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Modelling Shared Assets in Indonesia's Forfeiture Bill: International Collaboration and Digital Networks

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Abstract

Article 54, paragraph 3 of the United Nations Convention Against Corruption (UNCAC) encourages the implementation of a mechanism for confiscating assets resulting from criminal acts without requiring a criminal verdict, known as the in rem approach. As part of Indonesia's commitment to UNCAC, the Asset Confiscation Bill is designed to strengthen the domestic legal framework in implementing this mechanism. The Asset Confiscation Bill specifically regulates the in rem mechanism, including the division of assets, which was previously only regulated in a limited manner in Article 57 of Law Number 1 of 2006 concerning Mutual Assistance. The division of assets is intended to overcome the high costs in the confiscation process and minimize the risk of intervention by other parties that could hinder the

effectiveness of its implementation. In addition, the division of assets allows for integrative cross-country cooperation, a crucial aspect of anti-corruption efforts. This includes tracking, collecting, and distributing digital asset data, and has been successfully implemented in the United States, Switzerland, and Canada. In the Indonesian context, the mechanism offered is a fair but flexible process between the two countries that can be implemented into a mutual legal assistance agreement.

KEYWORDS *Asset Tracking, Cyber Networks, International Law, Legal Assistance*

Introduction

In 2023, Indonesia's Corruption Perception Index (CPI) score reached 34[1], which at the ASEAN level is lower than the four other ASEAN countries[2]: Singapore, Malaysia, Thailand, and Timor-Leste. This performance remained relatively consistent with previous years. Over the period spanning from 2012 to 2023, Indonesia's highest CPI score was 40, achieved in 2019, while the remaining scores fell within the range of 32 to 38 points. The data show that the public perceives inadequate eradication of corruption in Indonesia. According to the National Survey on Public Trust in Law Enforcement Institutions and Perceptions of the *Kanjuruhan* Case[3],

[1] 34 out of 100, with a score of 0 indicating a high level of corruption. Transparency International. Corruption Perceptions Index 2022. Retrieved May 10, 2023, from https://www.transparency.org/en/cpi/2022

[2] Brunei Darussalam is not considered in the survey due to its absence from the list

[3] The survey's target demographic comprises Indonesian citizens aged 17 years and older or those married and possess a telephone, encompassing approximately 83% of the total national population. Sample selection was executed using the random digit dialing (RDD) method, which involves the random generation of telephone numbers. Employing the RDD technique, a sample of 1212 respondents was chosen through the systematic generation, validation, and screening of telephone numbers. The survey's margin of error is estimated to fall within the range of ±2.9% at a 95% confidence level, assuming a conventional simple random sampling approach. Interviews with respondents were conducted via telephone by skilled interviewers. Lembaga Survei Indonesia. Survey if Public Trust for *Kanjuruhan* Government. Retrieved June 04, 2023, from https://www.lsi.or.id/post/rilis-survei-lsi-20-oktober-2022

conducted from October 06 to 10, 2022, by the Indonesian Survey Institute (LSI), most Indonesians believe that efforts to combat corruption in the country are insufficient, and some even view it as highly deficient.

The persistent deterioration of corruption in Indonesia is evident through examining economic losses incurred due to corrupt activities. This trend has remained upward, particularly over the last five years. The data in Table 1 below encapsulates the extent of financial losses incurred by Indonesia from 2017 to 2023, derived from the findings of the comprehensive monitoring of Indonesia's corruption cases conducted by the Indonesian Corruption Watch (ICW):

TABLE 1. Financial Losses Incurred From 2017-2023

Year	State Financial Losses
2017	IDR 29.42 Trillion
2018	IDR 9.29 Trillion
2019	IDR 12 Trillion
2020	IDR 56.74 Trillion
2021	IDR 62.93 Trillion
2022	IDR 48.81 Trillion
2023	IDR 28.4 Trillion

Source: Indonesia Data from ICW, 2023

The state's fiscal losses are inverse to the scale of recoveries. In 2020, the state incurred losses of 56 trillion but only managed to recover 19.6 trillion. In 2019, losses amounted to 12 trillion, with a recovery of just 748 billion. This trend continued in 2018 when losses reached 9.2 trillion, and only 838 billion was recovered. In 2017, a significant 24.4 trillion was lost, with an insufficient recovery of just 1.4 trillion. Previous corruption cases also faced similar challenges. Nevertheless, the state losses depicted in the table above pale compared to the extensive losses experienced by Indonesia due to the corruption case of the Bank Indonesia Liquidity Assistance (BLBI) in 1997-1998. This case emerged during Indonesia's economic turmoil in 1997-1998 when Bank Indonesia allocated a staggering 147.7 trillion to aid 48 domestic banks facing liquidity issues in meeting their client obligations, and these funds were subsequently misappropriated.

The Supreme Audit Agency (BPK) published its audit findings in August 2000, revealing total state losses of 138 trillion attributed to the BLBI corruption scandal.[4] Estimates from the Indonesian Forum

[4] Feri Sandria. Ini Daftar 3 Kasus Korupsi Terbesar RI, Nyaris Samai BLBI. Retrieved March 10, 2023, from

for Budget Transparency (*Fitra*) suggest that these losses could surpass IDR 2,000 trillion by 2015 and reach up to IDR 5,000 trillion by 2023.[5] In response to this crisis, the government established a specialized task force, the Bank Indonesia Liquidity Assistance Fund (BLBI) Task Force, through the Decree of the President of the Republic of Indonesia Number 6 of 2021 jo. RI Presidential Decree Number 16 of 2021, to resolve the BLBI corruption case by December 2023.

Regrettably, reports until September 2022 indicated that a significant portion of state losses, amounting to 75 percent or IDR 82.6 trillion, remained unrecovered.[6] However, there was a significant development in February 2023, as the Ministry of Finance reported on its official website. The Bank Indonesia Liquidity Assistance (BLBI) Task Force successfully acquired physical assets and Non-Tax State Revenue (PNBP) receipts from obligors or debtors involved in BLBI cases, directing these resources toward the state treasury. Additionally, assets were transferred to various Ministries, Institutions, State-Owned Enterprises (BUMN), and Regional Governments, totalling an estimated 39,005,542 square meters with a corresponding value of IDR 28,377 trillion. Nevertheless, these figures still fall short of expectations.

During a press conference on August 27, 2021, Deputy Attorney General Setia Untung Arimuladi emphasized the severe challenges faced in the asset forfeiture process related to the former Bank Indonesia Liquidity Assistance (BLBI) case. This challenge primarily arises from the presence of these assets located overseas.[7] Fifty-three debtors are suspected of having fled abroad in connection with the BLBI case, with twenty-three individuals identified as being

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https://www.cnbcindonesia.com/market/20220817183001-17-364517/ini-daftar-3-kasus-korupsi-terbesar-ri-nyaris-samai-blbi

5 Maya Ayu Puspitasari. Negara Rugi Rp 2.000 Triliun Akibat Penyelewengan BLBI. Retrieved March 10, 2023, from https://bisnis.tempo.co/read/765395/negara-rugi-rp-2-000-triliun-akibat-penyelewengan-blbi)

6 Dewan Perwakilan Rakyat Republik Indonesia. Satgas BLBI Harus Tagih Dana BLBI Rp110,4 Triliun. Retrieved June 06, 2023, from https://www.dpr.go.id/berita/detail/id/41014/t/Satgas+BLBI+Harus+Tagih+Dana+BLBI+Rp110%2C4+Triliun

7 Tempo.co.Satgas BLBI Susun Strategi Kejar Aset Obligor di Luar Negeri. Retrieved March 10, 2023, from https://nasional.tempo.co/read/1499500/satgas-blbi-susun-strategi-kejar-aset-obligor-di-luar-negeri

in developed countries, including Singapore, Australia, and others.[8] Indonesia has long been engaged in collaborative efforts with countries often used as havens for hidden assets, including ASEAN member countries, the People's Republic of China, South Korea, the United Arab Emirates, and Iran.[9] Unfortunately, the effectiveness of these efforts has not been fully realized, as the asset recovery process still tends to be protracted.

Recovering unlawfully transferred funds abroad, whether of public or private origin, represents a highly complex endeavor. Developing nations face substantial obstacles due to the need for more laws supporting non-conviction-based (NCB) asset forfeiture, limitations in their legal, investigative, and judicial capacities, and insufficient financial resources. In jurisdictions where concealed assets are typically located, often in developed nations, requests for legal assistance may go unanswered due to the absence of necessary legislation, including provisions for NCB asset forfeiture. The asset recovery process can become even more challenging in cases where factors such as the demise of individuals involved, their fugitive status, or legal immunity impede criminal investigations or prosecutions.[10]

Saldi Isra, Deputy Chairman of the Constitutional Court, provided insights into this phenomenon, describing it as 'unique' and 'unfortunate.' This situation raises pressing concerns as assets belonging to 'white-collar' criminals often find haven in nations with lower corruption levels. The challenge faced by Asian and African countries with higher corruption rates highlights the stark reality that their misappropriated assets are often held in prominent nations like the United States, Australia, and Europe. Repatriating these stolen assets to developing countries poses a daunting and potentially insurmountable challenge unless developed nations demonstrate a strong and proactive commitment to supporting recovery efforts.[11]

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[8] Ricardo Santos. (2021). Procedures for Implementing Mutual Legal Assistance to Recover Assets Resulting from Corruption That Are Rushed Abroad. Jurnal Hukum Lex Generalis, 2(1), p. 41.

[9] Kompas.com. Ini Negara-negara yang Telah Menjalin Perjanjian MLA dengan Indonesia. Retrieved March 22, 2023, from https://nasional.kompas.com/read/2019/03/28/11563391/ini-negara-negara-yang-telah-menjalin-perjanjian-mla-dengan-indonesia

[10] T.S. Greenberg, L.M. Samuel, and W. Grant. *A Good Practices Guide for Non-Conviction-Based Asset forfeiture*. Washington D. C: The World Bank, 2009), 1.

[11] S. Isra. *Asset Recovery Tindak Pidana Korupsi Melalui Kerjasama Internasional* (paper presented at a workshop on International cooperation

International legal cooperation encompasses at least three distinct forms: extradition, the transfer of sentenced individuals or prisoners, and mutual legal assistance in criminal matters, which covers investigations, prosecutions, courtroom trials, and the forfeiture of proceeds from criminal activities. Among these cooperative mechanisms, the recovery of assets that cross national jurisdictions is facilitated through mutual legal assistance.[12] In Indonesia, the framework for such assistance is further detailed in Law No. 1 of 2006 concerning Mutual Assistance.

