

The Effectiveness of Recovering Losses on State Assets Policy in Dismissing Handling of Corruption



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ABSTRACT

The recovery of state financial losses due to corruption in Indonesia does not reduce the criminal risk for corruptors, and the purpose of this study is to examine the effectiveness of asset forfeiture from corruption in Indonesia. This comparative normative legal research compares the recovery of state losses due to corruption in Indonesia and Saudi Arabia. This research confirms that. *First*, the current legal framework for collecting and seizing corruption-related assets in Indonesia must be revised to recover state financial losses. *Second*, the existing mechanisms need to be improved for law enforcement against corruption, particularly the recovery of state losses. When compared to Saudi Arabia, the mechanism for recovering corruption assets in Indonesia is less efficient, considering that in Saudi Arabia, corruptors may lose 70% of their wealth confiscated by the Saudi Arabian government. *Third*, the seizure of corrupt assets in Indonesia must use the paradigm of unexplained wealth. This approach allows for confiscating assets belonging to people whose value is grossly disproportionate to their known income and who cannot prove (using reverse proof) that they acquired the assets legally.



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1. Introduction

The prevalence of corruption in Indonesia is becoming increasingly pervasive, permeating all sectors, including the government itself, akin to a virulent contagion. The proliferation of this illicit activity has a direct or indirect detrimental impact on the State's fiscal resources as well as on the well-being of its citizens. It is imperative for the government to exert utmost endeavors in order to prevent and eliminate this difficulty.¹ The legal concept of corruption is explicitly outlined in 13 articles of Law No. 31 of 1999, which has been modified by Law No. 20 of 2001

¹ Hendi Yogi Prabowo, 'Re-Understanding Corruption in the Indonesian Public Sector through Three Behavioral Lenses Hendi', *Facilities*, 35.6 (2015), 925–45 <https://doi.org/10.1108/JFC-08-2015-0039>

pertaining to the eradication of corruption. These pages provide a comprehensive explanation of the specific actions that can be potentially punished with criminal consequences for corruption. According to these articles, corruption is categorized into 30 different kinds or categories of corrupt acts. The 30 forms/types of corruption offenses can be categorized as State financial losses, Bribery, Embezzlement, Extortion, Fraudulent activities, and Gratuities.²

These diverse manifestations of corruption persist unchecked, eroding the State's financial resources and assuming a parasitic nature. Indonesia adopted the United Nations Convention against Corruption (UNCAC) on 18 April 2006 by the enactment of Law no 7 of 2006. The United Nations strengthened the regulation by incorporating corruption as a form of transnational organized crime through the Convention Against Transnational Organized Crime (UNTOC).³ Indonesia ratified and enacted this regulation through Law Number 5 of 2009, which concerns the Ratification of the United Nations Convention Against Transnational Organized Crime.

The government's endeavors have not effectively diminished the prevalence of corruption offenses, as shown by political analysts who emphasize that corruption is a highly alarming phenomenon and a formidable obstacle for every nation, particularly Indonesia.⁴ The reason for this is that the consequences imposed on the offenders, specifically incarceration, are seen insufficient in effectively addressing the issue of corruption. The traditional approaches to recuperating state costs resulting from corruption offenses through the confiscation and seizure of corruptors' assets upon the finalization of their judicial conviction have demonstrated limited efficacy in combating corruption. Furthermore, the confiscation of assets belonging to corrupt individuals cannot be carried out haphazardly. It is necessary to implement a reversal of the burden of evidence, as stipulated in Article 37 A and Article 38 B of Law Number 20 of 2001, which pertains to amendments to Law Number 31 of 1999 concerning the eradication of corruption. Nevertheless, this approach is seen ineffective as it necessitates navigating the intricate legal procedures and stages. Therefore, alternative methods are required to combat corruption.⁵

² Rian Saputra, Muhammad Khalif Ardi, and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)*, 6.2 (2021), 437–82 <https://doi.org/10.15294/jils.v6i2.51371>

³ T H E Control and O F Corruption, *Institutions, Governance and the Control of Corruption*, 2018 <https://doi.org/10.1007/978-3-319-65684-7>

⁴ Daniel Márquez, 'Mexican Administrative Law Against Corruption: Scope and Future', *Mexican Law Review*, 8.1 (2015), 75–100 <https://doi.org/10.1016/j.mexlaw.2015.12.004>

⁵ Noore Alam Siddiquee, 'Combating Corruption and Managing Integrity in Malaysia: A Critical Overview of Recent Strategies and Initiatives', *Public Organization Review*, 10.2 (2010), 153–71 <https://doi.org/10.1007/s11115-009-0102-y>

The Anti-Corruption Law serves the purpose of not only penalizing corrupt individuals but also aims to recover the financial losses that the state has suffered as a result of corruption.⁶ Nevertheless, the present predicament indicates that this objective has not proven to be successful, except for the enforcement, which appears to be discriminatory, in addition to the disparity between the substantial amount of money allocated by the government to combat corruption and the relatively minimal amount recovered from state financial losses. In 2012, it was reported that the amount of money allocated to combat corruption between 2001 and 2009 was Rp. 73.1 trillion, while the amount of money recovered from state financial losses during the same period was Rp. 5.3 trillion.⁷

Another viable approach to combat corruption is to "deprive corrupt individuals of their ill-gotten wealth," specifically by ensuring that their assets, which are suspected to have been acquired through criminal activities, are confiscated. According to Mardjono Reksodiputro, corruption is a KTO (Korupsi, Tipikor, dan Tindak Pidana Khusus) and hence it is OK to employ unconventional techniques in the process of investigating and combating this crime. Confiscating the assets of corrupt individuals is not the sole solution, as per the Criminal Code.⁸ Confiscation is considered an additional penalty, requiring a prior judicial process and evidence before it can be implemented. Consequently, law enforcement authorities initiated a shift in their approach to combating crime, specifically transitioning from focusing on punishing criminals to prioritizing the recovery of state assets that were lost as a result of these illegal activities (asset recovery). Through the utilization of the Stolen Asset Recovery framework, Non-conviction-based Asset forfeiture is a process of recovering stolen assets without criminalization. It is based on the concept of asset recovery outlined in the United Nations Convention Against Corruption (UNCAC), which has been ratified by Law Number 7 of 2006. This approach allows for the seizure of assets without requiring a criminal conviction.⁹

This proposal holds significant importance as it has the potential to effectively retrieve the outcomes and advocates of corruption prosecution through its implementation. If the perpetrator of a crime has died, the criminal justice process

⁶ Ratna Juwita, 'Good Governance and Anti-Corruption: Responsibility to Protect Universal Health Care in Indonesia', *Hasanuddin Law Review*, 4.2 (2018), 162–80 <https://doi.org/10.20956/halrev.v4i2.1424>

⁷ Rimawan Pradiptyo, 'Does Corruption Pay in Indonesia? If so, Who Are Benefited the Most?', *SSRN Electronic Journal*, 41384, 2012 <https://doi.org/10.2139/ssrn.2107537>

⁸ Jinting Deng, 'The National Supervision Commission: A New Anti-Corruption Model in China', *International Journal of Law, Crime and Justice*, 52 (2018), 58–73 <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2017.09.005>

⁹ Sauro Mocetti and Tommaso Orlando, 'Corruption, Workforce Selection and Mismatch in the Public Sector', *European Journal of Political Economy*, 60 (2019), 101809 <https://doi.org/https://doi.org/10.1016/j.ejpoleco.2019.07.007>

is automatically halted.¹⁰ Similarly, if the perpetrator has fled abroad, the process is hindered and delayed due to their fugitive status, although they can still be tried in absentia but not executed. Additionally, if the perpetrator enjoys strong immunity, making it difficult to hold them accountable, their assets can still be legally processed. Law enforcement utilizes asset recovery tactics to combat criminal activities, particularly corruption. These two aspects are closely intertwined and cannot be dissociated. White-collar offenders have a fundamental need to manage and secure the proceeds of their calculated crimes. An individual may be inclined to engage in corrupt practices if the potential gains outweigh the perceived risks of punishment. Some corrupt individuals are willing to face imprisonment if they believe their family can continue to live a prosperous life from the proceeds of their corrupt activities.¹¹

In order to carry out asset recovery, evidence of criminal offenses must be promptly seized and subsequently confiscated if it has enduring legal validity. The Criminal Procedure Code stipulates that materials about criminal offenses are seized and presented as evidence during the trial, with their disposition being determined by the court.¹² Confiscation is a lawful procedure during the pre-adjudication phase, namely during the investigation—according to the regulations stated in KUHAP Article 1 paragraph 16 jo. Article 7 paragraph (1), it is evident that the individuals authorized to perform confiscation operations are law enforcement officers, specifically investigators and maybe public prosecutors.¹³

