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Normative Reconstruction of Asset Forfeiture: A Legal Pathway Following Demise of Corruption Suspects

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ABSTRACT

The death of a corruption suspect before a final and legally binding court judgment creates a fundamental juridical paradox that paralyzes the Indonesian criminal justice system. On one hand, the state loses its instruments for recovering losses due to its reliance on the conviction-based asset forfeiture paradigm. On the other hand, seized assets are trapped in a state of uncertainty, injuring the public's sense of justice while simultaneously threatening the civil rights of the heirs. This research aims to analyze this normative vacuum (rechtsvacuüm) critically and, as its culmination, to formulate a concrete, implementable legal reconstruction of law as it ought to be (ius constituendum). Using a normative legal research method grounded in statutory, conceptual, and critical comparative approaches, this study finds that the current juridical dead end is at odds with Radbruch's three basic legal values: justice, certainty, and utility. As a solution, this research proposes a paradigm shift toward the NCB asset forfeiture model, operationalized through a procedural blueprint in the form of a special civil lawsuit. Based on a critical synthesis of international practices, a hybrid model is designed—termed the “Civil-Based Asset Status Examination”—which adopts the flexibility of the civil law tradition while strictly guaranteeing due process of law. The final result is a concrete normative formulation capable of reconciling the state's interest in asset recovery with the protection of human rights, while simultaneously offering a progressive step in the renewal of criminal procedure law in Indonesia.

Keywords: *Corruption; Heirs' Rights; NCB Asset Forfeiture; Normative Reconstruction; Suspect's Demise.*

INTRODUCTION

Corruption has long been recognized as an extraordinary crime. Its corrosive impact is measured not only by a state's financial losses but also by its capacity to shred the fabric of public trust and delegitimize state institutions (Fauzi, 2018; Harefa et al., 2020; Anandya & Ramadhana, 2024). This pathological phenomenon, as described by Handoyo (2013), is both multidimensional and systemic. Such conditions demand a law enforcement response that transcends the mere punishment of perpetrators. The required legal framework must be simultaneously repressive and restorative, placing asset recovery as one of its central pillars (Sulantoro, 2021). Without effective recovery efforts, the fight against corruption becomes a mere spectacle of punishment, devoid of any tangible restorative impact on society.

Within this context, evidentiary assets derived from crime undergo a fundamental shift in meaning. These assets no longer function merely as an instrument of proof to secure a conviction in court. More significantly, seized assets are a concrete manifestation of state losses and become the central object for restoring public justice (Yusuf, 2014; Supardi, 2018). Therefore, ensuring these assets are returned to the state treasury is an imperative. The objective is not only to recover economic losses but also to affirm the principle that crime must not pay for any party involved.

However, the architecture of Indonesian criminal procedure law contains a crucial structural flaw. This weakness manifests dramatically when a corruption

suspect or defendant dies before the judicial process reaches a final, legally binding judgment (*inkracht van gewijsde*). Law Number 8 of 1981, the primary foundation for criminal procedural law, is built upon the paradigm of conviction-based asset forfeiture. This paradigm absolutely requires a guilty verdict as the juridical basis for forfeiting assets. Consequently, when criminal prosecution is terminated by operation of law—as stipulated in Article 77 of Law Number 1 of 1946 due to the defendant's death—the state effectively loses all legal instruments to proceed with the forfeiture of seized assets.

This situation creates a serious and problematic legal vacuum (*rechtsvacuüm*). Its impact extends far beyond theoretical discussions in academic seminars. This juridical impasse is a tangible problem that has repeatedly occurred in judicial practice, directly harming the state's interests. The most vivid example is the case involving the late Haris Harto. In that instance, the Binjai District Prosecutor's attempt to file a civil lawsuit against the heirs was declared inadmissible (*niet ontvankelijke*) by the Binjai District Court. One of the judge's considerations, as analyzed by [Brunner et al. \(2024\)](#), was the prosecutor's inability to prove in detail the identities of the legal heirs. This ruling set a bitter precedent, demonstrating how the absence of a clear procedural legal basis renders the state's efforts to recover assets futile.

In essence, this impasse gives rise to a paradox—a conceptual tension—between two fundamental legal principles, both guaranteed by the Constitution. On the one hand, the state possesses a constitutional mandate and a legitimate public interest in recovering financial losses arising from corruption. On the other hand, there is the principle of protecting property rights guaranteed by the Constitution, including the civil rights of heirs. Without an adequate legal instrument, any state action to pursue assets held by heirs risks being deemed arbitrary and a violation of human rights ([Muntahar et al., 2021](#)). Herein lies the urgency to formulate a juridical middle path capable of reconciling public interests with the protection of private rights ([Zyham et al., 2022](#); [Syauket, 2025](#)).

Globally, the international community has long recognized the fatal flaw of models that depend entirely on criminal convictions. In response, a global paradigm shift toward Non-Conviction-Based (NCB) Asset Forfeiture has occurred. This concept is explicitly endorsed by the UNCAC. The convention enables states to forfeit assets through non-criminal channels, such as civil actions, when the perpetrator cannot be prosecuted, including by reason of death. Practices in various countries, such as the United Kingdom's Unexplained Wealth Order (UWO) and the United States' civil-based asset forfeiture mechanism, indicate a global consensus ([Heathershaw & Mayne, 2023](#); [Anisa & Nelson, 2024](#)). This consensus holds that a perpetrator's death should not serve as a shield protecting the proceeds of crime from the reach of the law.