That legislation establishes the guiding principles for executing mutual assistance in criminal matters, drawing from domestic criminal procedural law, intergovernmental agreements, and international conventions and practices. Such assistance can be formalized through either a formal agreement or good relations, especially in cases where a formal agreement is absent. Subsequently, the Minister of Law and Human Rights, acting as the central authority, initiates requests for assistance from foreign countries or responds to such requests as they are received. Additionally, the operationalization of these principles is explained in the 'Guidelines for Handling Mutual Legal Assistance (MLA) in Criminal Matters in Indonesia,' a publication authored by the Directorate General of Legal Administration.[13]

The process of mutual legal assistance (MLA) in Indonesia is based on various legal sources, such as domestic criminal procedure law, international treaties, and international conventions. Indonesian national law, particularly the Criminal Procedure Code and Law No. 1 of 2006 on Mutual Assistance in Criminal Matters provides a legal framework that regulates the procedures for implementing MLA, including the government's obligation to provide or receive legal assistance in criminal cases. In addition, Indonesia also relies on bilateral and multilateral agreements, such as the Treaty on Mutual Legal Assistance in Criminal Matters, 2004 at the ASEAN level, which strengthens regional cooperation in handling

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in combating corruption, organized by the Faculty of Law, Universitas Diponegoro dan Kanwil Depkumham). accessed June 06, 2023, from https://www.saldiisra.web.id/index.php/21-makalah/makalah1/47-asset-recovery-tindak-pidana-korupsi-melalui-kerjasama-internasional.html

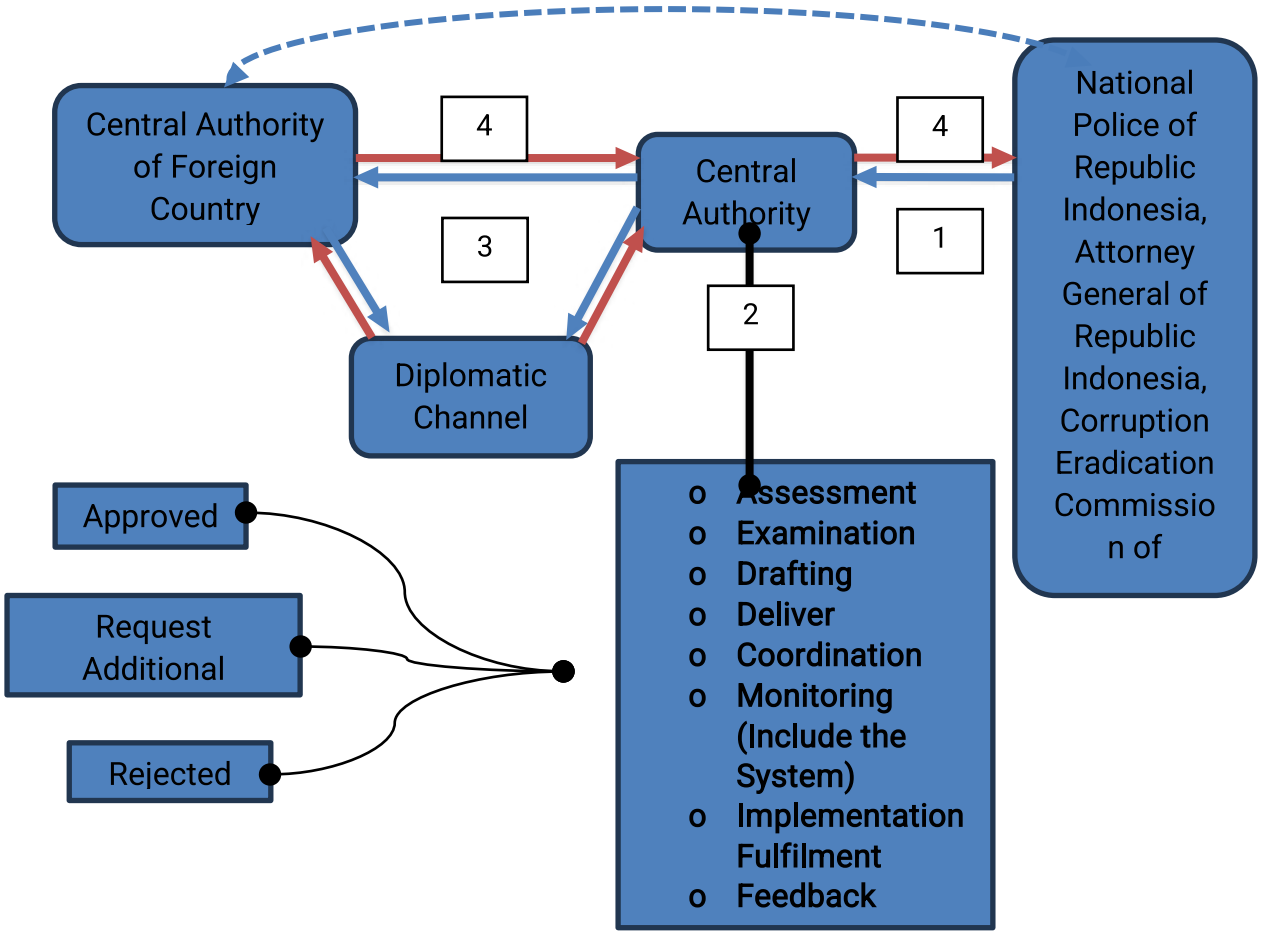
12 BPH Nasional. Analisis dan Evaluasi Hukum Terhadap UU No 1 tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana (Jakarta: BPH Nasional, 2010)

13 For further details, see (Retrieved June 06, 2023) from ahu.go.id/mla/download/id/0

transnational crimes. As part of the international community, Indonesia is bound by obligations stipulated in various international conventions, such as the United Nations Convention Against Corruption (UNCAC) and the United Nations Convention Against Transnational Organized Crime (UNTOC), which require member states to facilitate MLA in cases such as corruption, money laundering, and other transnational crimes. The implementation of MLA in Indonesia is supervised by the Minister of Law and Human Rights as the central authority responsible for receiving, processing, and evaluating requests for legal assistance from other countries. The Minister is tasked with coordinating the implementation of MLA with law enforcement agencies, such as the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK). Every MLA request must follow applicable national laws and international agreements.

Requests deemed to have no strong legal basis or are contrary to national sovereignty may be rejected based on Article 7 of Law No. 1 of 2006. In certain situations, MLA can be carried out through formal mechanisms based on international agreements or the principle of good relations between countries. This good relations mechanism is usually used in urgent situations, although it must still go through official procedures and must not conflict with domestic law. For example, in several cases of cross-border money laundering, Indonesia has cooperated with countries that do not have formal MLA agreements by referring to the provisions stipulated in the UNCAC. In addition to the legal framework, implementing MLA in Indonesia, please see picture 1 and picture 2, is also guided by operational documents such as the "Guidelines for Handling Requests for Mutual Legal Assistance" issued by the Ministry of Law and Human Rights. These guidelines play a crucial role in providing practical guidance in processing MLA requests, from receiving the request and evidence collection steps to reporting the results. The guidelines include coordination between law enforcement agencies and clear timelines to ensure process efficiency. Although the legal framework and operational guidelines are in place, challenges remain in implementing MLA, such as cross-agency coordination and technical limitations. To overcome these obstacles, Indonesia must adopt modern technologies, such as blockchain-based digital platforms, which can increase transparency and efficiency in tracking cross-border evidence. With a strong legal framework and technological innovation, the MLA system in Indonesia is expected to be more effective in dealing with increasingly complex transnational crimes.

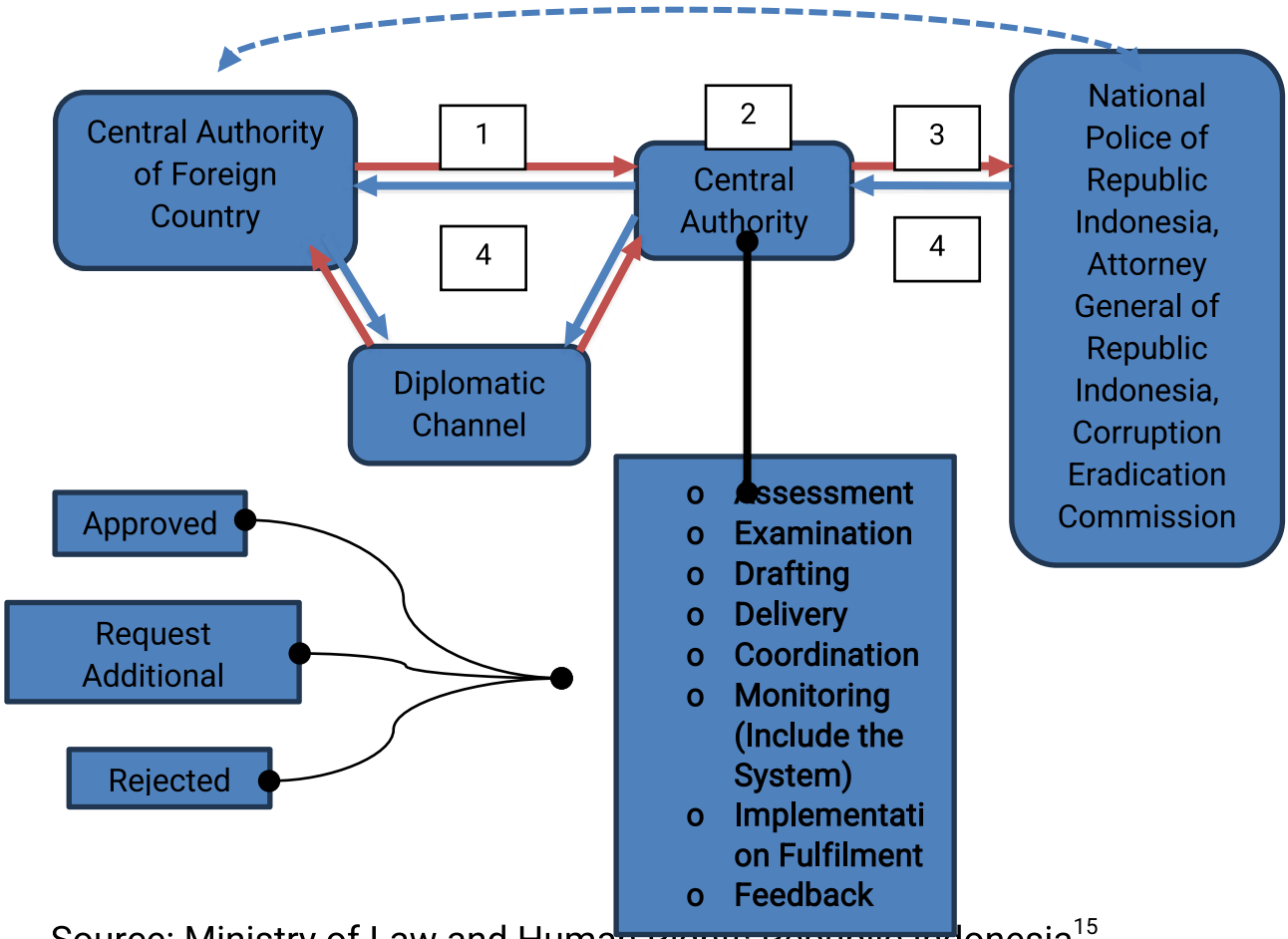
PICTURE 1. Flowchart Mutual Legal Assistance from Indonesia.



Source: Ministry of Law and Human Rights Republic Indonesia[14]

[14] Guidelines Handling MLA by Directorate General Legal Administration, for further details, see centralauthority.kemenkumham.go.id/mla-request-to-indonesia-side/guidelines-flowchart-side. Retrieved June 06, 2023.

PICTURE 2. Flowchart Mutual Legal Assistance from a Foreign Country



Source: Ministry of Law and Human Rights Republic Indonesia[15]

[15] "(1) Law enforcement agency proposing MLA request may need to consult with the Ministry of Law and Human Rights of the Republic of Indonesia in submitting the request; (2) Having due regard to the compatibility of the request and proportionality of the crime with the relevant Indonesian laws; (3) Indicate mechanism being used to propose request of assistance; (4) Stating the law enforcement institution requesting the assistance and its legal basis following the law of the requesting state; (5) Explain case summary about the legal assistance request and applicable criminal law to the case in which the assistance is being sought and the sanctions; (6) Identify assistance being requested; (7) Describe time urgency and provide contacts". Retrieved June 06, 2023; for further details, see central authority.kemenkumham.go.id/mla-request-from-Indonesia-side/guidelines-flowchart-side2

In the pursuit of confiscating the proceeds of criminal activities through Mutual Legal Assistance (MLA) procedures, it is imperative to first establish the occurrence of a criminal act through a court decision. This type of forfeiture, relying on a criminal verdict, is known as personal forfeiture and has been employed in several countries. However, a significant paradigm shift occurred in 2003 with the introduction of the United Nations Convention Against Corruption (UNCAC) by the United Nations (UN). The UNCAC includes provisions encouraging nations to enact legislation for asset forfeiture without the strict requirement of a preceding criminal conviction, as outlined in Article 54, Paragraph 1, Letter (c) of the UNCAC. This convention was established to demonstrate the international community's commitment to combat global corruption. Article 54 Paragraph 1 letter (c) UNCAC:

> *"Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted because of death, flight or absence or in other appropriate cases".*

The United Nations Convention against Corruption (UNCAC) was ratified during a High-Level Conference held in Merida, Mexico, from December 09 to 11, 2003. Over the subsequent seven years, it received signatures from 140 countries, with 145 countries ultimately ratifying it, including Indonesia, through enacting Law No. 7 of 2006. Before the adoption of UNCAC, Indonesia had established a civil regime-based asset forfeiture process exclusively under the Corruption Eradication Law. This process was governed by the civil forfeiture mechanisms outlined in Articles 32, 33, 34, and 38C of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (as amended by Law No. 20 of 2001, commonly referred to as the Corruption Law)[16]. However, the practical implementation of these policies necessitates further enhancement.