In connection with this matter, law enforcement authorities have started to examine these alternative approaches by vigorously combatting corruption through the process of asset recovery. An example of such an entity is the Corruption Eradication Commission (KPK), established in 2003 to address, combat, and eliminate corruption in Indonesia.¹⁴ The establishment of the Commission is grounded in the Law of the Republic of Indonesia Number 30 of 2002, which focuses on eradicating corruption. The Commission's main responsibilities include coordinating with authorized agencies to combat corruption, overseeing their activities, implementing measures to prevent corruption, and monitoring the

¹⁰ Jenny Domashova and Anna Politova, 'The Corruption Perception Index: Analysis of Dependence on Socio-Economic Indicators', *Procedia Computer Science*, 190 (2021), 193–203 <https://doi.org/https://doi.org/10.1016/j.procs.2021.06.024>

¹¹ Dahyeon Jeong, Ajay Shenoy, and Laura V Zimmermann, 'De Jure versus De Facto Transparency: Corruption in Local Public Office in India', *Journal of Public Economics*, 221 (2023), 104855 <https://doi.org/https://doi.org/10.1016/j.jpubeco.2023.104855>

¹² Stephen Ojeka and others, 'Corruption Perception, Institutional Quality and Performance of Listed Companies in Nigeria', *Heliyon*, 5.10 (2019), e02569 <https://doi.org/https://doi.org/10.1016/j.heliyon.2019.e02569>

¹³ Gabriel Kuris, 'Watchdogs or Guard Dogs: Do Anti-Corruption Agencies Need Strong Teeth?', *Policy and Society*, 34.2 (2015), 125–35 <https://doi.org/10.1016/j.polsoc.2015.04.003>

¹⁴ Dimitrios Varvarigos, 'Cultural Persistence in Corruption, Economic Growth, and the Environment', *Journal of Economic Dynamics and Control*, 147 (2023), 104590 <https://doi.org/https://doi.org/10.1016/j.jedc.2022.104590>

administration of the state government.¹⁵ The Corruption Eradication Commission can coordinate the investigation, inquiry, and prosecution of corruption offenses as part of its coordination responsibilities. Implement a robust reporting system for activities aimed at eliminating corruption.¹⁶ Seek information regarding efforts to eradicate corruption from the appropriate authorities. Arrange hearings or meetings with authorized entities responsible for combating corruption. Additionally, comprehensive reports from relevant agencies should be requested regarding measures to prevent corruption

Each law enforcement agency in Indonesia has its specific processes for recovering state financial losses resulting from corruption. This adversely affects the efficacy of recovering governmental financial damages from corruption in Indonesia. This can be observed from the data presented in the 2013-2022 annual report of the Indonesian Corruption Watch (ICW), which indicates that the state has incurred significant losses due to widespread corruption. The report reveals that the total amount of state losses resulting from corruption crimes reached approximately Rp.236,231,909,399,485 (two hundred thirty-six trillion two hundred thirty-one billion nine hundred nine million three hundred ninety-nine thousand four hundred eighty-five rupiah). However, the amount of money successfully recovered and returned to the state treasury through fines and restitution was only Rp. 33,079,023,282,628 (thirty-three trillion seventy-nine billion twenty-three million two hundred eighty-two thousand six hundred twenty-eight rupiah). In essence, the endeavors of law enforcement officers to recover state losses can only restore a mere 0.86% of the overall loss. This indicates a disparity in the number of unrecovered losses, total Rp.203,152,886,116,857, that the state is obligated to bear.

Previous research related to corruption have been carried out, but the focus of this study has never been carried out. Firstly, the research titled "Re-understanding corruption in the Indonesian public sector through three behavioural lenses," The authors argue that the widespread corruption in the Indonesian public sector is a result of the collective decision-making processes of the participants throughout time. The process is shaped by the cognitive frameworks of individuals and organisations, which are used to analyse problems and situations using prior knowledge and experience. This study examines how corruption normalisation is employed to maintain corruption networks, particularly within the Indonesian public sector. These networks are highly resistant to traditional approaches, such as detection and prosecution, making them extremely challenging to dismantle. In essence, the normalisation process will ultimately lead to a decline in moral values

¹⁵ Jon S T Quah, 'Defying Institutional Failure: Learning from the Experiences of Anti-Corruption Agencies in Four Asian Countries', *Crime, Law and Social Change*, 53.1 (2010), 23 – 54
<https://doi.org/10.1007/s10611-009-9213-1>

¹⁶ Anisah Alfada, 'The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model', *Heliyon*, 5.10 (2019), e02649
<https://doi.org/https://doi.org/10.1016/j.heliyon.2019.e02649>

among public servants, resulting in their activities being motivated purely by the fear of punishment and the anticipation of personal gains. The three pillars of institutionalisation, rationalisation, and socialisation mutually reinforce one another, creating a normalising framework that is remarkably resistant to short-term anti-corruption initiatives. The normalising framework can only be dismantled by consistently striking its pillars with significant force. Corruption in Indonesia will only be eradicated when the social, institutional, and personal frameworks are redesigned to view it as an anomaly rather than a standard practice.¹⁷

Secondly, the research titled "Obstruction of Justice in the endeavour to eliminate corruption in Indonesia". This study examines the problem of obstruction of justice in the endeavour to eliminate corruption in Indonesia. This study addresses two key questions: What are the characteristics of obstruction of justice in the anti-corruption campaign in Indonesia, and what are the most effective strategies for law enforcement authorities to combat it? Based on empirical evidence, the study demonstrates that an action is considered impeding justice when it is consciously carried out to impede the smooth functioning of the legal process (*mens rea*). While anyone can conduct an act of obstruction of justice, it is typically facilitated by influential individuals such as government and law enforcement officers, lawyers, and lawmakers. The study proposes that to intensify the ongoing battle against corruption, it is necessary to revise corruption laws, maintain cooperation between law enforcement agencies, utilize existing corruption-related laws, enhance the professionalism of law enforcement, and increase public awareness.¹⁸

The third research is "Assessing Judicial Performance in Indonesia: The Court for Corruption Crimes". Many countries have established new specialized courts in response to international pressure for judicial change and due to their decision-making. Included in this group of courts are specialized anti-corruption courts. The Indonesian Court for Corruption Crimes in Jakarta, established by legislation in 2002, has become well-known and infamous for its nearly perfect conviction rate in more than 250 cases. However, in 2010, the authority to handle corruption matters was transferred to specialized corruption courts in all 34 provincial capitals of Indonesia. The prudence of this decision has faced severe criticism, with concerns expressed regarding whether these regional courts have upheld the professionalism of the lone Jakarta court. This paper analyzes the justification for

¹⁷ Prabowo.

¹⁸ Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), 72-83
<https://doi.org/10.1016/j.ijlcrj.2017.07.001>

the creation of these courts and assesses the extent to which conviction rates can serve as reliable measures of their effectiveness.¹⁹

It is evident that each law enforcement agency in Indonesia undertakes many endeavors to transfer assets obtained through criminal activities. The effectiveness of attempts to transfer the assets obtained from criminal activities in each law enforcement institution is the only aspect that has to be examined. It is important to determine the extent to which these efforts are successful and the value of assets that have been effectively recovered.

2. Research Method

This study employs a normative legal research methodology, incorporating a statutory, conceptual, and comparative legal approach. Saudi Arabia is recognized as a legal benchmark due to its recent success in confiscating assets obtained through corrupt criminal activities.²⁰ This research employs the document study method as the chosen data collection strategy.²¹ The legal resources utilized in this study encompass Law Number 31 of 1999 about the eradication of corruption, Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 regarding the eradication of corruption, Law Number 8 of 2010 addressing the prevention and eradication of money laundering, and Royal Order No. A/44 of Saudi Arabia.