In Indonesia, academic discourse on NCB asset forfeiture has indeed developed, yet it has largely remained at the conceptual level. Several studies have successfully mapped the concept from an economic analysis perspective (Hafid, 2021) and compared it with the mandates of UNCAC (Abdullah et al., 2021). Other research has even explored the potential application of an *in rem* action model (Fitriyani & Maizaroh, 2023). Although these studies have laid a crucial theoretical foundation, they have not yet translated the NCB framework into specific, in-depth operational solutions for the juridical impasse caused by a suspect's death. In other words, the existing literature has answered the question of "what NCB is," but has left a crucial research gap regarding "how NCB can be operationalized to fill this specific legal vacuum."

This research gap is exacerbated by the stagnant state of national legislation. The Asset Forfeiture Bill, touted as the primary legislative instrument for adopting an NCB mechanism, has been stalled in legislative deliberations for years (Ramelan et al., 2012; BPHN, 2022; DPR, 2024). This process is hampered by various political dynamics (Jumantoro et al., 2025). Although its academic draft includes relevant clauses, the absence of this law to date compels law enforcement officials on the ground to operate within a juridical gray area. They are forced to rely on discretion without a solid normative foundation. Ironically, such practices are vulnerable to abuse of power and corruption itself (Ketaren et al., 2024).

Thus, the urgency of this research stems from three intertwined layers of issues. There is a philosophical urgency to uphold the values of justice, certainty, and the utility of law. There is also a juridical-constitutional urgency to fill the legal vacuum and guarantee citizens' rights. Finally, there is a practical urgency to provide law enforcement officials with an effective instrument. These three urgencies demand a conceptual breakthrough that not only identifies the problem but also boldly proposes a comprehensive, implementable, and academically defensible solution.

Based on the background outlined above, this research has a series of systematic objectives. *First*, it aims to critically analyze the vacuums and weaknesses within Indonesia's positive legal framework that lead to an impasse in resolving corruption assets following a suspect's death. *Second*, it seeks to construct an ideal conceptual model of asset forfeiture in these circumstances, drawing on fundamental legal principles and comparative practices. *Third*, as the culmination of the analysis, it aims to formulate a proposed normative reconstruction of the law as it ought to be (*ius constituendum*) that is both concrete and implementable. This study is expected to provide a theoretical contribution to the development of criminal procedure law discourse in Indonesia. Furthermore, it also offers a practical contribution in the form of substantive policy input for the deliberations on the Asset Forfeiture Bill and potential future amendments to Law Number 8 of 1981.

METHOD

To dissect the issues and achieve the stated research objectives, this study is designed within the framework of normative, or doctrinal, legal research. This methodological choice is a logical necessity, given the fundamental nature of the problem under examination: the existence of a legal vacuum (*rechtsvacuüm*), potential regulatory disharmony, and the urgent need for a conceptual and prescriptive legal reconstruction (Marzuki, 2014). While fully acknowledging the strong empirical implications of this issue on the ground, this study consciously confines its scope to the normative domain. The purpose is first to construct a robust, coherent, and academically defensible doctrinal foundation that can then serve as a valid basis for subsequent empirical research (Soekanto & Mamudji, 2010).

In its operationalization, this research applies three approaches simultaneously and synergistically to dissect the problem comprehensively across multiple dimensions (Qamar & Rezah, 2020). The statute approach is employed as the primary instrument for the inventory, identification, and critical analysis of various positive legal products—particularly Law Number 8 of 1981 and Law Number 31 of 1999¹—to map the location of normative gaps and inconsistencies precisely. Next, the conceptual approach is utilized to provide philosophical and theoretical depth. This approach uses various legal theories and principles, such as Rawls's (1971) theory of justice and Radbruch's (2006) three basic values of law, as analytical tools to evaluate the quality of existing norms and to build the foundational argument for reconstruction. Finally, the comparative approach is used to open alternative horizons by critically studying how legal systems in other countries—specifically the United Kingdom, the United States, the Netherlands, and Thailand—have designed solutions to similar problems, providing instructive material for formulating the most suitable model for Indonesia.

The entire argumentative structure of this research is supported exclusively by secondary data collected through systematic library research (Sampara & Husen, 2016). This process involves inventorying, identifying, classifying, and selecting the most relevant and current sources. These data sources are classified into three main categories. Primary legal materials include all relevant laws and regulations, as well as final, legally binding court decisions. Secondary legal materials include comprehensive academic literature, including the Academic Draft of the Asset Forfeiture Bill; textbooks; reputable national and international scientific journals; and various articles that present the doctrines and opinions of recognized legal scholars. As a supplement, tertiary legal materials such as legal dictionaries, encyclopedias, and glossaries are used to clarify complex juridical definitions and concepts.

¹Law Number 31 of 1999, as amended by Law Number 20 of 2001.

The culmination of this methodological process is the data analysis technique, designed to address the research objectives in a phased, systematic manner. The analysis is conducted using a normative qualitative method that progresses from a descriptive to a prescriptive level (Irwansyah, 2020). In the initial stage, the collected data is analyzed descriptively-analytically. This analysis employs methods of legal interpretation, particularly systematic and teleological interpretation, to comprehend the meaning, purpose, and interrelation of norms within the positive law (*ius constitutum*), ultimately confirming the existence of a legal vacuum. Subsequently, the findings from this interpretive stage are synthesized with the theoretical framework from the conceptual approach and the results of the comparative study. The objective is to construct a cohesive argument for the envisioned ideal model. The final stage of this analysis involves legal construction, in which the research transitions from merely explaining or evaluating to actively formulating a recommended new norm as the law ought to be (*ius constituendum*). This new norm must be logical, coherent, and academically defensible, and must be designed specifically to fill the legal vacuum identified earlier.

