

Civil Forfeiture as a Legal Mechanism for Recovery of State Losses in Corruption Cases in Indonesia

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Abstract

The recovery of state financial losses from corruption remains a central challenge in Indonesia's anti-corruption framework. Despite the availability of various recovery mechanisms, questions persist regarding their effectiveness and conformity with the principle of proportionality and national legal policy. This study examines the application of proportionality in state loss recovery policies and formulates a future-oriented legal policy to enhance recovery effectiveness. Employing a normative legal research method, this study applies Robert Alexy's proportionality test, suitability, necessity, and proportionality in the strict sense to assess criminal restitution, post-conviction asset confiscation, and administrative and civil forfeiture mechanisms. The findings reveal that Indonesia's current recovery framework is fragmented and predominantly reliant on repressive, criminal-based approaches, resulting in limited asset recovery. The novelty of this study lies in its proportionality-based formulation of civil forfeiture as an integrated administrative recovery model that prevents asset dissipation while safeguarding due process and property rights. This study argues that proportionality does not weaken anti-corruption efforts, but rather provides a normative foundation for designing recovery policies that are effective, balanced, and capable of delivering measurable public benefits.

Keywords

Civil Forfeiture; Corruption; Proportionality; Legal Policy

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1. INTRODUCTION

The instrument of restitution payments in the eradication of corruption in Indonesia is intended not only to deter the perpetrator but also to recover the losses incurred as a result of the crime. Corruption can be categorized as an extraordinary crime with a significant impact on a country's economic, social, and political stability (A. M. Rahman & Husnul, 2024). One method used to restore state finances is through the instrument of restitution payments, which is regulated under Article 18 of Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (here in after, the Tipikor Law).

Philosophically, corruption is the main obstacle to achieving the state's goals as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, paragraph four, namely: (1) protecting all Indonesian people and all Indonesian territory; (2) advancing general welfare; (3) improving the nation's life; (4) participating in implementing world order based on freedom, eternal peace and social justice. On the other hand, corruption is a structured and systematic crime, so the impacts, mechanisms of proof, and legal process require significant time. (Adjie, 2009)

Recovering state financial losses remains a crucial issue in the enforcement of corruption laws in Indonesia. This problem lies not only in the execution of restitution of state financial losses, but also in the disparity between the amount of losses and the compensation decisions. In the context of corruption trials in Indonesia, there is often a discrepancy between the total state losses caused by corruption and the compensation amounts imposed (Hanum, 2024). Although the state's losses often reach significant figures, compensation decisions do not reflect their magnitude. This discrepancy is caused by various factors, including limitations in gathering evidence that can accurately measure losses, the complexity of tracing the flow of corrupt funds, and differing judges' views on the true value of losses.

On the other hand, weaknesses in the asset evaluation and tracking system exacerbate this situation, leading to compensation decisions that are significantly lower than the state's financial losses. This situation not only reduces the effectiveness of state financial recovery but also creates a perception of injustice among the public and undermines public confidence in the integrity of the judicial system. Therefore, reforms to loss-assessment methods and the strengthening of asset-confiscation mechanisms are needed so that compensation decisions more accurately reflect the financial impact of corruption. (Husodo, 2010)

According to ICW data for 2022, the disparity was 7.83%. This means that compensation decisions based on calculated losses accounted for only 7.83%. Indonesian Corruption Watch (ICW) data for 2021 showed that only 2.29% of state financial losses were recovered through compensation payments. Statutory provisions for the recovery of state financial losses from corruption are limited to compensation payments. (Watch, 2022)

The literature review related to the theme of returning state losses in corruption cases was first studied by Rahmayanti with the title "*The Restitution of State Financial Losses in Law Enforcement Against Corruption Crime*" in 2023. The results show that, as an extraordinary crime, the state cannot punish only the perpetrators of corruption with criminal penalties. This encourages efforts to confiscate and return illegally seized assets to their rightful owners, namely the people through the state treasury. (Rahmayanti, 2023)

