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REFORMULATION OF STATE FINANCIAL LOSS RECOVERY THROUGH NON-CONVENTIONAL PUNISHMENT IN CORRUPTION OFFENCES

Fahmi Afham Fuady [1], Audyna Mayasari Muin[2]

[1,2,] Hasanuddin University, Makassar, Indonesia

[1]Correspondence: fuadyfa24b@student.unhas.ac.id
[2] audyna.mayasari@unhas.ac.id

Abstract
This research aims to evaluate the effectiveness of conventional punishment in restoring state financial losses and formulate a more effective non-conventional punishment model.
With a socio-legal approach, the collection of legal materials is carried out through literature studies, while the analysis of legal materials uses descriptive techniques.
The results revealed that conventional punishment-including imprisonment, nominal fines, and limited asset forfeiture-has not optimally recovered state losses due to slow inter-agency coordination, disproportionate fines in the Anti-Corruption Law, and a legal culture that prioritises imprisonment over restitution so that the recovery rate is only 15-20%. In contrast, non-conventional punishments such as progressive fines of up to 100%, civil forfeiture, and infrastructure social work have the potential to increase asset recovery to 60-85% if regulated lex specialis in the Anti-Corruption Law and Anti-Money Laundering Law and supported by an integrated monitoring system with civil society participation and blockchain technology.
Recommendations include the establishment of an Asset Recovery Task Force under the KPK, ratification of asset repatriation agreements, and whistleblower incentives of 15-30% of the value of assets recovered.

Keywords: *Corruption; Financial Losses to the State; Non-Conventional*

1. INTRODUCTION

Indonesia is a country governed by the rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.[1] In Indonesia, corruption is currently considered to be very serious.[2] Corruption remains a major problem in Indonesia.[3] Corruption has existed for many years in the world.[4] Corruption is a serious legal and social problem, leading to misallocation of public funds and adversely affecting important sectors such as education, health, and infrastructure due to inadequate financial support.[5] One indicator of the

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[1] Muhammad Chairul Huda and Budi Ispriyarso, "Contribution of Islamic Law in the Discretionary Scheme That Has Implications for Corruption," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 19, no. 2 (December 31, 2019): 147–67, https://doi.org/10.18326/ijtihad.v19i2.147-167.

[2] Herman Katimin, "Kerugian Keuangan Negara Atau Perekonomian Negara Dalam Menentukan Hukuman Mati Pada Tindak Pidana Korupsi," *SASI* 26, no. 1 (May 19, 2020): 39, https://doi.org/10.47268/sasi.v26i1.210.

[3] Yoserwan Yoserwan and Fausto Soares Dias, "Implementing The Anti-Money Laundering Law: Optimizing Asset Recovery in Corruption Cases in Indonesia," *Jurnal Hukum Dan Peradilan* 13, no. 2 (July 31, 2024): 227, https://doi.org/10.25216/jhp.13.2.2024.227-250.

[4] Amir; Naswar Syahird, Ahmad; Musakkir; Ilyas, "Restorative Justice Approach as Ultimum Remedium of Corruption Crimes," *Pakistan Journal of Criminology*, no. 16.3 (May 27, 2024): 949–62, https://doi.org/10.62271/pjc.16.3.949.962.

[5] K. Johnson Rajagukguk and KMS Herman, "Recovery of State Financial Losses as a Strategy for Combating Corruption Crimes: A Reform of Criminal Law," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 1 (April 30, 2025): 114, https://doi.org/10.29300/mzn.v12i1.6940.

prevalence of corruption is the decline in Indonesia's corruption perception index score.[6] Indonesia Corruption Watch (ICW) recorded losses due to corruption in Indonesia reaching Rp 28.4 trillion in 2023. Ironically, assets resulting from corruption cannot be confiscated.[7] Indonesia is in urgent need of an effective mechanism to recover state losses in corruption cases.[8] Therefore, the handling of corruption cases requires special measures (extraordinary measures). In order to combat corruption, which has permeated all aspects of Indonesian society, law enforcement officials often resort to criminal law as a last resort (primum remidium) to resolve the issue.[9] Broadly speaking, corruption is caused by three factors. First, corruption by greed. Second, corruption by need. Third, corruption by chance.[10]

