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The Application of Civil Forfeiture as a Restorative Mechanism in Returning State Financial Losses due to Corruption Crime

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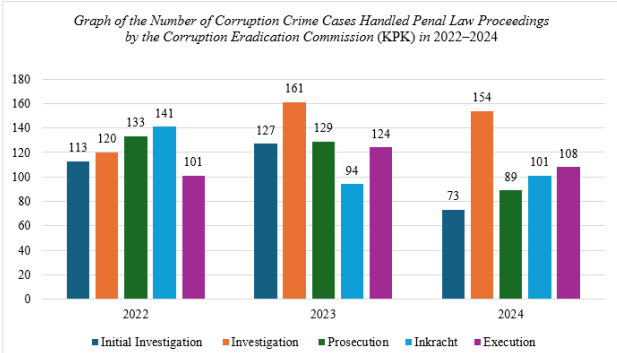
ABSTRACT

Corruption crimes not only cause significant financial losses to the state, but also lead to inequality and undermine the effectiveness of the legal system. The recovery of state losses has so far relied on a repressive criminal approach limited to court decisions, which is unable to address situations where perpetrators flee, die, or cannot be brought to trial. This can be seen from data from the Corruption Eradication Commission (KPK) for the years 2022–2024, which shows that out of 1,768 corruption cases handled through criminal proceedings, only assets worth approximately Rp1.281 trillion were successfully recovered. This article examines the application of civil forfeiture as a restorative mechanism focused on the direct recovery of assets without waiting for a court ruling. This study employs normative legal research using a legal, conceptual, and comparative approach, utilizing secondary data obtained through literature review. This study analyzes non-conviction-based asset forfeiture practices in civil law countries such as France and common law countries such as the United States and the United Kingdom. The analysis shows that the civil forfeiture mechanism is in line with the principles of restorative justice and can be applied in Indonesia through regulatory reforms that guarantee legal certainty and the protection of human rights. The implementation of an in rem asset forfeiture scheme with a limited reversal of the burden of proof is considered capable of accelerating the recovery of state losses while strengthening the sustainable eradication of corruption.

INTRODUCTION

The recovery of state financial losses due to corruption has not been maximized by law enforcement agencies. According to the Annual Report of the Corruption Eradication Commission (KPK), between 2022 and 2024, there were 1,768 corruption cases handled through criminal proceedings, but the value of assets recovered only amounted to approximately Rp1.281 trillion (KPK, 2024).This amount is certainly not commensurate with the actual financial losses incurred by the state as a result of corruption. The core issue in recovering state financial losses lies in the current legal approach, which continues to prioritize punitive measures as the primary objective, rather than positioning punishment as a tool to achieve broader and more substantive justice, including fiscal justice for the state. In actual practice, asset recovery mechanisms frequently encounter significant obstacles due to the protracted, technical, and often convoluted nature of criminal legal proceedings. These processes heavily rely on conventional evidence standards, which often delay the confiscation of illicit assets. Moreover, assets obtained through corruption are frequently concealed, transferred to third parties, or laundered through complex, transnational financial networks. Such conditions make it increasingly difficult for law enforcement authorities to trace and secure these assets in a timely manner. As a result, many of the stolen state assets remain unrecovered, highlighting the urgent need for more effective, flexible, and preventive legal mechanisms that go beyond traditional criminal justice paradigms.



Picture 1. Number of Corruption Cases Handled through the Criminal Track by the Corruption Eradication Commission (KPK) in 2022-2024

The data shows that the number of corruption cases handled by the KPK through criminal proceedings fluctuated throughout 2022–2024. Although the initial trend in investigations and prosecutions was relatively high, the rate of execution or asset recovery was consistently lower. Although the nominal value appears significant, reaching Rp1.281 trillion during the 2022–2024 period, this figure is still far

from the real value of losses caused by corruption crimes as a whole.