3. Results and Discussion

The Effectiveness of Recovering Losses on State Assets Policy in Indonesia

Asset forfeiture refers to the compulsory seizure of assets or property that the government deems to be intimately associated with a criminal offense. Common law countries, particularly the United States, have established three distinct types of asset forfeiture: criminal forfeiture, administrative forfeiture, and civil forfeiture.²² Criminal forfeiture is the process of seizing assets through the criminal justice system, where the seizure of assets occurs concurrently with the

¹⁹ Simon Butt and Sofie Arjon Schütte, 'Assessing Judicial Performance in Indonesia: The Court for Corruption Crimes', *Crime, Law and Social Change*, 62.5 (2014), 603 – 619 <https://doi.org/10.1007/s10611-014-9547-1>

²⁰ Jamal Wiwoho and others, 'Islamic Crypto Assets and Regulatory Framework: Evidence from Indonesia and Global Approaches', *International Journal of Law and Management*, 2023 <https://doi.org/10.1108/IJLMA-03-2023-0051>

²¹ Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIAN LEGAL STUDIES*, 8.1 (2023), 243–88 <https://doi.org/10.15294/jils.v8i1.67632>

²² Jiwon Suh, 'Human Rights and Corruption in Settling the Accounts of the Past: Transitional Justice Experiences from the Philippines, South Korea, and Indonesia', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 179.1 (2023), 61–89 <https://doi.org/https://doi.org/10.1163/22134379-bja10049>

determination of the defendant's guilt in a criminal offense. Administrative forfeiture is a method of asset forfeiture that enables the state to confiscate assets without the need for involvement from judicial institutions. Civil forfeiture is a legal process when a lawsuit is filed against an asset instead of the person who committed a crime. This allows authorities to collect assets even if the criminal case against the person is still ongoing. Civil forfeiture, in contrast to criminal forfeiture, has fewer prerequisites and is thus more appealing for implementation and lucrative for the state.²³

The civil forfeiture model should be used in Indonesia due to its employment of a reversed burden of proof and its ability to swiftly seize assets suspected of being connected to criminal offenses. Furthermore, in civil forfeiture, the legal action is directed at the asset rather than the individual suspected or accused of wrongdoing.²⁴ This allows state assets to be seized even if the wrongdoer has passed away or has not undergone criminal prosecution. This practice appears to be subsequently implemented and is referred to by another term, specifically non-conviction-based asset forfeiture (sometimes abbreviated as NCB asset forfeiture) or, in Indonesian, "asset forfeiture without conviction".²⁵

Asset forfeiture without conviction is a crucial principle in the endeavor to eliminate criminal offenses that damage the financial and economic well-being of the state. It involves reclaiming the property of individuals who are accused of acquiring it via illicit activities that undermine the state's finances or economy.²⁶ These criminal offenses might stem from corrupt activities, illegal logging, drug-related crimes, customs and excise violations, and money laundering.²⁷ Mardjono Reksodiputro explains that asset forfeiture can be executed through three distinct methods: a. Criminal forfeiture. This process is generally referred to as forfeiture when specific things are confiscated if they are determined to be tools used by the

²³ Taryn Vian and Erika L Crable, 'Corruption and the Consequences for Public Health', in *International Encyclopedia of Public Health (Second Edition)*, ed. by Stella R Quah, Second Edi (Oxford: Academic Press, 2017), pp. 168–76 <https://doi.org/https://doi.org/10.1016/B978-0-12-803678-5.00091-6>

²⁴ Gang Xu and others, 'Anti-Corruption, Safety Compliance and Coal Mine Deaths: Evidence from China', *Journal of Economic Behavior & Organization*, 188 (2021), 458–88 <https://doi.org/https://doi.org/10.1016/j.jebo.2021.05.013>

²⁵ Anupriya Khan and Satish Krishnan, 'Moderating Effects of Business-Systems Corruption on Corruption in Basic National Institutions and Electronic Government Maturity: Insights from a Dynamic Panel Data Analysis', *International Journal of Information Management*, 59 (2021), 102349 <https://doi.org/https://doi.org/10.1016/j.ijinfomgt.2021.102349>

²⁶ Brian Akins, Yiwei Dou, and Jeffrey Ng, 'Corruption in Bank Lending: The Role of Timely Loan Loss Recognition', *Journal of Accounting and Economics*, 63.2 (2017), 454–78 <https://doi.org/https://doi.org/10.1016/j.jacceco.2016.08.003>

²⁷ Ming-Qing Zhang and others, 'Scalable Active Subspace Low-Rank Graph Representation for Continuous System Online Security Evaluation with Input Corruption', *Process Safety and Environmental Protection*, 158 (2022), 242–56 <https://doi.org/https://doi.org/10.1016/j.psep.2021.12.003>

defendant to commit a crime. Once a legally binding criminal decision is made, the state takes ownership of the confiscated goods. b. Administrative forfeiture refers to the process by which the government seizes property without the need for a court order.²⁸ This forfeiture is contractual, meaning that the executive (government) is legally empowered to confiscate specific items without the need for a trial. As an illustration, actions related to customs and excise. c. Seizure of assets by the government. Civil forfeiture also referred to as the confiscation of goods that are unclaimed due to war or abandoned (weiskamer), was previously known by this name.²⁹

Seizing illegal profits has become a significant concern in the fight against financial wrongdoing in recent years. Hence, the United Nations (UN) has incorporated asset forfeiture as a fundamental tenet in the 2003 United Nations Convention Against Corruption (UNCAC) for a legitimate reason. According to this standard, countries must make the greatest possible effort to confiscate assets obtained from illegal activity without going through the process of criminal prosecution.³⁰ Indonesia, being a member of UNCAC, currently lacks a comprehensive regulatory framework that properly manages the asset forfeiture scheme without involving criminalization. This strategy has been commonly used in criminal cases, such as money laundering and narcotics violations.³¹ Nevertheless, when it comes to corruption cases, the ability of Law Number 31 Year 1999 on Corruption, as amended by Law Number 20 Year 2001, to assist in retrieving state losses through criminal and civil asset forfeiture is considered less than ideal.

Confiscating assets acquired through corrupt activities in Indonesia still depends on conventional methods, particularly by employing legal instruments. This information is clearly stated in the Indonesia Corruption Watch (ICW) report. ICW reports that the court has fined corruption offenders a total of Rp. 867,825,750,000 (867 billion 825 million 750 thousand rupiahs) between 2013 and 2022. In addition, the reparation sum has been determined to be Rp. 32,211,197,532,826 (32 trillion 211 billion 197 million 532 thousand 826 rupiahs). The total value of state losses collected via fines and restitution amounts to Rp. 33,079,023,282,628 (thirty-three trillion seventy-nine billion twenty-three million

²⁸ Nur Shafiq Kapeli and Nafsiah Mohamed, 'Battling Corruption in Malaysia: What Can Be Learned?', *Journal of Financial Crime*, 26.2 (2019), 549 – 555 <https://doi.org/10.1108/JFC-04-2018-0044>

²⁹ Januar Rahadian and Silas Oghenemaro, 'Monodualistic and Pluralistic Punishment Politics in Criminal Code Reform: Lessons from Indonesia', *Journal of Law, Environmental and Justice*, 1.3 (2023), 225–43 <https://doi.org/10.62264/jlej.v1i3.17>

³⁰ Afshan Uroos and others, 'Economic Analysis of Corruption: Evidence from Pakistan', *Transnational Corporations Review*, 14.1 (2022), 46–61 <https://doi.org/https://doi.org/10.1080/19186444.2021.1917331>

³¹ Zico Junius Fernando and others, *Deep Anti-Corruption Blueprint Mining, Mineral, and Coal Sector in Indonesia*, *Cogent Social Sciences*, 2023, IX <https://doi.org/10.1080/23311886.2023.2187737>

two hundred eighty-two thousand six hundred twenty-eight rupiah).³² The a tabular representation of the monetary losses incurred by the state, the fines imposed, and the restitution awarded in corruption cases from 2013 to 2022 based on the records of court rulings obtained from ICW.

