

## **FAILURE OF CRIMINAL LAW IN RECOVERING STATE LOSSES DUE TO CRIMINAL ACTS OF CORRUPTION**

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**Abstract:** The effectiveness of recovering state financial losses resulting from acts of corruption remains below expectations. In 2022, the number of decisions observed by ICW significantly increased (2,056 decisions with 2,249 defendants). In 2022, the average prison sentence for corruption offenders in 2022 was 3 years and 4 months, amounting to a state expenditure of IDR. 48,786,368,945,194.70 (IDR. 48.786 trillion). This article aims to describe the failures of Indonesian criminal law to recover state assets and analyse the causes and consequences stemming from these shortcomings. This research was based on qualitative research by conducting legislative studies and literature studies. The results reveal a persistent failure to recover state financial losses, characterized by the increasing unrecovered losses year by year. This trend is attributed to a legal vacuum regarding retrieving state financial losses. The existing legal framework is deemed inadequate or insufficient to facilitate confiscating assets belonging to corruptors, thereby constraining judges in rendering appropriate sentences for the restitution of state losses. Consequently, this situation impedes equitable economic development and deters foreign investors, as ruling elites and conglomerates exploit resources to benefit certain groups. In conclusion, the current formulation of criminal law falls short in addressing the legal requirements for recovering state financial losses due to corruption. Therefore, it is recommended to expedite the passage of the Asset Confiscation Bill to rectify these deficiencies and enhance the effectiveness of anti-corruption measures.

**Keywords:** Failure of criminal law, Return of State Financial Losses, Corruption Crime.

**Abstrak:** Efektivitas pengembalian kerugian keuangan negara akibat tindak pidana korupsi masih jauh dari harapan. Pada tahun 2022, jumlah putusan yang berhasil diamati oleh ICW bertambah secara fundamental, yakni 2.056 putusan dengan 2.249 terdakwa. Pada tahun 2022, pelaku korupsi rata-rata pidana penjara selama 3 tahun 4 bulan yang merugikan negara sebesar Rp.48.786.368.945.194,70 (Rp48,786 triliun). Artikel ini bertujuan untuk mendeskripsikan bentuk kegagalan hukum pidana Indonesia dalam Upaya pengembalian aset negara serta menganalisis faktor penyebab dan akibat yang ditimbulkan akibat kegagalan hukum pidana dalam upaya

pengembalian aset negara. Penelitian ini didasarkan pada penelitian kualitatif dengan melakukan studi perundang-undangan dan studi literatur. Hasil penelitian menunjukkan bahwa bentuk kegagalan pengembalian kerugian keuangan negara ditandai dengan semakin meningkatnya nilai kerugian negara yang tidak dikembalikan dari tahun ke tahun. Hal ini akibat dari kekosongan hukum yang dapat diterapkan dalam upaya pengembalian kerugian keuangan negara dikarenakan formulasi hukum yang berlaku sudah tidak relevan atau tidak dapat menjangkau untuk dilakukan perampasan aset koruptor sehingga hakim memiliki keterbatasan dalam memvonis kaitannya dengan pengembalian kerugian negara. Hal ini berdampak terhadap terhambatnya pembangunan ekonomi yang berkeadilan serta menghambat investor asing disebabkan penguasa bersama konglomerat menjadikan lahan untuk menguntungkan kelompok tertentu. Penelitian ini berkesimpulan bahwa formulasi hukum pidana tidak dapat mengakomodir kebutuhan hukum terkait pengembalian kerugian keuangan negara akibat korupsi, sehingga direkomendasikan untuk segera mengesahkan Rancangan Undang-Undang Perampasan Aset.

**Kata Kunci:** Kegagalan Hukum pidana, Pengembalian Kerugian Keuangan Negara, Tindak Pidana Korupsi.

## INTRODUCTION

The recovery of state financial losses resulting from corruption crimes continues to fall short of expectations. Criminal law failure refers to cases where the criminal justice system fails to resolve criminal acts or provide justice effectively.<sup>1</sup> This failure manifests as inadequacies within the criminal justice system, leading to insufficient enforcement and punishment for criminal offenses.<sup>2</sup> From 2017 to the first semester of 2022, the Supreme Audit Agency submitted 25 reports on the findings of Investigative Audits, indicating state/regional losses totalling IDR 31.55 trillion, and 311 reports on the results of State Loss Calculations, amounting to state/regional losses of IDR 57.53 trillion to relevant authorized agencies.<sup>3</sup> According to Indonesian Corruption Watch data, the state incurred losses of 62.5 trillion throughout 2021, of which only 2.2 trillion could be recovered.<sup>4</sup> This data illustrates the alarming trend of escalating state financial losses due to criminal acts of corruption, year by year. Criminal justice failures can manifest in various ways, including inadequate investigations, flawed legal systems, wrongful convictions, or failure to prevent crime,<sup>5,6</sup> all of which contribute to the persistence of corruption in this country.<sup>7</sup>