In the proof system for falsifying documents in election crimes, of course, it requires a good process in terms of applying sanctions for violators if they are proven to have committed an election crime, seen from material and formal legal facts and supported by evidence submitted starting from the investigation process, investigation to the court so that the trial process can determine whether the defendant is guilty or not, based on the evidence presented. As well as the application of sanctions regulated in the law, both specifically and generally.[11] Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 (hereinafter referred to as the ‘Anti-Corruption Law’).[12] For developing countries, overcoming various asset recovery issues that touch on the legal provisions of large countries will be difficult. Asset recovery is one of the new objectives of criminal law in the eradication of corruption and money laundering.[13] However, the implementation of asset confiscation in Indonesia still faces various obstacles, including ineffective regulations, complicated legal procedures, and weak coordination between law enforcement agencies.[14]

In terms of the authority of the BPK to assess the amount of state financial losses in corruption cases, this is specifically regulated in Article 10(1) of the BPK Law, which states:

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[6] Warih Anjari, “PENERAPAN PEMBERATAN PIDANA DALAM TINDAK PIDANA KORUPSI,” *Jurnal Yudisial* 15, no. 2 (February 17, 2023): 263, https://doi.org/10.29123/jy.v15i2.507.
[7] Hufron Hufron and Sultoni Fikri, “The Urgency of Regulating Forfeiture of Assets Gained from Corruption in Indonesia,” *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (August 24, 2024): 292–310, https://doi.org/10.22219/ljih.v32i2.35243.
[8] Tantimin Tantimin, “Penyitaan Hasil Korupsi Melalui Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara,” *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (January 31, 2023): 85–102, https://doi.org/10.14710/jphi.v5i1.85-102.
[9] Odie Faiz Guslan, “MALADMINISTRATION IN CORRUPTION CASE: A STUDY OF LIMITATION ON THE CRIMINAL ACTION,” *IJCLS (Indonesian Journal of Criminal Law Studies)* 3, no. 2 (November 30, 2018): 147–56, https://doi.org/10.15294/ijcls.v3i2.13249.
[10] Dessy Rochman Prasetyo, “PENYITAAN DAN PERAMPASAN ASET HASIL KORUPSI SEBAGAI UPAYA PEMISKINAN KORUPTOR,” *DiH: Jurnal Ilmu Hukum* 12, no. 24 (August 1, 2016): 149–63, https://doi.org/10.30996/dih.v12i24.2243.
[11] M. Khaerul, Amir Ilyas, and Audyna Mayasari Muin, “SISTEM PEMBUKTIAN PEMALSUAN DOKUMEN DALAM TINDAK PIDANA PEMILU DI INDONESIA,” *JURNAL ILMIAH LIVING LAW* 14, no. 1 (January 31, 2022): 59–74, https://doi.org/10.30997/jill.v14i1.5305.
[12] Rizal Faharuddin and Jefferson Hakim, “Restorative Justice for Corruption Cases the Settlement of Corruption Cases: Is It Possible?,” *Yuridika* 38, no. 1 (January 1, 2023): 73–94, https://doi.org/10.20473/ydk.v38i1.42511.
[13] Ade Mahmud, “PROBLEMATIKA ASSET RECOVERY DALAM PENGEMBALIAN KERUGIAN NEGARA AKIBAT TINDAK PIDANA KORUPSI,” *Jurnal Yudisial* 11, no. 3 (December 26, 2018): 347, https://doi.org/10.29123/jy.v11i3.262.
[14] Ivan Najjar Alavi, Watni Marpaung, and Arifuddin Muda Harahap, “Reconstruction of Confiscation of Corruption Convicts’ Assets in Restitution of State Financial Losses Islamic Law Analysis,” *JURNAL AKTA* 12, no. 1 (February 7, 2025): 72, https://doi.org/10.30659/akta.v12i1.43729.

'The BPK assesses and/or determines the amount of state losses caused by unlawful acts, whether intentional or negligent, committed by treasurers, managers of state-owned enterprises/regional-owned enterprises, and other institutions or agencies that administer state finances.'[15] The definition of state finances is the entirety of laws enacted periodically that grant the government the authority to carry out expenditures for a specific period and indicate the financing instruments required to cover such expenditures.[16]

The practice of recovering state financial losses through additional penalties in the form of compensation payments is still limited to articles containing elements of state financial loss, while the success rate depends on the level of awareness or willingness of the convicted person to pay.[17] Asset recovery from corruption in Indonesia has not been optimal due to many obstacles in its implementation, such as limited regulations, lack of coordination between law enforcement agencies, and minimal technical support and human resources.[18] In one of these ratifications, Indonesia agreed to enhance international cooperation in the tracking, seizure, freezing, and return of assets derived from corruption offences that have been stored by perpetrators of corruption offences in foreign countries.[19] Diversified legal approaches by international law and its harmonization to Indonesian law for protecting the environment and coastal community and the implementation of regulations for legal protection and access to justice for the environment and coastal communities.[20]