Table 1: Indonesia Corruption Watch Report 2013 to 2022

Years	Amount of State Loss	Fines	Money in Lieu
2013	3,460 Trilliun	36.95 Milliar	515.55 Milliar
2014	8,776 Trilliun	16.38 Milliar	1,404 Trilliun
2015	1,740 Trilliun	48.08 Milliar	1,542 Trilliun
2016	3,085 Trilliun	60.66 Milliar	720 Milliar
2017	29,419 Trilliun	110.69 Milliar	1,446 Trilliun
2018	9,290 Trilliun	119.88 Milliar	838.54 Milliar
2019	12,002 Trilliun	116.48 Milliar	748.16 Milliar
2020	56,739 Trilliun	156.35 Milliar	19,696 Trilliun
2021	62,931 Trilliun	202.23 Milliar	1,441 Trilliun
2022	48,786 Trilliun	194.32 Milliar	3,821 Trilliun

Source: Indonesia Corruption Watch Corruption Defendant Sentencing Trends Report from 2013 to 2022

Upon examining the contrast between the recovery or return of state losses through penalties and restitution in the table above, it becomes evident that the value of state losses greatly exceeds the amount of reparation.³³ Therefore, it may be inferred that the corruption elimination approach implemented by the Government through authorized Government agencies such as POLRI, AGO, and KPK is not highly efficient, particularly in recovering state losses.³⁴ The problem of combating corruption is centered around three primary concerns: prevention, eradication, and asset recovery.³⁵ The discussion on combating corruption encompasses measures to prevent and penalize corrupt individuals and strategies to recover the financial damages incurred by the state as a consequence of these egregious offenses. Recovering stolen public assets in corruption cases is often challenging. The individuals involved in tipikor have extensive and difficult-to-attain opportunities to conceal or launder the profits from their unethical

³² Zico Junius Fernando and others, 'Preventing Bribery in the Private Sector through Legal Reform Based on Pancasila', *Cogent Social Sciences*, 8.1 (2022) <https://doi.org/10.1080/23311886.2022.2138906>

³³ Rushdi Abdul Rahim, Azmil Mohd Amin, and Norsam Tasli Mohd Razali, 'Scenario Planning for Development of a National Anti-Corruption Framework', *Foresight*, 23.3 (2020), 299–310 <https://doi.org/10.1108/FS-04-2020-0040>

³⁴ Umi Khaerah Pati, Pujiyono, and Pranoto, 'Sharia Fintech as a Sharia Compliance Solution in the Optimization of Electronic-Based Mosque's Ziswaf Management; [Fintech Syariah Sebagai Solusi Kepatuhan Syariah Dalam Pengoptimalan Pengelolaan Ziswaf Masjid Berbasis Elektronik]', *Padjadjaran Jurnal Ilmu Hukum*, 8.1 (2021), 47 – 70 <https://doi.org/10.22304/pjih.v8n1.a3>

³⁵ Barbara Huber, *Sanctions against Bribery Offences in Criminal Law, Corruption, Integrity and Law Enforcement*, 2021 https://doi.org/10.1163/9789004481213_010

activities.³⁶ The challenge for recovery attempts is compounded by the fact that the illicit funds from criminal activities are securely stored outside the jurisdiction where the corruption offense occurred.³⁷

Efforts to recoup state losses resulting from corruption offenses have played a crucial role in combating corruption.³⁸ Regarding asset forfeiture in corruption cases, the Indonesian legal system currently recognizes three approaches for recovering assets, civil Lawsuit to recover state losses, imposition and application of restitution in criminal court, and confiscation of assets from corrupt criminals without punishment.³⁹ Indonesia has not yet implemented the "Asset Forfeiture of Corruption Perpetrators without punishment" model due to the absence of a legal basis and the lack of an established Asset Forfeiture Law.⁴⁰ Furthermore, establishing the criminal justice system in Indonesia has not prioritized confiscating and seizing the profits and tools used in illicit activities as a crucial component in the endeavor to decrease the crime rate in the country.

This analysis focuses on the criminal procedure law in Indonesia. It highlights the following points: - The regulations about confiscation are currently found in the Criminal Code, Law Number 30 of 2002, which has been amended multiple times, most recently by Law Number 19 of 2019, known as the Second Amendment to the KPK Law (KPK Law).⁴¹ Additionally, the regulations regarding confiscation are also addressed in Law Number 16 of 2004, which pertains to the Indonesian Attorney and has been amended by Law Number 11 of 2021 (Attorney Law).⁴² The Indonesian Criminal Procedure Code (KUHAP) serves as the legal foundation for investigators from the Indonesian Police and the Attorney General's Office, including the Attorney General's Office Law. On the other hand,

³⁶ Hong-Hai Lim, 'Improving Administrative Performance in Malaysia: The More Difficult Next Steps in Reform', *Policy and Society*, 26.2 (2007), 33–59 [https://doi.org/10.1016/s1449-4035\(07\)70107-8](https://doi.org/10.1016/s1449-4035(07)70107-8)

³⁷ Alvaro Cuervo-Cazurra, 'The Effectiveness of Laws against Bribery Abroad', *Journal of International Business Studies*, 39.4 (2008), 634 – 651 <https://doi.org/10.1057/palgrave.jibs.8400372>

³⁸ David S Jones, 'Curbing Corruption in Government Procurement in Southeast Asia: Challenges and Constraints', *Asian Journal of Political Science*, 17.2 (2009), 145 – 172 <https://doi.org/10.1080/02185370903077444>

³⁹ Mabroor Mahmood, 'Corruption in Civil Administration: Causes and Cures', *Humanomics*, 21.3 (2005), 62 – 84 <https://doi.org/10.1108/eb018905>

⁴⁰ Scott A Fritzen and J Patrick Dobel, 'Transforming Corrupt Systems: What Have We Learned?', *Public Integrity*, 20 (2018), S60 – S73 <https://doi.org/10.1080/10999922.2018.1461172>

⁴¹ Jon S T Quah, 'Curbing Corruption in Singapore: The Importance of Political Will, Expertise, Enforcement, and Context', *Research in Public Policy Analysis and Management*, 23 (2013), 137 – 166 [https://doi.org/10.1108/S0732-1317\(2013\)0000023006](https://doi.org/10.1108/S0732-1317(2013)0000023006)

⁴² Yasmirah Mandasari Saragih and Berlian Berlian, 'The Enforcement of the 2009 Law Number 46 on Corruption Court: The Role of Special Corruption Court', *Sriwijaya Law Review*, 2.2 (2018), 193 <https://doi.org/10.28946/slrev.vol2.iss2.69.pp193-202>

the Corruption Eradication Commission (KPK) Law serves as the basis for granting seizure authority to KPK investigators.⁴³

Table II
Comparison of Seizure Authority Policies in
Criminal Procedure Code, KPK Law, and Attorney Law

Criminal Procedure Code	Corruption Eradication Commission Law	Prosecutor's Law
Chapter V, Fourth Section - Confiscation (Article 38 to Article 46)	Article 12, Article 47 and Article 47A (further arrangements regarding the auction of confiscated goods are regulated in Government Regulation Number 105 of 2021 concerning the Auction of Confiscated Objects of the Corruption Eradication Commission)	Article 30A: In asset recovery, the Attorney General's Office is authorised to conduct activities to trace, seize, and return assets obtained from criminal offences and other assets to the state, victims, or those entitled. (Further regulation of this provision is regulated in the Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 concerning the Second Amendment to the Regulation of the Attorney General Number Per-027/A/JA/ 10/2014 concerning Guidelines for Asset Recovery).
Definition of Seizure according to Article 1 Item 16 of KUHAP: "a series of actions by investigators to take over and or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions, and trials".		Definition of Confiscation according to the Indonesian Attorney General's Regulation Number 7 of 2020 concerning Guidelines for Asset Recovery: a series of actions by investigators or public prosecutors or state lawyers to take over and / or store assets related to crimes / criminal acts or other assets under their control, both for the purposes of investigation, prosecution and justice and for the purposes of asset recovery, in accordance with statutory provisions.
Main Arrangements: Confiscation is carried out by investigators with the permission of the Chairman	a. Main Arrangements: Confiscation is carried out by investigators by notifying the Supervisory Board (Article 47);	a. In general, the procedure for implementing confiscation by prosecutors is carried out based on the provisions in the

⁴³ P Pujiyono, Sufmi Dasco Ahmad, and Reda Manthovani, 'The Future of the Leniency Program as an Efforts to Reveal Cartel Practices in Indonesia', *ARPJ Journal of Engineering and Applied Sciences*, 14.20 (2019), 7599 – 7608 <<https://doi.org/10.36478/JEASCI.2019.7599.7608>>.

of the local District Court (Article 38); b. Objects that can be confiscated in criminal cases (Article 39); c. Confiscated objects are stored in the State Confiscated Object Storage House (Article 44); d. confiscated objects are prohibited from being used by anyone (Article 44); e. confiscated objects can be sold by auction if the object is an object that can be quickly damaged or endangered or if the cost of storing the object becomes too high (Article 45); f. the auction is carried out as far as possible with the consent of the suspect or his attorney (Article 45).

b. The results of confiscation can be auctioned (Article 47A); c. the auction of confiscated objects can be carried out either at the stage of investigation, prosecution, or the case has been submitted to the court; d. the auction of confiscated objects is carried out on confiscated objects that are perishable, dangerous, and the cost of storage is too high (Article 4 PP 105/2021); e. the auction is carried out as far as possible with the consent of the suspect or his/her attorney (Article 5 PP 105/2021). The auction of confiscated objects is carried out on confiscated objects that are quickly damaged, dangerous, and the cost of storage becomes too high (Article 4 of PP 105/2021); e. the auction is carried out as far as possible with the consent of the suspect or his attorney (Article 5 of PP 105/2021); f. there is a mechanism for determining the limit value (Article 8 of PP 105/2021) there are detailed arrangements for the stages of conducting an auction (PP 105/2021).