- 1 Sahuri Lasmadi, Ratna Kumala Sari, and Hari Sutra Disemadi, "Restorative Justice Approach as an Alternative Companion of the Criminal Justice System in Indonesia," vol. 140, 2020, 206–9, <https://doi.org/10.2991/aebmr.k.200513.044>.
- 2 Virginia Garcia, Hari Sutra Disemadi, and Barda Nawawi Arief, "The Enforcement of Restorative Justice in Indonesia Criminal Law," *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (2020): 22–35, <https://doi.org/10.22219/ljih.v28i1.10680>.
- 3 BPK.RI, "Laporan 2022 Tahunan BADAN PEMERIKSA KEUANGAN," BPK.RI, 2022.
- 4 Indonesia Corruption Watch, "Tiga Tahun Pemerintahan Joko Widodo - Ma'ruf Amin 'Setengah Hati Berantas Korupsi Hingga Regresi Demokrasi,'" Indonesia Corruption Watch, 2023.
- 5 Lan Chi Le et al., "Wrongful convictions in asian countries: A systematic literature review," *International Journal of Comparative and Applied Criminal Justice* 00, no. 00 (2023): p. 1–17, <https://doi.org/10.1080/01924036.2023.2188235>.
- 6 I Made Sukanada et al., "Reveal the 'Face' of the Impartiality in the Indonesian Criminal Justice System: Challenges and Development", 2021, p. 6, <https://doi.org/10.4108/eai.14-4-2021.2312845>.
- 7 T Lindsey and H. Pausacker, "Crime and punishment in Indonesia", in *Crime and Punishment in Indonesia* (Routledge, 2020), p. 1–17. <https://doi.org/10.4324/9781315768601-16>

When assessing shortcomings in criminal law, several factors should be taken into consideration, including the adequacy of the legal framework, the effectiveness of investigations and prosecutions, the existence of impunity and accountability, transparency and access to information, compliance with international standards, and public trust and perception.<sup>8</sup> This issue is further compounded by the presence of various penal laws in Indonesia that still adhere to colonial-era legislation.<sup>9</sup> Therefore, it is important to note that the evolution and improvement of the criminal justice system is a continuous process. Addressing this problem requires long-term commitment, comprehensive analysis and strategic steps to reform the criminal justice system and effectively eradicate corruption.<sup>10</sup>

Recovering state losses refers to the process of reclaiming public assets that have been misused, misappropriated or illegally acquired.<sup>11,12</sup> Investigations, legal processes, and asset recovery efforts are often used to cover state losses.<sup>13</sup> Several government agencies charged with eradicating corruption and financial crimes include the Corruption Eradication Commission (KPK), the Office of the Attorney General, and the Financial Transaction Reports and Analysis Center (PPATK).<sup>14</sup> These agencies work together to investigate cases of corruption, embezzlement, money laundering and other financial misconduct leading to government losses. After collecting evidence and taking legal action, the court may require individuals or entities found guilty to return misappropriated funds or assets to the state.<sup>15</sup>

In recent years, Indonesia has intensified its efforts to combat corruption and recover public losses. The government has implemented reforms to improve anti-corruption institutions and improve the legal framework.<sup>16</sup> The amount of money or assets recovered, the ability to obtain punishment through a fair legal process and the potential deterrent effect against corruption can all be used to measure the

- 8 John Braithwaite, "Maximal Accountability with Minimally Sufficient Punishment," *Journal of Corporation Law* 47, no. 4 (2022): 911–36.
- 9 H Zafarullah and N. A Siddiquee, "Open government and the right to information: Implications for transparency and accountability in Asia", *Public Administration and Development* 41, no. 4 (2021): p. 157–68. <https://doi.org/10.1002/pad.1944>
- 10 Achmad Irwan Hamzani, "Law enforcement of terrorism criminal performers in Indonesia", *Journal of Xi'an University of Architecture & ...* XII, no. Iii (2020): p.5448–5457. <https://doi.org/10.1002/pad.1944>
- 11 Andin Adyaksantoro, Abdul Rachmad Budiono, and Abdul Madjid, "International Journal of Multicultural and Multireligious Understanding Indonesia Regul Ation Authority of the State ' s Attorney in Efforts to Restore State Financial Losses Due to Corruption Crimes," *International Journal of Multiculturaland Multireligious Understanding*, 2021, 259–67.
- 12 Wulandari et al., "Asset Forfeiture of Corruption Proceeds Using the Non-Conviction Based Asset Forfeiture Method: A Review of Human Rights", *Indonesia Law Reform Journal* 3, no. 1 (2023): p. 15–25, <https://doi.org/10.22219/ilrej.v3i1.24496>.
- 13 Sugeng Wahyudi, "Penal Policy on Assets Recovery Corrruption Cases in Indonesia", *Journal of Indonesian Legal Studies* 4, no. 01 (2019): p. 45–72.
- 14 Andi Hidayat Anugrah Ilahi and Yeni Widowaty, "The Optimization of Corruption Deterrence during the Covid-19 Pandemic", *Padjadjaran Jurnal Ilmu Hukum* 8, no. 1 (2021): p. 71–91, <https://doi.org/10.22304/pjih.v8n1.a4>.
- 15 Ana Fauzia and Fathul Hamdani, "Legal Development Through the Implementation of Non-Conviction Based Concepts in Money Laundering Asset Recovery Practices in Indonesia", in *Proceedings of The 2nd International Conference on Law and Human Rights 2021*, vol. 592, 2021, p. 506–13.
- 16 Ahmad Qisa'i, "Sustainable Development Goals (SDGs) And Challenges Of Policy Reform On Asset Recovery In Indonesia," *Indonesian Journal of International Law* 17, no. 2 (2020): 231–52, <https://doi.org/10.17304/ijil.vol17.2.785>.

effectiveness of state loss recovery in Indonesia.<sup>17</sup> These efforts obviously depend on the capacity and independence of institutions such as the Corruption Eradication Commission (KPK) and the Public Prosecution Service.<sup>18</sup> Public opinion about the government's commitment to eradicating corruption and recovering state losses is paramount.<sup>19</sup> Continuous evaluation, improving anti-corruption measures and adapting strategies can all help increase the success of this approach.

So far, studies on criminal law have tended to approach the subject from three distinct perspectives. Firstly, they often examine the inclination of judges to impose additional penalties, such as compensation and fines, in corruption cases.<sup>20</sup> Secondly, they delve into the causes and repercussions of acts of corruption within criminal law.<sup>21</sup> Lastly, they explore efforts to prevent and prosecute individuals involved in corrupt activities.<sup>22</sup> Despite these perspectives, research concerning the shortcomings of criminal law, particularly in recovering state financial losses, remains limited.