The second article by Puteri Hikmawati, titled "*Return of State Financial Losses from Payment of Replacement Money for Corruption Crimes, Can It Be Optimal?*", was published in 2019. The results show that the replacement payment instrument is not yet optimal, especially if the assets resulting from corruption exceed the established payment instrument, in which case the Asset Confiscation Bill must be implemented. (Hikmawati, 2019)

The third article by Arie Kartika et al., entitled "*Law Enforcement in the Recovery of State Funds from Corruption Crimes*", was published in 2024. The results showed that to recover state losses, sanctions are not only sufficient with compensation equivalent to assets obtained through corruption, but also require increased fines and decisions to confiscate the perpetrator's assets obtained from the proceeds of corruption. However, the main obstacle is that prisoners tend to choose human imprisonment rather than paying compensation.

The four articles by Itok Dwi Kurniawan et al emphasize the urgency of non-conviction-based asset forfeiture as a response to the ineffectiveness of criminal restitution in recovering state losses from corruption. They argue that reliance on criminal convictions delays asset recovery and facilitates asset concealment (Dwi Kurniawan et al., 2024). Next, the five articles by Orrisa Firstra and Indung Wijayanto show that civil forfeiture is an asset-oriented recovery mechanism that focuses on the illicit origin of assets rather than criminal liability (Graviddita & Wijayanto, 2025). While both studies highlight the effectiveness of civil forfeiture, they do not examine its legitimacy through a proportionality-based constitutional analysis, which constitutes the focus of the present study.

The latest research review by Kusnadi, entitled "*Policy Formulation of Provisions for the Return of Assets Proceeds of Corruption Crimes*", was published in 2020. The research results show that the formulation of state policy must immediately respond to obstacles to law enforcement and the recovery of assets resulting from corruption by amending the Corruption Eradication Law and the Asset Confiscation Law as a more responsive mechanism, so that it is in line with the concept of asset recovery based on the *United Nations Convention Against Corruption* or abbreviated as UNCAC 2003. (Kusnadi, 2020)

Considering the literature reviews above, the compensation payment instrument remains ineffective in achieving the goal of recovering state losses, and a model is needed to ensure the effectiveness and efficiency of loss recovery. Therefore, the novelty of this research lies in its perspective, which focuses on the proportionality of recovering state financial losses using the civil forfeiture instrument in corruption cases in Indonesia. The theoretical approach used as an analytical tool is the theory of proportionality and legal politics.

Furthermore, this research will discuss how the principle of proportionality applies to the recovery of state financial losses from corruption through civil forfeiture in Indonesia. Moreover, how should a proportionate and due-process-oriented civil forfeiture policy (*ius constituendum*) be formulated to recover state losses from corruption in Indonesia? This article aims to examine the recovery of state financial losses from corruption in Indonesia through the lens of the principle of proportionality, with particular emphasis on the use of civil forfeiture, and to formulate a future-oriented legal policy (*ius constituendum*) that integrates civil forfeiture with due process safeguards.

2. METHOD

This research employs a normative legal research methodology that emphasizes the examination of positive legal norms governing corruption-related matters and the recovery of state losses. The normative analysis primarily focuses on legal provisions and the application of the principle of proportionality. The methodology incorporates a statutory approach, which involves studying regulations governing the management of corruption-related criminal acts, alongside a conceptual approach aimed at understanding the theory of proportionality and legal politics. (Ali, 2010)

The legal materials utilized comprise primary legal sources, specifically Law No. 31 of 1999 regarding the Eradication of Criminal Acts of Corruption, in conjunction with Law No. 20 of 2001, as well as secondary legal materials sourced from relevant literature reviews and tertiary legal materials derived from academic institutions and encyclopedias (Efendi & Ibrahim, 2016). The collection of legal materials is conducted through literature reviews, which are subsequently analyzed qualitatively to present information in a descriptive-analytical manner. (Miles & Huberman, 2014)

In this study, the theory of proportionality as formulated by Robert Alexy is operationalized as an analytical framework to assess the legality and effectiveness of civil forfeiture in recovering state financial losses from corruption. The analysis applies Alex's strict criteria of suitability, necessity, and proportionality to evaluate whether civil forfeiture is an appropriate instrument for asset recovery. Whether less restrictive yet equally effective alternatives exist, and whether the restriction of property rights is balanced against the public interest in restoring these losses.