Table 1. State Financial Rescue from Enforcement Activities by the Corruption Eradication Commission (KPK) in 2022-2024

Year	*Asset Recovery*
2022	*IDR* 417,4 *Billion*
2023	*IDR* 384,4 *Billion*
2024	*IDR* 479,69 *Billion*
Total	*IDR* 1,281 *Trillion*

Source: KPK Annual report

The regulation of corruption sanctions that emphasizes the retributive aspect (retaliation) against the perpetrators of corruption is in fact ineffective in efforts to recover state financial losses due to these actions. Meanwhile, efforts to confiscate and return state financial losses are only used as additional punishment, so they are facultative. As a result, the return of state financial losses is not maximized (Sebastian, 2021). Moreover, if the perpetrators of corruption have transferred assets and fled abroad, it hinders the criminalization process and efforts to recover state financial losses. One of them is the corruption case of e-KTP procurement with a state financial loss of IDR 2.3 trillion in the 2011-2013 period 2013 (TEMPO, 2025a), but until now one of the suspects in the case, Paulus Tannos, has been named as a suspect along with former President Director of the State Printing Corporation Isnu Edhy Wijaya; 2014-2019 DPR member Miryam S. Haryani; and Head of the Information Technology Technical Team e-KTP Implementation Husni Fahmi (CNN Indonesia, 2025). The suspects other than Tannos have been sentenced as per the judge's verdict that is legally binding.

Paulus Tannos is a new suspect named by the KPK on August 13, 2019 based on the results of the development of the e-KTP case, where the KPK stated that Paulus Tannos played an important role in conspiring to work on the e-KTP project by conducting several meetings with vendors including suspects Husni and Isnu to engineer the e-KTP project. However, the KPK failed to examine and arrest Tannos, because before he was named a suspect, in 2017, Tannos and his family had left Indonesia and chose to live in Singapore (TEMPO, 2025b). In Indonesia, this is a problem that has not been touched by existing regulations, namely in the event that the suspect is not found, the suspect escapes, the suspect or defendant becomes insane, there are no heirs or heirs are not found for a civil lawsuit, while it is evident that there is a state financial loss, and in the event that the asset is not placed in criminal confiscation. The legal problems that remain untouched above cannot be resolved through the criminal process because the criminal process is an in personam process attached to the perpetrator (Aldino & Susanti, 2025).

So, a special strategy needs to be pursued by progressively changing the legal paradigm of law enforcement officials who do not only prioritize the imposition of prison sanctions but need to optimize the return of state losses (Mahmud, 2020) without focusing on proving criminal guilt, but on the status of the asset itself. One of these approaches is through civil forfeiture. The application of civil forfeiture is a non-penal instrument that has the potential to strengthen international cooperation in tracking and recovering assets across countries. This is in line with the principles of the United Nations Convention Against Corruption (UNCAC) 2003, which has been ratified through Law Number 7 of 2006 (Mamesah et al., 2024).

Therefore, in an effort to restore state financial losses due to corruption crimes, the civil forfeiture approach can be adopted as a restorative mechanism that places the public interest above the interests of punishment to ensure that state assets are not lost in vain just because the perpetrator escapes or cannot be criminally punished. This paper will discuss how civil forfeiture can be applied in the Indonesian legal context as a restorative mechanism that focuses on recovering state financial losses due to corruption crimes. By combining normative and comparative approaches, this paper seeks to offer an alternative solution to the weaknesses of the asset recovery system that relies entirely on criminal mechanisms.

RESEARCH METHODS

This research is a normative legal study that aims to examine positive legal norms related to the implementation of civil forfeiture policies in Indonesia and compare them with other countries. The approaches used in this study include the statute approach, the comparative approach, and the conceptual approach. The formal object of this research is the legal norms governing asset recovery policies, while the material object is asset recovery policies in law enforcement practices in Indonesia and other countries such as the United Kingdom, the United States, and France. The research procedure was carried out in stages, starting with the identification of legal issues, the collection of legal documents, the review of regulations and academic literature, comparative analysis, and the formulation of policy reformulation within the framework of the national legal system.

The data used is secondary data, obtained through a literature study of legislation, official documents, annual reports, as well as academic publications and international documents such as UNCAC 2003. The data collection instrument in this research is legal document analysis, including a review of laws and institutional reports containing quantitative data on asset recovery. Data analysis was conducted qualitatively using legal interpretation methods, including systematic, teleological, and historical interpretations, to explore the meaning and interrelationships between legal norms. This analysis is theoretically linked to Soerjono Soekanto's Theory of Legal Effectiveness, which emphasizes that legal effectiveness depends on norms, law enforcement agencies, supporting facilities, legal awareness, and the legal culture of society. The analysis technique used is descriptive-analytical, which involves presenting data systematically, outlining normative issues, and formulating reformative alternative solutions in the form of a non-penal approach model for asset recovery. Through this method, the research is expected to provide conceptual and practical contributions to the renewal of national legal policy.