Criminal Procedure Code. For the technical seizure of assets, it is specifically regulated in the Indonesian Attorney General's Regulation Number 7 of 2020 concerning Guidelines for Asset Recovery in Chapter IV Asset Maintenance and Chapter V Asset Seizure.

Confiscation in corruption cases is fraught with intricacies. For instance, Article 39 of the Criminal Procedure Code restricts the range of items that can be seized, which may hinder law enforcement officers (Investigators) from securing objects unrelated to the case but are valuable for ensuring compensation payment.⁴⁴ The number is 28. This can undoubtedly impede the restoration of state damages resulting from corruption. Hence, it is imperative to incorporate a mechanism like conservatoire beslag (a concept in civil law) within the terms of the Anti-Corruption Law to freeze the offender's assets at the earliest stage legally.⁴⁵

⁴⁴ Tinuk Dwi Cahyani, Muhamad Helmi Md Said, and Muhamad Sayuti Hassan, 'A Comparison Between Indonesian and Malaysian Anti-Corruption Laws', *Padjadjaran Jurnal Ilmu Hukum*, 10.2 (2023), 275–99 <https://doi.org/10.22304/pjih.v10n2.a7>

⁴⁵ Satria Unggul Wicaksana Prakasa, 'Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures', *Lentera Hukum*, 6.3 (2019), 413–30 <https://doi.org/10.19184/ejllh.v6i3.14112>

Furthermore, apart from the issue of loophole provisions in the seizure of assets from corrupt individuals, which create opportunities for them to evade confiscation or restitution, there are also concerns regarding the management of confiscated assets once they have been successfully seized.⁴⁶ Certain confiscated assets may incur substantial administration expenses or even have the capacity to diminish the overall worth of assets, such as plantation land, corporations, factories, hotels, office buildings, and shares. The existing confiscation procedures do not permit the utilization or use of confiscated goods. Managing confiscated or seized assets for investigation is a complex and costly task that currently lacks a clear and definitive legal framework.⁴⁷

In addition, asset forfeiture refers to the legal process in which the authorities can seize the assets or property of a defendant who has been proven guilty in court.⁴⁸ Asset forfeiture can be categorized into two main types: criminal forfeiture, also known as criminal or personam forfeiture, and civil forfeiture, sometimes called civil or non-conviction-based asset or in rem forfeiture. There are now two legal mechanisms available for asset forfeiture in cases related to corruption offenses: the Anti-Corruption Law and the Money Laundering Law.⁴⁹ The Anti-Corruption Law utilizes criminal and civil procedures to recover state financial losses through asset forfeiture, serving as the primary tool for combating corruption.⁵⁰ Under the Anti-Money Laundering Law, asset forfeiture is carried out via criminal, civil, and administrative methods.

Table III

Comparison Matrix of Legal Basis for Asset Forfeiture Arrangements in Indonesia

	Corruption Act		Money Laundering Act		
	Criminal	Civil	Criminal	Civil	Administration
Article 10 letter b number 2 of the Criminal Code;	Article paragraph Article 32	32 (1), 32 (2),	Article 10 letter b number 2 of the Criminal Code;	Article 67 of the Anti-Money Laundering Law;	Articles 34 - 36 of the Anti-Money Laundering Law;
Article 39 paragraph (1) of the Criminal Code, asset	Article 33, Article 34, and Article 38C of the Anti-	Article 39 paragraph (1) of the Criminal Code,	Supreme Court Regulation Number 1 Year 2013	Government Regulation Number 99 Year	

⁴⁶ Caroline Gratia Sinuraya and Tutik Rachmawati, 'Does Icts Matters for Corruption?', *Asia Pacific Fraud Journal*, 1.1 (2017), 49 <https://doi.org/10.21532/apfj.001.16.01.01.04>

⁴⁷ Alvedi Sabani, Mohamed H Farah, and Dian Retno Sari Dewi, 'Indonesia in the Spotlight: Combating Corruption through ICT Enabled Governance', *Procedia Computer Science*, 161 (2019), 324–32 <https://doi.org/https://doi.org/10.1016/j.procs.2019.11.130>

⁴⁸ Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11153>

⁴⁹ Hendi Yogi Prabowo, 'To Be Corrupt or Not to Be Corrupt: Understanding the Behavioral Side of Corruption in Indonesia', *Journal of Money Laundering Control*, 17.3 (2014), 306–26 <https://doi.org/10.1108/JMLC-11-2013-0045>

⁵⁰ Hwian Christianto, 'From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia', *Padjadjaran Jurnal Ilmu Hukum*, 7.3 (2020), 421–42 <https://doi.org/10.22304/pjih.v7n3.a7>

forfeiture as an additional punishment;	Corruption Law	asset forfeiture as an additional punishment;	2016
Article 39 paragraph (3) of the Criminal Code, assets forfeited are only assets that have been confiscated previously;		Article 39 paragraph (3) of the Criminal Code, assets that are confiscated are only assets that have been confiscated previously;	
Article 18 paragraph (1) of the 1999 Anti-Corruption Law, additional punishment in the form of asset forfeiture, payment of restitution, etc.		Article 77 - 78 of the Anti-Money Laundering Law, reverse proof	

Implementing asset forfeiture through the provisions outlined in these two legal instruments is often challenging. The provision of Article 4 of the Anti-Corruption Law, which deals with the restitution of public financial losses, is seen as an obstacle to recovering assets from corruption crimes rather than effectively addressing the issue. Hence, it is imperative to conduct a thorough review, particularly for cases involving negligible state financial losses. Secondly, applying Article 18, paragraph (1), letter an is relevant when the defendant's assets are situated or stored in a foreign country without a bilateral agreement, making it extremely challenging to seize these assets. Thirdly, Article 18, paragraph (1), letter b of the Anti-Corruption Law. Implementing restitution to compensate for state losses can be challenging in practice. An often recurring portrayal is that offenders prefer serving a subsidiary term rather than being required to make restitution payments. This is indirectly related to the significant reparation receivables in the Attorney General's Office, which has reached Rp 12.7 trillion.⁵¹

Furthermore, until now, the courts have held divergent perspectives regarding this restitution. Article 18, paragraph (1), letter b stipulates that restitution is limited to property acquired by the convicted individual via acts of corruption. The Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2014, which deals with Additional Penalties for Restitution in Corruption Crimes, confirms that the restitution payment in corruption crimes should equal the value

⁵¹ Pujiyono Suwadi, Priscilla Wresty Ayuningtyas, and others, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, ahead-of-p ahead-of-print (2022) <https://doi.org/10.1108/IJHRH-04-2022-0032>

of the property obtained through those crimes.⁵² The lack of consensus among the court members is evident in the Nurhadi case, where the judge dismissed the request for additional compensation of Rp 83 billion, arguing that the funds received were personal and did not cause any financial loss to the state. According to Article 18 letter b of the Anti-Corruption Law, the imposition of additional compensation does not depend on the presence of state financial losses. The legislation just defines *restitution* as paying a sum of money, with the maximum limit equivalent to the value of the assets acquired through corrupt activities. Civil lawsuits under the Anti-Corruption Law are subject to specific conditions outlined in Articles 32(1), 32(2), Article 33, Article 34, and Article 38C. One of these conditions is that the lawsuits are restricted to corruption offenses that result in financial losses for the state. These offenses are specifically mentioned in Article 2 and Article 3 of the Anti-Corruption Law.⁵³

Furthermore, the process of confiscating corrupt assets through civil procedures is deemed intricate, leading to inefficiency in recovering assets derived from corruption. Additionally, law enforcement officials have not fully utilized the legal tools provided by the Anti-Money Laundering Law to seize assets obtained through corrupt activities. Yenti Garnasih argues that Anti-Money Laundering is not merely a novel criminal activity but a fresh approach to eliminating corruption. Therefore, implementing the Anti-Money Laundering Law should have safeguarded all assets acquired through corrupt activities and those obtained from 23 other criminal offenses. However, the reality is that less than 20% of corruption cases employ Anti-Money Laundering techniques despite the presence of Anti-Money Laundering features in these instances.⁵⁴

The data extracted from the ICW's annual report, specifically Table I, unequivocally illustrates the magnitude of financial losses incurred by the state due to pervasive corruption. The report discloses that the state incurred damages amounting to roughly Rp.236,231,909,399,485 (two hundred thirty-six trillion two hundred thirty-one billion nine hundred nine million three hundred ninety-nine thousand four hundred eighty-five rupiah) as a result of corruption crimes. However, the total sum effectively reimbursed to the state treasury in fines and restitution amounted to Rp. 33,079,023,282,628 (thirty-three trillion seventy-nine