RESULTS AND DISCUSSION

A. Systemic Pathology: A Diagnosis of the Normative Vacuum in Positive Law

The endeavor to reconstruct the legal norms governing the status of corruption assets following a suspect's demise is not merely a technical or procedural matter. It is an urgent necessity rooted in the philosophical and juridical foundations of the Indonesian state under the rule of law. This issue is, in essence, a systemic pathology. The existing legal vacuum (*rechtsvacuüm*) not only creates procedural dysfunction but also actively undermines the fundamental principles that support the legal order itself. The absence of a mechanism to resolve the status of seized assets when criminal prosecution is terminated due to a suspect's death has given rise to an anomaly (Pawe et al., 2025). Assets strongly suspected of originating from criminal activities become trapped in a legal gray area, unable to be forfeited by the state yet not legally returnable to the heirs. This condition directly challenges the essence of a just state governed by the rule of law.

Philosophically, this pathology can be sharply diagnosed through the framework of the three basic legal values proposed by Radbruch (2006): legal certainty (*rechtssicherheit*), justice (*gerechtigkeit*), and utility (*zweckmäßigkeit*). First, from the perspective of legal certainty, this regulatory vacuum blatantly sacrifices the predictability and consistency that are the lifeblood of a modern legal order. The absence of clear norms has led to inconsistent law enforcement practices, in which the fate of seized assets depends more on officials' interpretation

and discretion than on rigid rules. This condition, as [Arief \(2018\)](#) warned, creates “multiple uncertainties.” For the state, there is a permanent risk of losing assets that should be recoverable. For the heirs, there is ambiguity over assets that can be held hostage in legal proceedings with no clear end. This uncertainty is the antithesis of a healthy legal order ([Tantimin, 2023](#)).

Second, from a justice standpoint, the current situation creates an acute, unresolved dilemma. On one hand, allowing heirs to tacitly control assets strongly suspected to be the proceeds of corruption would deeply wound the public’s sense of justice. It also perpetuates the dangerous message that the profits of crime can be inherited. This inaction contradicts the principle of corrective justice, which demands remedying wrongs. On the other hand, depriving heirs of these assets—who in many cases were not involved in the criminal act—without a fair and transparent judicial process risks violating their legitimate civil rights. This situation clashes with the principle of distributive justice as conceptualized by [Rawls \(1971\)](#), which requires fairness in the allocation of rights and obligations. The existing legal vacuum fails to provide a mechanism capable of mediating between these two poles of justice. Consequently, injustice is allowed to persist in two different forms.

Third, from a utilitarian perspective, the status quo is highly inefficient and counterproductive. High-value assets seized and left to languish in legal limbo for years are subject to depreciation, physical deterioration, or even misuse by irresponsible parties ([Ketaren et al., 2024](#)). It represents a massive waste of public resources. This condition directly contradicts the primary objective of the asset recovery regime mandated by UNCAC, which stipulates that the proceeds of crime should be optimally managed and subsequently returned for the greatest possible public welfare. Thus, the absence of an effective resolution mechanism is not just a legal failure; it is also a failure to realize the socio-economic benefits of the anti-corruption agenda.

Juridically and constitutionally, the failure of positive law to address this issue constitutes a serious anomaly within the Indonesian rule of law. The principle of the rule of law (*rechtstaat*), as affirmed in Article 1 section (3) of the 1945 Constitution, mandates that all government actions must be based on clear law. It includes the seizure and forfeiture of assets, which cannot be based on incidental (*ad hoc*) policy or mere discretion ([Asshiddiqie, 2006](#); [Pawe et al., 2025](#)). The absence of an explicit *post-mortem* norm in either Law Number 8 of 1981 or Law Number 31 of 1999 effectively encourages practices that rely on administrative policy. Such practices are prone to abuse, which ironically can open avenues for new corruption within the asset management process.

Furthermore, this condition directly clashes with the guaranteed protection of citizens' constitutional rights. Article 28D section (1) of the 1945 Constitution explicitly guarantees every person's right to "recognition, guarantees, protection, and fair legal certainty." In this context, the heirs of a deceased suspect are entitled to legal clarity regarding the status of assets connected to the decedent. Leaving their assets in a state of uncertainty without a fair resolution mechanism constitutes a disregard for this constitutional right. Likewise, it also intersects with the right to property guaranteed in Article 28H section (4) of the 1945 Constitution. Therefore, it can be concluded that the need to reconstruct this legal norm is no longer a mere policy choice. This need is a constitutional imperative to heal the pathology within the system, uphold the principle of the rule of law, and guarantee the fundamental rights of citizens.

B. A Paradigmatic Turning Point: Proposing Civil-Based Asset Forfeiture as a Solution

After diagnosing the systemic pathology that paralyzes asset recovery efforts, the next logical step is to formulate a way forward. The fundamental limitation of Indonesia's criminal procedure framework, as previously described, stems from its rigid adherence to the conviction-based asset forfeiture paradigm. This sole dependency on a criminal verdict, as affirmed by [Aldino and Susanti \(2025\)](#), creates an unavoidable juridical dead end the moment a suspect passes away. To escape this impasse, a bold paradigm shift is required. This turning point involves adopting and internalizing the NCB asset forfeiture model.

This paradigm shift is not a leap into a conceptual void. It aligns with international legal consensus. The NCB concept is specifically regulated in Article 54(1)(c) of the UNCAC as an instrument to address situations where a perpetrator cannot be prosecuted for various reasons, including death. [Abdullah et al. \(2021\)](#) even underscore that adopting NCB asset forfeiture is the most logical and relevant solution to circumvent the consequences of Article 77 of Law Number 1 of 1946, which is set to come into effect. Thus, this move is not merely about innovation but also about harmonizing national law with global standards and best practices in the fight against corruption.

The essence of this paradigmatic turning point lies in the clear conceptual separation between legal proceedings against the subject (the perpetrator) and those against the object (the asset). The former is a criminal proceeding against the person (*in personam*) aimed at proving criminal guilt. The latter, meanwhile, is a civil proceeding against the asset itself, intended to establish its illicit status. By making this separation, the focus of proof shifts fundamentally: from the often-

futile endeavor of “punishing the deceased perpetrator” to the more realistic and beneficial effort of recovering “crime-tainted” assets for the state.