This study aims to address the deficiencies in previous studies, which have overlooked the failures of criminal law in recovering state financial losses—a facet that remains understudied. In line with this, three questions can be formulated: (1) what are the forms of criminal law failure in recovering state financial losses, (2) what are the factors causing the failure of criminal law to recover state financial losses?, and (3) what are the impacts of the failure of criminal law to recover state financial losses?. The answers to these questions provide a comprehensive contribution of thought that can be used as a formulation and concept for ideal criminal law formulation to be applied in the future.

Corruption has become a major problem in Indonesia, affecting all sectors of society, such as politics, bureaucracy and business.<sup>2324</sup> The Anti-Corruption Law and the

- 17 Rini Krisna Boboy, Umbu L. Pekuwali, and Aksi Sinurat, "Prosecutor's Authority As A Country Lawyer In Returns Of State Losses Due To Corruption Criminal Action," *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 1, no. 2 (November 2021): 255–67, <https://doi.org/10.54443/ijerlas.v1i2.147>.
- 18 Joeroy Joeroy, Jeane N. Sally, and Wiratno Wiratno, "Implementation of Follow the Money in Eradicating Corruption and Money Laundering", *International Journal of Social Health* 2, no. 5 (2023): p. 249–64, <https://doi.org/10.58860/ijsh.v2i5.43>.
- 19 Nani Mulyati and Aria Zurnetti, "Assset Recovery as a Fundamental Principal in Law Enforcement of Corruption by Corporations", *Andalas International Journal of Socio-Humanities* 4, no. 1 (2022): p. 51–60, <https://doi.org/10.25077/aijosh.v4i1.33>.
- 20 Febby Mutiara Nelson and Topo Santoso, "Plea Bargaining in Corruption Cases: A Solution for the Recovery of Financial Losses by Indonesia?," *Pertanika Journal of Social Sciences and Humanities* 28, no. 2 (2020): 1233–48.
- 21 Nurul Huda Sakib, "Understanding Cultural Causes of Corruption: The Case of Bangladesh," *International Journal of Research and Innovation in Social Science* III, no. V (2019): 2454–6186.
- 22 Lindsey D. Carson, "Deterring Corruption: Beyond Rational Choice Theory," *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2520280>.
- 23 Bambang Slamet Riyadi, Basuki Rekso Wibowo, and Vinita Susanti, "Culture of Corruption Politicians' Behavior in Parliament and State Official during Reform Government Indonesia (Genealogical Study)," *International Journal of Criminology and Sociology* 9 (2020): 52–62, <https://doi.org/10.6000/1929-4409.2020.09.06>.
- 24 Fadjar Trisakti, Salamatul Afyah, and Nanang Suparman, "Bureaucratic Corruptive Behavior: Causes And Motivation of State Civil Aparatures in Indonesia", *International Journal of Psychosocial Rehabilitation* 24, no. 4 (2020): p. 5290–5303, <https://doi.org/10.37200/ijpr/v24i4/pr201627>.

Eradication of Corruption Law have created a legal framework in this country.<sup>25</sup> The independent Corruption Eradication Commission (KPK) has played an important role in investigating and prosecuting corruption cases, especially those involving senior officials.<sup>2627</sup> The legal system has been strengthened by establishing special anti-corruption courts and increasing penalties for corruption crimes.<sup>2829</sup> Indonesia has also participated in international cooperation to combat corruption, ratifying the UN Convention against Corruption and participating in regional initiatives.<sup>30</sup>

On the other hand, weak investigation and prosecution of criminal acts of corruption is another aspect of the criminal justice failure in Indonesia.<sup>31</sup> This failure can be caused by various issues, including limited resources, inadequate training and law enforcement capacity, and the effects of corruption itself within the system.<sup>32</sup> These problems can lead to incomplete investigations, inadequate evidence collection and compromised legal processes. Another problem is impunity, with bribers often escaping punishment or receiving light consequences,<sup>33</sup> due to several reasons, including judicial corruption, political interference or the influence of influential individuals or networks.<sup>34</sup> Weaknesses in the justice system can allow corrupt activities to flourish or hinder efforts to prosecute perpetrators.<sup>35</sup>