These theses are systematically applied to existing statutory provisions and policy practices, and they propose legal reforms concerning civil forfeiture in Indonesia. On the other hand, the theory of legal politics, according to Mahfud MD, will examine how the direction of the dynamics of legal drafting is seen as a form of government policy in determining efforts to be implemented, as well as necessary changes, especially regarding legal aspects, seen from the political configuration in parliament. (Mahfud MD, 2017)

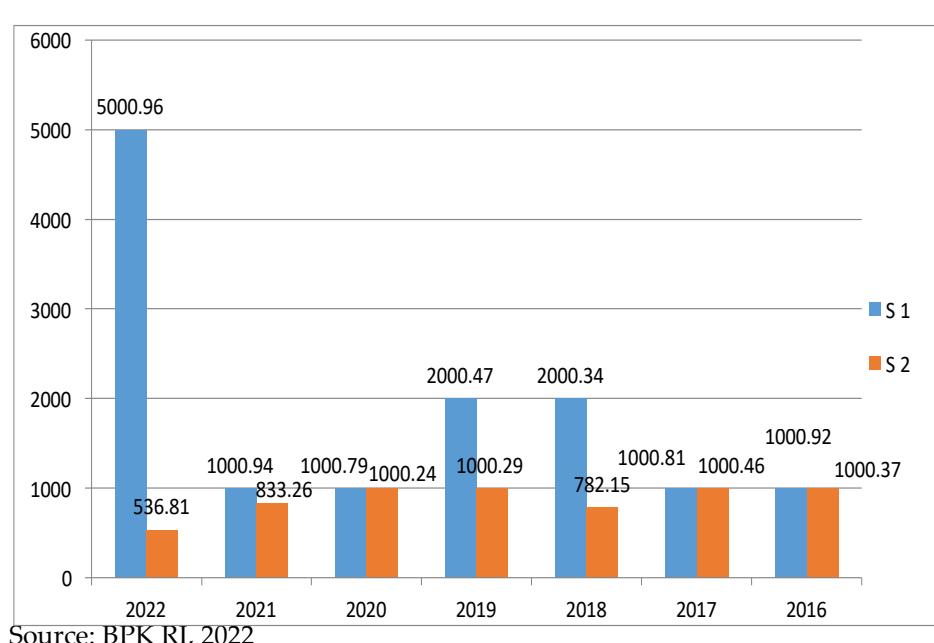
The research adopts a method rather than an empirical approach because the concerns coherence, legitimacy, and future orientation (ius const the norma to support the illustration of a set of recovery). Empirical data focus on supporting the illustration of enforcement gaps, while the primary focus is on evaluating legal principles and constitutional safeguards for formulating a proportionate, rights-based approach. This is considered more important for formulating proportionate, rights-based legal policy recommendations for the development of civil forfeiture in Indonesia.