⁵² Rian Saputra, M Zaid, and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), 61–118 <https://doi.org/10.15294/lesrev.v7i1.64143>

⁵³ Pujiyono Pujiyono, Bambang Waluyo, and Reda Manthovani, 'Legal Threats against the Existence of Famous Brands a Study on the Dispute of the Brand Pierre Cardin in Indonesia', *International Journal of Law and Management*, 63.4 (2020), 387 – 395 <https://doi.org/10.1108/IJLMA-01-2018-0006>

⁵⁴ Pujiyono Suwadi, Reda Manthovani, and others, 'Legal Certainty on Commercial Court Authority to Examine And Adjudicate Mark Dispute Without Prior Appeal Petition to The Mark Appeal Commission', *Journal of Law and Sustainable Development*, 11.2 (2023) <https://doi.org/10.55908/sdgs.v11i2.322>

billion twenty-three million two hundred eighty-two thousand six hundred twenty-eight rupiah). Law enforcement personnel can recoup only a minuscule 0.86% of the total damages borne by the state. This suggests an imbalance in the number of state losses that have not been recovered, specifically amounting to Rp.203,152,886,116,857, which the state is legally responsible.

This graph demonstrates that the amount of loss related to the value effectively restored is not comparable or lower.⁵⁵ The discrepancy is thought to stem from a gap in the restitution process, which permits the potential substitution of incarceration. In addition, several more variables contribute to the limited cash generated by reparation. The amount of losses has not yet been offset by the returned funds, resulting in a discrepancy of 281. As a result, the amount of money being deposited into the state is considerably lower than the value of the loss. This condition illustrates that offering monetary recompense in addition to a secondary penalty is not by the idea of "following the money."⁵⁶ This signifies a divergence between the intended notion and the tangible execution of law enforcement. The judge's decision to impose jail and restitution is justified when the offender cannot reimburse the state's damages. Nevertheless, this practice may become prevalent in corruption courts. In that case, there is a legitimate concern about the compensation that may be lost to the state budget due to replacing it with physical punishment.⁵⁷

The difficulty faced by offenders who cannot make reparation can be related to two factors. Firstly, the perpetrator owns insufficient funds or assets to satisfy the restitution sum fully. In addition, the perpetrator pretends to have no money or belongings to avoid the obligation of compensating, even though the assets have been sent abroad or given to someone else.⁵⁸ The judge must ascertain the veracity of one of the two conditions through a comprehensive evidentiary process, as the legal ramifications of the two conditions differ greatly. In this context, the timeliness and accuracy of the public prosecutor in providing evidence of the guilty person's assets are of utmost importance, as they will eventually define the convicted person's legal status in front of the judge.⁵⁹

⁵⁵ Laurence R Helfer, Cecily Rose, and Rachel Brewster, 'Flexible Institution Building in the International Anti-Corruption Regime: Proposing a Transnational Asset Recovery Mechanism', *American Journal of International Law*, 117.4 (2023), 559 – 600 <https://doi.org/10.1017/ajil.2023.32>

⁵⁶ Pallavi Roy and others, 'Breaking the Cycle of Corruption in Nigeria's Electricity Sector: Off-Grid Solutions for Local Enterprises', *Energy Research & Social Science*, 101 (2023), 103130 <https://doi.org/https://doi.org/10.1016/j.erss.2023.103130>

⁵⁷ Zhiyuan Guo, 'Anti-Corruption Mechanisms in China after the Supervision Law', *Journal of Economic Criminology*, 1 (2023), 100002 <https://doi.org/https://doi.org/10.1016/j.jeconc.2023.100002>

⁵⁸ Marco Arnone and Leonardo S Borlini, *Corruption: Economic Analysis and International Law*, 2014 <https://doi.org/10.4337/9781781006139>

⁵⁹ Tommaso Trinchera, 'Confiscation And Asset Recovery: Better Tools To Fight Bribery And Corruption Crime', *Criminal Law Forum*, 31.1 (2020), 49 – 79 <https://doi.org/10.1007/s10609-020-09382-1>

Corruption, an illicit activity, is motivated by the unlawful quest for monetary benefit. Hence, law enforcement organizations must formulate a strategy to identify the assets of convicted criminals, as these assets serve as the main impetus for their illicit actions. Through early identification and seizure of these assets, judges can efficiently issue orders for condemned individuals to provide restitution. If the compensation is not remunerated, the prosecutor has the authority to auction the seized assets.⁶⁰ As previously mentioned, implementation challenges suggest that the current legislation's confiscation and asset forfeiture provisions are inadequate in restoring and recovering public financial losses. The existing procedures are inadequate in addressing the need for law enforcement to deal with corruption offenses that lead to a focus on recovering damages incurred by the state.

The Effectiveness of Recovering Losses on State Assets Policy in Saudi Arabia

The Arabic term for corruption is "al-fasâd," which refers to the wrongful property acquisition. Nevertheless, this nation employs the term "risywah" to refer to the offense of corruption. Saudi Arabia rigorously enforces sharia law, a legal system based on Islamic principles. This country is a monarchy and is one of the Islamic nations that implement Islamic law within its borders. The term "risywah," used to describe the act of corruption, is closely linked to the hadith nabawi, which explains this offense.⁶¹

Bribery, in essence, is a means to accomplish a desired outcome, guided by the philosophy of attaining the goal at any cost. "risywah" or "râsya" refers to a rope designed to draw water from a well. An ar-râshî is an individual who provides something, such as money, to another party. Ar-Râshi acts as an intermediary between the one offering a bribe and the person accepting the bribe. Al-murtasyî is the person who receives the bribe. In terminology, risywah is a concept that fiqh scholars have defined in many ways. One such definition, proposed by Muhammad Rawwas, describes risywah as providing something to someone to distort the truth, invalidating or justifying what is incorrect. b. Muhsin defines risywah as: "A gift given by an individual to a judge or others to secure legal certainty or fulfill their desires". According to Yusuf al-Qardhawî, risywah refers to providing something to a person in power or authority, intending to ensure their success by overcoming their opponents or influencing the outcome in a

⁶⁰ Peter Leasure, 'Asset Recovery in Corruption Cases: Comparative Analysis Identifies Serious Flaws in US Tracing Procedure', *Journal of Money Laundering Control*, 19.1 (2016), 4 – 20 <https://doi.org/10.1108/JMLC-04-2015-0010>

⁶¹ Lego Karjoko and others, 'The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosia*, 16.2 (2021), 362–92 <https://doi.org/10.19105/al-lhkam.v16i2.5314>

desirable manner. It may also involve prioritizing or delaying their business for personal gain.⁶²

Yusuf Qardhawî's definition explicitly states that bribery is not limited to the courts and judiciary. Indeed, the act of bribery proliferated in every facet of communal existence. Even more intricate and diverse in all manifestations. After presenting multiple iterations of the definition of bribery, it is evident that there are three essential components. These include: a. The bribe recipient is "The individual who accepts something from others, whether money or services, to fulfill the requester's corrupt demands." b. The briber is specifically referred to as "The individual who provides property, money, or services in order to accomplish their objective". c. A *bribe* is: "Assets, currency, or services provided to acquire something desired, anticipated, or solicited".⁶³

The semantic connotations of the term "risywah" diverge from the Egyptian interpretation of "ikhtilâs." The distinction between risywah and ikhtilâs is significant, resulting in an ambiguous understanding of the term and concept of corruption by Islamic criminal law. Due to the varying terminology used to describe the act of corruption, there are differences in the terminology and consequences referred to as "uqūbat". Nevertheless, the "uqūbat, is ultimately imposed on all amri in the form of ta'zîr, although the specific type of ta'zîr to be imposed on the perpetrator of this jarîmah al-faced is still unclear.⁶⁴

Saudi Arabia continues to uphold the death penalty as the most severe punishment for individuals convicted of corruption offenses. The death penalty has been in existence since the time of the leadership of the Prophet s.a.w and Khulafau al-Rasyidin when this punishment is implemented as a means of upholding human rights. Like other governments, the State of Saudi Arabia faces challenges in its eradication efforts. However, the magnitude of these impediments may vary. Public sector fraud is not a positive thing; instead, it is a cultural problem that addresses and prevents fraud and corruption. One participant even perceived their duty as uncovering unlawful activities and