RESULTS AND DISCUSSION

1. Weaknesses of Criminal Mechanisms in Efforts to Recover State Financial Losses

The criminal approach in the Indonesian legal system remains the primary means of addressing corruption, including in the recovery of state financial losses. This can be seen from data from the Corruption Eradication Commission (KPK) showing that as of 2023, of the total Rp116.7 trillion in state losses due to corruption, only around Rp34.6 trillion has been recovered (KPK, 2023). However, compensation payments for

losses resulting from corruption are only considered an additional penalty, and even the compensation payments do not match the amount of state financial losses (Edison, 2023). Empirical reality also shows that there is a tendency for corruption convicts to prefer to undergo a subsidiary punishment rather than paying restitution because the weight of the subsidiary punishment is much lighter and quite economical than having to compensate the state so that the state still loses economically (Mahmud, 2017).

Reliance on the criminal process also has many structural and procedural obstacles, including the length of the evidentiary process, the complexity of evidence, and the protection of the defendant's legally binding rights. These conditions often lead to delays and even failures in recovering the proceeds of crime. On the one hand, it also places a significant burden on law enforcement agencies such as the KPK, the Attorney General's Office, and the Indonesian National Police. The high volume of cases that must be handled each year creates pressure on human resources, budgets, and time that is disproportionate to the recovery results obtained. In addition, the focus on investigation and prosecution often detracts from asset tracing and confiscation, which should be an important part of the recovery strategy.

Inconsistencies in law enforcement for perpetrators of corruption crimes that are selective in the application of articles while ignoring the principle of the ultimum remidium result in so many state losses not being recovered. Ultimum remidium must be ensured so that in practice it can run effectively and efficiently. This is important in order to create a balance between legal certainty and justice (Harahap, 2006). In addition to structural burdens, Indonesia's criminal justice system still lacks normative flexibility in handling highly complex corruption cases. The absence of legal instruments that allow for asset recovery without first proving the perpetrator's guilt hinders the effectiveness of the process. For example, civil mechanisms in the form of state lawsuits for losses resulting from corruption can only be carried out if the perpetrator is known and the criminal process cannot be continued for certain reasons, such as death. This mechanism is also subject to ordinary civil procedure law, making it lengthy and not adaptive to the speed of asset recovery.

Another fundamental weakness lies in the imbalance between the repressive and restitutive functions of criminal law. Indonesian criminal law tends to focus on punishing perpetrators rather than on recovering the economic losses incurred by the state. However, according to the principle of ultimum remedium, criminal law should be the last resort, not the primary tool in resolving cases of state financial losses. The placement of criminal law as primum remedium in practice actually leads to waste of state budget and complicates financial recovery. Going forward, the direction of criminal law policy must be re-constructed so that it not only serves to punish perpetrators but also restores public rights that have been violated.

2. Civil Forfeiture as a Restorative Alternative to Recover State Financial Losses

Civil forfeiture or often also called asset forfeiture or asset forfeiture without punishment is a legal mechanism that allows the state to seize assets derived from criminal offenses even though there has been no criminal verdict declaring someone guilty (Rifai H et al., 2025). Asset forfeiture needs to be pursued considering the modes used by corruptors to hide the proceeds of their crimes are changed in various forms, such as: a) immovable property; b) purchase of valuables; and c) loaded in the form of domestic shares. Therefore, the application of civil forfeiture is effective in securing state assets or recovering state financial losses due to corruption, especially if the suspect is difficult to be criminally prosecuted, such as the e-KTP corruption case involving Paulus Tannos. In the context of state financial recovery, civil forfeiture offers a solution that is more efficient and oriented towards substantive justice, because it emphasizes returning state financial losses directly, not just punishing the perpetrator.

This step is important, because corruption crimes that cause state financial losses are interpreted as the loss or reduction of money, securities, and goods that are real and certain in amount, which should be subject to the sanction of returning these losses as appropriate in order to restore state finances. This is in line with the sanctions contained in Law 30/2014 and also Article 59 paragraph (2) of Law 1/2004 concerning the State Treasury, because the context of what is harmed is state finances, and the only effort to restore state finances is not the imprisonment of the body of the perpetrator of the crime of corruption but the return of the losses caused (Hamonangan et al., 2024), including by confiscating the assets owned by the perpetrator.