However, that legal framework cannot be invoked in cases where the suspect has absconded, become incapacitated, or lacks heirs for civil litigation despite state losses having transpired and remaining unaddressed through criminal forfeiture[17] and also is

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[16] These mechanisms were applicable only in specific circumstances, such as when the suspect or defendant had passed away, when evidence was insufficient, when acquittal had been granted, or when assets resulting from corruption had not been confiscated.

[17] Yunus Husein, *Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi* (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2019), 7.

contingent upon several fundamental principles:[18] (a) Conditional Principles: Civil lawsuits are only applicable in specific cases of corruption; (b) It is limited to criminal acts of corruption that harm state finances; and (c) It is a complementary approach to state forfeiture procedures. These conditions compound the difficulties in reclaiming assets originating from corrupt activities. Regulations governing asset recovery and forfeiture in corruption cases, whether on a national or international scale, should be recognized as a pivotal element within anti-corruption initiatives, as they protect the rights of the populace. Asset forfeiture can be a powerful instrument in deterring corrupt individuals more efficaciously than relying solely on imprisonment.

Crucially, the Draft Law on Asset Confiscation in Indonesia must be rooted in the principles of the United Nations Convention Against Corruption (UNCAC). This international convention serves as a beacon, offering member states clear guidelines on effectively combating corruption, including confiscating assets derived from criminal activities.

The Bill must clearly define assets, including property, money, or other goods derived from corruption, directly or indirectly, as regulated in Article 31 of the UNCAC. The Bill must regulate a fair confiscation mechanism, including confiscating assets controlled by third parties. Legal procedures must ensure transparency, fairness, and an appeal mechanism for the injured party. Confiscation must be based on valid evidence, using the reverse burden of proof principle. The Bill must include measures to prevent the transfer or concealment of assets through a temporary confiscation mechanism. It follows Article 31 of the UNCAC, which requires states to take preventive measures before transferring assets. The Bill should include provisions for international cooperation in tracing and recovering assets held abroad following Article 46 of the UNCAC. Asset management should be carried out transparently, prioritizing the public interest or eradicating corruption. Accountable management mechanisms need to be established to prevent misuse. The Bill should provide detailed provisions for personal confiscation (based on a criminal conviction) and civil confiscation (without requiring a criminal conviction). Civil confiscation is a solution for cases where the perpetrator cannot be prosecuted while still ensuring the validity of the evidence and a fair legal process.

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[18] Haswandi. "Pengembalian aset tindak pidana korupsi pelaku dan ahli warisnya menurut sistem hukum Indonesia. *Jurnal Hukum dan Peradilan 6,* no.1 (2017): 161, https://doi.org/10/25216/jhp.6.1.2017.161-178.

Obstacles such as transferring assets abroad and proving the origin of assets can be overcome through modern tracking technology, international cooperation, and regulatory adjustments that allow for more effective confiscation. The Asset Forfeiture Bill is a key instrument for eradicating corruption. To be successful, the Bill must integrate national and international legal principles, cross-border cooperation, and modern technology, such as advanced tracking systems, to ensure effective and fair implementation.

As a testament to its commitment to upholding UNCAC's directives, the Indonesian government has formulated an Asset Forfeiture Bill. This legislation outlines a framework for asset forfeiture without the necessity of a criminal verdict, commonly referred to as "in rem" forfeiture. The Asset Forfeiture Bill was initially proposed by the Centre for Financial Transaction Reports and Analysis as far back as 2008. Most recently, in 2022, the bill garnered renewed approval for inclusion in the priority National Legislation Program for 2023. Regrettably, however, the bill has yet to be enacted into law.

Based on Article 5, the Asset Forfeiture Bill encompasses a broad spectrum of asset types eligible for forfeiture, which can be explained as follows: 1) Assets resulting from criminal acts. These assets include any wealth obtained directly or indirectly from criminal acts. Including a) Assets obtained directly from criminal acts. For example, cash obtained from theft or fraud. b) Assets that may have been obtained indirectly from criminal acts but from assets obtained illegally. For example, if someone uses money from corruption to buy property, the property can be considered an asset obtained indirectly from criminal acts. c) Assets donated to others or converted into personal, other people, or corporate wealth are also included in this category. For example, if someone donates money from criminal acts to someone else, the money can still be confiscated. d) All capital, income, and economic benefits from illegally obtained assets can also be confiscated. It stated that if someone uses illegal assets to generate income, that income can be the object of confiscation. 2) Assets employed in the commission of criminal acts.

Assets known or reasonably suspected to be tools used or used to commit a crime. Assets used in a crime can be confiscated as part of the law enforcement process. This confiscation aims to prevent using these assets in further crimes and enforce the law. 3) Replacement assets are officially declared as subject to forfeiture. These assets refer to the legitimate wealth or goods belonging to the perpetrator of a crime that can be used as a replacement for

assets that the state has seized. If an asset obtained from a crime has been confiscated, the state can confiscate other legitimate assets belonging to the perpetrator as a replacement. Hence, It aims to ensure that the perpetrator does not benefit from the crime he committed. The assets in question must be the legitimate property of the perpetrator and not directly related to the crime committed. For example, if someone is involved in a crime of corruption and the assets resulting from corruption have been confiscated, the state can confiscate other assets owned by the perpetrator unrelated to the crime. 4) Assets discovered or reasonably suspected to have originated from criminal activities. These assets include items found and known or suspected of being derived from a crime. items found by authorities suspected to be derived from a crime. In addition, the state can confiscate items found to be known or suspected to be derived from a crime. This confiscation process aims to return the items to their rightful owner, if possible, or to be used as evidence in legal proceedings against the perpetrator of the crime. 5) Assets that exhibit a disproportionate relationship to reported income or possess unverifiable origins of acquisition.

Assets owned by an individual or entity that are disproportionate to reported income or legitimate sources of wealth can indicate that the assets may have been obtained through illegal means or a crime. For example, if someone owns a luxury property or vehicle but does not have enough income to justify the ownership, then the assets may be suspected. If the asset owner cannot provide valid evidence regarding the origin of the asset, then the asset may be considered suspicious and potentially subject to confiscation. It aims to prevent individuals or entities from profiting from illegal activities. Assets whose origin cannot be proven and are suspected of being related to criminal acts can be seized by the state. It provides a legal basis for law enforcement to seize suspicious assets. 6) Assets derived from criminal acts or utilized in the commission of such acts include items seized by authorities obtained from criminal acts or used to commit criminal acts. Items seized by law enforcement during the investigation or prosecution process. These items can be money, valuables, vehicles, or tools used to commit crimes. Assets that are the result of criminal acts, such as money obtained from drug sales or stolen goods, can be seized by the state. Consequently, it aims to restore justice and prevent perpetrators from profiting from illegal acts. The law plays a crucial role in restoring balance and order by seizing assets used in the commission of criminal acts.

The bill also includes asset-sharing provisions, a longstanding

challenge in asset recovery. The United States, known for its extensive asset recovery endeavors, has adopted an asset-sharing mechanism. Asset sharing entails the equitable allocation of proceeds from confiscated assets among parties actively contributing to the forfeiture process. The primary goal of asset sharing is to alleviate the substantial operational expenses associated with asset forfeiture, particularly when the assets in question are dispersed across multiple foreign jurisdictions. This also safeguards the process from external influences that could hinder its effective execution.[19]

Asset sharing is not recent, and its origins can be traced back to its widespread application in addressing international narcotics cases. The inception of regulations governing asset-sharing mechanisms can be attributed to the United States with the **Money Laundering Control Act of 1986**. The resounding success of the United States in repatriating assets through this approach subsequently inspired numerous countries to adopt similar practices. Asset-sharing regulations have emerged as a pivotal tool in enforcing asset forfeiture penalties within the United States. By implementing an asset-sharing framework, the equitable allocation of responsibilities and gains among various stakeholders can be achieved, ultimately resulting in a mutually beneficial outcome (a "win-win" solution). Therefore, countries are encouraged to consider this approach when dealing with the repatriation of assets that traverse international jurisdictions.[20]

The specific regulations governing the allocation and conditions for asset-sharing mechanisms are being developed, thereby fortifying their implementation. The asset-sharing process is formalized through a written agreement among the parties responsible for asset forfeiture, with the guiding principle being freedom of contract. Before the formulation of the Asset Forfeiture Bill, provisions about asset sharing were embedded in Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters, Article 57. The reintroduction of profit-sharing provisions within the Asset Forfeiture Bill underscores Indonesia's recognition of asset-sharing significant role in addressing asset forfeiture challenges.[21]

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[19] Tsalis Abida Nurdin. "Perbandingan Pengaturan Perampasan Aset Tindak Pidana Korupsi Antara Indonesia Dengan Amerika Serikat Yang Sudah Menerapkan Non-Conviction Based Asset Forfeiture." *Recidive*., *13,* No.2 (2024): 472, https://jurnal/uns.ac.id/recidive/article/view/88654/pdf.

[20] Muhammad Yusuf, *Merampas Aset Koruptor* (Jakarta: Kompas, 2013), 167

[21] Izzudin Hafid, ''Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis of Law. *Lex Renaissance 6,* no. 3 (2021): 472.

Based on the information mentioned earlier, it is evident that the passage of the Asset Forfeiture Bill is of paramount importance. This legislation can resolve numerous corruption cases under the latest legal framework. To ensure the effective implementation of asset forfeiture efforts, Indonesia must establish complementary legal provisions in conjunction with the Asset Forfeiture Bill to govern the asset-sharing mechanism. This necessity is underscored by the experiences of the Corruptor Hunting Team, which previously dealt with requests from foreign entities such as Hong Kong, Switzerland, and Australia regarding the asset-sharing of recovered assets. Such complementary regulations are essential to prevent any confusion or unexpected losses arising from asset-sharing agreements. Ultimately, the comprehensiveness and adequacy of asset forfeiture regulations directly impact the optimization of endeavors, leading to greater success and positive outcomes.

This study uses a normative approach within the framework of legal research to analyse the division of assets in extradition agreements between countries. The normative approach, which prioritizes legal sources such as international treaties, national laws and regulations, and legal doctrines, is particularly significant in this context as it allows for a comprehensive analysis of the legal framework governing asset division in extradition agreements.

This study classifies data into three main categories: primary sources, secondary sources, and tertiary sources. Primary Sources include relevant extradition agreements, international treaties, and bilateral laws governing the division of assets between related countries. National laws and regulations govern the principles of extradition and the rights of states in terms of asset division. The author will also use relevant court decisions, both national and international, related to cases of asset division in extradition. Next, secondary sources, the data used are law books, journal articles, and previous research that discuss theories of extradition, asset division, and analysis of international treaties. Literature analysis on the basic principles of international law and states' rights in the context of extradition agreements. In Tertiary sources, the author uses News references and reports that cover the latest developments in extradition cases related to asset division. However, to ensure its validity, this source is only used to provide additional context and not as primary data for legal analysis.

This study will use normative legal analysis with the following approaches: Case Study Analysis, which analyses several relevant extradition cases, both those that have been decided and those that are ongoing, to explore how the division of assets is carried out in

practice. The selected cases will reflect the diversity of situations and laws involved identify patterns, constraints, and possible solutions applied in extradition treaties. Then, the author will also use comparative legal analysis to compare extradition regulations and practices between countries with different legal systems. The study will examine whether there are differences or similarities in the division of assets and how each country regulates the issue in domestic and international law.

After data collection, analysis will be carried out by integrating findings from various sources. Data from primary and secondary sources will be processed qualitatively, using thematic analysis techniques to identify key elements relevant to the division of assets. The process of data collection involved a comprehensive review of relevant legal documents, treaties, and court decisions, ensuring that the data is both comprehensive and relevant. This process will be strengthened by legal interpretation referring to the legal principles applicable in international relations. All data will be tested for validity, especially data from tertiary sources that are only used as additional references. In addition, using legitimate and relevant primary sources will underlie the conclusions of this study, while secondary sources will be used to support a more in-depth legal analysis.

