

## **Ius Constituendum Criminal Asset Confiscation: Corrective Justice Orientation In Enforcement Of Corruption Criminal Acts**

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### ***Abstract***

Corruption in Indonesia, as an extraordinary crime that harms the state and society, requires a more effective legal approach through strengthening the ius constituendum related to asset forfeiture oriented towards corrective justice, while still paying attention to aspects of human rights and the principle of due process of law. This research aims to analyze the application of the ius constituendum concept of asset forfeiture oriented towards corrective justice in the enforcement of corruption crimes in Indonesia, as well as to identify challenges and opportunities for its implementation. This research uses normative legal research method with conceptual and statutory approaches, analyzes primary, secondary, and tertiary legal materials through literature study, and applies prescriptive and evaluative analysis techniques to examine the application of corrective justice-oriented asset forfeiture in the enforcement of corruption in Indonesia. The results show that the ius constituendum concept of corrective justice-oriented asset forfeiture can be applied in the enforcement of corruption crimes in Indonesia through several ways, such as simplifying the asset forfeiture process, expanding the authority of non-conviction-based asset forfeiture, implementing temporary asset forfeiture, and updating regulations. The implementation of this concept is faced with challenges such as regulatory limitations, evidentiary difficulties, and bureaucratic obstacles, but also opens up opportunities to increase the effectiveness of state asset recovery, adopt international best practices, and strengthen the legal framework. By addressing the challenges and capitalizing on the opportunities, Indonesia can build a fairer and more effective corruption eradication system.

## I. Introduction

Corruption has become a serious problem in Indonesia and is a form of extraordinary crime that adversely affects national development. Corruption not only harms state finances, but also hampers economic growth, reduces public trust in government, and damages social order.(Kismartini et al., 2022) In recent years, the government has taken various measures to combat corruption, including through the creation of regulations and the establishment of specialized institutions, such as the Corruption Eradication Commission (KPK). Nonetheless, corruption eradication in Indonesia still faces many challenges that require a more effective approach, one of which is to strengthen the ius constituent regarding asset forfeiture from perpetrators of corruption.(Kurniawan et al., 2023)

Basically, law enforcement that prioritizes the punishment of corruptors through prison sanctions is often considered insufficient to provide a deterrent or restorative effect. In this context, the idea of adopting a corrective justice orientation as an alternative approach has emerged. Corrective justice does not only aim to punish the perpetrator, but also seeks to restore the situation before the crime occurred by seizing assets that were illegally obtained.(Hasanuddin et al., 2023) As such, this approach focuses not only on punishment, but also on restoring the harm caused to the state and society. This concept is then known as corrective justice-oriented asset forfeiture.

In Indonesia, efforts to seize assets from perpetrators of corruption are still limited to lengthy and bureaucratic legal processes. The existing Corruption Law, although it regulates asset forfeiture, is considered not fully effective in seizing the assets of the perpetrators.(Tantimin, 2023) Therefore, it is important to review and strengthen the ius constituendum in the context of criminal asset forfeiture so that its implementation is more optimal. Ius constituendum is a legal concept that refers to the law that is expected or that will apply in the future, which in this case refers to the ideal asset forfeiture legal framework for handling corruption in Indonesia (Christiana Sri Murni, Fradhana Putra Disantara, 2023).

Corrective justice in corruption law enforcement is important because its orientation is not only to punish, but also to restore justice for victims, namely the community and the state. With a clear legal framework regarding asset forfeiture, it is expected that there will be a stronger deterrent effect and more effective recovery of losses.(Reda et al., 2020) This research aims to examine more deeply the concept of ius

constituendum of asset forfeiture and how it is applied in the context of corruption law enforcement oriented towards corrective justice.

In some countries, corrective justice-oriented asset forfeiture practices have proven effective in combating corruption. For example, several countries in Europe and America have implemented asset forfeiture laws that allow for the expropriation of assets without having to wait for a criminal conviction. In Indonesia, the implementation of asset forfeiture laws focusing on corrective justice has yet to be fully implemented.(Suyatmiko & Nicola, 2019) This obstacle cannot be separated from the debate on the concept of justice and how the asset forfeiture mechanism can be effective without violating the rights of the perpetrators. In addition, the issue of human rights is also a concern in the development of asset forfeiture regulations in Indonesia. Asset forfeiture that does not go through a court process or without a criminal verdict is often considered contrary to the principle of due process of law.(Muntahar et al., 2021) Therefore, in developing this ius constituendum, it is important to pay attention to human rights aspects so that asset forfeiture regulations can be widely accepted and do not create new injustices for perpetrators.