But this requires a long process because it must wait for a court decision. Meanwhile, the civil mechanism in Indonesia is only used as a backup effort if the efforts in the criminal path are deemed impossible to carry out in terms of reimbursement of state money lost due to corruption or confiscation of the property concerned because there is something like the suspect/ defendant died during the legal process, so the civil suit becomes an alternative so that the legal process is not stopped (Septiana & Afifah, 2022). As a result, the civil mechanism through asset forfeiture is only used as an alternative by law enforcement.

Asset forfeiture efforts have been contained in Article 18 letter (a) of Law 31/1999 on Corruption Crimes which states that:

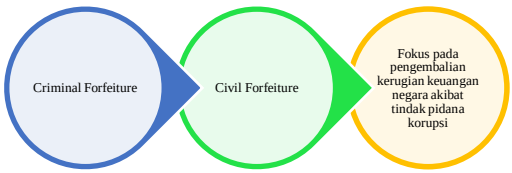
"forfeiture of tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes, including companies owned by convicts where corruption crimes are committed, as well as the price of goods that replace these goods".

Based on a court decision that has permanent force, assets controlled by the perpetrator of a corruption crime can be forcibly taken in accordance with the value of losses arising from the corruption crime committed. In the process of asset expropriation through criminal channels, the first stage aims to find evidence of asset ownership and the location of property storage related to corruption crimes. This is done by tracing the allegedly illegally acquired property. Furthermore, the perpetrator is not allowed to transfer, change, dispose of, or hide assets, or temporarily carry out responsibilities as manager, custodian, or supervisor of assets based on the decision of other officials who have the authority (Aldino & Susanti, 2025). However, criminal deprivation has many difficulties in its implementation. One of them is the ability of the perpetrator to divert or flee the proceeds of crime or instruments of crime abroad and even the perpetrator may flee abroad as in the case *a quo*.

Meanwhile, civil asset forfeiture efforts in Law 31/1999 jo. Law 20/2001 actually still uses an ordinary civil regime where the trial process is still subject to ordinary formal or material

civil law. Thus, the civil lawsuit in Law 31/1999 jo. Law 20/2001 requires the prosecution to prove the existence of "state losses". This is of course different from Non-Conviction Based (NCB) which uses a different civil regime such as reverse proof. The principle of reversing the burden of proof has very comprehensive benefits considering that one of the obstacles to eradicating corruption is the difficulty of proving the perpetrators, so it is necessary to change the proof system, which was originally imposed on the public prosecutor, to the defendant (Dalimunthe, 2020) to prove that the assets confiscated by law enforcement officials did not originate from corruption or other crimes.

The idea of returning assets from the proceeds of corruption crimes is actually in line with restorative justice, which is none other than one of the objectives of punishment itself (Wantra et al., 2025).



Picture 2. Application of Civil Forfeiture in Returning State Financial Losses

By using the return of assets resulting from corruption through the reverse burden of proof based on the principle of presumption of guilt through the civil forfeiture mechanism (Endraswari, 2016) with the return and transfer of assets to the state who are victims of criminal acts so that this mechanism is effectively used in efforts to recover state financial losses, especially in conditions where the suspect is absconding.

The concept of asset forfeiture without criminalization according to Sudarto and Hari Purwadi, is the most appropriate and simple way to carry out an asset forfeiture mechanism without criminalization or non-conviction-based (NCB) asset forfeiture is that initially assets suspected of being the proceeds of crime are blocked and withdrawn from economic traffic, namely through confiscation requested by the court (Rifai H et al., 2025). In addition, asset forfeiture is an obligation of every member state, including Indonesia based on the United Nations Convention Against Corruption (UNCAC) as part of international cooperation efforts in fighting corruption.

Article 54 paragraph (1) of UNCAC has stipulated that all countries should consider taking measures deemed necessary so that the confiscation of assets resulting from corruption is possible without criminal proceedings in cases where the perpetrator cannot be prosecuted by reason of death, flight or not found according to the case a quo. In Law 31/1999 jo. Law 20/2001 has provided limited solutions to the return of corrupt assets on a national scale through civil lawsuits as stipulated in Article 32, Article 33, Article 34, and Article 38 letter c of the Anti-Corruption Law, or through criminal prosecution as stipulated in Article 11 letter a, Article 18 paragraph (2), Article 38 paragraph (5).