A. Assets Forfeiture

The economic perspective on criminal involvement is grounded in the premise that most potential criminals are ordinary individuals who do not suffer from illnesses or physical deformities, as was suggested by criminologists in the nineteenth century. Instead, these individuals are seen as rational actors who respond to incentives. As articulated by Becker in 1968[22], their decision to engage in criminal behaviour is contingent upon whether the anticipated net benefit (utility) of committing a crime outweighs the benefit (utility) derived from legal activities.

From an analytical standpoint, it is crucial to recognize that criminal activity carries inherent risks, primarily the risk of apprehension. Consequently, Becker posited that potential criminals can be deterred from unlawful actions by[23]:

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[22] Gary S. Becker is an American economist. He put forward theories related to criminal behavior from an economic perspective (See further in Gary S. Becker, ‘‘Crime and Punishment: An Economic Approach,” in The Economic Dimensions of Crime (London: Palgrave Macmillan,1968), 1-54

[23] D. J. Pyle. ‘‘The economic approach to Crime and punishment.’’ *Journal of Interdisciplinary Economics 6*, no. 1 (1995): 2

1. Increasing the likelihood of being apprehended and punished,
2. Intensifying the severity of punishment in case of capture.

Regarding the likelihood of punishment facing individuals involved in criminal activities, Raaj K. Sah argues that it is determined endogenously, specifically by their awareness of the number of fellow criminals apprehended. In his article titled "Social Osmosis and Patterns of Crime," it can be inferred that:[24]

1. The history of criminal activity tends to perpetuate further criminal engagement. In other words, the present overall participation rate in criminal activities tends to be higher when the past participation rate was also high. This phenomenon arises from the fact that a heightened crime rate, given a fixed police budget, leads to a reduced detection rate, consequently increasing the rate of participation in criminal activities. That occurs because individuals become aware of more criminals successfully evading detection. A similar effect may be observed if fewer resources were allocated to criminal detection in the past.
2. Two societies possessing identical parameters may exhibit distinct steady-state crime participation rates due to disparities in past criminal activities or criminal justice policies. This outcome can be explained by the same reasoning elucidated in (1) above.
3. Policy changes, such as an increased detection rate, may appear modest compared to their long-term impact due to indirect effects. For instance, an elevated detection rate is a deterrent to criminals, partly because they perceive a greater likelihood of being apprehended. When a fixed policing budget is allocated to investigating fewer crimes, the detection rate is further boosted, resulting in a subsequent reduction in the overall crime rate - a virtuous cycle (Conversely, a lower detection rate initiates a vicious cycle of increasing Crime).

As the task of augmenting the probability of apprehension grows more intricate, involving the cooperation of diverse stakeholders potentially influenced by political motivations to redirect cases, the enduring approach to manage the surge in criminal cases include optimizing the potential penalties imposed on perpetrators upon their apprehension (Crime does not pay).

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[24] *Ibid.*, 2-3

Economic crimes, generally motivated by the hope of obtaining more incredible new wealth, should make the punishment of forfeiture of the proceeds of the Crime itself the main subject of punishment. Unfortunately, so far, the punishment for forfeiture of assets resulting from criminal acts in Indonesia is not independent but only serves as an additional punishment, which makes its implementation less than optimal.

Asset forfeiture is often used interchangeably with asset seizure, but these terms have distinct definitions. Forfeiture of assets results in the permanent loss of ownership because assets are seized as compensation for unlawful activities that harm state finances. In contrast, seizure is typically a temporary measure aimed at preserving evidence. It entails various outcomes, including returning the assets to the original owner, confiscating them for the state, destruction, or retaining them under the supervision of the prosecutor's office. Additionally, investigators can only have the authority to carry out seizure, whereas an executed forfeiture should have a judge's order following a final decision. The precise definitions of these terms can vary depending on the type of Crime and jurisdiction, but in a general sense, they can be delineated as such.

> *"Forfeiture needs to be distinguished from seizure. Simply put, the police can seize property (e.g., cash), but forfeiture is always a separate action. When something is forfeited, ownership of it is relinquished. A seizure, on the other hand, is temporary."*[25]

According to legal historians, asset forfeiture has historical roots in ancient Greek beliefs, where objects were considered complicit in the actions committed against them.[26] Therefore, forfeiture assets are typically directly connected to the associated criminal act. However, the forfeiture process cannot be executed immediately; it necessitates a preceding seizure procedure while awaiting a definitive legal decision establishing the criminal offense. Once a criminal act has been proven, asset seizure can transition into an asset forfeiture. This concept of deprivation is also referred to as "*in personam*."

The path to obtaining a final court decision faces numerous

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[25] J. L. Worrall. The Civil Asset Forfeiture Reform Act of 2000: A sheep in wolf's clothing? *Policing: An International Journal of Police Strategies & Management 27,* no.2 (2004): 222

[26] Amy D. Ronner. Prometheus Unbound: Accepting a Mythless Concept of Civil in Rem Forfeiture with Double Jeopardy Protection." Buffalo Law Review 44 (1996): 670

implementation challenges and is no longer deemed sufficient. Prosecuting criminals becomes exceedingly difficult and often impossible if the suspect or defendant flees abroad or passes away, resulting in failed prosecutions and impacting failed asset forfeiture outcomes. This situation is particularly disheartening, especially in corruption cases, given that substantial sums of misappropriated funds rightfully belong to the public, and their return should be an obligation.

A novel approach has emerged in response to this predicament and in pursuing more equitable efforts to combat corruption while enhancing the practicality of repatriating cross-border assets. The United Nations Convention Against Corruption (UNCAC) introduces an innovative method for asset return between nations, one that does not rely on a criminal decision. This approach, known as non-conviction-based (NCB) or forfeiture in rem, is outlined in Article 54, paragraph (1), letter (c) of the UNCAC.

> *"Consider taking such measures as may be necessary to allow confiscation of such property[27] without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases."*

UNCAC was ratified in December 2003 and has received ratification from more than 140 countries. As its name suggests, UNCAC was established in response to concerns voiced by nations, particularly those in developing countries, that had suffered significantly from the misappropriation of state assets through corrupt practices. These countries encountered challenges in collaborating with developed countries (often safe havens for corrupt funds from developing countries) due to the stringent legal systems and intricate procedural actions in place. Some developed countries sometimes need more time to engage in such collaborations.

The previous article, namely Article 53 of UNCAC, is also designed to ensure that each party country that signs UNCAC recognizes that other party countries have the same legal standing to carry out civil actions and other efforts to recover assets that have been obtained illegally and have gone beyond borders their jurisdiction in terms of (1) As a plaintiff in a civil lawsuit who can access the court, (2) As a state that must be recovered from damage caused by criminal acts (corruption) or (3) As a third party claiming ownership rights and, therefore, must be assisted in civil

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[27] "*Property shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets*." (Article 2 UNCAC)

and criminal forfeiture procedures.[28]

Indonesia later ratified UNCAC through Law No. 7 of 2006, and the mandate for forfeiture in rem is further outlined in a separate law, namely in the Asset Forfeiture Bill. This bill has been proposed by the Centre for Financial Transaction Reports and Analysis since 2008 (most recently in 2022. The bill was also approved again to be included in the priority National Legislation Program in 2023, but unfortunately, until now, the bill has not been passed). The bill accommodates provisions for forfeiture in rem, which are adequate for implementation in Indonesia.

Types of forfeiture can be divided into at least three types:

1. *In Personam Forfeiture.*

Criminal forfeiture, also known as personal forfeiture, has been a form of punishment for criminal activities since the early 19th century, coinciding with the emergence of prisons.[29] This form of forfeiture falls under the purview of criminal law and can only be enacted with a criminal verdict declaring the defendant guilty, making it conviction-based forfeiture. It serves as an additional penalty alongside a prison sentence.

This forfeiture primarily targets "tainted" assets, whether they are considered proceeds or directly linked to criminal activity leading to the forfeiture. In cases where tracing these assets proves impossible, the government can seek forfeiture with substitute assets. Suppose the assets are unavailable at the time of the verdict's enforcement. In that case, the court can order the forfeiture of substitute assets of equivalent value, provided that the government can demonstrate that this unavailability is due to the defendant's actions. [30]

In Indonesia, asset forfeiture regulations predominantly revolve around personam forfeiture, as evidenced by several asset forfeiture provisions outlined below:

TABLE 2. Asset Forfeiture Regulations in Indonesia

No	Article	Regulation
1.	18	Law No. 31 of 1999 on the Eradication of Corruption Crimes
2.	36B	Law No. 20 of 2001 on the Eradication of Corruption Crimes
3.	66	Law No. 1 of 2004 on State Treasury

[28] Academic Draft of the Asset Forfeiture Bill, p. 12-13

[29] David J. Fried. Rationalizing criminal forfeiture. *J. Crim. L. & Criminology 79* (1988): 330

[30] H.J. Garretson. Federal Criminal Forfeiture: a royal pain in the assets. *S. Cal. Rev. L. & Soc. Just.*, *18* (2008): 53

4.	101	Law No. 35 of 2009 on Narcotics
5.	78 (15)	Law No. 14 of 1999 on Forestry
6.	79 (4)	Law No. 8 of 2010 on Prevention and Eradication of the Crime of Money Laundering
7.	29 dan 35	Government Regulation instead of Law No. 01 of 2002 on the Eradication of Terrorism Offenses
8.	73 (4)	Law Number 31 of 2004 on Fisheries
9.	110	Law Number 10 of 1995 on Customs

Source: Research Analysis, 2024

Third parties interested in the property the government intends to forfeit criminally cannot intervene or initiate civil lawsuits to establish the validity of their claims. These third parties must await a court-issued forfeiture order based on criminal forfeiture, and then they can request a hearing to determine their interest in the forfeiture.[31] Before the law on asset confiscation was specifically regulated. Various laws (see table 2) in Indonesia provide a legal framework for asset confiscation in the context of criminal acts, be it Corruption, money laundering, or other law violations. This regulation aims to recover assets obtained illegally and support more effective law enforcement. Some of them are Article 18 of Law No. 31 of 1999 concerning Corruption (later amended by Law No. 20 of 2001). This law regulates the confiscation and seizure of goods resulting from criminal acts of Corruption. The process involves identifying assets that are the result of criminal acts of Corruption, initiating legal proceedings, and finally, the assets are confiscated by the State. These assets then become the property of the State and can be used to replace losses caused by criminal acts of Corruption. This article is very important in eradicating Corruption in Indonesia because it provides a legal basis for confiscating and seizing illegal assets. With this provision, it is hoped that it can provide a deterrent effect for perpetrators of Corruption and return state losses due to Corruption.

Article 36B of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Corruption. This article has a different focus and context from Article 18 of Law No. 31 of 1999 concerning Corruption, although both are related to confiscating assets resulting from Corruption. This article is a more specific addition or change regarding confiscating assets obtained from Corruption.

Article 66 of Law No. 1 of 2004 concerning the State Treasury

[31] *Ibid.*, hal.59

does not directly regulate asset confiscation. However, in the context of state financial management, several aspects can be related to the issue of asset confiscation, especially regarding accountability and supervision of budget use. Article 66 emphasizes the importance of accountability and transparency in budget expenditures. Budget users, who are responsible for using the budget and must prepare an accountability report, play a crucial role in preventing abuse of authority or improper management that could potentially cause losses to state finances. If some irregularities or actions are detrimental to the State, including confiscation or seizure of assets obtained from unlawful actions, are discovered, legal action can be taken. This could involve confiscating assets as part of recovering state losses.

Article 101 of Law No. 35 of 2009 concerning Narcotics regulates criminal sanctions for violators involved in narcotics abuse. In this context, asset confiscation can be carried out on property resulting from narcotics crimes. By confiscating assets obtained from narcotics crimes, it is hoped to reduce the incentive for violators to continue committing these crimes. Confiscated assets can be used to support prevention and rehabilitation programs related to narcotics abuse, thereby providing benefits to the community.

Article 78 Paragraph 15 of Law No. 14 of 1999 concerning Forestry regulates administrative and criminal sanctions for parties violating forest management provisions. Although this article does not explicitly mention asset confiscation, there is a relationship between the violations regulated in the article and the asset confiscation actions that may be carried out as part of law enforcement. If someone commits a violation regulated in Article 78, such as illegal logging, assets obtained from the illegal activity (for example, wood from logging) can be confiscated. This confiscation, which is not explicitly stated in the article but is a common practice, aims to restore losses caused by illegal actions and prevent profits from activities that damage the environment.