⁶² You-How Go and others, 'A Transport Environmental Kuznets Curve Analysis for Malaysia: Exploring the Role of Corruption', *Environmental Science and Pollution Research*, 28.3 (2021), 3421 – 3433 <https://doi.org/10.1007/s11356-020-10736-w>

⁶³ Christine Siew Pyng Chong, Suresh Narayanan, and Andrew K G Tan, 'Sentencing Discrimination and Disparities in Bribery Cases in Malaysia: An Assessment', *Asian Journal of Criminology*, 2023 <https://doi.org/10.1007/s11417-023-09415-9>

⁶⁴ Noore Alam Siddiquee and Habib Zafarullah, 'Absolute Power, Absolute Venality: The Politics of Corruption and Anti-Corruption in Malaysia', *Public Integrity*, 24.1 (2022), 1 – 17 <https://doi.org/10.1080/10999922.2020.1830541>

thwarting any attempts to manipulate or deceive in both the public and private domains.⁶⁵

This scenario allows individuals to articulate their perspectives on corruption in Saudi Arabia. These perspectives may not reflect the opinions of all employees or industries. However, they provide insight into how corruption is perceived in Saudi Arabia by individuals with firsthand experience instead of a general survey that may overlook significant concerns of those directly involved. Based on the literature review of *jarîmah al-fasâd* (corruption crimes) in Saudi Arabia, no specific forms and types have been identified. However, corruption persists in Egypt, although the specific style and form are not mentioned. However, corruption continues to persist in Saudi Arabia and is regarded as a forbidden practice in religion, with even several crown princes being implicated in it.⁶⁶

Royal Order No governs the criminal offense of corruption in Saudi Arabia. A/44 is the primary legislation that regulates the act of corruption and its penalties in the country. This legislation establishes the lawful foundation for the seizure of unlawfully acquired assets resulting from acts of corruption. The entity responsible for enforcing corruption offenses in Saudi Arabia is NAZAHA, which stands for the Saudi Anti-Corruption Agency. NAZAHA possesses the jurisdiction to confiscate assets suspected to have been acquired unlawfully by public officials or other individuals implicated in corrupt activities.⁶⁷

In Saudi Arabia, bribery offenses carry significant legal repercussions, such as imprisonment for a maximum of ten years, fines of up to 1 million Riyals (equivalent to US\$4.1 billion), and the possibility of being dismissed or banned from public office. If individuals engage in offering or pledging a bribe but then decline to follow through, they may face a maximum punishment of ten years of imprisonment and a fine of up to IDR 4.1 billion.⁶⁸ In Saudi Arabia, the legal system permits the seizure of the profits obtained from criminal activities. Additionally, penalties will be applied beyond the maximum punishment set for

⁶⁵ Naif Alsagr, 'Revisiting the Natural Resources Rent and Financial Development Nexus: Does Geopolitical Risk and Corruption Really Matters?', *Resources Policy*, 89 (2024), 104638 <https://doi.org/https://doi.org/10.1016/j.resourpol.2024.104638>

⁶⁶ Frank G Madsen, 'Corruption: A Global Common Evil', *RUSI Journal*, 158.2 (2013), 26 – 38 <https://doi.org/10.1080/03071847.2013.787730>

⁶⁷ Mohammed Ahmad Naheem, 'Saudi Arabia's Efforts on Combating Money Laundering and Terrorist Financing: (Review Undertaken in September 2017)', *Journal of Money Laundering Control*, 22.2 (2019), 233 – 246 <https://doi.org/10.1108/JMLC-10-2018-0065>

⁶⁸ Nicholas J Lord, 'Responding to Transnational Corporate Bribery Using International Frameworks for Enforcement: Anti-Bribery and Corruption in the UK and Germany', *Criminology and Criminal Justice*, 14.1 (2014), 100 – 120 <https://doi.org/10.1177/1748895812474662>

the crime for individuals who commit the same offense multiple times. However, they will not exceed twice the specified limit.⁶⁹

Corporations may face penalties of up to tenfold the bribe amount and be prohibited from engaging in procurement agreements. In Saudi Arabia, the legal repercussions for money laundering are severe. They include hefty fines of up to 7 million Riyals (\$7.8 billion), imprisonment for a maximum of 15 years, travel restrictions for Saudi nationals, and deportation for non-Saudi nationals after serving their sentence. Individuals who engage in acts of harassment may face criminal consequences, including imprisonment for a period ranging from one month to one year, as well as fines ranging from 5,000 Riyals to 50,000 Riyals. It should be noted that under Sharia law or other relevant legislation, a more severe penalty may be imposed.⁷⁰ The confiscation of illicit assets in Saudi Arabia is crucial to the government's anti-corruption campaign and efforts to reclaim unlawfully acquired governmental assets. The purpose of these measures is to enhance public trust, reinforce the integrity of the judicial system, and foster effective governance in the administration of public funds.⁷¹

An important instance of asset forfeiture related to corruption in Saudi Arabia is the "Ritz-Carlton Corruption Crackdown" case in 2017. In November 2017, Prince Mohammed bin Salman, who was then serving as the Deputy Crown Prince of Saudi Arabia, initiated an anti-corruption initiative called "Operation Anti-Corruption" or "Anti-Corruption Crackdown".⁷² During this campaign, a large number of influential individuals and government officials in Saudi Arabia, including notable princes, ministers, and entrepreneurs, were apprehended and held in custody at the Ritz-Carlton Hotel in Riyadh. They faced allegations of engaging in corruption and power abuse, as well as acquiring assets unlawfully.⁷³

Throughout the procedure, the Saudi Arabian government declared its intention to employ every essential method, encompassing current legislation and regulations, to seize unlawfully obtained assets belonging to the individuals

⁶⁹ Ariadna H Ochnio, 'Recent Developments in EU Anti-Corruption Strategy: The Missing Element of the Return of Corrupt Assets to "Victim Countries"', *Journal of Money Laundering Control*, 27.7 (2024), 1 – 12 <https://doi.org/10.1108/JMLC-11-2023-0176>

⁷⁰ Abdulaziz I Almulhim and Patrick Brandful Cobbinah, 'Can Rapid Urbanization Be Sustainable? The Case of Saudi Arabian Cities', *Habitat International*, 139 (2023), 102884 <https://doi.org/https://doi.org/10.1016/j.habitatint.2023.102884>

⁷¹ Ali A Shash and Abdulaziz Al Qarra, 'Cash Flow Management of Construction Projects in Saudi Arabia', *Project Management Journal*, 49.5 (2018), 48 – 63 <https://doi.org/10.1177/8756972818787976>

⁷² Bayan Sameer Bantan and Keith Thomas, 'Measuring What Matters: A Sector-Specific Corporate Social Responsibility Framework for Quality Practice', *Thunderbird International Business Review*, 63.3 (2021), 339 – 354 <https://doi.org/10.1002/tie.22195>

⁷³ Daniel Moshashai, Andrew M Leber, and James D Savage, 'Saudi Arabia Plans for Its Economic Future: Vision 2030, the National Transformation Plan and Saudi Fiscal Reform', *British Journal of Middle Eastern Studies*, 47.3 (2020), 381 – 401 <https://doi.org/10.1080/13530194.2018.1500269>

suspected of corruption.⁷⁴ The confiscated assets comprise real estate, financial accounts, high-end automobiles, and other properties purportedly associated with illicit activities. The case garnered global scrutiny because of its magnitude and influence and the Saudi Arabian government's rigorous approach to dealing with corruption allegations.⁷⁵

Saudi Arabia has established executive regulations and guidelines that outline the procedures for forfeiting corrupt assets. These procedures include identifying assets suspected of being obtained through illicit means, the government's seizure, and the subsequent transfer of the assets to the state.⁷⁶ Additionally, Saudi Arabia adopts an international approach by collaborating with other countries to seize corrupt assets involved in cross-border transactions. This may entail exchanging information, providing legal aid, and coordinating law enforcement activities among nations. The Saudi Arabian government is firmly dedicated to transparently and responsibly confiscating corrupt assets. This may entail disseminating information regarding confiscated assets and their subsequent utilization for the betterment of the public.⁷⁷

Saudi Arabia employs a process to recover public assets from corruption by seizing an average of 70% of the assets owned by individuals accused of corruption, as specified in the financial agreement. In addition, after the financial deals are signed, the crown prince, as the chairman of the anti-corruption commission, makes royal orders to exonerate corrupt offenders from all accusations. This groundbreaking approach of eliminating corruption by seizing the ill-gotten money of corrupt individuals should serve as a model for Indonesia, which aims to recover public losses by confiscating the assets of suspects.