The advantages of using civil forfeiture as an effort to recover state financial losses due to corruption, namely: a) does not require a long process such as a criminal mechanism so that assets can be secured immediately so that there is no transfer by the suspect; b) prevents the perpetrator from enjoying the proceeds of crime; c) effective recovery of state financial losses; and d) can encourage transparency and accountability in law enforcement. Therefore, the concept of a more effective asset forfeiture method than the current one using in rem asset forfeiture needs to be immediately enacted, including by revising the Prosecutor's Office Law, KUHAP, and TIPIKOR Law to include a civil forfeiture mechanism with a reversed burden of proof based on the *presumption of guilt.*

3. Application of Civil Forfeiture in Various Countries

a. United States of America

The implementation of asset forfeiture with civil forfeiture mechanism in the United States makes assets as the subject of law (Department of Justice, 2025). In the implementation of civil forfeiture against an asset, the US government first announces to the public that the asset will be confiscated by the court without the need to issue a warrant of arrest in rem, this implementation is carried out based on the Civil Asset Forfeiture Reform Act (CAFRA) 2000. This means that the implementation of forfeiture by in rem lawsuit in the United States can be carried out without waiting for a conviction decision from the court and can run together with the adjudication process in the criminal court that examines, tries and decides the defendant's case (Sakinah & Sumardiana, 2025).

In the United States, asset forfeiture is managed by the Department of Justice called the Asset Forfeiture Program (AFP). The program uses asset forfeiture as a tool to deter, disrupt, and dismantle crime, by denying them the proceeds and instruments of criminal activity. AFP involves federal, state, tribal, and local law enforcement agencies across the country. The main objectives of AFP are to punish and deter criminal activity by seizing property used in or obtained through illegal activity, Promote stronger collaboration between law enforcement agencies at the federal, state, local, tribal, and international levels; return assets that may be used to compensate victims in accordance with federal law; and ensure that program implementation is professional, legal, and in line with the principles of good publicy (Sakinah & Sumardiana, 2025).

b. United Kingdom

The implementation of civil forfeiture is carried out by the Asset Recovery Agency, which later merged into part of the National Crime Agency, which can apply for civil recovery in several conditions, namely: the perpetrator of the crime has died, the perpetrator is acquitted in the criminal judgment, there is a criminal judgment but without asset forfeiture due to prosecutorial error, the perpetrator is outside the UK jurisdiction, the owner of the asset cannot be identified, or there is insufficient evidence to support the criminal prosecution process (Sakinah & Sumardiana, 2025; Sonora Gokma & Nelson, 2023). To achieve asset recovery in the UK, there are four stages: tracing assets, collecting evidence, freezing and seizing assets (through mutual legal assistance/MLA requests and handling assets (assets can be returned to the foreign jurisdiction after the seizure process is completed). These stages are in line with the practices stipulated in the Criminal Finances Act 2017 in the UK as an update in asset recovery in the UK applying

the Unexplained Wealth Order (UWO) mechanism which is a civil investigative instrument that requires a Politically Exposed Person (PEP) or an individual suspected of being involved in financial crime, or having links to it, to explain the ownership of assets that appear disproportionate to their official income (Sakinah & Sumardiana, 2025).

According to the Asset Recovery Statistical Bulletin for the financial year ending March 2024, the UK recovered £243.3 million from the proceeds of crime through various mechanisms, including forfeiture, confiscation and civil recovery orders. Of this, £7.4 million was recovered through civil recovery orders, which are a form of non-penal approach (GOV UK, 2024).

c. France

France as a civil law country has adopted civil forfeiture (asset forfeiture without conviction) through an in rem approach, as set out in Article 41-4 of the Code de Procédure Pénale and Article 131-21 of the Code Pénal. This mechanism allows the state to confiscate assets resulting from a crime even though there has been no criminal judgment against the perpetrator. France also established the Agence de Gestion et de Recouvrement des Avoirs Saisis et Confisqués (AGRASC) to manage confiscated assets. (Boucht, 2014) asserts that despite potential tensions with the presumption of innocence, asset-based forfeiture remains legitimate if carried out proportionally and transparently as an effort to save state financial losses due to criminal acts.