Article 78 Paragraph 15 can be one of the bases for law enforcement to carry out confiscation actions against forest products obtained illegally. Confiscated assets can be used for the benefit of the State, including for the rehabilitation of damaged forests and conservation programs.

Article 79 Paragraph 4 of Law No. 8 of 2010 concerning Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes regulates confiscating and seizing assets from money laundering crimes. This article states that assets obtained

from money laundering crimes can be confiscated and seized by the State.

B. Administrative Forfeiture

The administrative forfeiture process commences with the seizure of assets suspected to be derived from criminal activities. As its name implies, administrative forfeiture does not involve a court proceeding. Upon issuing a forfeiture notice to the owner of the seized asset or any other interested party, if no objections are raised, the asset is subject to automatic administrative forfeiture. In the United States, administrative forfeiture typically pertains to the following types of assets:[32] (a) prohibited imported goods; (b) vehicles employed for the importation, transportation, or storage of controlled substances; (c) monetary instruments; (d) other assets with a value of less than $500,000.

C. Civil Forfeiture/In Rem[33]

The practice of in rem forfeiture is believed to have its origins in the governance of the British government during the colonial period in the United States. During this era, the British Parliament and colonial legislatures employed forfeiture to ensure strict adherence to applicable laws. The underpinnings of many provisions of in rem forfeiture can be traced back to the British Navigation Laws, which took effect in the mid-17th century. These laws mandated that ships importing or exporting goods from British ports sail under the British flag. Violations of these Acts could lead to the seizure and forfeiture of the ships or cargo to the crown, irrespective of the guilt or innocence of the owner.[34]

Using the British statutes as a model, the inaugural session of

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[32] US Department of Treasury. Forfeiture Overview. Retrieved June 06, 2023, from https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/asset-forfeiture/forfeiture-overview

[33] *"Actions in rem, being proceedings directly against property, are a manifestation of the principle that a state has the power to determine the title, status, or condition of property within its borders. But this power may not be arbitrarily exercised; it is limited by a second principle, which is, that the interests of persons in property may not be cut off without attempting to provide such persons notice and an opportunity to be heard. Thus, for a court to act in rem, certain preliminary steps must be taken. When these have been taken, the court is said to have jurisdiction to act in rem, or jurisdiction in rem"* Fraser Jr, G. B. (1948). Actions in Rem. *Cornell LQ*, *34*, p. 29.

[34] Forbes. Civil Forfeiture Laws and The Continued Assault on Private Property. Retrieved June 06, 2023, from https://www.forbes.com/2011/06/08/property-civil-forfeiture.html

the US Congress enacted forfeiture statutes designed to facilitate the collection of customs duties. This revenue source contributed as much as 90 percent to the federal government's financial resources during that era. The US Supreme Court assumed a crucial role in reinforcing the significance of forfeiture laws. Judge Joseph Story, who presided during this epoch, cogently articulated the principle that the vessel involved in an act of aggression is treated as the transgressor, constituting the guilty instrument or entity subject to forfeiture, with scant regard for the owner's character or conduct. In such circumstances, forfeiture is deemed a compelling necessity, representing the sole viable means to suppress the offense or misconduct and securing indemnification for the aggrieved party.[35]

The consensus among legal historians and scholars is that forfeiture constitutes an exceptionally potent and severe legal instrument. In the early 1970s, the US Congress expanded its use from customs and admiralty law to combat drug-related activities. They enacted the civil drug-related forfeiture statute, authorizing the forfeiture of contraband and property involved in drug trafficking. In subsequent amendments, Congress included proceeds from drug transactions, described as 'penal in nature' and extended the law to encompass real property. These changes demonstrated Congress's intent to use forfeiture as a robust deterrent against drug offenses.[36]

Civil forfeiture, known as forfeiture in rem, has a long history in various countries, notably the United States since 1970[37] and Italy since 1956, where it is employed to combat organized Crime, drug trafficking, and related offenses. Favored initially by common law countries, civil law nations, including Italy, the Netherlands, Colombia, and the Philippines, are progressively adopting it to recover assets in cases where criminal prosecution is unattainable.

This non-conviction-based (NCB) form of forfeiture operates within the civil law framework, with the government as the plaintiff, the property or asset as the defendant (distinct from person-based forfeiture), and interested third parties as claimants. Unlike in personam forfeiture, in rem proceedings consolidate all parties with an interest in the assets into a single stage. In the United States, forfeiture cases have unique titles, such as United States v. Approximately 600 Sacks of Green Coffee Beans and 'United States v. One Etched Ivory Tusk of African Elephant.[38]. Forfeiture in rem

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35 *Ibid.*

36 Ronner, *op.cit*, p. 673

37 Michael Preciado and Bart J. Wilson, "The welfare effects of civil forfeiture." *Review of Behavioral Economics* 4, no. 2 (2017): 153-179.

38 Stefan D. Cassella, Asset forfeiture law in the United States. Retrieved June

addresses legal gaps where the government cannot confiscate assets through criminal proceedings (in personam) despite valid grounds for forfeiture. The nexus in rem forfeiture lies between the assets and the criminal act rather than the assets and the perpetrator, simplifying situations involving third-party involvement.[39]

While it may initially appear more straightforward, civil forfeiture possesses inherent vulnerabilities. Initiating civil forfeiture proceedings demands a more substantial investment of resources than with criminal cases. Furthermore, due to its direct association with assets, it cannot substitute assets or obtain monetary judgments. Consequently, civil forfeiture is primarily utilized as an alternative when criminal forfeiture proves unviable or unfeasible. In the United States, civil forfeiture is invoked under specific circumstances, namely:

1. The defendant is deceased, a fugitive, or incompetent to stand trial.
2. The Crime violates foreign law, but the property is in the United States or falls under the jurisdiction of a US court.
3. The defendant has already been convicted in a state, foreign, or tribal court, eliminating the need for a second criminal prosecution.
4. The defendant pleads guilty to an offense different from the one leading to forfeiture.
5. The property subject to forfeiture, identified as facilitating property, is not owned by the defendant but by an unrelated third party, such as their spouse.
6. The government could initiate a criminal case, but considerations of justice favour a less severe penalty

In general, Indonesia primarily adheres to asset forfeiture in personam. Nonetheless, there are exceptions, particularly in cases involving corruption. Law No. 20 of 2001 on the Eradication of Corruption Crimes delineates mechanisms for personal forfeiture and incorporates provisions for civil forfeiture. It is worth noting that these provisions still rely on conventional civil procedural law, wherein the Plaintiff and Defendant are individuals or legal entities. Consequently, in cases of corruption, both forms of forfeiture are regulated.

Article 38C of Law No. 20 of 2001 stipulates that if it is ascertained that a convict's assets have been concealed or hidden

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05, 2023, from http://assetforfeiturelaw.us/wp-content/uploads/2016/10/Chapter-for-Colin-King.pdf

[39] *Ibid.*

after a final court decision and there is strong suspicion that these assets are connected to a criminal act, the state can initiate a civil lawsuit against the convict or their heirs. When there is insufficient evidence for criminal prosecution, the suspect dies during the investigation, or the defendant succumbs during the court proceedings. At the same time, it is evident that the state has suffered a tangible loss. The state attorney, typically the prosecutor, can institute a civil lawsuit against the heirs of the suspect or defendant (as per Articles 32, 33, and 34 of Law Number 31 of 1999).

In practice, however, civil lawsuits targeting the proceeds of corruption-related criminal acts have rarely been pursued. According to Mujahid A. Latief, a researcher at the National Law Commission (KHN), civil lawsuits have been invoked only once, notably in the case of President Soeharto. During this case, the Attorney General's Office filed a lawsuit against former President Soeharto and his entire foundation, asserting that all foundation assets belonged to the state. This legal action resulted in a loss of IDR 3 trillion for the state, despite former President Soeharto receiving a Decree to Discontinue Investigation (SKPP) due to his permanent illness. The lawsuit underwent a protracted legal process (spanning six years), extending from the initial filing in 2009 to a final decision in 2015[40].

The established procedural framework for civil forfeiture in corruption cases is often considered inadequate. State Prosecutors face at least two significant challenges. Firstly, the strict adherence to formal evidentiary principles intrinsic to civil law adds substantial complexity. Secondly, this legal process is characterized by lengthy timelines required to attain legally binding decisions[41]. Civil lawsuits against property resulting from criminal acts are only found in corruption cases[42]. Furthermore, forfeiture of assets without criminal proceedings is specifically regulated in Article 67 paragraph (2) of Law Number 8 of 2010 concerning Money Laundering, which is further detailed in Republic of Indonesia Supreme Court Regulation Number 01 of 2013[43]. In addition, the process of Asset forfeiture refers to the Criminal Code and the Criminal Procedure Code, which unfortunately have shortcomings in accommodating

[40] Indonesia Corruption Watch. Kasus Mantan Presiden Soeharto. Retrieved June 06, 2023, from https://antikorupsi.org/id/article/kasus-mantan-presiden-soeharto

[41] Indonesia Corruption Watch. Pengembalian Aset Korupsi via Instrumen Perdata. Retrieved June 05, 2023, from https://antikorupsi.org/id/article/pengembalian-aset-korupsi-instrumen-perdata

[42] Husein., *loc.cit.* p. 569

[43] Hafid, I., *Loc.Cit.* p. 472

provisions related to forfeiture[44]:

In addition, the process of Asset forfeiture refers to the Criminal Code and the Criminal Procedure Code, which, unfortunately, have shortcomings in accommodating provisions related to forfeiture. The weaknesses in the Criminal Procedure Code and the Criminal Code related to confiscating and seizing assets in investigating and prosecuting criminal acts. Weaknesses in the Criminal Procedure Code: It does not regulate the confiscation and seizure of proceeds and tools of crime as a crucial part of the investigation. In the Criminal Procedure Code, the definition of investigation is limited to "searching for and collecting evidence that can provide information about the crime involved and finding the suspect." The confiscation and seizure of assets or tools used in the crime have not been very important in revealing the material truth and supporting the process of proving the crime. In fact, in practice, the confiscation of assets related to criminal acts (such as money, goods, or property suspected of being the proceeds of crime) can be important evidence to support charges and is often used to prove state or community losses in cases of corruption, money laundering, or other organized crimes. This is in line with Article 31 of the United Nations Convention Against Corruption (UNCAC), a significant international treaty that Indonesia is a party to, which concerns asset confiscation.

Then the second weakness of the Criminal Procedure Code is that it does not regulate the authority of investigators to detect and find the results and tools of crime, especially from sources whose confidentiality is protected, such as information from banks, financial institutions, or even personal documents. In the modern world, many crimes involve electronic transactions or data hidden in digital form, making it difficult for investigators to access information that can be evidence. The Criminal Procedure Code has not fully accommodated technological developments and new investigation challenges. Article 12 of the UNCAC encourages countries to provide more flexible and secure legal channels for collecting evidence through international cooperation or searching for information abroad.

Then, the definition of criminal instruments that can be disclosed in the Criminal Procedure Code is limited to items that have been used or intended to commit a crime; this means that only items that are directly involved in a crime can be confiscated. In fact, in many cases, there are other items that, although not directly used

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[44] Husein., *loc.* Cit. Hal. 567-569

to commit a crime, can facilitate or enable a crime to occur. For example, financial documents, digital recordings, or resources used in the criminal process (such as bank accounts used for money laundering). As explained in UNCAC Article 31, the state must have a broader confiscation system to ensure that the tools of crime are confiscated and that assets derived from the crime itself, including those related to money laundering and other proceeds of crime. In some countries, such as the United States, Civil Asset Forfeiture allows for the confiscation of assets even though no criminal sentence has been imposed, if there is evidence that the assets originated from a crime, which could be a more effective model in regulating confiscation in Indonesia. The Criminal Procedure Code also does not detail the potential for confiscating assets and criminal instruments that can hinder the investigation process until a verdict is rendered. It refers to conditions where assets or instruments used in a crime hinder or harm the investigation process, for example, if a suspect or perpetrator hides or moves assets related to the crime to avoid confiscation. UNCAC Article 31(3) regulates this, where the state must be able to secure assets at risk of being lost during the legal process. It allows the state to act more quickly in handling assets that could hinder proving a crime. Overall, the weaknesses in the Criminal Procedure Code and the Criminal Code related to the confiscation and seizure of assets indicate the need for reform in the Indonesian legal system to align with technological developments and modern challenges in eradicating crime, especially corruption and economic crimes. The state needs to adapt the provisions of criminal procedure law to handle the issue of confiscation and seizure of assets more comprehensively and efficiently, which is not only limited to direct evidence related to the crime but also to assets that allow the crime to occur, and provide investigators with broader authority in detecting and seizing evidence originating from sources whose confidentiality is protected.

