered burden of proof. The prosecution bears the initial burden of establishing a specific prima facie nexus between criminal conduct and an identified contribution, payment, improvement, or gain through sufficient, consistent, and verifiable evidence. Only after that threshold is met must a claimant prove, on the balance of probabilities appropriate to the ancillary proprietary issue, the lawful source of the value and the legal basis, amount, priority, and timing of the right claimed. This allocation does not lower the standard for proving criminal liability and does not permit ownership alone to substitute for a value nexus.

A limited evidentiary burden may be placed on facts uniquely within the claimant's control, such as the source of a down payment, the identity of a beneficial owner, or the reason for a related-party transfer. Missing records are relevant but not conclusive.

The judge must consider the transaction's age, legal record-retention duties, the availability of bank or tax data, administrative compliance, and credible alternative evidence. The presumption of innocence and privilege against self-incrimination remain intact because the proprietary allocation cannot be used to presume the claimant's criminal guilt.

For creditors, good faith requires six cumulative findings: the right arose before seizure or before knowledge of the criminal risk; real value or a facility was provided; the security was validly created and registered; the creditor lacked actual knowledge of the illegal source; due diligence was reasonable for the transaction's risk; and no collusion, sham arrangement, or disproportionate benefit existed. The court should assess conduct at origination and during repayment, because a creditor initially acting in good faith may later ignore a pattern showing that the loan is being used for layering.

Minimum documentation includes the loan agreement, proof of disbursement, security deed and registration, payment history, appraisal, beneficial-ownership information, income and source-of-funds checks, customer-risk classification, and internal escalation records. Concrete red flags include a cash down payment inconsistent with the borrower's profile, unexplained rapid principal repayment, payments by unrelated or high-risk third parties, beneficial-owner mismatch, structuring below reporting thresholds, grossly inflated or depressed valuation, forged documents, a security interest created after the investigation became known, or failure to respond to a suspicious-transaction alert. A red flag triggers explanation and enhanced scrutiny; it does not by itself prove collusion. Documented enhanced due diligence and a reasonable response support good faith.

The ruling must include a calculation table showing the acquisition cost, source and date of each material contribution, principal payments, improvements, fair market value, realization costs, valid secured claim, other third-party rights, tainted ratio, separately traceable gains, recoverable value, and returned lawful value. It must also identify who bore each evidentiary burden, which red flags were proven, the appraisal method adopted, and why competing calculations were rejected. This transparency permits meaningful appeal and prevents the phrase 'related to a criminal offense' from replacing a legal determination of value.

4. Implications for the Asset Forfeiture Bill and Judicial Practice

As of 27 August 2026, the Asset Forfeiture Bill remained in the 2026 Priority Legislative Program, with the House of Representatives targeting enactment by 15 December 2026 (Media DPR RI, 2026c). The active deliberations make codification of mixed assets urgent. Leaving the issue to general judicial discretion would reproduce the inconsistency shown by the cases above.

The first and indispensable priority is legislative codification. The bill must define a mixed asset as property wholly or partly acquired, maintained, improved, or paid off with criminal proceeds, and must require proportional value-based forfeiture. It must distinguish restraint of an object, forfeiture of a tainted object or share, and an equivalent-value order against the offender. Without those definitions, a court cannot know whether it is preserving an asset, determining rights in that asset, or enforcing a personal value liability.

The second priority is an operational value-determination procedure. The prosecutor must submit a source-of-funds schedule, proposed tainted ratio, provisional appraisal, and calculation of the amount sought. Third parties must receive notice and

access to the relevant material, subject to proportionate confidentiality protection. The judge may appoint a neutral appraiser or forensic accountant, consolidate expert questions, set disclosure deadlines, and require the judgment to state the recoverable value rather than merely list objects. Neutral appraisal costs are initially advanced by the state when it seeks forfeiture and are finally treated as audited realization costs. Secured creditors must have standing to claim against proceeds even when they do not assert ownership of the whole asset.