3. FINDINGS AND DISCUSSION

3.1. Proportionality of recovery of state financial losses in corruption cases in Indonesia

Corruption is a very serious crime that not only negatively impacts state finances but also hinders national development, undermines social structures, and erodes public trust in state institutions (Yunus et al., 2021). In this regard, restitution of state losses through compensation mechanisms is crucial in enforcing the law against corruption. The total state losses due to corruption can be seen in the following graph: (Admin, 2022)

The Amount of State Financial Losses According to BPK Data from 2016 to 2022 in Semester I and Semester II



Furthermore, the total state financial losses handled by Law Enforcement Officers (APH), namely the Police, the Prosecutor's Office, and the Corruption Eradication Committee (KPK) in 2022, namely (Watch, 2022) :

Total State Financial Losses Handled by Law Enforcement Officials (APH), namely the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK) in 2022

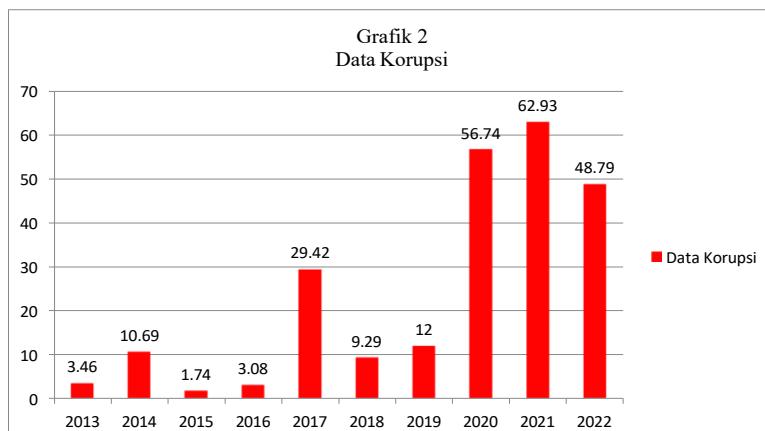
2022			
	138 Kasus	405 Kasus	36 Kasus
	307 Tersangka	909 Tersangka	105 Tersangka
	Rp. 1,327 Trilyun	Rp. 39,207 Trilyun	Rp. 2,212 Trilyun
2023			
	192 kasus	551 Kasus	48 kasus
	385 tersangka	1.163 tersangka	147 tersangka
	Rp.960 miliar	Rp.26.7 triliun	Rp.705 miliar

Source: Indonesia Corruption Watch (ICW), 2022

Based on the above data, the Prosecutor's Office handled 405 cases involving 909 suspects in 2022, with a target of 1,027 cases. The managed budget was IDR 138.9 billion. The value of state losses from cases handled by the Prosecutor's Office was the largest among other institutions in 2022, totaling IDR 39.207 trillion. The Police had a target of handling 1,625 corruption cases in 2022, with a budget of IDR 291.7. However, they were able to resolve only 138 cases, naming 138 people as suspects, with potential state losses totaling IDR 1.327 trillion.

Based on data from Indonesia Corruption Watch (ICW), which is based on corruption decisions by first instance courts up to the Supreme Court's cassation level, it states that state losses due to corruption cases reached IDR 238.14 trillion over the last 10 years, from 2013 to 2022, namely (Watch, 2022):

Corruption Data in Indonesia



Source: Indonesia Corruption Watch (ICW), 2022.

The findings of this study demonstrate a persistent gap between the magnitude of state financial losses caused by corruption and the actual amount recovered through existing legal mechanisms. Empirical data from the *Badan Pemeriksa Keuangan* (BPK), *Komisi Pemerintahan Korupsi* (KPK), and Indonesian Corruption Watch (ICW) consistently show that, despite significant enforcement efforts, asset recovery remains disproportionately low. Between 2016 and 2022, BPK recorded a steady increase in state financial losses, while the recovery rate of criminal restitution remained below 10%.

Data from Indonesian Corruption Watch (ICW) further indicate that over the period 2013-2022, total state losses due to corruption exceeded IDR 238 trillion, yet only a marginal portion was recovered through court-ordered compensation and post-conviction confiscation. Institutional performance data from 2022 reveal that although the Prosecutor's Office and the KPK handled a substantial number of high-value cases, recovery outcomes remained limited due to procedural delays, asset dispersion, and reliance on final criminal judgments.