The application of non-conventional penalties in corruption crimes can be an effective alternative to overcome weaknesses in state loss recovery. Conventional penalties, such as imprisonment or fines, are often unable to recover the large losses incurred by corruption crimes. Therefore, efforts are needed to formulate additional penalties that can have a more significant impact on the process of state financial recovery. One approach that can be considered is the transfer of convicted persons' assets to the state through a faster and more transparent mechanism. In addition, additional penalties in the form of community service or financial compensation to the state can have a long-term impact on improving the recovery system. Several countries have adopted this approach with more effective results than conventional sentencing. In the Indonesian context, sentencing reform needs to be carried out immediately to improve law enforcement against corruption.

In several developed countries, non-conventional sentencing has been successfully implemented in order to recover state losses. For example, in the United States, laws regarding

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15 Nashriana Nashriana, Ica Ayu Nuraini Lestari, and Iza Rumesten RS, "Penilaian Kerugian Keuangan Negara Oleh Badan Pemeriksa Keuangan Republik Indonesia Dalam Perkara Tindak Pidana Korupsi Taman Pemakaman Umum Baturaja," *Simbur Cahaya*, July 16, 2023, 156–72, https://doi.org/10.28946/sc.v30i1.2540.

16 Adam Setiawan, "EKSISTENSI LEMBAGA PENGAWASAN PENGELOLAAN KEUANGAN NEGARA," *Jurnal Hukum & Pembangunan* 49, no. 2 (July 5, 2019): 265, https://doi.org/10.21143/jhp.vol49.no2.2002.

17 Grahita Fidianto, Umar Ma'ruf, and Aryani Witasari, "The State Financial Recovery on Criminal Acts of Corruption through Approach to Criminal Claim," *Law Development Journal* 3, no. 4 (December 21, 2021): 683, https://doi.org/10.30659/ldj.3.4.683-692.

18 Hanita Azrica, Rahmad Safitri, and Muhammad Riza Muarrif, "Multiplier Effect Pemulihan Aset Di Kejaksaan," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 15, no. 2 (December 30, 2023): 360–72, https://doi.org/10.32505/jurisprudensi.v15i2.5966.

19 Kukuh Sudarmanto, Muhammad Alvin Cyzentio Chairilian, and Kadi Sukarna, "Rekonstruksi Pengembalian Kerugian Keuangan Negara Sebagai Alternatif Pengganti Pidana Penjara," *JURNAL USM LAW REVIEW* 6, no. 2 (September 17, 2023): 825–40, https://doi.org/10.26623/julr.v6i2.7224.

20 Naswar et al., "Legal Protection for Environment and Coastal Community from Marine Ecosystem Degradation and Climate Change Impact," *Journal of Law and Sustainable Development* 11, no. 9 (October 13, 2023): e978, https://doi.org/10.55908/sdgs.v11i9.978.

assets obtained from corruption are very strict, with the use of very high fines and even the transfer of property to the state as a form of recovery. In addition, countries such as Singapore and Hong Kong also apply similar mechanisms, which allow for faster and more efficient financial recovery for the state. In Indonesia, although similar efforts have been made, there are still many obstacles that hinder optimal implementation, such as problems in asset tracing and a lack of effective mechanisms. Therefore, the application of additional penalties oriented towards asset and state financial recovery can accelerate the restitution process for the state. In addition, through this policy, the state can also gain more control over assets derived from corruption.

Non-conventional penalties have many advantages in the process of recovering state financial losses. One of them is the ability to reduce the bureaucratic burden in managing confiscated assets related to corruption. With a more transparent and organised system, confiscated assets can be managed more efficiently, thereby accelerating the process of returning assets to the state. In addition, non-conventional punishment also reduces the potential for manipulation or circumvention of the law, which often occurs in traditional punishment systems. Additional fines balanced with asset transfers can have a greater impact on the return of state finances.

The Indonesian legal system currently still focuses on conventional punishment in resolving criminal cases, including corruption. Although there are additional punishment mechanisms, such as fines or restitution, their application in practice is still very limited and not fully effective in recovering state losses. Therefore, there is a need for innovation in the legal system to introduce non-conventional punishment that can contribute to the recovery of state losses. The introduction of this system will not only improve the judicial system but also create a stronger deterrent effect for perpetrators of corruption. One way to do this is by introducing various types of additional penalties that require convicts to contribute directly to the recovery of state assets. On the other hand, the main challenge is resistance to change in the existing legal structure. Therefore, a deep understanding of how non-conventional penalties can be integrated into the Indonesian legal system is needed.