The operationalization of this NCB paradigm can be effectively realized through the domain of civil law. Although civil law instruments have long been recognized in Indonesia’s legal system, they have not been optimized for asset recovery in cases of corruption. The proposed model is the filing of a special civil lawsuit by the state, through the State Attorney (JPN), against assets strongly suspected to have originated from a criminal act of corruption. This approach offers an elegant way out of the criminal law impasse because, in the civil realm, the death of a decedent does not automatically extinguish their obligations, including the obligation to return unlawfully obtained assets.

Furthermore, this civil-based approach opens up two primary modalities that can be applied either in parallel or cumulatively, depending on the case’s characteristics and the strength of the evidence. The first modality is an action against the thing (*in rem*) (Fitriyani & Maizaroh, 2023). In an *in rem* lawsuit, the asset itself is the object of the dispute, as it is considered “tainted” by the criminal act. The burden of proof is to demonstrate a direct link between the asset and the corrupt activity. Thus, the legal status of the asset is detached from that of its owner, allowing the state to directly target the “proceeds of crime” without continually pursuing the “perpetrator,” who is no longer alive.

The second modality is a civil action against the person (*in personam*) specifically directed at the heirs. It is crucial to emphatically underline that this lawsuit is not a disguised attempt to criminalize the heirs. Instead, it aims to enforce the fundamental civil law principle that no one should be heard who invokes his own guilt (*nemo auditur propriam turpitudinem allegans*). As detailed by Zyham et al. (2022) and Syauket (2025), heirs can be held civilly accountable. However, this accountability is limited strictly to the value of the corruption-derived assets they received as part of their inheritance. In this scenario, the state acts as a legitimate creditor, seeking to recover the losses it suffered from the tainted portion of the estate.

Ultimately, this paradigm shift does not aim to create new law from nothing (*ex nihilo*). Rather, it seeks to activate, adapt, and optimize existing civil law principles and instruments within the Indonesian legal system. Therefore, this step is not a revolution that demands a complete overhaul; it is an intelligent evolution to make the law more responsive, just, and beneficial in the war against corruption. It is a step to ensure that the death of a corrupt individual does not become the final victory for the crime itself.

C. Mirroring Other Jurisdictions: Critical Lessons from International Practice

After proposing the need for a paradigm shift toward a civil-based asset forfeiture model, the next logical step is to look outward to reflect on the experiences of other jurisdictions. This comparative law approach is not merely an attempt to crudely imitate the legal models of other countries (a legal transplant). Instead, it is a critical learning process aimed at identifying universal principles, absorbing proven models, and anticipating potential challenges that may arise during adaptation into the Indonesian legal context. By dissecting the best practices and failures of other nations, the formulation of a reconstruction model for Indonesia can be conducted more meticulously, informatively, and realistically.

1. The UK's Civil Recovery Model: A Dialectic between Effectiveness and Limitation

The United Kingdom is often regarded as a pioneer in the application of civil-based asset forfeiture, particularly through its monumental legislation, the Proceeds of Crime Act 2002 (POCA). POCA introduced a civil recovery mechanism that allows the state, through bodies such as the National Crime Agency, to file a claim in the High Court against assets suspected to be the proceeds of unlawful conduct. The primary theoretical advantage of this model lies in its standard of proof. Unlike criminal proceedings, which demand proof “beyond a reasonable doubt,” a civil recovery claim only requires proof on the “balance of probabilities.” This lower standard significantly facilitates the state’s ability to successfully forfeit assets, even when evidence to convict an individual is insufficient or unattainable, such as in cases involving the suspect’s death.

Although it appears robust on paper, the practical implementation of POCA reveals a sharp dialectic between legal power and the reality of its enforcement. An analysis by [Chistyakova et al. \(2021\)](#) uncovered a crucial finding: rather than serving as a primary weapon against high-level white-collar crime and corruption, the UK’s asset forfeiture mechanism has, in many cases, been more effectively used as a symbolic disciplining tool against lower-level acquisitive crimes. It indicates a significant gap between the law in the books and the law in action. High-value targets with substantial financial resources and access to the best legal services are often more difficult to reach. Consequently, the instrument’s effectiveness becomes limited to weaker targets.

This gap became even more apparent with the existence of a more aggressive instrument, the UWO, through the Criminal Finances Act 2017.

The UWO was specifically designed to target the wealth of transnational kleptocrats by reversing the burden of proof, compelling individuals to explain the legitimate origins of their suspicious wealth. However, a critical analysis by [Heathershaw and Mayne \(2023\)](#) of one of the most high-profile UWO cases—involving the family of a former high-ranking Kazakh official—demonstrated the instrument’s failure. They found that ruling elites, aided by professional legal and financial enablers, were able to construct complex and legally acceptable explanations to shield their wealth from the UWO’s grasp. Ironically, the instrument designed to combat corrupt elites is more susceptible to ensnaring dissidents or elites who have lost their political power.

The lessons from the UK experience for Indonesia are dualistic and must be critically digested. On the one hand, the civil recovery model offers a mature, proven, and highly attractive procedural framework, notable for its balance between effectiveness and due-process guarantees. On the other hand, the UWO case provides a stark warning that, however sophisticated a legal instrument may be, it can be blunted when confronted with political power and the expertise of professionals who assist in concealing assets. Therefore, the adoption of a UK-inspired model must be accompanied by a critical awareness of potential implementation gaps and, just as importantly, the need to build law enforcement capacity capable of confronting sophisticated and complex legal resistance.