The finding directly relates to the first objective of this study, assessing the effectiveness of mechanisms through the lens of proportionality. The empirical evidence confirms that criminal-based punishment and post-conviction formal exist but function in adequately in practice, thereby justifying the need to evaluate alternative recovery models that are more effective and proportionate.

Recovery of state financial losses is the main objective in eradicating corruption, as implied in the consideration that: "*consequences of corruption that have occurred so far, in addition to harming state finances or the state economy, also hamper the growth and sustainability of national development that demands high efficiency.*" The considerations are that corruption causes financial or economic losses to the state and hampers the growth and sustainability of national development. All efforts to eradicate corruption are expected to be oriented towards instruments for recovering financial or economic losses to the state (Sakinah & Sumardiana, 2025). This means that recovery of financial or economic losses to the state must be achieved to overcome the consequences of corruption.

The primary objective of enacting the Corruption Law is to recover financial losses incurred by the state. Consequently, the enforcement of criminal law against corruption emphasizes the restitution of state financial resources to the state from those who commit corrupt acts. The recovery of state losses due to corruption represents a vital strategic initiative within the framework of a welfare state and the application of justice principles (Miladmahesi, 2020). The welfare state concept provides for state-owned resources to enhance the quality of life and welfare for all citizens, particularly the most vulnerable. The occurrence of corruption diverts state assets that should be allocated for the development of social infrastructure, education, health, and other public services, thereby directly affecting the living standards of the populace.

In the context of a modern rule of law, two categories can be identified based on their functions and objectives: a formal (classical) rule-of-law and a material (welfare) rule-of-law—the difference between the two lies in how the state implements its mechanisms. The first concept emphasizes the state's role as a supervisor to prevent violations. In contrast, the second concept shows that the state is not only responsible for security but also strives to promote the welfare of society. (Petrini, 2013)

Although this instrument is designed to recover state losses, its actual implementation remains significantly low. In the last 4 years (2020-2024), the Corruption Eradication Commission has seized only IDR 2 trillion, or around 4-5% of the total assets at IDR 50 trillion. This shows that, although there is formal suitability, the implementation's effectiveness still needs to be evaluated. (2020–2024 Performance: KPK Returns State Losses Worth Rp. 2.5 Trillion., 2024)

The next stage is necessity, which examines whether there are equally effective alternatives with less severe consequences. In addition to the State Attorney General re-implementing civil remedies, the attorney general, as well as administrative mechanisms such as account blocking and asset confiscation, and criminal proceedings, which are still rarely utilized. According to, if equally effective alternatives are available, the use of more stringent measures, such as waiting for a final decision before auctioning the assets of corruptors, needs to be re-examined historically.

The final stage is balance or proportionality in the strict sense, in which the burden on the defendant's rights must be weighed against the benefits to the state and society. For example, KPK data in the first semester of 2023 shows an additional asset recovery of IDR 154 billion (January - May 2023) compared to the target of IDR 141 billion. This figure is still quite small when compared to the accumulated losses of hundreds of trillions due to corruption. (*KPK returns state assets IDR 154.1 billion in five months 2023*) Through the "Weight Formula" mechanism, courts and legislators can assess the intensity of the restriction on rights (the value of seized assets) relative to the public interest or the amount of losses recovered, ensuring that decisions are fairer and have a real impact.

From a proportionality perspective, the theory offers a normative framework for reforming Indonesia's legal policy for recovering state losses from corruption. By applying the principles of appropriateness, necessity, and balance, asset recovery instruments can be designed not only to be legally valid but also effective, efficient, and fair for all parties, including the perpetrators, the state, and society at large. The application proportionality theory within the framework of recovering state financial losses from corruption does not favor the perpetrators, but rather upholds a balance between individual rights and the public interest.

The Concept emphasizes that any restriction on rights, including the property rights of perpetrators of corruption, can only be justified if the following prerequisites are met: appropriateness, necessity, and balance. In the context of extraordinary crimes such as large-scale corruption, this

principle serves as a foundation for designing a firmer and swifter enforcement mechanism, provided it remains in line with the values of substantive justice.