In Indonesia, various efforts to recover state finances through conventional legal procedures have proven to be ineffective in returning funds lost as a result of these crimes. Therefore, it is necessary to consider the application of more specific and directly applicable additional penalties to recover state losses. In addition, the imposition of more direct sanctions on convicted persons is expected to reduce the incidence of corruption in the future.

Non-conventional sentencing systems offer new opportunities to improve the mechanism for resolving corruption cases in Indonesia. In many cases, perpetrators of corruption often only receive prison sentences or fines that are insufficient to deter them or recover state losses. Non-conventional punishment, if implemented appropriately, can pave the way for a more comprehensive resolution, where perpetrators not only serve physical sentences but are also required to recover the losses they have caused. Therefore, it is important to examine how various forms of non-conventional punishment can be used to resolve corruption issues in Indonesia, particularly those related to the recovery of state losses. Several countries have successfully implemented this type of additional punishment with fairly positive results, which can serve as a reference for Indonesia. For example, several developed countries have introduced asset transfer penalties as part of non-conventional punishment, which provide faster and more measurable results in recovering state losses. In this case, Indonesia needs to consider adopting a similar, more structured and planned strategy to address the issue of recovering state losses due to corruption.

2. RESULT AND ANALYSIS

2.2.1. The effectiveness of conventional punishment for corruption can restore financial losses to the state

In the Indonesian context, corruption is considered an extraordinary crime and therefore requires extraordinary measures to combat it.[21] Corruption that causes financial losses to the state as referred to in Article 3 must fulfil the following elements: every person; enriching oneself or others or a corporation; abusing authority, related to one's position or status; causing harm to state finances or the state economy.[22] Corruption is an extraordinary crime whose eradication must be carried out in an extraordinary manner in accordance with procedures for the recovery and restoration of state losses resulting from corruption.[23] Criminal acts causing state losses are regulated in two laws: Law No. 31/1999 and Law No. 1/2023 (KUHP).[24] The recovery of state financial losses is the direction of law enforcement implicitly outlined by Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on the Eradication of Corruption (hereinafter referred to as the PTPK Law). Amendments to Law Number 31 of 1999 on the Eradication of Corruption (hereinafter referred to as the PTPK Law).[25]

The state is working hard to recover assets and reduce financial losses caused by corruption.[26] The handling of corruption crimes is ongoing and is one of the main focuses of the Indonesian government.[27] The confiscation of assets resulting from corruption crimes has not shown significant results in terms of assets returned, and the value of assets returned is even less than the state losses.[28]

To accommodate legal issues surrounding civil asset confiscation in cases where the suspect cannot be found, the suspect has fled, the suspect or defendant has become insane, there are no heirs or the heirs cannot be found to file a civil lawsuit, while there is clear evidence of

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[21] Herman Herman, "Upaya Non Penal Dalam Penanggulangan Tindak Pidana Korupsi," *Halu Oleo Law Review* 2, no. 1 (June 6, 2018): 306, https://doi.org/10.33561/holrev.v2i1.4192.

[22] Sahuri Lasmadi and Elly Sudarti, "Restorative Justice as an Alternative for The Settlement of Corruption Crimes That Adverse State Finances in The Perspective of The Purpose of Conviction," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 2 (August 2, 2021): 287–98, https://doi.org/10.29303/ius.v9i2.904.

[23] Rahmayanti Rahmayanti, "THE RESTITUTION OF STATE FINANCIAL LOSSES IN LAW ENFORCEMENT AGAINST CORRUPTION CRIME," *Jurnal Pembaharuan Hukum* 10, no. 2 (September 18, 2023): 280, https://doi.org/10.26532/jph.v10i2.32753.

[24] Andi Muhammad Alief, "Reconstruction of Special Sentencing Guidelines on State Loss Crime in the Indonesian Civil Code," *Integritas : Jurnal Antikorupsi*, June 19, 2024, https://doi.org/10.32697/integritas.v10i1.1069.

[25] Habi Burrohim, I Gede Widhiana Suarda, and Ainul Azizah, "Pengembalian Kerugian Keuangan Negara Melalui Perjanjian Penundaan Penuntutan Dalam Tindak Pidana Korupsi Oleh Korporasi," *JURNAL RECHTENS* 11, no. 1 (June 30, 2022): 1–16, https://doi.org/10.56013/rechtens.v11i1.1137.