2. The United States’ *In Rem* Actions: Radical Effectiveness and a Stark Human Rights Warning

After analyzing the more balanced UK model, the United States case study presents a fundamentally different spectrum. The United States has a long tradition, perhaps the most extensive, of applying NCB asset forfeiture, widely known as civil-based asset forfeiture. The Civil Asset Forfeiture Reform Act of 2000 is a pivotal piece of legislation, instrumental in shaping and reforming the modern asset forfeiture program. The foundation of this model is a potent and radical legal fiction: the doctrine of an action against the thing (*in rem*). Under this doctrine, the state does not prosecute an individual. Instead, the state files a lawsuit directly against the asset, which is considered “tainted” or “guilty” for its involvement in a criminal act. Theoretically, in a case commonly styled as *United States v. \$124,700 in U.S. Currency*, the “defendant” is the currency itself, not its owner.

The logical consequence of this *in rem* approach is its extraordinary effectiveness in severing the dependency on the perpetrator’s status. The death,

flight, or even acquittal of the asset's owner from criminal charges becomes irrelevant; the state can still proceed with the forfeiture process (Sofian et al., 2023). By detaching itself from the need to prove an individual's guilt in a criminal court, the state can act more quickly and flexibly. This process is highly relevant in cases where a suspect has died, as the focus of proof shifts from the individual's guilty mind (*mens rea*) to the asset's nexus with illegal activity (Cassella, 2018). For decades, this mechanism has been a mainstay weapon for the U.S. government in the wars on drugs, organized crime, and corruption, proving capable of crippling criminal networks by severing their financial lifelines (Anisa & Nelson, 2024).

This high effectiveness, however, comes at a steep price: the serious potential for human rights violations and the erosion of fundamental principles of criminal law. The most pointed criticism frequently leveled against civil-based asset forfeiture is its capacity to erode the presumption of innocence. In many cases, the burden of proof is effectively reversed; the asset owner—who may never have been criminally charged—is compelled to prove in court that their property was acquired legitimately (Rompegading, 2022). This process can be exceedingly expensive, complex, and time-consuming. Consequently, many citizens with limited resources choose to forfeit their assets despite their innocence simply to avoid a protracted, burdensome legal process.

Furthermore, the model carries a dangerous systemic risk: the potential to encourage “policing for profit.” Sianipar et al. (2024) specifically highlight that the U.S. asset forfeiture system, which shares similarities with concepts in Indonesia's Asset Forfeiture Bill, has an inherent potential for abuse. This concern is amplified by the practice in some jurisdictions where law enforcement agencies are permitted to retain a portion of the assets they seize to fund their operations. This financial incentive can drive aggressive, disproportionate seizures, in which targets are no longer based on the strength of the evidence but on the economic value of the seizable assets.

Thus, the lesson from the United States for Indonesia is a stark warning. Although the *in rem* model offers the allure of extraordinary effectiveness, its adoption must be approached with extreme caution. Adoption without robust due-process protections, a clear standard of proof for the state, and accessible third-party claim procedures risks creating a repressive instrument that could erode the public's sense of justice. Effectiveness in asset recovery must not be bought at the expense of citizens' fundamental rights.

3. The Civil Law Middle Path: The Netherlands' Integrated Approach

In contrast to the models derived from the common law traditions of the UK and the U.S., the Dutch legal system offers a particularly valuable perspective for Indonesia, primarily because of its shared roots in the civil law tradition. Rather than creating an entirely separate civil-based asset forfeiture regime that is at times adversarial to criminal law, the Netherlands, through the *Wetboek van Strafvordering*, has developed a more integrated and flexible approach. This approach is known as the confiscation of unlawfully obtained profits (*ontnemings van wederrechtelijk verkregen voordeel*). This model demonstrates that NCB principles can be integrated into an existing procedural framework without requiring a radical overhaul of the system.

The core of the *ontnemings* mechanism is its focus on the “illegal profits” themselves, rather than on punishing the perpetrator as a primary prerequisite. This procedure can be initiated by the Public Prosecutor as a separate process, which can run in parallel with or even after the main criminal process is completed. Most importantly, the success of the *ontnemings* procedure is not absolutely dependent on a conviction in the principal case. As long as the state can demonstrate to a judge that the defendant obtained financial gain from a criminal act, a confiscation order can be issued. As described by [Groenhuijsen and Kooijmans \(2011\)](#), this flexibility is key, allowing the state to continue pursuing the proceeds of crime even if the main criminal process is halted for various reasons, including the defendant's death.

Specifically within the context of a suspect's death, which is the focus of this research, the Dutch legal system provides a pragmatic pathway. Although the unique (*sui generis*) *ontnemings* procedure may not be directly continued against the deceased, the state is not left without options. The state can still file an ordinary civil lawsuit against the deceased's heirs. This lawsuit no longer centers on the complex task of proving a criminal act. Instead, it focuses on proving that a portion of the estate received by the heirs originated from an illicit source or from an unlawful act committed by the decedent. The burden of proof in this civil domain is inherently lighter, and its focus is narrower ([Vieira & Rodríguez, 2025](#)).

This integrated approach applied in the Netherlands offers a fundamental lesson for Indonesia. It demonstrates that adopting an NCB asset forfeiture mechanism does not necessarily entail the wholesale importation of a common law-based civil forfeiture model that may feel alien to the system. Instead, its principles can be adapted and integrated into the civil law and procedural frameworks already familiar to Indonesian legal practitioners. This model would potentially face less resistance from practitioners and academics

because it does not create a completely new legal “monster,” but rather expands and optimizes the function of existing legal instruments. Thus, the Netherlands presents a moderate, middle-path model that balances the need for effective asset recovery with the imperative to maintain the coherence and integrity of the civil law system.