The third priority is an effective remedy before irreversible execution. Enforcement should be suspended for the genuinely disputed portion when immediate sale risks irreparable harm, unless the property is perishable, management costs are disproportionate, or delay threatens value. A court may authorize preservation, escrow, temporary management, or sale with the disputed proceeds retained. Ex post compensation based only on an auction result may be inadequate when the sale price is depressed, or the claimant loses a unique home or productive asset.

The fourth priority is value-preserving management. Productive assets should not be sold automatically. A supervised administrator may continue operations, lease the property, secure insurance, undertake necessary maintenance, or select an optimal sale time. The management plan, costs, and conflicts of interest must be reviewable because deterioration harms the state, victims, creditors, and lawful owners alike (Lasmadi et al., 2023).

The fifth priority is a uniform judicial and inter-agency protocol. The Supreme Court should issue a PERMA requiring a tracing schedule, a standard calculation table, good-faith findings, valuation-date reasons, and a distribution order. Investigators, prosecutors, the Financial Transaction Reports and Analysis Center, public appraisers,

financial regulators, and asset managers should use compatible evidence formats. Coordination is especially necessary where criminal enforcement overlaps with bankruptcy or civil execution (Sitompul & Hasibuan, 2023).

Non-conviction-based forfeiture requires the strongest safeguards because permanent deprivation may occur without a conviction of a particular person. The statute must define the applicable standard of proof, notice, legal aid where needed, access to evidence, independent adjudication, appeal, and periodic review of restraint. Efficiency cannot justify shifting all risk of error to the asset owner (Saputra, 2017).

Pending legislation, the Supreme Court can issue interim guidance directing judges to distinguish physical control from final value, examine registration and priority, require proof of the source and timing of material contributions, and decide creditor good faith through express findings. A generic order that property is 'forfeited to the state' is inadequate whenever a third party presents a colorable claim.

D. CONCLUSION

The answer to the first research question is that Indonesian law recognizes several elements of a mixed-asset regime but does not yet contain the regime itself. The 2025 Criminal Procedure Code permits seizure of property suspected to be partly derived from crime; the National Criminal Code permits forfeiture of proceeds, gains, and equivalent value; anti-corruption procedure protects bona fide third parties; and security law preserves registered priority rights. These provisions do not determine the source and timing of contributions, valuation dates, passive appreciation or loss, evidentiary burdens, creditor good faith, claim priority, or distribution of net proceeds.

Judicial decisions accordingly alternate between protecting a registered mortgage and prioritizing state recovery without a unified value analysis.

The answer to the second research question is a rebuttable proportional model that separates control of the object from permanent deprivation of value. The state first proves a prima facie nexus to an identified contribution or gain. The court then determines net realizable value, deducts valid security and other third-party rights, calculates the tainted ratio within the owner's equity, adds separately traceable illegal gains, and states the recoverable value subject to the ceiling of that equity. Dual-date appraisal, reasoned treatment of market changes, a cumulative creditor good-faith test, and a transparent distribution order prevent the formula from becoming rigid.

This model is not merely an optional accounting technique. It is a constitutional requirement of non-arbitrary property interference under Articles 28D(1) and 28H(4) of the 1945 Constitution and a practical expression of UNCAC's limit on confiscating commingled property. Effective recovery remains a legitimate public aim, but necessity and fair balance prohibit the state from taking lawful equity or a bona fide creditor's proven interest merely because it is embedded in the same indivisible object as criminal proceeds.

The legislative priority is therefore explicit codification of mixed assets and proportional value-based forfeiture in the Asset Forfeiture Bill. The next priorities are a judicial value-determination procedure, a pre-execution remedy, value-preserving management, and a uniform PERMA. Until those rules exist, courts should require tracing, appraisal, good-faith findings, and a calculation table in every judgment involving a credible third-party claim. Without this framework, Indonesian law

remains insufficient to satisfy legal certainty, substantive justice, due process, and the rule of law.

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