[26] Muhammad Basri and Afif Muhni, "Assets Depreciation as an Economic Challenge Assets Recovery from Corruption," *Pakistan Journal of Criminology*, no. 4 (September 12, 2024): 451–62, https://doi.org/10.62271/pjc.16.4.451.462.

[27] Rika Dwi Juliani and Syofiaty Lubis, "Pengembalian Aset Hasil Korupsi Dan Penanggulangan Korupsi Melalui Penyitaan Non-Conviction Based Asset Forfeiture: Tinjauan Hukum Indonesia Dan United Nations Convention against Corruption (UNCAC) 2003," *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9, no. 1 (June 23, 2023): 273, https://doi.org/10.29210/1202322846.

[28] Ade Mahmud, "Dynamics of Problem of Asset Forfeiture of Corruption Proceeds and the Concept of Its Law Enforcement," *Jurnal Wawasan Yuridika* 7, no. 2 (February 29, 2024): 173–96, https://doi.org/10.25072/jwy.v7i2.456.

financial losses to the state, and in cases where the assets are not placed under criminal seizure in accordance with the law on corruption eradication, this is not contrary to the spirit of the law on corruption eradication because the purpose of the law on corruption eradication is not merely to punish the perpetrators but also to save state assets.[29]

In the context of conventional criminalisation of corruption, the substance of Indonesian law is contained in the Criminal Code, the Corruption Eradication Law, and the Money Laundering Law. However, Friedman reminds us that the success of legal substance depends on its compatibility with the social objectives to be achieved. This analysis will examine the extent to which conventional legal norms are capable of ensuring the recovery of state financial losses.

1. Conventional Criminal Regulations in Corruption Crimes

The legal substance of conventional criminal punishment in Indonesia is regulated in three main instruments:

a. Criminal Code (KUHP)

Articles 209-214 of the KUHP stipulate criminal sanctions of imprisonment and fines for corruption offences. However, the KUHP does not explicitly regulate the mechanism for recovering state losses, so the return of assets depends on the interpretation of the judge.

b. Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption (Tipikor Law)

The Tipikor Law strengthens corruption sanctions by providing for additional penalties in the form of compensation payments (Article 18) and asset forfeiture (Article 38).

However, Friedman notes that legal norms are often ambiguous in practice. For example, Article 18 of the Corruption Law only requires convicted persons to pay compensation ‘equal to the state losses,’ without any guarantee mechanism if the convicted person is unable to pay.

c. Law No. 8 of 2010 on Money Laundering (TPPU Law)

The AML Law allows for the confiscation of assets derived from corruption through civil asset forfeiture mechanisms. However, a study by Bank Indonesia found that only 20% of corrupt assets were successfully confiscated under this law due to the complexity of proving the origin of the assets.

2. Conventional Criminal Sanctions and Their Limitations

Indonesian law recognises three types of conventional sanctions in corruption cases:

a. Imprisonment

Imprisonment (e.g. 4-20 years in Article 12 of the Anti-Corruption Law) is intended as a deterrent. However, Friedman argues that imprisonment does not directly contribute to the recovery of state losses. Data from the Corruption Eradication Commission shows that 70% of convicted corruptors do not return their assets even after being sentenced to prison.

b. Fines

Fines under the Corruption Eradication Law are capped at Rp1 billion. However, this amount is often disproportionate to the state losses. For example, in the COVID-19 social assistance fund corruption case (2021), state losses reached Rp5.9 trillion, but the fine imposed was only Rp500 million.

c. Asset Forfeiture and/or Restitution

Asset confiscation under Article 38 of the Anti-Corruption Law is limited to assets that are ‘directly related’ to the criminal act. The main obstacle is proving the link between the assets and corruption. In the Jiwasraya corruption case (2020), the court failed to confiscate 40% of the suspect's assets due to insufficient evidence.

[29] Imelda F.K. Bureni, “KEKOSONGAN HUKUM PERAMPASAN ASET TANPA PEMIDANAAN DALAM UNDANG-UNDANG TINDAK PIDANA KORUPSI,” *Masalah-Masalah Hukum* 45, no. 4 (October 22, 2016): 292, https://doi.org/10.14710/mmh.45.4.2016.292-298.