At the suitability stage, Indonesian legal instruments, such as the determination of compensation and asset thestation based on a final decision, are designed to ensure restitution of state losses. However, their effectiveness remains limited, necessitating strengthening through provisional confiscation procedures or non-conviction-based asset forfeiture mechanisms that allow the state to block and seize assets from the investigation stage onward. His approach does not provide "immunity" for the perpetrator, but rather ensures that the goal of restitution is achieved without being hampered by a lengthy judicial process. (Sakinah & Sumardiana, 2025)

The necessity stage requires policymakers to evaluate alternatives that are equally effective but have a lesser impact on individual rights. In major corruption cases, waiting for a final decision can risk the dispersal or transfer of assets, so administrative and civil options, such as civil lawsuits by the State Attorney or confiscation through tax authorities, should be strengthened.

If these alternatives can recover assets as quickly and as extensively as criminal mechanisms, then the use of more stringent inkraft methods must be reconsidered. The proportionality stage (in the strict sense) bridges the gap between the value of confiscated assets and the socio-economic benefits of restitution by applying a "weighting formula" to measure the intensity of rights restrictions relative to the public interest (Alexy, 2014). In practice, determining compensation equivalent to the value of state losses, or confiscating assets worth trillions of rupiah from perpetrators of major corruption, is proportional, because the economic and moral impact of corruption far outweighs the burden imposed on the perpetrator. Thus, firm action is not excessive, but rather a form of balanced and fair law enforcement.

3.2. Ius Constituendum Law: Development of a Model for Recovering State Losses Due to Criminal Acts of Corruption

The recovery of state losses constitutes a fundamental effort to restore state finances and the national economy, both of which were harmed by corruption. However, the current scope of the anti-corruption law has not fully supported this objective, as it implicitly allows convicted persons to choose between paying a fine or serving a substitute imprisonment sentence determined by the court. His weakness is reflected in Article 18, Paragraph (1), letter b, of the Anti-Corruption Law, which provides that the payment of a replacement amount equal to the assets obtained through corruption constitutes an additional penalty. (Saputro & Chandra, 2021)

In the study and analysis of the model for recovering state financial losses through the payment of replacement funds, funders examine it using the administrative using and asset-confiscation documents. Handling corruption requires a shift from punishment and deterrence to asset recovery. Mimitri Vlassis further emphasized that the global community, both developing and developed countries, is increasingly frustrated and suffering from the injustice and poverty caused by corruption (M. Yanuar, 2007). The success of eradicating corruption is not only measured by the number of perpetrators convicted, but also by the extent to which state assets corrupted are returned. In principle, the eradication of corruption has shifted from following the suspect to following the money and the assets, and from pursuing only assets related to corruption cases to pursuing all such assets. (Bureni, 2016)

It is recognized that one of the legal instruments considered effective in recovering state financial losses due to corruption is confiscation, because the current legal instrument, through payment, has not been effective in recovering such losses. (Rahman et al., 2016) The presence of legal instruments for the confiscation of criminal assets is essential to prevent financial losses primarily. The presence of legal instruments that include asset tracking, asset management, asset handover, and asset utilization and supervision. (Saputra, 2017)

Asset confiscation following a court ruling through existing legal instruments is very fragile and Law enforcement officials, in this case the Corruption Eradication Commission (KPK) and the Prosecutor's Office, as executors of compensation payments, face a dilemma. On the one hand, they are required to execute the confiscation and seizure of assets; however, on the other hand, they are very likely to be sued in court regarding the confiscation and/or seizure of assets.