- 25 Mokh Najih and Fifik Wiryani, "Learning the social impact of corruption: A study of legal policy and corruption prevention in indonesia and malaysia", *Journal of Social Studies Education Research* 11, no. 4 (2020): p. 175–89. <https://www.learntechlib.org/p/218545/>
- 26 Ahmad Khoirul Umam and Brian Head, "Testing the Limits of Public Integrity: The Impact of Vested Interests and Countervailing Forces on Indonesia's KPK", *Asian Politics and Policy* 12, no. 3 (2020): p. 384–403, <https://doi.org/10.1111/aspp.12548>.
- 27 Ahmad Khoirul Umam et al., "Addressing Corruption in Post-Soeharto Indonesia: The Role of the Corruption Eradication Commission", *Journal of Contemporary Asia* 50, no. 1 (2020): p. 125–43, <https://doi.org/10.1080/00472336.2018.1552983>.
- 28 Febby Mutiara Nelson, "In Search of a Deferred Prosecution Agreement Model for Effective Anti-Corruption Framework in Indonesia", *Hasanuddin Law Review* 8, no. 2 (2022): p. 122–38, <https://doi.org/10.20956/halrev.v8i2.3292>.
- 29 Ilham Nurhidayat and Bevaola Kusumasari, "Strengthening the effectiveness of whistleblowing system A study for the implementation of anti-corruption policy in Indonesia", in *Journal of Financial Crime*, vol. 25, 2018, p. 140–54, <https://doi.org/10.1108/JFC-11-2016-0069>.
- 30 Dimitris Ziouvas, "International Asset Recovery and the United Nations Convention Against Corruption", in *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan, Cham, 2018), p. 591–620, [https://doi.org/10.1007/978-3-319-64498-1\\_25](https://doi.org/10.1007/978-3-319-64498-1_25).
- 31 Elisabeth Sundari and Anny Retnowati, "The Weakness Of The Control System For Fighting Corruption In The Judicial Process: The Case Of Indonesia," *International Journal of Social Policy and Law* 02, no. 01 (2021): 93–102.
- 32 A Dirwan, "The Effect of Education against Corruption In Indonesia", *OIDA International Journal of Sustainable Development* 12, no. 01 (2019): p.53–64, [www.oidaijsd.comalsoavailableathttp://www.ssrn.com/link/OIDA-Intl-Journal-SustainableDev.html](http://www.oidaijsd.comalsoavailableathttp://www.ssrn.com/link/OIDA-Intl-Journal-SustainableDev.html).
- 33 Muhammad Ali Zaidan, "Sociological approach to eradication corruption in Indonesia (alternative to imprisonment)", *The Indonesian Journal of International Clinical Legal Education* 1, no. 1 (2019): p. 3–18, <https://www.google.com/search?q=Corruption+damages+people%27s+welfare+and+hinder+s+national+and+regional+development.+So+to+deal+with+it%2C+reforms+are+nee>.
- 34 Edward Aspinall and Marcus Mietzner, "Indonesia's Democratic Paradox: Competitive Elections amidst Rising Illiberalism", *Bulletin of Indonesian Economic Studies* 55, no. 3 (2019): p. 295–317, <https://doi.org/10.1080/00074918.2019.1690412>.
- 35 Zuhairan Yunmi Yunan et al., "Spread of corruption in Indonesia after decentralisation: a spatiotemporal analysis", *Oxford Development Studies* 51, no. 2 (2023): p. 198–215, <https://doi.org/10.1080/13600818.2022.2162493>.

This research argues that the failure of criminal law to restore state finances stems from the inability to achieve optimal recovery of state financial losses. Efforts to replenish state finances do not proportionately correspond to the repercussions of criminal acts of corruption, particularly regarding the restitution of state financial losses. This deficiency is attributable to the absence of comprehensive legal provisions governing the restitution of state financial losses, which are currently confined to articles 2 and 3 of the Corruption Crime Law (UUTPK). Furthermore, the legal framework concerning the restitution of state losses is restricted to a maximum compensation and fines of IDR 1 billion. Consequently, the nation experiences adverse effects, including impeding sustainable and equitable economic development and deterring foreign investment.

## Methods

This study examines the recovering of the state's financial losses, as the ratio of the state's financial losses to revenues is not balanced,<sup>36</sup> and the formulation of the Indonesian criminal law is unable to absorb the return of the state's financial losses due to corruption crimes.<sup>37</sup> This research was conducted by analysing the failure of criminal law in recovering financial losses from the state, the form of legal vacuum when it comes to reimbursing financial losses to the state and the impact resulting from the failure of criminal law to recover financial losses from the state. This research employed a qualitative method, with the key data examining laws and regulations relating to the recovery of state financial losses resulting from criminal acts of corruption, supported by related literature. The data in this study were drawn from primary and secondary legal material in the form of legal regulations, judicial decisions, online media, journal books and research report books related to the failure of criminal law (UU TIPIKOR) regarding the recovering of state finances losses due to actions of corruption crime.

The data collection involved document and literature studies. Document studies were carried out by searching for data, official documents, court decisions and other matters related to the object of the problem to gain strength in obtaining information and gaining the right insight when conducting research. Literature reviews are conducted by reviewing and analysing the results of legal research, journals and literature related to the subject of research, to gain a comprehensive understanding of the research conducted, and to identify research gap and subsequently investigate a research opportunity. The data analysis employed in this study was descriptive-qualitative. It encompassed the organization, interpretation, and reflection upon the data gathered during the research process. This process aimed to seek the patterns, trends, relationships, and findings, thereby offering insights or deeper understanding into the research topic. Such analysis entails organizing, interpreting, and subsequently drawing conclusions from the analysed data.

## Results and Discussion

### *Ineffective recovery of state financial losses*

One of the objectives of law enforcement to eradicate criminal acts of corruption is asset recovery to compensate the state for financial losses. Data shows that state

36 Hilaire Tegan et al., "Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues", *Bestuur* 9, no. 2 (2021): p. 90–100, <https://doi.org/10.20961/bestuur.v9i2.55219>.

37 Sugeng Wahyudi, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia", *Journal of Indonesian Legal Studies* 4, no. 1 (2019): p. 45–72, <https://doi.org/10.15294/jils.v4i01.28224>.

losses due to corruption cases in 2020 reached up to IDR 56.7 trillion. In 2021, that figure increased around IDR 6.2 trillion to 62.7 trillion. This data was calculated based on corruption cases handled by both the Public Prosecution Service and the Corruption Eradication Commission (KPK), as explained by Kurnia Ramadhan.<sup>38</sup>

This data reveals that in 2020 the country experienced an increase in losses of IDR. 56.7 trillion and in 2021 it was 62.7 trillion, with a difference of 6.2 trillion due to corruption crimes. In detail, data from the past five years illustrate the potential value of irrecoverable state losses. Table 1 shows the potential value of state losses attributed to corruption cases, extrapolated from the trends observed in the 2021 ICW corruption judgments spanning the period from 2017 to 2021.