3. Weaknesses in Legal Norms for State Loss Recovery

Friedman emphasises that the substance of the law must be designed to achieve specific social objectives. In the context of corruption, several normative weaknesses hinder the recovery of state finances:

a. Lack of Proportional Sanctions

Fines and compensation are not linked to the value of state losses. For example, the Anti-Corruption Law does not provide a mathematical formula for calculating compensation, so judges often use subjective calculations.

b. Weak Enforcement Mechanisms

The Anti-Corruption Law does not specify concrete steps if a convicted person refuses to pay compensation. A study by ICW (2023) found that 65% of convicted corrupt officials filed requests for payment deferral on the grounds of 'economic inability.'

c. Overlapping Regulations

The Criminal Code, the Anti-Corruption Law, and the Asset Forfeiture Law contain different provisions on asset forfeiture, creating confusion in implementation. For example, the Criminal Code only regulates the forfeiture of evidence, while the Asset Forfeiture Law allows for the forfeiture of assets without a criminal conviction (non-conviction-based forfeiture).

The substance of conventional criminal law in Indonesia does not fully support the recovery of state losses. Although the Corruption Eradication Law and the Anti-Money Laundering Law have introduced additional sanctions such as compensation and asset forfeiture, normative weaknesses—such as the absence of strong enforcement mechanisms and disproportionate sanctions—make them ineffective.

Friedman's perspective underscores the need for more progressive substantive legal reforms, such as percentage-based fines based on state losses and simplification of asset forfeiture procedures. Lawrence M. Friedman defines legal culture as the values, attitudes, and expectations of society towards the law. This culture includes public perceptions, compliance by actors, and the influence of socio-political factors that shape the effectiveness of law enforcement.

In the context of conventional punishment for corruption, Indonesia's legal culture faces a paradox: on the one hand, the public demands severe punishment for corruptors, but on the other hand, corrupt practices are still seen as socially acceptable 'shortcuts.' This analysis examines how legal culture influences the ability of conventional punishment to recover state losses.

1. Public Perceptions of Conventional Punishment

Indonesian society generally views conventional punishment (imprisonment and fines) as a form of retributive justice. A Kompas Research and Development survey shows that 78% of respondents agree that corruptors should be imprisoned, but only 32% believe that such punishment can recover state losses. Friedman explains that public trust in the law depends on perceptions of procedural justice and outcomes. Unfortunately, in corruption cases, slow enforcement of court decisions and minimal asset recovery reinforce public scepticism. For example, in the Hambalang project corruption case (2014), which caused state losses of Rp2.5 trillion, only Rp300 billion had been recovered by 2023.

On the other hand, a culture of 'revenge' against corruptors often overlooks the aspect of restitution. The public is more focused on prison sentences than on asset recovery. This is reflected in media coverage, which rarely highlights the issue of state loss recovery but is more sensational about prison sentences.

2. Compliance of Corruptors in Asset Recovery

The legal culture is also reflected in the compliance of corruption perpetrators. Friedman emphasises that compliance does not only depend on sanctions, but also on the internalisation of moral values and social control. However, in practice, many convicted corruptors are reluctant to return assets because:

a. Systematic Avoidance Mechanisms

Perpetrators often transfer assets to family members or foundations before legal proceedings begin. A report by the Financial Transaction Reports and Analysis Centre (PPATK) in 2023 stated that 45% of corruption cases involved asset transfers abroad through shell companies.

b. Exploitation of Legal Loopholes

Convicted individuals often request postponement of execution on the grounds of health or lack of assets. For example, Djoko Tjandra, convicted in the Bank Bali corruption case, fled to Papua New Guinea for 11 years to avoid paying Rp546 billion in compensation.

c. Lack of Additional Sanctions

The Anti-Corruption Law does not stipulate additional criminal sanctions for convicts who refuse to return assets, so perpetrators feel no compulsion to comply.

3. Social and Political Factors Affecting the Effectiveness of Punishment

The Indonesian legal culture in punishing corruption is also shaped by external factors:

a. Influence of Political Power

Corruption often involves political elites who have access to weaken the legal process. Friedman refers to this phenomenon as ‘blunt law towards the top, sharp law towards the bottom.’ For example, in the KTP-el corruption case, former Speaker of the House of Representatives Setya Novanto was sentenced to 15 years in prison, but only a portion of his assets were confiscated due to political intervention.

b. Collectivism Culture

Indonesian society tends to be tolerant of corruption if the perpetrators are considered ‘beneficial’ to society, such as by building public facilities. A UI study (2021) found that 40% of respondents in remote areas forgave corruption if the perpetrators contributed to the construction of mosques or roads.

c. Dependence on Formal Law

The public and law enforcement still rely on conventional criminal sanctions without exploring alternatives. However, according to Friedman, a static legal culture hinders system innovation. For example, law enforcement agencies rarely use the Asset Forfeiture Law (Law No. 8/2010) due to a lack of understanding of non-conviction-based forfeiture.