The Effectiveness of Recovering Losses on State Assets

The effectiveness of asset recovery from corruption offenses in Indonesia remains inadequate, as evidenced by numerous studies and research. The lack of clear regulations regarding the seizure of assets derived from corruption in Indonesia, combined with the focus of the Indonesian Corruption Law solely on punishing corrupt individuals rather than recovering the proceeds of their crimes,

⁷⁴ J C Sharman and David Chaikin, 'Corruption and Anti-Money-Laundering Systems: Putting a Luxury Good to Work', *Governance*, 22.1 (2009), 27 – 45 <https://doi.org/10.1111/j.1468-0491.2008.01420.x>

⁷⁵ David Seth Jones, 'IMDB Corruption Scandal in Malaysia: A Study of Failings in Control and Accountability', *Public Administration and Policy*, 23.1 (2020), 59 – 72 <https://doi.org/10.1108/PAP-11-2019-0032>

⁷⁶ Stephen Platt, 'Bribery And Corruption', in *Criminal Capital: How the Finance Industry Facilitates Crime* (London: Palgrave Macmillan UK, 2015), pp. 84–103 https://doi.org/10.1057/9781137337306_5

⁷⁷ Barney Warf, 'Spatiality of Corruption in the Middle East and North Africa', in *Global Corruption from a Geographic Perspective* (Cham: Springer International Publishing, 2019), pp. 83–109 https://doi.org/10.1007/978-3-030-03478-8_4

is the reason for this situation. Research and reports from ICW reveal that between 2013 and 2022, the Court imposed fines totaling IDR 867,825,750,000 (eight sixty-seven billion eight hundred twenty-five million seven hundred fifty thousand rupiah) on corruption defendants. Additionally, restitution amounted to Rp. 32,211,197,532,826 (thirty-two trillion two hundred eleven billion one hundred ninety-seven million five hundred thirty-two thousand six hundred twenty-eight rupiah). The entire worth of state losses collected from fines and restitution is Rp. 33,079,023,282,628 (thirty-three trillion seventy-nine billion twenty-three million two hundred eighty-two thousand six hundred twenty-eight rupiah).

From 2013 to 2022, the State's total financial losses from corruption crimes amounted to approximately Rp. 236,231,909,399,485 (two hundred thirty-six trillion two hundred thirty-one billion nine hundred nine million three hundred ninety-nine thousand four hundred eighty-five rupiah). The author argues that the efforts to eliminate corruption in Indonesia primarily revolve around punishing the individuals responsible for criminal acts rather than considering methods of asset forfeiture to recover the financial losses incurred by the State due to corrupt activities.⁷⁸

To effectively combat corruption in Indonesia, it is crucial to prioritize punitive actions against wrongdoers and emphasize initiatives that try to recover or compensate for the financial losses incurred by the State. The Indonesian Government's commitment to combat corruption is evident in its stringent approach towards punishing offenders and recovering state losses. This commitment is represented in the political and legal policies established by the President and in different anti-corruption measures and legislation.⁷⁹ Suppose this issue is not promptly addressed and resolved. In that case, there is a risk that it would progressively undermine the economic stability of a country at both the macro and micro levels. In order to expedite and enhance the recovery of state assets, it is imperative to make the best use of asset forfeiture without conviction, which is in line with the principles of economic analysis of law.⁸⁰ Hence, those who commit criminal acts for financial gain are anticipated to carefully weigh the pros and cons of refraining from engaging in such illegal activities. The more the ease of committing a crime (with the lowest expense but maximum profit), the

⁷⁸ Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 31–42 <https://doi.org/10.53955/jhcls.v1i1.5>

⁷⁹ Renze Salet and Jan Terpstra, 'Criminal Justice as a Production Line: ASAP and the Managerialization of Criminal Justice in the Netherlands', *European Journal of Criminology*, 17.6 (2020), 826–44 <https://doi.org/10.1177/1477370819828332>

⁸⁰ Onur Sari and Sener Celik, 'Legal Evaluation of the Attacks Caused by Artificial Intelligence-Based Lethal Weapon Systems within the Context of Rome Statute', *Computer Law and Security Review*, 42 (2021), 105564 <https://doi.org/10.1016/j.clsr.2021.105564>

greater the likelihood of individuals engaging in criminal activities, and conversely.⁸¹

In future efforts to combat corruption, multiple techniques can be employed for asset forfeiture. These methods include asset forfeiture following the establishment of a corruption offense and asset forfeiture prior to the establishment of a corruption offense. Asset forfeiture occurs before establishing evidence of corruption, specifically in cases involving unexplained riches.⁸² If an individual possesses unexplained riches, the State can seize the portion of their assets that cannot be substantiated as having been acquired legitimately, using a specific legal process. Furthermore, the owner can regain ownership and enjoy the remaining assets, which can be substantiated as having been acquired legally.

Utilizing asset forfeiture to target individuals with "unexplained wealth" is often regarded as one of the most effective methods to deter such behaviors. The process of establishing unexplained wealth is simplified for two reasons.⁸³ Firstly, it employs the reverse proof procedure, although the Public Prosecutor is still required to demonstrate the presence of an excessive amount of wealth. Secondly, it utilizes the civil standard of proof, known as the balance of probability, which is less stringent than the criminal standard of proof (beyond reasonable doubt). The utilization of this civil burden of proof is a result of the unexplained wealth asset forfeiture process, as well as other non-criminal asset forfeiture processes (NCB asset forfeiture) conducted through a civil procedure rather than a criminal one, as the focus is on seizing the assets (in rem) rather than criminalizing the individual (in personam).

The next step involves seizing assets obtained through corrupt activities using the "illicit enrichment" method. Switzerland categorizes illicitly acquired assets as funds or other tangible assets obtained through illegal activities. Identify and restore these assets to their lawful owners through authorized repatriation procedures.⁸⁴ Another approach for repatriation involves establishing agreements between the country where the assets were unlawfully obtained and the country where the funds were placed to use them for development projects or other humanitarian purposes. It is worth noting that this approach was initially planned to be included in the Anti-Corruption Law. However, it was later removed and transferred to the Asset Forfeiture Bill. The rationale behind this decision was that the Anti-Corruption Law focuses on individual liability (in personam approach),

⁸¹ Loraine Gelsthorpe, 'Women and Criminal Justice', in *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)*, ed. by James D Wright, Second Edition (Oxford: Elsevier, 2015), pp. 616–21 <https://doi.org/10.1016/B978-0-08-097086-8.28100-2>

⁸² David U. Enweremadu, 'Nigeria's Quest to Recover Looted Assets: The Abacha Affair', *Africa Spectrum*, 48.2 (2013), 51–70 <https://doi.org/10.1177/000203971304800203>

⁸³ Kevin Chamberlain, 'Recovering the Proceeds of Corruption', *Journal of Money Laundering Control*, 6.2 (2003), 157 – 165 <https://doi.org/10.1108/13685200310809518>

⁸⁴ Ochnio.

while illicit enrichment is addressed through a broader approach (in rem approach).⁸⁵ Consequently, the provisions related to illicit enrichment were incorporated into the Asset Forfeiture Bill. This ensures that illicit enrichment applies not only to corruption offenses but also to other criminal offenses.

The "unexplained wealth" paradigm is more efficient and effective in dealing with asset confiscation in cases of future corruption offenses.⁸⁶ Unexplained wealth is a legal mechanism that permits confiscating assets belonging to an individual whose value is significantly high but is deemed unjustifiable due to its inconsistency with their income source. Through the reverse proof method, the person in question cannot demonstrate that the assets were acquired lawfully or not derived from criminal activities. The government of Saudi Arabia employs this strategy, which has established a process to reclaim state assets acquired by corrupt means. This is achieved by confiscating an average of 70% of the total assets owned by individuals accused of corruption.

4. Conclusion

According to the findings of this study, it is evident that the current legal framework for confiscating and seizing assets related to corruption in Indonesia is insufficient in effectively restoring and recovering the financial damages incurred by the state. The current mechanisms remain insufficient to address the requirement for law enforcement against corruption, particularly in recovering state losses. Meanwhile, asset forfeiture for corruption offenses in Saudi Arabia has shown to be rather efficient. The Saudi Arabian government has the authority to seize an average of 70% of the assets of those accused of corruption. To optimize the confiscation of assets related to corruption crimes in Indonesia, it is advisable to adopt the unexplained wealth model approach in the regulation of asset forfeiture. This approach enables the seizure of assets belonging to individuals whose value is significantly disproportionate to their known income sources and who cannot provide evidence (using the reverse proof method) that their assets were acquired legally and not through criminal activities.

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