**Table 1.** The potential value of state losses due to corruption cases based on the trend of the 2021 ICW corruption judgment for the period 2017-2021:<sup>39</sup>

Number	Year	Number of Indonesians/billion	Yield
1	2017	29.419 billion	1,4 trillion
2	2018	9.290 billion	838 billion
3	2019	12.000 billion	748 billion
4	2020	56.739 billion	19,6 trillion
5	2021	62.931 billion	1.4 trillion

**Source:** (Kompas.id)

Table 1 shows the potential losses to state finances resulting from corruption rulings from 2017 to 2021. In 2017, the loss amounted to 29.4 trillion, with a partial recovery of 1.4 trillion, leaving an outstanding balance of 28 trillion unrecovered. Similarly, in 2018, the loss stood at 9.2 trillion, with a return of 834 billion, resulting in a remaining deficit of 8.452 trillion. Continuing this trend, the loss for 2019 was 12 trillion, with a return of 748 trillion, leaving 11.2 trillion unrecovered. Moving to 2020, the loss reached 56.7 trillion, with a partial return of 19.6 trillion, leaving approximately 37.1 trillion yet to be recovered. Lastly 2021, the projected loss is 62.9 trillion, with a return of 1.4 trillion, indicating around 60.5 trillion still outstanding.

38 Susana Rita Kumalasanti, "ICW Sebut Hanya 2,2 Persen Kerugian Negara Berhasil Dikembalikan", Kompas, 2022, accessed, 2023-10-15 [https://www.kompas.id/baca/polhuk/2022/05/22/icw-sebut-hanya-22-persen-kerugian-negara-berhasil-dikembalikan?status=login&status\\_login=login](https://www.kompas.id/baca/polhuk/2022/05/22/icw-sebut-hanya-22-persen-kerugian-negara-berhasil-dikembalikan?status=login&status_login=login). See also, Inna Junaenah, Abd Shukor Mohd Yunus, and Normawati Hashim, "Adequacy of Public Information for Meaningful E-Participation in Policy-Making," *Journal of Southeast Asian Human Rights* 6, no. 2 (December 31, 2022): 153, <https://doi.org/10.19184/jseahr.v6i2.32420>.

39 Kumalasanti. See also, Agus Kasiyanto and Sri Rahayu Jatmikowati, "The Efforts Of Preventing Bribery And Gratification At The Land Office," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 1 (April 1, 2023), <https://doi.org/10.22373/petita.v8i1.165>; Aris Rahmadillah, "Mark Up Penjualan Harga Tiket Bus Pada Loker Terminal Batoh Dalam Perspektif Tas'ir Al-Jabari," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 3, no. 2 (January 30, 2020), <https://doi.org/10.22373/petita.v3i2.51>. See also, Muhammad Siddiq Armia, "Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)," *Qudus International Journal of Islamic Studies*, 2019, <https://doi.org/10.21043/qijis.v7i2.4974>; Muhammad Siddiq Armia et al., "Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (June 29, 2022): 113–35, <https://doi.org/10.19105/al-lhkam.v17i1.4987>.

This trend presents a significant judicial challenge in alignment to eradicate corrupt practices, which is not yet congruent with the state's vision of recovering financial losses. The case of the former Secretary of the Supreme Court exemplifies this discrepancy. The Supreme Court (MA) dismissed the Corruption Eradication Commission's (KPK) appeal in the bribery case involving former MA Secretary Nurhadi and his son-in-law, Rezky Herbiyono. Consequently, neither Nurhadi nor Rezky were obligated to pay restitution, as requested by the KPK Public Prosecutor.<sup>40</sup>

Consequently, the state is grappling with escalating losses, with returns still significantly lagging behind the losses incurred by perpetrators of corrupt acts. Furthermore, court rulings typically do not mandate criminal compensation for bribery offenders, limiting the application of such penalties solely to the provisions outlined in Articles 2 and 3 of the Corruption Law."

This scenario underscores the resistance to imposing additional fines on bribery convicts, such as compensation payments, as evidenced by the cassation judges' refusal to grant the public prosecutor's demand for such penalties against Nurhadi. Returning financial losses to the state annually reveals an increasing trajectory, particularly notable between 2020 and 2021. Consequently, the state experiences increasing losses, with returns still significantly lagging behind the losses incurred by perpetrators of corrupt acts. Furthermore, court rulings typically do not mandate criminal compensation for bribery perpetrators, limiting the application of such penalties solely to the provisions outlined in Articles 2 and 3 of the Corruption Law (UUTPK).

#### *Emptiness of legal formulation*

The current state of implementation regarding criminal law provisions for compensating state financial losses due to acts of corruption is notably deficient. This deficiency is apparent in the ineffectiveness of the legal framework governing corrupt activities to adequately address the restitution of the state's financial losses, thus creating a legal vacuum.<sup>41</sup> Urgent action is required to rectify this situation, particularly concerning the unresolved matter of civil asset confiscation. To address the legal vacuum surrounding the seizure of assets related to criminal acts of corruption, it is not inconsistent with Article 54 letter c of the UNCAC 2003, which stipulates the consideration of measures necessary to facilitate the confiscation of

40 RI Kejaksaan, "Surat Jaksa Agung Muda Tindak Pidana Umum Nomor B-4301/E/EJP/9/2020 Tanggal 16 September 2020 Perihal Petunjuk Pelaksanaan Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif," Kejaksaan.go.id, 2020, 2023-10-17. <https://www.kejaksaan.go.id/berita/s/memaknai-pembebanan-uang-pengganti-perkara-korupsi-berbasis-sua-e946f>. See also, Muhammad Siddiq Armia, "Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience," *Intellectual Discourse*, 2018; Muhammad Siddiq. et al Armia, "Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?," *JLS* 7 (2022): 525; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, "Introduction: Form Over Substance, Achieving Objectives While Preserving Values," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (2023): i-iii; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, "Introduction: Maintaining the Constitutional Rights to Create a Better Society," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 1 (2023): 69-71.