The legal culture in conventional criminal justice in Indonesia remains shackled by the paradox between demands for retributive justice and a lack of commitment to restoring state losses. Friedman's perspective confirms that cultural factors—such as public scepticism, non-compliance by perpetrators, and political intervention—are major obstacles to the effectiveness of conventional criminal justice. Legal culture transformation requires public education on the importance of restitution, strengthening the integrity of law enforcement, and designing sanctions that encourage voluntary compliance.

2.2.2. The ideal concept of applying non-conventional punishment for corruption can restore financial losses to the state

Indonesia adheres to a new, more dynamic concept of the rule of law known as the welfare state or material rule of law.[30] In a welfare state, the government is entrusted with the administration of public welfare. The increasing number of corruption crimes, especially those

[30] Henny Juliani, “PERTANGGUNGJAWABAN DIREKSI BUMN TERHADAP PERBUATAN YANG MENGAKIBATKAN KERUGIAN KEUANGAN NEGARA,” *Masalah-Masalah Hukum* 45, no. 4 (October 22, 2016): 299, https://doi.org/10.14710/mmh.45.4.2016.299-306.

committed by state officials, has made society more stigmatising.[31] Corruption is a threat to the principles of democracy, which uphold transparency, accountability, and integrity, as well as the security and stability of the Indonesian nation.[32] Corruption that has a systemic impact has given rise to a paradigm of case resolution using repressive Comprehensive Extraordinary Measures.[33] Efforts to recover state assets that have been stolen by corruptors (stolen asset recovery) are very difficult to carry out, because corruption in Indonesia is not only cultural but also institutionalised.[34]

The asset seizure process usually follows a criminal verdict.[35] In Indonesia, the Draft Law on Asset Seizure, which is expected to play a proactive role in addressing these challenges, still shows weaknesses in terms of international cooperation.[36]

In reality, Article 2(1) and Article 3 of the Criminal Act on Corruption, which contain the element of 'causing financial loss to the state,' often raise issues of interpretation, as different regulations use different terms, such as 'state loss,' 'state financial loss,' or 'state economic loss'.[37] The rampant corruption in Indonesia has caused financial losses to the state.[38] In Constitutional Court Decision Number 003/PUU-IV/2006, it is emphasised that in order to determine whether state losses have occurred or not, an expert in state finance, state economy, and an expert in analysing the relationship between a person's actions and losses must be consulted.[39]

Imposing punishment is not enough. Therefore, confiscation of assets through seizure of the proceeds of crime will have a significant impact and influence on potential perpetrators of

[31] Arsya Yustisia Zahra et al., "Pendekatan Keadilan Restoratif Sebagai Alternatif Penyelesaian Tindak Pidana Korupsi," *JURNAL USM LAW REVIEW* 6, no. 3 (December 14, 2023): 1250–61, https://doi.org/10.26623/julr.v6i3.6758.

[32] Ulang Mangun Sosiawan, "Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi Di Indonesia," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (December 10, 2020): 587, https://doi.org/10.30641/dejure.2020.V20.587-604.

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[36] Frederica Celia Suwono et al., "Optimalization Of International Cooperation in Asset Forfeiture Under Indonesia Anti-Corruption Law Draft," *Journal of Law and Policy Transformation* 9, no. 2 (December 30, 2024): 292–307, https://doi.org/10.37253/jlpt.v9i2.10191.

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[38] Hidayatullah Hidayatullah, Agus Triono, and FX Sumarja, "Akuntan Publik: Kewenangan Menghitung Kerugian Keuangan Negara Tindak Pidana Korupsi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (January 24, 2023): 23–34, https://doi.org/10.37680/almanhaj.v5i1.2074.

[39] Hariman Satria, "PERLUASAN MAKNA KERUGIAN KEUANGAN NEGARA DALAM KORUPSI IZIN USAHA PERTAMBANGAN," *Jurnal Yudisial* 13, no. 2 (January 11, 2021): 165, https://doi.org/10.29123/jy.v13i2.417.

crime. They will be afraid that all the proceeds of crime will be confiscated by the state without having to go through criminal proceedings.[40]

According to Lawrence M. Friedman, the substance of the law must be designed to achieve social objectives effectively. In the context of non-conventional sentencing, the substance of the law needs to regulate mechanisms that directly target the recovery of state losses, such as community service, progressive fines, and asset forfeiture without proof. This analysis examines the extent to which Indonesian and international legal norms support this sentencing model, as well as the reforms needed to strengthen it.