In 2012, Indonesia initiated a draft law aligned with the 2003 UNCAC mandate, primarily focusing on adopting forfeiture provisions without requiring a criminal verdict—known as Asset Forfeiture[45]. This comprehensive legislation redefines the application of in rem forfeiture in Indonesia, reducing reliance on traditional civil procedural law. Mungki Hadipraktito, Director of

[45] Article 3 (1) of the Asset Forfeiture Bill stipulates: (1) Asset forfeiture, as referred to in Article 2, does not eliminate the authority to prosecute the perpetrators of criminal acts.

Asset Tracking, Evidence Management, and Execution (*Labuksi*)[46] at the Corruption Eradication Commission, highlights several advantages of the bill (despite its pending approval):[47]

1. Have provisions that make the forfeiture process save more time and costs in handling cases
2. The scope of assets that can be confiscated is broader
3. Asset substitution if there are assets that are difficult to confiscate, such as those located abroad
4. Management of confiscated/confiscated assets will be more efficient
5. The existence of a complete reverse-proof system
6. Fill the legal gaps related to forfeiture with non-conviction-based asset forfeiture.

The draft Indonesian asset forfeiture law's structure is paramount, as it delves into crucial aspects such as the benefits and hurdles in executing asset forfeiture provisions and the impact of global principles on the Indonesian legal system. The advantages of the Draft Asset Forfeiture Law are that it is highly relevant to the challenges faced by Indonesia in eradicating corruption and economic crimes. The law's focus on reducing the profits from criminal acts and providing a deterrent effect on perpetrators directly addresses these challenges. This is particularly important as these crimes often involve the transfer of assets from criminal acts abroad or using these assets to continue illegal practices.

One of the key challenges in implementing asset forfeiture is the need for effective supervision and law enforcement, especially in cases involving the return of assets that have been transferred or hidden by criminals. The draft law must address this by focusing on transparency and accountability in asset confiscation and distribution and establishing robust oversight mechanisms by the Prosecutor's Office and the Corruption Eradication Commission to prevent abuse of authorities. This aligns with Article 31 of the UNCAC, which mandates state parties to implement asset confiscation to prevent and combat corruption while ensuring that human rights are not violated (UNODC, 2022).

Stefan D. Casella, a former federal prosecutor with expertise in money laundering and asset recovery at the US Department of

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[46] *Labuksi* is an abbreviation for asset tracking, evidence management, and execution by the Corruption Eradication Committee (KPK).

[47] Rofiq Hidayat, "Lima Urgensi atas RUU Perampasan Aset Tindak Pidana. HukumOnline.com, June 05, 2023, from https://www.hukumonline.com/berita/a/lima-urgensi-atas-ruu-perampasan-aset-tindak-pidana-lt61a73220c1b8f/

Justice, highlighted the potential benefits of implementing forfeiture in rem regulations, especially in cases where: [48]

1. No party contests the forfeiture, making in rem deprivation a time and resource-efficient option
2. The perpetrator of the Crime has passed away
3. The suspect is absent, and the funds are in the possession of a courier with no knowledge of ownership
4. Property ownership involves the interests of third parties
5. Criminal punishment is unnecessary in the interest of justice
6. The perpetrator is a fugitive, requiring the rejection of any defense efforts until their return
7. The defendant has faced punishment in another country but left the property in their place of origin

Despite the focus on in rem forfeiture, Indonesia's legislation provides substitute assets when forfeiture is not feasible (akin to in personam forfeiture). Additionally, this bill outlines procedures for asset return and provisions related to asset sharing. In rem confiscation (confiscation of property, not persons) can help recover illegally acquired assets, but the main challenge is establishing valid evidence and ensuring transparency in the confiscation process. A major challenge in implementing this bill is regulating asset confiscation in the context of human rights and broader legal principles. Although asset confiscation aims to combat crime and reduce the negative impacts of economic crimes, transparent and careful implementation is crucial to protect individual property rights.

For example, procedural issues in the application of in rem confiscation—the act of confiscating objects used in or obtained from a crime, regardless of whether or not there has been a criminal conviction against the individuals involved—can create tension with private property rights stipulated in the Indonesian Constitution. Asset confiscation must be carried out with due respect to the individual rights guaranteed by the Constitution. Asset confiscation without considering due process of law can risk violating individuals' basic rights to retain their property.

The 1945 Constitution, Article 28G Paragraph 1, clearly states that everyone has the right to protect themselves, their families, their honor, their dignity, and their property under the state's authority. Therefore, asset confiscation, particularly in rem

[48] Stefan D. Cassella, "Civil Asset Recovery: The American Experience." In *Research Handbook on International Financial Crime* (2015), 496-506, accessed on June 05, 2023, from https://eucrim.eu/articles/civil-asset-recovery-american-experience/

confiscation, must be implemented with careful protection of these basic rights in mind. This ensures that the principles of non-retroactivity and due process stipulated in the constitution are not violated.

In rem refers to confiscating property involved in a crime, regardless of who owns the property. It is easier to confiscate assets without waiting for a criminal decision against the individual concerned. In personam, on the other hand, it refers to the confiscation of an individual and only applies if there is a criminal decision against the person. Applying in rem in this draft law needs to be translated more clearly into the Indonesian legal framework, especially considering the differences in legal culture and judicial systems compared to countries that have implemented rem confiscation, such as the United States or the United Kingdom. Using in rem confiscation in Indonesian law can speed up returning assets derived from criminal acts, but its application must be more transparent and based on valid evidence.

In the case of United States v. $4.5 million, the International Court states that in rem confiscation can be carried out without waiting for a verdict against the perpetrator, as long as there is sufficient evidence that the assets were obtained from a crime. In Indonesia, this in rem confiscation needs to be adjusted to national law, and the principles of positive Indonesian law and basic rights guaranteed by the constitution must be paid attention to.

TABEL 4. Important substances in the Asset Forfeiture Bill:

Expansion of Regulations	Explanation
The addition of types of assets that can be seized (Article 5, paragraphs 1 and 2)	Expanded forms of assets that can be seized/forfeited: (1) Proceeds of criminal acts; (2) Assets that have been used in the commission of criminal acts; (3) Forfeitable substitute assets as declared legitimate; (4) Assets discovered or reasonably suspected to be derived from criminal acts; (5) Assets disproportionate to one's income or of unverifiable origin of acquisition; (6) Proceeds of criminal acts or assets used in the commission of criminal acts.
Criminal forfeiture without a criminal conviction (Article 2)	Forfeiture of assets under this law is not based on the criminal conviction of the perpetrator
Asset sharing agreements (Article 64)	The government may enter into agreements with the government of another country to share the proceeds, including cost recovery, from asset forfeiture involving that country, whether conducted in Indonesia or another

	country.

Source: Research Analysis, 2024

Replacement assets refer to assets used to replace assets that have been seized or cannot be found. In contrast, asset distribution refers to the distribution of the proceeds of confiscation obtained from the perpetrator of the crime. This mechanism is very important in eradicating corruption because assets obtained from criminal acts cannot always be found or seized, especially if they have been moved abroad or hidden. UNCAC Article 31 requires countries to introduce clear and secure procedures related to the distribution and return of assets, including through a replacement asset mechanism, to ensure that the proceeds of confiscation are used for the benefit of the state and society (UNODC, 2022).

Some important substances in this regulation, referred to in table 4, are: 1) Expansion of Asset Confiscation Regulations (Article 5, paragraphs 1 and 2). This regulation expands the types of assets that can be seized or confiscated by the state, not limited to proceeds of crime. Assets that can be confiscated include Assets that are the result of criminal acts, Assets Used in Crime, Goods or assets that are used directly in the implementation of criminal acts, Replacement Assets that are Declared Legal, Assets that are considered to be a replacement for proceeds of crime that have been obtained legally, Assets Found or Suspected of Being Related to Crime: Assets that are found and have a connection or suspicion of originating from criminal acts, Assets that are Unbalanced with Income; Assets owned by individuals that do not correspond to resources or income that can be legally verified. The addition of this type of asset provides law enforcement officers with the flexibility to trace and confiscate assets suspected of originating from criminal acts, even if it has not been proven in court. It could strengthen efforts to eradicate economic crime and money laundering. Asset Confiscation Without Criminal Conviction is a crucial aspect of this Law (Article 2). It allows the state to immediately act against assets suspected of being related to a crime, providing a swift response even if the legal process against the perpetrator has not been completed or even if the perpetrator has not been found. This step prevents the use or flow of wealth derived from crime, provides a deterrent effect, and accelerates the process of recovering state assets. Indonesia also has regulations that allow for the formation of asset-sharing agreements with other countries, especially in

cases involving criminal assets involving international parties. Article 64 allows for Sharing of Proceeds of Asset Confiscation. The Indonesian government can cooperate with other countries to share the proceeds of asset confiscation involving transnational crimes, including recovery costs. This asset-sharing model is especially important in the context of transnational crimes, such as money laundering, corruption, and drug trafficking, where perpetrators often flee or hide their assets abroad. With an international agreement, Indonesia can strengthen its efforts to return assets that have been stolen or obtained illegally and expand the country's ability to face global challenges related to transnational crime. Asset-sharing agreements with other countries are also a very useful instrument for ensuring that criminals who flee abroad cannot avoid responsibility by hiding their wealth in other countries.

D. Assets Sharing

Asset recovery is an effort to return the proceeds of corruption committed abroad to their country of origin or legitimate owner.[49] Assets proven to be part of a criminal act and designated as seized assets will be returned to their original owners. Therefore, asset recovery is an ongoing process following the forfeiture. So far, the rate of returning state losses suffered by Indonesia has been far from optimal, for instance, in the case of Hendra Haradja, one of the corrupt individuals involved in the BLBI case. Assets amounting to around 493,000 US dollars located in Australia and Hong Kong took years to recover, and ultimately, only around 4 billion Indonesian Rupiah was returned.[50] (despite the South Jakarta District Court imposing a penalty of 1.9 trillion Indonesian Rupiah for the repayment of state losses, the death penalty, and a fine of 30 million Indonesian Rupiah).[51]

After establishing the asset forfeiture mechanism, the Asset Recovery mechanism is also regulated in the Asset Forfeiture Bill, outlined in Article 59, paragraphs 1, 2, and 3, which state:

1. The return of Criminal Assets to third parties or other parties, either in whole or part, shall be carried out based on a final court decision.
2. In cases where the Criminal Assets, as referred to in paragraph (1), have already been transferred by the state,

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49 UNCAC Coalition. Asset Recovery. Retrieved June 05, 2023, from https://uncaccoalition.org/learn-more/asset-recovery/

50 Santos, R. *Op. cit.*, hal. 42

51 *Ibid.*

their return shall be based on the value of the Criminal Assets at the time of the transfer.

3. The return of Criminal Assets, as referred to in paragraph (1), is considered void if it has expired 5 (five) years from the date of the final and legally binding court decision.

This issue seems familiar to Indonesia, as other countries also face challenges when recovering assets that have crossed international jurisdictions, which is time-consuming. Examples include Nigeria, Peru, and the Philippines. Nigeria successfully seized and confiscated assets worth 505.5 million US dollars from Switzerland and 800 million US dollars domestically, all linked to the former president, General Sani Abacha. This process took several years, spanning from 1998 to early 2006. Peru received 33 million US dollars from the Cayman Islands, 77.5 million US dollars from Switzerland, and 20 million US dollars from the United States in 2001, 2002, and 2004, respectively, as part of asset recovery related to corruption cases involving the former head of police intelligence, Vladimiro Montesinos. Lastly, the Philippines spent 18 years (1986-2004) working to seize and confiscate 624 million US dollars from Switzerland, the proceeds of corruption involving their former president, Ferdinand Marcos.