The criminal procedure law instruments contained in Articles 39, 40, and 41 of the Criminal Procedure Code are also inadequate for recovering state financial losses. In fact, the Prosecutor's Office has established an Asset Recovery Center (PPA) whose role is to carry out asset recovery activities, provide assistance, and coordinate and ensure that each stage of asset recovery is integrated into the realization of good governance. However, the existence of the PPA has also not enabled the recovery of state financial losses due to corruption. (Tantimin, 2023)

In relation to this problem, a stronger legal instrument is really needed that enables law enforcers (KPK and the Prosecutor's Office) to seize and confiscate assets to prevent state financial losses. The process of a coercive effort that is part of the investigation stage, and the process of seizure and confiscation of assets after a judge's decision that has permanent legal force (*Inchraacht*) (Ilma, 2025). Set Tracking Actions are essential from the investigation stage, as they help track and identify assets of suspects and parties involved in corruption, and provide data support to investigators in preparing replacement payments (I. H. Rahman et al., 2016). This is as stated in Article 18, paragraph (1), letter b,

of the Corruption Law: the maximum amount of replacement money payments equals the assets obtained from criminal acts of corruption.

In practice, law enforcement officers in Indonesia find it very difficult to confiscate assets resulting from criminal acts controlled by criminals (Asy'ari & Naibaho, 2024). The difficulties encountered in confiscating assets resulting from criminal acts are numerous, such as the lack of instruments in the effort to confiscate assets resulting from criminal acts, the absence of adequate international cooperation, and the lack of understanding of the mechanism for confiscating assets resulting from criminal acts by law enforcement officers (Indriana, 2019). The time required to carry out the act of confiscating the assets of criminals until the assets resulting from criminal acts can be confiscated or seized by the state, namely, after obtaining a court decision that has permanent legal force. (Sibuea et al., 2016)

The paradigm error regarding compensation for corruption crimes is also contained in Article 18 of the PTPK Law, which states that the confiscation of assets or wealth is intended only for convicts. The method of hiding assets from corruption is usually through relatives, close friends, or trusted people. The most obvious example is the APBD corruption case involving Hendy Boedoro, the former regent of Kendal, who was sentenced by the Corruption Court at the Supreme Court's cassation level to seven years in prison, along with a fine and compensation of 13.121 billion rupiah. The Supreme Court's cassation decision was issued in June 2008, but as of 2010, Hendy Boedoro had not paid the compensation as stipulated in the decision. Consequently, in May 2010, Hendy Boedoro's wife, Widya Kandi Susanti, officially participated in the Kendal regional election and won. However, to become a regent candidate, a significant amount of money is required. As stated by former Semarang mayoral candidate Mahfud Ali, he had spent at least Rp. 5 billion to participate in the regional election. (Husodo, 2010)

Comparative practices demonstrate that several jurisdictions have adopted civil or non-conviction-based forfeiture as an effective instrument for recovering assets derived from corruption while maintaining proportionality and due process safeguards. In the United States, civil forfeiture is implemented through an *in rem* mechanism that allows the state to confiscate assets connected to unlawful activity without requiring a prior criminal conviction (Cassella, 2013).

In addition, the United Kingdom, through the Proceeds of Crime Act 2002, has developed civil recovery, account-freezing orders, and unexplained wealth orders as administrative and civil tools to prevent asset dissipation at an early stage, particularly in cases involving serious economic crime and corruption. Next, similar approaches are also reflected in comparative studies on Australia, where non-conviction-based forfeiture is applied as part of a preventive and recovery-oriented anti-corruption strategy, subject to judicial control and protection of third-party rights. (Valerian, 2025)

In connection with the aforementioned description, two concepts warrant examination in the pursuit of recovering state financial losses attributable to corruption. Firstly, it is essential to establish genuine legal policies by incorporating laws specifically governing the confiscation of assets derived from criminal activities within the national legal framework (Ilma, 2025), particularly in the context of corruption. Secondly, there is a need to strengthen legal institutions to facilitate international cooperation in tracking and confiscating assets obtained through corruption. From a political standpoint, the government has urged legislators to promptly finalize the Draft Law (RUU) on the Confiscation of Criminal Assets. (Sianturi, 2025)