41 Dwidja Priyatno, "Non conviction based (NCB) asset forfeiture for recovering the corruption proceeds in Indonesia", *Journal of Advanced Research in Law and Economics* 9, no. 1 (2018): p. 219-33, [https://doi.org/10.14505/jarle.v9.1\(31\).27](https://doi.org/10.14505/jarle.v9.1(31).27). See also, Khairil Akbar et al., "Sistem Pengawasan Dana Otonomi Khusus Aceh Dan Dampaknya Terhadap Pemberantasan Korupsi," *INTEGRITAS* 7, no. 1 (2021), <https://doi.org/10.32697/integritas.v7i1.719>.



such property even in cases where the offender cannot be prosecuted due to reasons such as death, flight, absence, or other appropriate circumstances.<sup>42</sup>

The explanation for this lies in the legal vacuum or lack of applicable legal framework when seizing the assets of perpetrators involved in corruption crimes through means other than UUTPK, despite Indonesia's ratification of the United Nations Convention Against Corruption. This gap allows the state to confiscate the assets of individuals engaged in criminal corruption even without criminal prosecution, particularly in cases where state financial losses have been incurred.

The impact of the legal wording regarding the seizure of assets need not rely solely on UUPKK, also known as the civil route. This implies that cases previously unprosecutable can now be pursued, even if the suspect is deceased, has absconded, is permanently incapacitated, or has insufficient evidence to proceed legally.<sup>43</sup> Anastasia stated that the future formulation of asset recovery is the adoption of the Asset Confiscation Act, which would address the legal void in cases where prosecution cannot be pursued due to various legitimate reasons, including the death or flight of the suspect, permanent illness, or the lack of evidence necessary to initiate prosecution.<sup>44</sup>

The asset confiscation bill aims to enable the seizure of assets belonging to corrupt individuals in the future, even when the suspect cannot be prosecuted, provided that their misconduct causing financial losses to the state can be established. The ratification of the asset confiscation law is anticipated to facilitate the confiscation of assets related to state financial losses, even in the absence of criminal conviction. Asset seizure in Indonesia has been carried out in two ways: the criminal and civil approaches.<sup>45</sup> Despite provisions within various legal frameworks such as the Criminal Code, the Code of Criminal Procedure, and the Corruption Act, existing regulations have seemingly failed to effectively facilitate asset seizure.<sup>46</sup>

Both criminal prosecution and civil proceedings can be utilized to seize the assets of corruption perpetrators, though currently, these methods are primarily applied within criminal law contexts. The emerging trend highlighted by this data regarding the legal void in recovering the state's financial losses indicates that national criminal law may no longer adequately address contemporary events or circumstances, thereby impeding efforts to hold perpetrators of financial harm to the state accountable. Consequently, urgent action is needed to promptly enact the asset confiscation law by current legal imperatives.

42 uncaccoalition.org, "THE UN CONVENTION AGAINST CORRUPTION – UNCAC" (2003).

43 M. Mustofa M. Idris Sihite, "Asset Recovery Policy Strategy of Corruption Proceeds Placed Abroad within the Perspective of the State as a Victim", *Technium social sciences journal* 19, no. 2021 (2021): p. 235–43, <https://techniumscience.com/index.php/socialsciences/index>.

44 Anastasia Suhartati Lukito, "Revealing the unexplained wealth in Indonesian corporation: A revolutionary pattern in non-conviction-based asset forfeiture", *Journal of Financial Crime*, 2020, p. 29–42 <https://doi.org/10.1108/JFC-11-2018-0116>. See also, A.Ahsin Thohari, "The Manifestation of the Rechtsidee of Pancasila in Regulating the Constitutional Rights in Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 4, no. 2 (2019): 149–62, <https://doi.org/10.22373/petita.v4i2.23>.

45 Rinaldy Amrullah et al., "The Corruption In Indonesia: The Importance Of Asset Recovery In Restoring State Finances," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1–11.

46 J Ginting, "Roles of the Mutual Legal Assistancess and Extradition Agreements in the Assets Recovery in Indonesia", *Indonesian Journal of International Law* 9, no. 4 (2011), p. 565–581, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1380&context=ijil>.

*Obstacle to sustainable, equitable economic development and impediment to foreign investment*

The lack of legal formulation has not only contributed to the ineffective recovery of the state's financial losses but also has consequences for hindering sustainable economic development, which should be fair and enable access for foreign investors to Indonesia. Corruption is therefore considered an extraordinary crime because it has a huge impact in the short and long term. Corruption is not only harmful to the country but also to the people. The diverse impacts of corruption in different sectors affect everyone. Manifestations of corruption's impact include inflated public service prices, increased poverty rates, and inadequate education and healthcare facilities. Economic development stagnates, and various development initiatives are impeded by corruption. Moreover, from a cultural standpoint, local wisdom is increasingly eroded and supplanted by unethical practices.<sup>47</sup>

These data explain that sustainable economic development is hindered by rampant corrupt practices, which not only affect the state but also other various aspects, including public services, health, education and welfare. The community are becoming poorer and development plans are getting to the point that local wisdom is becoming uncivilized. As the results mentioned above have been found in detail in various studies. Research shows that the level of corruption affects income inequality, measured by the Gini ratio because the rich have more influence and ability to bribe than the poor. They bribe to maintain their status and increase their personal and company wealth, ensuring their prosperity and further widening the wealth gap and impeding the access of underprivileged individuals to basic rights due to the corrupt practices of elites. The poor are poorer as they are exploited by corrupt state administrators in many life aspects, including public services that should be cheap or even free.<sup>48</sup> This occurrence stems from various illicit practices within the various domains, including corruption, lack of transparency, and economic policy instability. These circumstance is compounded by ineffective governance structures, which heighten business environment risks and diminish foreign capital inflows.<sup>4950</sup> Corruption within governmental institutions distorts public investment, eroding their integrity and dissuading foreign investors from allocating their capital to such jurisdictions. Typically, foreign investors will avoid countries with high levels of corruption.<sup>51</sup>