One of the significant obstacles to effective asset recovery is the need for more cooperation and complex procedural efforts. Additionally, there is often a lack of willingness on the part of asset-holding countries to help return assets to victim countries, citing the enormous costs associated with the forfeiture and return process. In the United States, see Table 5, where asset recovery efforts are more substantial, asset-sharing mechanisms are often employed (involves distributing the proceeds from seized assets among parties involved in the forfeiture process). It serves the dual purpose of covering the substantial operational costs of asset forfeiture, primarily when the assets are situated in multiple foreign countries. This approach addresses cost-related challenges and aims to prevent external interference that could hinder the effectiveness of the asset forfeiture process

> *"There must be no confusion between asset return and sharing; they are quite different. Asset sharing follows MLA requests that lead to asset recovery. It recognizes joint efforts between jurisdictions to recover criminal proceeds and encourages further cooperation in asset recovery. It applies to recovered criminal proceeds from all types of criminality*

except those offenses set out in UNCAC.[52]"

TABEL 5. Asset Sharing Mechanism in Some Countries

No.	Country	The percentage of Asset Sharing conducted
1.	United States	a) Countries providing significant assistance will receive a shared range of 50 to 80 percent; b) Countries providing great assistance will receive a shared range of 40 to 50 percent; c) Countries assisting only receive a share of less than 40 percent.
2.	Canada	a) 90% for the predominant portion contributed by the Government of Canada or another jurisdiction; b) 50% for a significant portion contributed by the Government of Canada or another jurisdiction; c) 10% if the contribution provided by the Government of Canada or another jurisdiction is minimal.
3.	Swiss	50%:50%

Source, Research Analysis 2024.

Asset sharing is also recommended by the Financial Action Task Force (FATF), a global body responsible for setting international standards in combating money laundering and terrorism financing. In its document titled "Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery," it emphasizes that one of the measures countries can adopt to fortify their legal framework and ensure effective cross-border tracking of assets and financial investments is the formulation of asset sharing agreements.

Asset sharing, an extension of asset recovery efforts, provides financial support for asset recovery initiatives undertaken by authorities in the recipient country to return illegal assets to their rightful owners. This practice is typically carried out through international cooperation on asset recovery (although some

[52] Government UK. Policy Paper: Framework for transparent and accountable asset return. Retrieved June 06, 2023, from https://www.gov.uk/government/publications/framework-for-transparent-and-accountable-asset-return/framework-for-transparent-and-accountable-asset-return#agreements

countries also have regional-level asset-sharing arrangements).

Historically, asset-sharing practices were viewed differently in socialist countries like China, where they were seen as potentially compromising sovereignty and were not considered a priority. In contrast, capitalist countries like the United States and Canada have commonly implemented asset-sharing arrangements, which are believed to have contributed to the success of their cross-border asset recovery efforts.[53] The United States is considered the pioneer in creating the first asset-sharing system.

The pioneering Western capitalist countries, such as the United States, have had an asset recovery system for over 200 years. It imposed asset forfeiture penalties and prevented criminals and their families from possessing illegal assets. However, the increasing spread of criminal activities beyond the jurisdiction of the United States led them to believe that the existing regulations were no longer sufficient. Therefore, a new cooperation model was created, known as the asset-sharing system. This system was first embodied in the **Money Laundering Control Act of USA (1986) § 1166(i) (1)**[54]

> *"Not withstanding any other provision of law except section 3 of the Anti-Drug Abuse Act of 1986 whenever property is civilly or criminally forfeited under the Controlled Substances Act. The Attorney General may with the concurrence of the Secretary of State equitably transfer any conveyance currency and any other type of personal property which the Attorney General may designate by regulation* ***for equitable*** *transfer or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property."*

Asset sharing also represents a strategic response by international policymakers to address developing countries' concerns regarding the forfeiture of criminal assets held in developed countries. The primary objective of asset sharing is to facilitate increased cooperation in asset recovery, overcoming barriers posed by asset recovery, the large operational costs associated with forfeiture, and the reluctance of many countries to return assets due to perceived benefits. Provisions regarding the sharing of assets can be identified in Article 14 of the UN

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[53] Huang, G., & Cao, X. (2022). Study on Chinese Criminal Assets Sharing System. *Chinese Studies*, *11*(4), p. 229

[54] *Ibid.*, hal. 231

Convention Against Transnational Organized Crime and The Protocols to it.

> **Article 14. Disposal of confiscated proceeds of Crime or property**
>
> *(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of Crime or property, or funds derived from the sale of such proceeds of Crime or property, following its domestic law or administrative procedures.*

In Indonesia, regulations related to asset sharing have been in place since 2006, specifically in Article 57 of Law Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters. Unfortunately, the implementation regulations for this sharing have not yet been established, causing difficulties in its execution.

> **Article 57**
>
> *The Minister may enter into an agreement or arrangement with a foreign country to obtain cost reimbursement and profit-sharing from the confiscated assets: (a) in a foreign country, because of actions taken based on a forfeiture decision at the request of the Minister; or (b) in Indonesia, as a result of actions taken in Indonesia based on a forfeiture decision at the request of a foreign country.*

While there is a need for more specific literature detailing the exact types of cases eligible for asset sharing, exempting assets derived from corruption is common. Nonetheless, it is important to consider a sharing mechanism to maximize potential recoveries from corrupt practices. The determination of asset-sharing amounts is typically governed by specific regulations or negotiated agreements among involved parties. Both methods come with their criteria, and various factors are considered when determining the extent of asset sharing.

E. Comparative Analysis of Countries' Best Practice

United States

The 'Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies[55] stipulates that the distribution of assets seized and shared among participating entities is primarily calculated based on the hours worked by each agency contributing to the federal forfeiture, encompassing all federal, state, local, and tribal agencies. Nevertheless, if it is perceived that the criteria solely

[55] For further details, see https://www.justice.gov/criminal-afmls/file/794696/download (Retrieved June 06, 2023)

relying on person-hours are insufficient, the authorities responsible for allocation (in this instance, the Attorney General and the Secretary of the Treasury) may take into account alternative factors, including (a) the inherent significance of the contributing role, (b) if the agency entitled to an adjustment would already receive a relatively substantial portion based on reported work hours, (c) if the agency initiated the information that led to the seizure, (d) if the agency delivered and elucidated particular distinctive or essential support, or (e) if the agency confiscated one or more assets that were forfeited in non-federal proceedings during the same investigation.

In another source, it is also mentioned that in 1995, for certain procedural operations, specific criteria for asset sharing in the United States were jointly established by the US Departments of the Treasury, Justice, and Secretary of State, divided into three levels of asset sharing percentages: (1) countries providing significant assistance would receive a sharing range of 50 to 80 percent, (2) countries providing great assistance would receive a sharing range of 40 to 50 percent, and (3) assisting only countries would receive a sharing of less than 40 percent.[56]

Canada

In Canada, the distribution of proceeds from criminal activities is governed by the Forfeited Property Sharing Regulations (FPSR). Article 7, paragraph 3[57] Subparagraphs a, b, and c state that the amount of asset sharing that the Attorney General can determine is as follows: (a) If the Government of Canada or a jurisdiction's contribution makes up the majority of the total contribution, it will be regarded as 90 percent, (b) If the Government of Canada or a jurisdiction's contribution makes up a substantial part of the total contribution, it will be regarded as 50 percent, and (c) If the Government of Canada or a jurisdiction's contribution makes up a minimal part of the total contribution, it will be regarded as 10 percent.

Nonetheless, the elucidation provided in Article 7, paragraph 5, clarifies that the percentage signifying the Government of Canada's contribution must stay within 10 percent. Moreover, distributions governed by the act are restricted to foreign governments that have agreed as per Article 11 of the Law (Article 3) and must adhere to

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[56] *Ibid.*

[57] Justice Laws Website. Forfeited Property Sharing Regulations. Retrieved June 06, 2023, from https://laws-lois.justice.gc.ca/eng/regulations/sor-95-76/page-1.html#h-977142

the Regulations (Article 4, paragraph 2).

Switzerland

Implementing asset-sharing provisions recommended by the Council of Europe Convention on Money Laundering and the Financial Action Task Force (FATF), Switzerland enacted the Federal Act on the Division of Forfeited Assets (DFAA), which came into effect on August 01, 2004. The DFAA delineates international asset-sharing, both actively and passively:

1. Active international asset-sharing occurs when Swiss authorities seize assets derived from criminal activities violating Swiss law and subsequently share the forfeiture proceeds with a foreign country that aided the process.
2. Passive international asset-sharing is the reverse. A foreign country initiates criminal prosecution and requests for asset forfeiture. Swiss authorities assist in the process and provide necessary assistance for asset seizure. In return for this assistance, a portion of the assets is shared as compensation.

Swiss authorities stipulate that if the confiscated assets result from bribery of public officials or illegal actions by public officials, the assets are returned in full to the aggrieved country without any sharing. Other than those mentioned, asset sharing involves negotiations between the victim country and the Federal Office of Justice (FOJ), followed by an asset-sharing agreement. Unlike the two previous countries, specific percentage allocations for asset sharing are not explicitly prescribed, which means the distribution is subject to the agreement reached. However, in practice, it is often evenly divided, typically 50:50. This differs from the arrangement when sharing is solely between the federal Swiss government and the canton, where specific percentages apply and are implemented when the amount reaches 100,000 Swiss francs:[58]

1. 50% is allocated to the public authority (either the canton or Federal Government) that spearheaded the criminal investigation and authorized the asset forfeiture, bearing the primary workload.
2. 20% is assigned to the cantons where the confiscated assets were situated as a token of appreciation for their collaboration in the criminal proceedings.
3. 30% is granted to the Federal Government in recognition of its assistance to the cantons in combating criminal activities.

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58 *Ibid.*

F. Assets Sharing Mechanism in Indonesia Regulations Regarding Asset Sharing

Currently, there are no specific regulations governing the extent of asset sharing. However, several laws address the authorities related to asset sharing. In the Draft Law on Asset Forfeiture, provisions regarding asset sharing can be found in Article 64, Paragraphs (1) and (2), which state as follows:

> **Article 64**
>
> 1. *The government may enter into agreements with foreign governments to share the proceeds, including cost reimbursement, from Asset Forfeiture involving that country, whether conducted in Indonesia or another country.*
> 2. *Agreements on revenue sharing, as referred to in paragraph (1), shall be made under the provisions of the prevailing laws and regulations*

Before this Draft Law was proposed, specifically in 2012, there were similar regulations governing asset sharing in Law No. 1 of 2006 regarding Mutual Legal Assistance in Criminal Matters. Articles 55 and 57 stipulate:

> **Article 55:**
>
> *All expenses arising from implementing Mutual Legal Assistance requests shall be borne by the Requesting State requesting assistance unless otherwise determined by the Requesting State and the Requested State*
>
> **Article 57**
>
> *The Minister may enter into agreements or arrangements with foreign countries to obtain reimbursement and a share of the forfeited property: a) In foreign countries, because of actions taken based on the forfeiture decision at the request of the Minister; or b) In Indonesia, because of actions taken in Indonesia based on the forfeiture decision at the request of a foreign country.*

The provisions on asset sharing in current Indonesian law include various laws and legal frameworks, such as Law No. 1 of 2006 on Mutual Legal Assistance (MLA), which provides a legal basis for international cooperation in sharing assets resulting from criminal acts. This law allows Indonesian authorities to conduct legal cooperation with other countries, including the sharing of assets that have been successfully seized. However, implementing this law still faces several challenges, such as lacking specificity in the mechanism for sharing assets between countries, which often

causes delays in implementation. Coordination between domestic institutions is ineffective, especially in synchronizing law enforcement efforts with international cooperation. Technical problems in negotiating the sharing of assets, for example in cases where the value of the seized assets is very large, requiring a special agreement. The Draft Law on Asset Forfeiture, especially Article 64, provides an opportunity to address this legal gap. The article establishes a clearer legal framework for how assets seized from criminal acts will be managed and shared domestically and internationally. However, this provision still needs deeper contextualization of international best practices, such as those implemented in the United Nations Convention against Corruption (UNCAC), which encourages a transparent and accountable approach to asset sharing.