4. Proof of Regional Feasibility: Pragmatic Adaptation in the ASEAN Context of Thailand

More than just an example from a Western jurisdiction, Thailand’s experience in implementing NCB asset forfeiture presents a particularly relevant and valuable case study. As a fellow ASEAN member state with a strong civil law heritage, Thailand’s success in adopting and operationalizing an NCB regime serves as the most convincing proof of concept for Indonesia. It effectively dismantles the potential argument from legal purists, who might deem this mechanism an alien product, inherently incompatible with the spirit of a national legal system rooted in the civil law tradition.

Thailand has maturely integrated a civil-based asset forfeiture mechanism into the framework of its Anti-Money Laundering Act 1999, within which corruption is explicitly covered as a predicate offense. The process is conducted through civil court channels, where the public prosecutor does not need to prove an individual’s criminal guilt to the criminal standard. Instead, the prosecutor needs only to demonstrate to the judge, based on the civil standard of proof, that the asset in question has a strong nexus with illegal activity. [Anisa and Nelson \(2024\)](#) highlight that the Thai model still upholds the principles of due process, as interested parties, including heirs, are afforded adequate rights and opportunities to mount a defense and prove the legitimate acquisition of their assets in court.

The most prominent aspect and a crucial institutional lesson from the Thai model is the institutionalization of asset management authority within an independent agency. This practice differs from certain models in which seized assets are directly managed by the law enforcement agency that seized them—a practice that can inherently create conflicts of interest and vulnerabilities to abuse. Thailand has a specialized agency responsible for handling, maintaining, and auctioning the proceeds of crime. The existence of this independent body not only ensures professionalism and accountability in asset management but also significantly enhances public trust in the entire asset recovery process. It is a highly valuable institutional lesson for Indonesia, which, to this day, still faces serious challenges in the effective and transparent management of seized and forfeited assets.

Thus, the fundamental lesson from Thailand is one of feasibility. The country's experience demonstrates that the principles of NCB asset forfeiture can be successfully adapted and implemented within a Southeast Asian socio-legal and bureaucratic context. Thailand's success offers not only inspiration but also a practical blueprint for how a country with a similar legal system can design an effective asset forfeiture regime without sacrificing the principles of procedural justice. It decisively strengthens the argument that the primary obstacle for Indonesia is not conceptual or doctrinal. Rather, it is the lack of political will to finalize the long-overdue legislative reform.

D. Systemic Harmonization: Weaving the New Norm into the National Legal Architecture

After reflecting on the diverse models applied in other jurisdictions, the analysis must now return to the domestic sphere to answer the most crucial question: How can a new paradigm be implemented within the existing Indonesian legal system? Adopting a concept, no matter how theoretically ideal, will be a futile academic exercise if it fails to be integrated harmoniously. The greatest challenge in operationalizing a civil-based asset forfeiture model lies not in formulating the concept itself, but in the meticulous effort to “weave” this new norm into the well-established Law Number 8 of 1981. Without a systemic harmonization strategy, the introduction of a new norm risks becoming a disruptive element, creating overlapping authorities, normative contradictions, and procedural confusion at the practical level.

This potential disharmony stems from a fundamental philosophical clash. Law Number 8 of 1981, as a product of its time, is inherently built upon a subject-centered criminal law philosophy. Within this philosophy, all actions in the interest of justice (*pro justitia*)—including seizure and forfeiture—are inextricably linked to the process of proving an individual's guilty mind (*mens rea*). The proposed civil-based asset forfeiture model, on the other hand, is grounded in an object-centered philosophy. Its primary focus is on proving an asset's connection to a criminal act, regardless of the perpetrator's legal status. This philosophical clash gives rise to sharp procedural misalignments, such as the validity of a seizure initiated for a criminal investigation that is subsequently terminated.

Amid this landscape, the stalled deliberations of the Asset Forfeiture Bill in the legislature have become the epicenter of the problem. This bill should ideally serve as the primary legislative instrument for introducing an NCB regime. However, it has been hampered by complex political dynamics, as observed by [Jumantoro et al. \(2025\)](#). The absence of this law renders any discourse on reform purely theoretical. However, it is critical to note that merely passing the Asset

Forfeiture Bill as a special law (*lex specialis*) without touching Law Number 8 of 1981 as the general law (*lex generalis*) is not a prudent solution. Such an approach would create a dualism of procedural law, potentially causing more problems than it solves by triggering normative and jurisdictional conflicts among law enforcement agencies.

Therefore, the most logical, systematic, and sustainable path forward is through a harmonization strategy comprising three mutually reinforcing pillars. These pillars are designed to ensure that the new norm is not merely “pasted on” but genuinely “woven” into the existing legal system, making it a coherent and functional component.

The first pillar is normative harmonization. This pillar demands limited yet strategic amendments to Law Number 8 of 1981. This change need not overhaul the entire system; it would suffice to add new articles that serve as a legal bridge between the criminal and civil domains. The essential function of this legal bridge is to explicitly affirm that the termination of the authority for criminal prosecution due to the defendant’s death—as stipulated in Article 77 of Law Number 1 of 1946—does not automatically terminate the state’s authority to file a civil lawsuit against the assets suspected to have originated from that crime. With such a provision, the long-standing juridical impasse could be definitively resolved.

The second pillar is institutional harmonization. A new norm cannot function without a clear institutional actor with a strong mandate. The proposed model positions the State Attorney (JPN) as the central actor representing the state in filing civil lawsuits. This step requires capacity building and clarification of the JPN’s mandate, as they may be unaccustomed to handling complex asset forfeiture cases that often involve intricate financial structures and cross-jurisdictional assets. Moreover, a clear demarcation of authority and a protocol for cooperation are needed between the Public Prosecutor (JPU), who handles the initial criminal process, and the JPN, who would take over the civil process, to avoid overlap and ensure both pathways can operate synergistically.