It is further stated that the authenticity of the legal politics of lawmakers is degraded by the crystallization of competing political wills to protect their interests, either through political compromise or the dominance of the largest political power (Asy'ari & Naibaho, 2024). His conclusion is very difficult to deny because the existence of the Asset Confiscation Bill could cause turbulence for the political world. The elite, who have been fond of disguising their corrupt assets in the name of other parties or obscuring assets through money laundering crimes, will face the threat of this bill. (M Ainun Najib, 2023)

Based on the concept of *Ius Constituendum*, developing a model for recovering state losses from corruption requires emphasizing two key variables: administrative efforts and asset confiscation (Agustina et al., 2025). Administrative efforts, in this case, encompass all non-litigation measures, including account blocking, tax incentive cuts, and coordination with financial authorities to freeze and secure stolen assets that can be seized before or concurrently with criminal proceedings. In this position, the state is not solely dependent on criminal justice mechanisms and is a waiting lengthy final decision. This allows for early asset confiscation and minimizes the risk of transfer or embezzlement by the suspect. (Dwi Juliani & Lubis, 2023)

The next stage is asset confiscation as the second variable that can be conceptualized into two forms, namely: 1) traditional, based on inkracht criminal decisions and non-conviction-based or civil forfeiture (Lindasari, 2025). Civil forfeiture is a legal instrument in rem that allows the state to prosecute and confiscate assets without proving the owner's guilt in a criminal framework, by showing only the relationship between the asset and the crime of corruption. (Nugraha et al., 2019)

In several common law countries, the civil forfeiture model accelerates recovery and eliminates legal loopholes that perpetrators often use to delay or evade asset recovery. The correlation between the development of the administrative model and asset confiscation through civil forfeiture lies in procedural synergy: preparing and completing forensic asset data so that, when the civil forfeiture mechanism is implemented, evidence of ownership and the flow of corruption funds is well documented. (Tantimin, 2023)

At the same time, the principles of proportionality and due process must be maintained, where the state needs to emphasize the rules for clarifying ownership, the right of appeal, and compensation for third parties in good faith, so that civil forfeiture does not become an arbitrary tool, but rather an effective instrument in a holistic recovery plan (Sakinah & Sumardiana, 2025). Thus, the ius constituendum of the model for recovering state losses due to criminal acts of corruption through the administrative model and civil forfeiture needs to be integrated through legal policy and legislation, in this case, the Draft Law on Asset Confiscation, so that it can be passed immediately. (Dwi Kurniawan et al., 2024)

In cases of corruption, the proportionality principle should not be interpreted as a mechanism solely intended to protect the rights of offenders. Instead, it serves to balance individual property rights with the collective constitutional right of the public, whose access to public resources and essential services is directly undermined by corruption (Ansori et al., 2025). In this sense, civil forfeiture functions as a rights-optimizing instrument that protects public interest and socio-economic rights, provided that implemented with due process and judicial safeguards.

4. CONCLUSION

This research concludes that the recovery of state financial losses resulting from corruption in Indonesia necessitates a reorientation through a legal framework grounded in proportionality. While criminal restitution and post-conviction confiscation are normatively justified, they fall short of addressing large-scale corruption because of procedural delays and low recovery rates. The application of Robert Alexy's proportionality test reveals the necessity of recovery instruments that are not only lawful but also essential and balanced between public interests and individual rights.

The proposed Ius Constituendum model incorporates administrative measures and civil forfeiture as complementary mechanisms within the anti-corruption framework. When executed with strong procedural safeguards, civil forfeiture enhances asset recovery without infringing upon due process or constitutional property rights. This model addresses a significant gap in current scholarship by connecting proportionality theory with tangible legal policy reform, providing practical guidance for legislators and law enforcement agencies. Consequently, the implementation of the Asset Confiscation Law is crucial to institutionalize a proportional, effective, and rights-based recovery framework that yields measurable public benefits in Indonesia's battle against corruption.

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