Table 2. Comparison of Civil Forfeiture Implementation

Country	Legal Basis	Implementing Agency	Legal Framework	Applicable Conditions	Key Characteristics
Amerika Serikat	Civil Asset Forfeiture Reform Act (CAFRA) 2000	Department of Justice (Asset Forfeiture Program - AFP)	*In rem* (Non-conviction based)	Assets suspected of being proceeds of crime; perpetrators not yet prosecuted; parallel process with criminal proceedings	Does not require a criminal conviction; asset-based; can be used for victim compensation
Inggris	Criminal Finances Act 2017, Proceeds of Crime Act 2002	National Crime Agency (NCA)	*In rem* + *Unexplained Wealth Order*	The suspect died, is on the run, there is insufficient criminal evidence, or the assets cannot be directly linked.	Possible if the owner cannot prove the legality of the assets; asset freeze orders are possible
Prancis	Code de Procédure Pénale Pasal 41-4, Code Pénal Pasal 131-21	AGRASC (Agence de Gestion et de Recouvrement des Avoirs Saisis et Confisqués)	*In rem*	No criminal conviction; assets suspected of being derived from crime	Focus on assets rather than actors; implemented proportionally and transparently; based on human rights protection

The application of civil forfeiture in various countries shows that asset seizure without criminal prosecution is not a threat to the principle of due process of law, but rather a legitimate restorative alternative to ensure that state finances do not continue to suffer losses due to the limitations of criminal mechanisms. Countries such as the United States, the United Kingdom, and France have developed legal systems that allow the state to seize assets through faster and more efficient in rem mechanisms. Lessons from these countries show that the success of asset recovery is highly dependent on legal certainty, specialized institutions, adaptive proof systems, and cross-border cooperation.

Indonesia, which is still fixated on a penal and in personam approach, must immediately undertake structural legal reforms by enacting an Asset Forfeiture Law, strengthening institutional functions, and ensuring that asset forfeiture can be carried out without depending on the legal status of the perpetrator. This is in line with the mandate of UNCAC 2003 Article 54, which regulates asset forfeiture without a criminal conviction in certain conditions, such as the perpetrator's escape or death. Thus, strengthening civil forfeiture in Indonesia is not only important in terms of legal effectiveness but also as part of a global commitment to combat corruption progressively and fairly.

This can also be seen in the experience of France, where the civil law system does not pose an obstacle to the application of civil forfeiture, provided that it is supported by strong regulations and adequate human rights protections. The implementation in the United States and the United Kingdom can also serve as a reference for efforts to maximize the financial losses incurred by the state as a result of corruption. Because if a penal or punitive approach is used in corruption crimes, it is equivalent to draining state finances during the investigation of the corruption case itself, from the investigation stage, prosecution, to court proceedings. The application of ultimum remidium in the agenda to reformulate the policy on the application of civil forfeiture

in terms of recovering state financial losses due to corruption is very important to emphasize. This principle aims to prevent the abuse of state power that is repressive and excessive, and emphasizes the importance of a more balanced, humane, and efficient legal resolution. The use of criminal penalties as primum remidium in cases of mismanagement of state finances is often carried out excessively by law enforcement officials, even though the issues in question can be resolved through administrative or civil mechanisms.

CONCLUSION

The application of civil forfeiture as a restorative mechanism in recovering state financial losses resulting from corruption is a strategic alternative that can address the various shortcomings of conventional criminal approaches. Reliance on criminal proceedings has proven ineffective in terms of speed, efficiency, and asset recovery success. Especially in cases where perpetrators flee, die, or cannot be prosecuted, criminal proceedings become stalled and continue to harm state finances.

Civil forfeiture offers an approach focused on the status of assets, not the perpetrator, enabling the seizure of corrupt assets without waiting for a criminal conviction. This is not only more adaptive to the dynamics of transnational corruption crimes but also aligns with the principles of restorative justice, which prioritize the recovery of losses. Lessons from countries such as the United States and the United Kingdom show that civil forfeiture can be effectively implemented through an in rem legal framework based on the burden of proof and with international legitimacy, particularly within the framework of the 2003 United Nations Convention against Corruption (UNCAC). Therefore, it is necessary to update national regulations that explicitly regulate non-conviction-based (NCB) asset forfeiture schemes while ensuring human rights principles and legal certainty. The enactment of the Asset Forfeiture Law is an urgent necessity as the legal basis for the implementation of civil forfeiture in Indonesia. The integration of this approach will not only accelerate the recovery of state losses but also strengthen the effectiveness of corruption eradication within the framework of a fair, progressive, and public interest-oriented legal system.

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