The third pillar, which serves as the guarantor of procedural justice, is procedural harmonization. Heeding the stark warning from practices in the United States, this pillar is crucial. The rules of engagement for this special civil lawsuit must be formulated with meticulous attention to the law. It includes, but is not limited to, provisions on the standard of proof to be used (shifting to the balance of probabilities), an easily accessible mechanism for third-party claims by good-faith actors (*derden verzet*), and the binding force of the resulting judgments. The goal is to ensure the process is not only effective in recovering state assets but also fully guarantees the rights of all parties and aligns with the principles of due process of law.

Ultimately, without systemic harmonization across these three pillars—normative, institutional, and procedural—any attempt at normative reconstruction will be nothing more than a paper tiger: elegant in an academic manuscript but paralyzed and potentially chaos-inducing in judicial practice (Behuku et al., 2025).

E. A Procedural Blueprint: Designing a Just Judicial Mechanism

All the conceptual, comparative, and systemic harmonization analyses previously outlined culminate in the need to design a concrete and operational judicial mechanism. The formulation of this procedural blueprint is the very heart of the reconstruction effort. It is where abstract principles are translated into actionable legal steps that can be executed in a courtroom. Most importantly, this mechanism must be built upon the solid foundation of the principle of due process of law. This principle demands that any state action that could potentially deprive an individual of their property rights must be conducted through a fair and transparent process, which provides an equal opportunity for all parties to be heard (*audi et alteram partem*). Given the repressive potential of asset forfeiture instruments, as warned by the experience in the United States, designing a strict and just mechanism is not an option; it is an absolute necessity to preserve the legitimacy of the legal process.

The proposed judicial mechanism, which can be termed a “Civil-Based Asset Status Examination,” is designed as a unique (*sui generis*) procedure that operates outside the conventional framework of criminal procedure. This process is not intended to determine the criminal guilt of the deceased. Instead, its sole purpose is to conduct an objective judicial examination of the legal status of the seized assets. The following procedural stages are designed to ensure a balance between the state’s interest in asset recovery and the protection of the constitutional rights of heirs and third parties acting in good faith (Article 14(1) of the ICCPR).

1. Initiation of the Procedure and Petition by the State

Once the criminal process is declared terminated due to the suspect’s death, the initiative shifts to the State Attorney (JPN). The JPN, in its capacity as the state’s representative, files a petition for an asset status examination with the competent district court. This petition is not a mere administrative formality; it must be supported by sufficient *prima facie* evidence demonstrating a reasonable suspicion that the seized asset is directly linked to the alleged act of corruption. This evidence can be drawn from the existing criminal investigation file. This stage serves as an initial judicial filter to prevent the state from filing frivolous or unfounded lawsuits, ensuring that proceedings advance only in cases with an adequate evidentiary foundation.

2. Issuance of an Examination Order and Securing the Asset's Status

Based on the JPN's petition, the judge will conduct a preliminary examination of the submitted evidence in a closed session. If the judge finds the petition well-founded, they will issue a formal order to open the Asset Status Examination. This order serves two crucial functions. *First*, it formally commences the open judicial examination process. *Second*, it provides the legal basis to continue or impose a security status (e.g., a freeze or seizure) on the asset for the duration of the examination. This stage ensures that all actions concerning the asset remain under judicial oversight and are no longer merely at the administrative discretion of law enforcement.

3. Notification, Summons of Parties, and the Evidentiary Process

It is the most central stage in guaranteeing due process of law. The court is obligated to properly notify all known heirs and any third parties named in the asset's ownership documents that the examination process has begun. They are then given a reasonable period to register as parties to the case and to file a claim or objection (third-party claim). It is where the principle of a fair hearing (*audi et alteram partem*) is tangibly realized. In the evidentiary phase, the initial burden of proof lies with the JPN. The state must prove the asset's nexus to the criminal act based on the civil standard of proof (the balance of probabilities). If the JPN is successful, the burden shifts to the heirs or third parties, who must then prove that the asset, or a portion of it, was acquired through legitimate means and is unrelated to the proceeds of crime. This shifting burden-of-proof mechanism is adopted to strike a balance between the state's power and individuals' protection.

4. The Judge's Final Judgment on the Asset's Status

After examining the evidence and hearing arguments from all parties, the judge will render a final judgment. This judgment is not punitive in nature. Rather, it is declaratory (establishing a state of fact) and constitutive (creating a new legal status) for the disputed asset. The judgment can have three primary outcomes. *First*, ordering the entire asset to be forfeited to the state if the state successfully met its burden of proof and no substantiated claims were made by other parties. *Second*, ordering a portion of the asset to be forfeited and the remainder to be returned, if an heir or third party successfully proves legitimate ownership over a part of the asset. *Third*, ordering the entire asset to be returned if the state failed to meet its burden of proof. This judgment is final and binding, definitively resolving the legal uncertainty that has been the primary source of the problem.

F. The Pinnacle of Reconstruction: Formulating the *Ius constituendum* as a Concrete Solution

The entire philosophical, conceptual, comparative, and procedural argumentative framework presented in this research must ultimately culminate in a concrete and prescriptive output. This stage represents the pinnacle of the legal construction method employed, where theoretical analysis is not left to float in abstraction but is consciously translated into an operational legislative draft. The formulation of this new legal norm as the law as it ought to be (*ius constituendum*) is designed to directly and precisely address the legal vacuum that has been the source of the systemic pathology. The proposed norm is founded upon four core, mutually balancing principles: legal certainty, substantive justice, the guarantee of due process of law, and the effectiveness of state asset recovery.

The following is the formulated substantive content proposed for integration into a new Asset Forfeiture Bill or through a limited amendment to Law Number 8 of 1981 to create the legal bridge previously described.