- 47 aclc.kpk.go.id, "Kenali Bahayanya Dampak Korupsi di Berbagai Bidang Ini", aclc kpk ri, 2022, accessed 2023-10-02, <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20220520-kenali-bahayanya-dampak-korupsi-di-berbagai-bidang-ini>.
- 48 aclc.kpk.go.id, "Kupas Tuntas 5 Dampak Buruk Korupsi terhadap Perekonomian Negara", aclc kpk ri, 2023, accessed, 2023-10-05, <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230113-kupas-tuntas-5-dampak-buruk-korupsi-terhadap-perekonomian-negara>. See also, Hongli Chu, Shengmin Sun, and Jian Wei, "Fiscal Pressure and Judicial Decisions: Evidence from Financial Penalties for Official Corruption in China," *International Review of Law and Economics* 77 (2024): 106156, <https://doi.org/https://doi.org/10.1016/j.irle.2023.106156>.
- 49 Vito Tanzi and Hamid Reza Davoodi, "Corruption, Public Investment, and Growth", *IMF Working Papers* 97, no. 139 (1997): p. 1, <https://doi.org/10.5089/9781451929515.001>.
- 50 Zdenek Drabek and Warren Payne, "The Impact of Transparency on Foreign Direct Investment", *Journal of Economic Integration* 17, no. 4 (2002): p.777-810, <https://doi.org/10.11130/jei.2002.17.4.777>.
- 51 Mohsin Habib and Leon Zurawicki, "Corruption and Foreign Direct Investment", *Journal of International Business Studies* 33, no. 2 (2002): p.291-307, <https://doi.org/10.1057/palgrave.jibs.8491017>.

The incompetence of stakeholders fosters an environment of uncertainty, deterring foreign investors due to the corrupt conduct of these stakeholders. Widespread corruption tarnishes the country's reputation in the eyes of foreign investors, who perceive it as lacking integrity. The tendency of officials and business conglomerates to exploit their authority and influence for personal enrichment undermines the sustainability of a fair and equitable economy, leading foreign investors to hesitate in committing their capital to nations known for corruption.

### Discussion

Ineffectiveness of recovering financial losses due to criminal acts of corruption to the state means the amount of losses incurred by the state and the losses returned to the state is not proportional. Zainur Rohman, a researcher at the Centre for Anti-Corruption Studies at Gadjah Mada University (UGM), underscores the importance of restoring the state's financial losses or reclaiming assets as a crucial goal in the fight against corruption. As an economic crime, corruption yields both direct consequences regarding state losses and indirect or potential losses that impact society at large. Saragih and Priyatno further emphasized that in addressing cases of corrupt practices, law enforcement authorities should not only focus on physical punishment but also prioritize the reimbursement of financial losses to the state through asset recovery. Consequently, an effective and efficient legal framework is imperative<sup>52</sup> to enable confiscating and seizing assets derived from criminal acts of corruption.<sup>53</sup>

Zainur pointed out in the case of a judge deciding a criminal case for corruption to restore the country's economy through asset recovery, this is settled through an additional criminal decision entailing monetary restitution and fines, with the maximum decision is only IDR. 1 billion. Moreover, perpetrators of corruption crimes who are sentenced to additional penalties are presented with the option of paying restitution and fines or serving a prison sentence. However, the inability to recover the state's financial losses is exacerbated by the fact that very few corruption perpetrators are charged with the crime of money laundering (TPPU). As highlighted by the Indonesian Corruption Watch (ICW), there exists a narrow interpretation regarding claims for restitution, limited only to corruption cases falling within the purview of TPPU that directly relate to the state's financial losses (as stipulated in Article 2 and Article 3 of the Law on the Eradication of Corruption).

A legal formulation gap arises when there are no established legal standards or regulations applicable to a particular event or circumstance. Wibowo stated that in cases where the suspect is absconding, mentally incapacitated, deceased without heirs, or where heirs are untraceable, a civil lawsuit may be pursued, even if there is a real financial loss for the state and in the event that the assets are not placed in criminal cases for confiscation. These types of cases are not included in Indonesia's criminal

52 Yasmirah Mandasari Saragih, "The efforts of eradication of corruption through instruments of money laundering law and return actors' assets", in *The 2nd Proceeding "Indonesia Clean of Corruption in 2020"*, 2016, p. 276–86. See also, Scott Altman, "Are Boycotts, Shunning, and Shaming Corrupt?," *Oxford Journal of Legal Studies* 41, no. 4 (December 1, 2021): 987–1011, <https://doi.org/10.1093/ojls/gqab015>; Stevie Martin, "Mud Sticks: Publication Of Information About Pre-Charge Criminal Investigations And The Tort Of Misuse Of Private Information," *The Cambridge Law Journal* 81, no. 2 (2022): 232–35, <https://doi.org/DOI:10.1017/S0008197322000307>.

53 Dwidja Priyatno, "Non conviction based (NCB) asset forfeiture for recovering the corruption proceeds in Indonesia", *Journal of Advanced Research in Law and Economics*, 2018, p. 219-233, [https://doi.org/10.14505/jarle.v9.1\(31\).27](https://doi.org/10.14505/jarle.v9.1(31).27).

corruption regulations<sup>54</sup>. Alam added that Indonesia currently implements the confiscation of assets without penalty in Indonesian law and regulations. Existing regulations regulate the seizure of assets only through criminal proceedings.<sup>55</sup> Given the escalating concern over financial losses incurred by the state, there is an urgent need for legal formulation that can address this pressing issue.