While the bill shows potential to improve the legal framework, it is crucial to conduct further analysis of several potential issues: The lack of adopted international standards is a pressing issue. The asset-sharing process can be disrupted if domestic legal provisions do not align with these standards. The next problem is that asset sharing often requires close coordination with foreign authorities, which sometimes have different priorities or policies. Absence of specific mechanisms for reimbursement of operational costs: The provisions on revenue sharing and reimbursement of operational costs do not yet explain how the allocation of funds will be carried out in practice, especially at the implementing level.

Things that can be recommended include Alignment with International Practices: Adopt guidance from UNCAC and bilateral agreements with countries with advanced asset-sharing experience, such as the United States or Switzerland. Integrate accountability mechanisms, including oversight by independent institutions. Clear job descriptions that can be included in the MLA, including budget flows and public reporting, provide solutions and introduce a neutral third party in asset-sharing negotiations.

G. Specific Provisions and Percentages Related to Assets Sharing

The framework for agreements between countries in sharing assets can follow the model of bilateral agreements related to sharing forfeited assets provided by the United Nations. Although not all proceeds of Crime can be shared, primarily if they originate from corruption, which belongs to the people and, in this case,

sharing mechanisms do not apply.[59] (This was also emphasized by Basrief Arief, a former attorney general who led the hunt for corruptors abroad. At that time, Hong Kong, Switzerland, and Australia, which held Indonesia's assets resulting from corruption, requested asset sharing as a condition for the forfeiture process. However, Basrief Arief firmly rejected this. According to him, it was illogical because those assets belonged to the state).[60]

However, such asset-sharing exemptions should be considered for more optimal asset recovery or through other cost-sharing mechanisms that align with the asset's value. In the draft model for sharing assets from criminal proceeds by the United Nations, Article 4, paragraph (1), states:

> "*Where the Holding Party proposes to share assets with the Cooperating Party, it shall: (a) determine, at its discretion and following its domestic law, the proportion of the assets to be shared, which in its view, represents the extent of the cooperation afforded by the Cooperating Party [possibly consider other formulations such as fixed percentages]*."

The extent of asset sharing that Indonesia should consider ought to be adjusted to the assistance provided by foreign governments related to asset forfeiture efforts outlined in the agreed-upon agreements (as is commonly done by other countries). In cases where both parties have an equal influence on forfeiture efforts, a 50:50 share ratio can be applied.

The distribution of assets derived from corruption is crucial in international and domestic law. In Indonesia, the approach to asset distribution has not been fully reflected in a systematic legal framework. However, there are several legal bases, such as Law No. 31 of 1999 concerning the Eradication of Corruption and Law No. 1 of 2006 concerning Mutual Legal Assistance (MLA). However, several challenges need to be considered. These challenges include the complex issue of Assets as the Property of the People. Assets derived from corruption are morally and legally considered to belong to the Indonesian people. This view influences negotiations on asset distribution with other countries, which often provide technical or legal assistance in asset recovery.

The practice shows that the country of origin has primary rights over confiscated assets, but the distribution mechanism often considers the contribution of other countries. The sovereignty factor

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[59] Academic Draft of the Asset Forfeiture Bill, p. 81

[60] Hukumonline.com. Asset Sharing, Hambatan dalam Perburuan Koruptor. Retrieved June 06, 2023, from https://www.hukumonline.com/berita/a/iasset-sharingi-hambatan-dalam-perburuan-koruptor-hol13657/

is also a major issue in this mechanism. The United Nations Convention Against Corruption (UNCAC) model, especially Article 57, plays a significant role in shaping international standards and guidelines for asset distribution. It suggests the full return of assets to the country of origin but allows other arrangements based on bilateral or multilateral agreements.

Asset sharing with countries such as Hong Kong, Switzerland, and Australia shows flexibility, but there is a lack of transparency in managing such agreements. This lack of transparency can lead to misunderstandings and disputes, highlighting the need for more openness and accountability in these processes. Adjusting the sharing ratio based on the level of assistance from the partner country, for example, 50:50, requires more in-depth consideration, including factors such as the level of contribution to the investigation, Operational costs borne by each party, and the primary interest of the home country in the full return of the assets.

Asset-sharing cases often involve multiple jurisdictions with different legal systems and priorities. Conflicts between domestic and international laws can complicate this process. Enforcing asset-sharing agreements requires trust and a clear framework. The absence of independent oversight can lead to mistrust among partner countries. Therefore, we must adopt a strategic and systematic approach. A bill on Asset Forfeiture, especially on the management and sharing of assets involving international cooperation, should be passed. Guidelines from the UNCAC should be adopted to ensure that asset sharing is carried out fairly and transparently.

The proposed model, a More Dynamic and Flexible Sharing Ratio, is crucial for the fair and transparent distribution of assets. It is based on the actual contribution of each party, setting clear parameters. For example, the partner country that provides key evidence gets a larger percentage, and the country that bears the cost of securing and storing assets can claim reimbursement. This model, along with the establishment of an independent oversight body, is not just a suggestion but a necessary step towards ensuring no abuse of authority or ethical violations in the asset distribution process.

H. Formal and Digital Stages of Assets Forfeiture for Assets Outside Indonesia's Jurisdiction

Investigators[61] Conduct asset tracing for suspects or defendants who have passed away, fled, are permanently ill, are of unknown whereabouts, have been released from all legal claims, have criminal cases that cannot be prosecuted, or have been convicted but later found to have unseized assets. The traced assets must meet the following criteria to be eligible for forfeiture:

1. Conduct asset tracing for suspects or defendants who have passed away, fled, are permanently ill, are of unknown whereabouts, have been released from all legal claims, have criminal cases that cannot be prosecuted, or have been convicted but later found to have unseized assets. The traced assets must meet the following criteria to be eligible for forfeiture.
2. Assets whose acquisition is unreasonable or disproportionate to the individual's income.
3. Seized items derived from criminal activities.

If it is proven through asset tracing that the assets meet the above criteria, they can be subjected to blocking or seizure. Blocking requires permission from the Central Jakarta District Court, while seizure must be carried out with an order from the investigating authority's superior. Both requests (blocking or seizure) are submitted to the competent institution in the country where the assets are located. If the request is denied, the blocking or seizure will be directed to assets of similar value owned by the same person. Parties with objections can submit their grievances through the superior of the investigator who issued the seizure or blocking order. Objections will not be accepted if the suspect/defendant has fled, is on a Wanted Persons List, is being tried in absentia, or is incapacitated. Asset forfeiture requests are submitted in writing by the State Attorney General to the Central Jakarta District Court. In conducting blocking, seizure, and asset forfeiture, the government may enter into cooperation agreements with foreign countries, whether bilateral, regional, or multilateral, or based on good relations, following the principle of reciprocity. The government may also enter into agreements with foreign governments to obtain revenue sharing and cost reimbursement for Asset Forfeiture involving that country, whether conducted in Indonesia or another country.

In international practice, asset tracing often faces challenges, notably the complexity of international financial structures. Assets are frequently concealed through a network of shell companies or

[61] Investigators encompass officials from the Police, Prosecutor's Office, Corruption Eradication Commission, National Narcotics Agency, and Civil Servant Investigator Officials.

bank accounts in highly confidential jurisdictions. The scarcity of data is another hurdle, as information about assets is often hard to obtain without close cooperation with authorities in other countries. StAR (Stolen Asset Recovery Initiative) emphasizes that successful asset tracing necessitates a robust collaboration between domestic authorities and international financial institutions, underscoring the crucial role of the latter. The subsequent step is blocking and confiscation. Indonesian authorities, guided by the provisions of Article 39 of the Criminal Procedure Code and Article 69 of the Money Laundering Law, can file a seizure application with the Central Jakarta District Court. However, in a cross-jurisdictional context, this procedure must adhere to international mechanisms, such as Mutual Legal Assistance (MLA). Under Law No. 1 of 2006, MLA enables Indonesia to seek legal assistance from other countries to block or confiscate assets. The existence of agreements between Indonesia and partner countries, such as UNCAC, can streamline this process. Some countries have higher evidentiary requirements to approve seizure. If Indonesia lacks an MLA agreement with a specific country, the procedure can become more intricate. In addition to MLA, Indonesia often leverages diplomatic relations to facilitate cooperation. However, the term "good relations" must be defined more precisely to ensure legal certainty. According to UNCAC Article 43, international cooperation must be rooted in principles of legal reciprocity and common interests. The final stage is the repatriation of assets to Indonesia. Based on international practice, several factors that influence the repatriation of assets include bilateral agreements and the discretion of foreign courts.

Integrating technology into the mechanism of in rem asset confiscation is crucial to increasing the effectiveness and efficiency of the process. The Asset Management Information System, developed by the Government of Indonesia includes tracking, managing, and monitoring activities of seized assets in real time. This system facilitates coordination between various law enforcement agencies and related institutions. However, in practice, permission or cooperation from outside the jurisdiction of Indonesia is required to determine the distribution of data or assets leaving Indonesia. In addition to the system, Blockchain technology for data transparency and security must also be developed. The role of blockchain technology, owned by the Centre for Financial Transaction Reports and Analysis, in developing a suspicious transaction tracking system is crucial. It can significantly enhance the transparency and integrity of our asset confiscation process.

This system can collaborate with international data systems and countries suspected of hiding Indonesian assets. In addition to these two digital systems, international collaboration is needed in digital networks to analyze the tracking of cross-border funds resulting from criminal acts. Integrating the above technologies is expected to increase the effectiveness, efficiency, and transparency in Indonesia's process of in rem asset confiscation, which is in line with international best practices.

Conclusion

Indonesia's asset forfeiture regulations are dispersed among various laws, encompassing a broad spectrum of sectors, including corruption and forestry. However, these regulations predominantly employ mechanisms reliant on criminal judgments (*in personam*) for asset forfeiture. In Indonesia, civil lawsuits targeting the proceeds of criminal activities find applicability solely within the ambit of Law No. 31 of 1999 on the Eradication of Corruption and asset forfeiture without prior criminal proceedings, which is explicitly only outlined in Article 67, paragraph (2) of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering that a stemming from the implementation of Article 54, paragraph (1), letter (c) of the United Nations Convention Against Corruption (UNCAC) 2003, subsequently ratified through Law No. 7 of 2006. The United Nations Convention Against Corruption (UNCAC) has pioneered the adoption of innovative mechanisms for cross-border asset recovery, specifically those that do not necessitate a criminal conviction, a concept known as non-conviction-based (NCB).

The implementation of UNCAC's mandate is further realized through the Asset Forfeiture Bill, which offers more detailed and comprehensive civil or rem forfeiture regulations. Despite being initially proposed by the Financial Transaction Reports and Analysis Centre in 2008 and, most recently, in 2022, and inclusion in the 2023 legislative priorities, this bill still needs to be funded. The urgency of passing this bill is paramount. Notably, the Asset Forfeiture Bill extends beyond legitimizing rem forfeiture; it encompasses broader provisions regarding the range of assets subject to forfeiture compared to previous regulations. Furthermore, it incorporates provisions related to asset sharing, holding the potential to bolster cross-border asset recovery in Indonesia, encompassing assets resulting from corruption or other criminal activities.

Asset sharing not only provides a solution for overcoming cost

obstacles but also prevents external authorities' interference, ensuring the efficiency of the forfeiture process. Integrating technology into the mechanism of in-rem asset confiscation is a crucial factor in increasing the effectiveness and efficiency of the process. This dual-purpose mechanism averts the potential distribution of burdens and benefits to different parties, making it a win-win solution. Therefore, it is a viable option for Indonesia to consider when aiming to enhance the likelihood of successfully recovering assets across jurisdictional boundaries. The structure of agreements among countries regarding asset sharing can adhere to the United Nations model of bilateral agreements for sharing forfeited assets. The allocation of shared assets will be tailored to match the assistance provided by foreign governments in asset forfeiture endeavors, as outlined in the agreed-upon accords. When both parties exert equal influence in forfeiture efforts, assets may be divided evenly, typically in a 50:50 ratio, or it can be flexible.

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