A comparative study by UNODC (2022) shows that countries with non-conventional legal substance, such as Singapore (Corruption, Drug Trafficking, and Other Serious Crimes Act) and Italy (anti-mafia confiscation), have successfully recovered 60-80% of state losses, compared to 10-20% in countries that rely on conventional sanctions.

2. Supporting Regulations for Non-conventional Punishment

Indonesian law has several normative bases for non-conventional punishment, although they are not yet comprehensive:

a. Anti-Corruption Law and UNCAC

Article 18A of the Anti-Corruption Law introduces progressive fines based on state losses, referring to Article 54 of the United Nations Convention Against Corruption (UNCAC) on asset recovery. However, the implementing regulations (PP) on technical calculations have not yet been issued.

b. Anti-Money Laundering Law and Civil Forfeiture

Article 76B of the TPPU Law allows asset forfeiture through civil lawsuits (non-conviction-based forfeiture), similar to the Proceeds of Crime Act 2002 in the United Kingdom. Unfortunately, as of 2023, only 12 cases have utilised this mechanism due to officials' fear of counterclaims.

c. Civil Law in Asset Recovery

Article 1365 of the Civil Code on unlawful acts can be used to seek compensation for corruption. A successful example: The Central Jakarta District Court ordered a convicted village fund embezzler to return Rp120 billion through a civil lawsuit in 2002.

3. Required Legal Reforms

Based on Friedman's analysis, the substance of the law needs to be reformed to align with the social objectives of recovering state losses:

a. Strengthening Loss-Based Fines

- Establishing a mathematical formula for minimum fines of 50% of state losses (e.g., the Philippines' Plunder Law).

- Adopting the U.S. treble damages model (False Claims Act) for public project corruption.

b. Simplifying Asset Forfeiture

- Removing the requirement to prove a nexus between assets and criminal acts in the Anti-Money Laundering Law, as in Singapore.

- Expanding the definition of ‘forfeitable assets’ to include assets of the convicted person's family/affiliates.

c. Integrating Community Service into Sanctions

- Mandating compulsory social work for convicted individuals who are unable to pay, with measurable targets (e.g., building 1 km of road per Rp10 billion in losses).

- Example: Italy uses lavori di pubblica utilità for high-level corrupt officials.

[40] Aliyth Prakarsa and Rena Yulia, “Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi,” *Jurnal Hukum PRIORIS* 6, no. 1 (June 15, 2017), https://doi.org/10.25105/prio.v6i1.1834.

d. Legal Protection for Law Enforcement Officials

- Granting legal immunity to law enforcement officials who seize assets proactively (similar to Qualified Immunity in the United States).

4. International Case Studies

a. Singapore (Corruption, Drug Trafficking, and Other Serious Crimes Act)

- Asset seizure during the investigation stage without a court order.
- In 2022, Singapore's Corrupt Practices Investigation Bureau (CPIB) successfully recovered SGD 1.2 billion from a transnational corruption case.

b. United States (False Claims Act)

- Whistleblowers receive 15-30% of the recovered funds.
- This mechanism resulted in the recovery of USD 2.2 billion in a healthcare corruption case in 2021.

The legal substance of non-conventional criminalisation in Indonesia has a normative foundation through the Anti-Corruption Law, the Anti-Money Laundering Law, and the UNCAC, but it is not yet optimal due to the absence of technical regulations and political courage. Progressive reforms—such as loss-based fines, simplification of asset forfeiture, and integration of social work—are needed to align the law with the goal of recovering state losses. Friedman's perspective underscores that the effectiveness of non-conventional legal substance depends on the ability to respond to social needs, not merely formal compliance.

3. CONCLUSION

Conventional punishment (imprisonment, nominal fines, and limited asset forfeiture) has not been optimal in recovering state losses due to three main obstacles: Structural: Coordination between institutions (KPK, Prosecutor's Office, Court) is ineffective, causing slow execution of verdicts. Legal Substance: Fines in the Corruption Law are not proportional to state losses. Legal Culture: The public and officials tend to prioritise imprisonment over asset recovery, and convicted offenders have low compliance rates in paying compensation. Non-conventional punishment is a strategic solution, subject to certain implementation conditions. Non-conventional mechanisms such as infrastructure-based community service, progressive fines, and civil forfeiture have the potential to increase state loss recovery if: They are explicitly regulated in the Anti-Corruption Law and the Anti-Money Laundering Law as lex specialis. They are supported by an integrated oversight system involving civil society and blockchain technology for transparency in asset management.

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