Due to changes/developments over time and technological advances, the applicable legal standards are no longer relevant to the events taking place. Ultimately, the law has limitations in achieving certain aspects of an event.<sup>56</sup> Wicaksana stated that the Indonesian legal system that adheres to civil law, a written and codified form of law, inevitably falls short of fully accommodating societal aspirations, especially in this everchanging era of reforms and transformations. The pace of developments is such that, despite the diligent efforts of legislators, societal issues necessitating regulation often outstrip their capacity to enact laws promptly. Consequently, it is not uncommon for gaps to emerge in the regulatory framework, leading to what is colloquially termed a "legal vacuum".<sup>57</sup> Recognizing this, governmental bodies, in collaboration with legislative institutions such as the DPR, are actively engaged in addressing pressing legal requirements, particularly concerning regulations regarding asset seizures.<sup>58</sup>

The prevalence of corrupt practices spans various sectors, encompassing both the public and interconnected business domains. These practices, ranging from office misconduct to bribery, result in significant financial losses for the state. The ineffective recovery of the state's financial losses due to corruption has a direct and indirect impact on sustainable economic development,<sup>59</sup> hindering equitable foreign investments.<sup>60</sup> Consequently, the pursuit of sustainable economic development is undermined, thereby affecting social justice.

Klitgaard and Kartodihardjo stated in their writings: Corruption, particularly state assets, are stem from bureaucratic performance and institutional policies, both of which fall within the institutional scope where corruption takes place. A five-year review of the implementation of the National Movement to Save Natural Resources (BNP SDA) by the Corruption Eradication Commission (KPK) found that weak

- 54 Ari Wibowo, "Barriers and Solutions to Cross-Border Asset Recovery," *Journal of Money Laundering Control* 26, no. 4 (May 30, 2023): 739–50, <https://doi.org/10.1108/JMLC-01-2022-0022>; Ozy, "Legal Perspective on the Trade Facilitation Agreement (TFA): Indonesia Case Studies," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 1, no. 1 (April 1, 2016), <https://doi.org/10.22373/petita.v1i1.75>.
- 55 Syariful Alam et al., "Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future", *Juris: Jurnal Ilmiah Syariah*, 2022, p. 143-156. <https://doi.org/10.31958/juris.v21i2.6722>.
- 56 "The Quality of Adjudication: Reviewing the Settlement of Criminal Cases by the Judges", *International Journal of African and Asian Studies*, 2019, p. 25.29. <https://doi.org/10.7176/jaas/59-04>.
- 57 Satria Unggul Wicaksana Prakasa, "Anti-Corruption Survivor, Academic Freedom, and The," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 4, no. 2 (2019): 163–73.
- 58 Syahiruddin Latif and Rizki Ramadani, "The Recovery of State Losses through Corruption Asset Confiscation: Policies and Obstacles", *Iapa Proceedings Conference*, 2022, p. 312, <https://doi.org/10.30589/proceedings.2022.703>.
- 59 Pak Hung Mo, "Corruption and Economic Growth", *Journal of Comparative Economics* 29, no. 1 (2001): p. 66–79, <https://doi.org/10.1006/jcec.2000.1703>.
- 60 Conceição Castro and Pedro Nunes, "Does corruption inhibit foreign direct investment?", *Revista Política*, 2013, p. 61-76, <https://doi.org/10.5354/0716-1077.2013.27418>.

institutions were the main cause,<sup>61</sup> influenced by internal and external power dynamics.<sup>62</sup> Additionally, Hartono argued that the lack of government focus on anti-corruption efforts contributes to deterring foreign investment in Indonesia, as evidenced by the diminished efficacy of the Corruption Eradication Commission (KPK) in combating corruption due to legislative amendments.<sup>63</sup> These issues underscore the root causes hindering fair and sustainable economic development, as well as impeding foreign investment access to Indonesia.

### Conclusion

In conclusion, the current legal framework for combating corruption fails to adequately address the restitution of the state's financial losses resulting from criminal acts of corruption. Relying solely on criminal law to combat corruption is insufficient. Therefore, there is a pressing need for a new legal approach that ensures the minimal recovery of the state's financial losses resulting from corruption. By ratifying the Asset Confiscation Law, the state can pursue civil means to recover financial losses, such as confiscating assets from corrupt individuals. This proactive measure is crucial, especially given the upward trend in corruption convictions in 2023, necessitating the state's ability to seize assets without prior criminal proceedings.

Indonesia's escalating financial losses have contributed to its decline in the Corruption Perception Index (CPI), ranking it third among the most corrupt nations globally. Courts' limited ability to convict corrupt individuals under existing legislation, particularly regarding financial recovery, underscores the urgency of implementing asset confiscation laws. Swift enactment of such legislation is imperative to facilitate the confiscation of assets acquired through corruption via civil means, thereby combating corruption effectively.

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62 Hariadi Kartodihardjo, Niken Ariati, and Maryati Abdullah, "Kebijakan Pencegahan Korupsi Sektor Sumber Daya Alam Melalui Pendekatan Institusional dan Struktural", *Jurnal INTEGRITAS (Edisi Khusus): Evaluasi Pemberantasan Korupsi Sektor Sumber Daya Alam* 5, no. 2 (2020): p. 3, <https://jurnal.kpk.go.id/index.php/integritas/article/view/481>.

63 Bambang Hartono, "Corruption Eradication Policy Judging from the Politics of Criminal Law (Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 Concerning the Corruption Eradication Commission)", 2020, p.551-554 <https://doi.org/10.2991/aebmr.k.200513.106>.

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