Article 1 (Exception to the Status of Evidence Following a Suspect's Death)

- (1) If the authority for prosecution of a suspect in a criminal act of corruption is terminated because the suspect passes away before a court judgment becomes final and legally binding, the criminal prosecution against said individual shall be terminated by operation of law.
- (2) The termination of criminal prosecution as referred to in section (1) shall have no legal effect on the status of evidence that has been seized.

Article 2 (Mechanism for the Civil Examination of Asset Status)

- (1) The resolution of the legal status of the evidence as referred to in Article 1 section (2) shall be transferred from the domain of criminal procedure to the domain of civil procedure.
- (2) The transfer as referred to in section (1) shall be carried out through a special judicial examination mechanism by the competent district court.
- (3) In the examination as referred to in section (2), the court shall be authorized to rule that:
 - a. the evidence be returned to the rightful heirs or third parties; or
 - b. the evidence be forfeited to the state.

Article 3 (Right of Objection and Burden of Proof)

- (1) Heirs or other interested third parties shall have the right to file an objection or claim to the evidence in the examination as referred to in Article 2 section (2).

- (2) In the examination, the initial burden of proof shall lie with the state to prove the nexus between the evidence and the criminal act of corruption based on the civil standard of proof.
- (3) If the state has fulfilled the burden of proof as referred to in section (2), the burden of proof shall shift to the heirs or third parties to prove that the acquisition of said evidence was legitimate.
- (4) The acquisition of an asset as referred to in section (3) shall be deemed legitimate if the interested heir or third party can prove that the acquisition was made in good faith.

Article 4 (Nature of the Court's Judgment)

- (1) The court's judgment concerning the legal status of the evidence in the examination, as referred to in Article 2 section (2), shall be final and binding in a civil capacity.
- (2) The judgment as referred to in section (1) shall definitively provide legal certainty for the evidence that was the object of the examination.

The rationale behind the formulation of the above norms is multidimensional, designed to address various challenges simultaneously. *First*, from a law enforcement perspective, this formulation provides an effective and legal instrument for the state to continue its efforts to recover losses from corruption, which were previously halted by the perpetrator's death. *Second*, from a human rights perspective, it provides fair legal certainty for heirs and third parties, freeing them from the endless legal limbo concerning the assets' status. *Third*, from a constitutionality perspective, this mechanism aligns with the principle of the rule of law and the guarantee of property rights protection, as stipulated in Article 1 section (3) and Article 28H section (4) of the 1945 Constitution, because any forfeiture is conducted through a transparent judicial process. *Fourth*, from an international law perspective, the adoption of this norm would demonstrate Indonesia's consistency and commitment to implementing its obligations under UNCAC. Thus, this law, as it ought to be (*ius constituendum*), is expected to be a strategic step toward a renewal of criminal procedure law that is more responsive, just, and effective in the agenda to eradicate corruption in Indonesia.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that Indonesia's current positive legal architecture suffers from a systemic pathology: a critical normative vacuum (*rechtsvacuüm*) regarding the legal status of corruption assets when a suspect dies before a court judgment becomes final and legally binding. The absolute reliance on the conviction-based asset forfeiture paradigm has created a juridical dead end

that directly sacrifices fundamental legal values such as certainty, justice, and utility. Consequently, the state's efforts to recover its losses are paralyzed, while the heirs' civil rights remain in limbo. This condition is opposed to the rule-of-law imperative mandated by the Constitution.

In response to this impasse, this research has successfully synthesized a conceptual solution grounded in a paradigmatic shift toward the NCB asset forfeiture model. This model is operationalized through a concrete procedural blueprint: a special civil lawsuit mechanism termed the "Civil-Based Asset Status Examination." After a critical analysis of various models in other jurisdictions, this research concludes that the most suitable model for Indonesia is an intelligent hybrid model. This model adopts the flexibility and integration rooted in the civil law tradition, as seen in the Netherlands, while strictly embedding due process protections, drawing lessons from the potential excesses of common law models. Thus, this research has comprehensively addressed the three established objectives: to analyze the existing systemic pathology, to construct an ideal and implementable model, and to formulate a concrete normative proposal as a strategic step toward the renewal of Indonesian criminal procedure law.

Based on these conclusions, several integral and strategic suggestions are proposed. Regarding legislative policy, it is a non-negotiable priority for the House of Representatives and the Government to immediately expedite the deliberation and ratification of the Asset Forfeiture Bill. However, it is crucial to ensure that this bill is not merely passed as a standalone law (*lex specialis*). To guarantee effectiveness and avoid a dualism of procedural law, its passage must be accompanied by systemic harmonization through a limited amendment to Law Number 8 of 1981 to create the robust legal bridge outlined in this research.

From a practical and institutional standpoint, while awaiting legislative reform, the Supreme Court and the Attorney General's Office are advised not to remain passive. These two institutions can begin formulating joint regulations or internal guidelines that incorporate the principles of due process of law in the handling of seized assets in *post-mortem* cases. Furthermore, in line with Thailand's best practices, the government should seriously consider establishing a special, independent agency to manage seized and forfeited assets. This step is crucial to enhancing professionalism, accountability, and public trust across the entire asset recovery regime.

Finally, from an academic perspective, this research paves the way for a more specific and in-depth future research agenda. Rather than merely calling for general empirical research, it is suggested that future studies focus on critical implementation issues. Follow-up research could examine in depth the perceptions and readiness of judges and prosecutors in Indonesia regarding the fundamental shift from the criminal

to the civil standard of proof. Additionally, an analysis of the socio-economic impact of this mechanism on families and heirs is necessary. Such research must also answer how negative impacts can be mitigated without sacrificing the primary objective of asset recovery. The findings from this empirical research will be crucial to ensure that the new legal norm is not only effective on paper but also in its implementation within society.

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