Based on the explanation of the background above, the author is interested in conducting research entitled "Ius Constituendum Criminal Forfeiture of Ase: Orientation of Corrective Justice in Corruption Crime Enforcement". The problem formulation in this research are:

1. How the concept of ius constituendum of corrective justice-oriented asset forfeiture can be applied in the enforcement of corruption crimes in Indonesia.?
2. What are the challenges and opportunities in implementing corrective justice through asset forfeiture as part of corruption law enforcement in Indonesia??

## **II. Research Method**

This research uses a normative legal research method, which aims to analyze legal norms related to asset forfeiture in corruption crimes with a corrective justice approach. This method focuses on the study of legal rules, principles, and legal concepts relevant to the problem under study. In this context, normative legal research allows researchers to explore

legal theories and doctrines relating to criminal asset forfeiture and its application in corruption law enforcement in Indonesia.

The approaches used in this research are conceptual approach and statutory approach. The conceptual approach aims to understand various theories and concepts related to corrective justice and how this concept can be applied in criminal law, especially regarding asset forfeiture. Through this approach, researchers will explore legal theories related to corrective justice and criminal asset forfeiture to gain an in-depth understanding of the concept of *ius constituendum* in the context of corruption crimes (Dewi et al., 2022).

In addition, this research also uses a statute approach, which involves an in-depth study of various laws and regulations in Indonesia related to corruption and asset forfeiture. This approach will examine relevant laws, such as Law Number 31 Year 1999 jo. Law Number 20 of 2001 on the Eradication of Corruption and other regulations that support asset forfeiture in corruption. As such, this research will evaluate the adequacy and effectiveness of these regulations in achieving the goal of corrective justice.

This research uses primary, secondary, and tertiary legal materials as sources of information. Primary legal materials include laws, government regulations, and other regulations related to asset forfeiture and corruption eradication. Secondary legal materials include literature, journals, books, and other scientific works that provide explanations, analysis, and opinions from legal experts on the concept of corrective justice and asset forfeiture practices. Tertiary legal materials, such as legal dictionaries and legal encyclopedias, were used to assist researchers in understanding legal definitions and terminology related to the research.

Data collection in this research was conducted through a literature study, which involved the collection and analysis of relevant legal materials, both from statutory sources and from academic literature. This literature study was conducted by identifying, collecting, and analyzing relevant legal documents and other scientific works related to the research topic. The researcher will read, understand, and record important information from each material collected to support the legal analysis conducted.

Data analysis in this normative legal research uses prescriptive and evaluative analysis techniques. Prescriptive techniques are used to provide an overview of the ideal law or *ius constituendum* in the application of asset forfeiture crimes oriented towards corrective justice. Meanwhile, evaluative techniques are used to evaluate the current legal rules in relation to their effectiveness in achieving corrective justice for victims of corruption crimes. The researcher will compile conclusions and suggestions based on a critical analysis of the regulations and legal concepts that have been reviewed, to contribute to the

development of a more effective and fair law in the enforcement of corruption crimes in Indonesia.

### **III. Results and Discussion**

#### **The Concept of Ius Constituendum Criminal Asset Forfeiture Oriented to Corrective Justice Can Be Applied in the Enforcement of Corruption Crime in Indonesia**

Corruption is a serious crime that damages state finances, social order and the economy. Efforts to suppress acts of corruption continue to be made through various regulations and policies, one of which is through the criminal approach of asset forfeiture.(Amrullah et al., 2023) The concept of ius constituendum applied in the context of criminal asset forfeiture refers to an ideal legal idea and is expected to be realized in the future in order to achieve corrective justice in corruption crimes. In the enforcement of corruption crimes, corrective justice focuses on restoring the losses incurred to the state and society, and seeks to return unlawfully obtained assets to the state.(Haswandi, 2016)

The laws and regulations underlying the handling of corruption crimes in Indonesia include Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption. This law regulates the imposition of basic punishment and additional punishment in the form of confiscation of assets obtained from corruption. However, the current regulatory framework does not fully provide room for asset forfeiture that can be carried out without waiting for a criminal verdict that is *inkracht* or has permanent legal force.(Ifrani, 2016) In this case, the concept of ius constituendum is proposed to strengthen existing regulations, in order to enable the seizure of corrupt assets to be carried out more quickly and effectively.

At this stage, it should be noted that asset forfeiture in the context of corruption crimes in Indonesia is still limited by various strict legal requirements. Law Number 31 Year 1999 jo. Law No. 20/2001 stipulates that asset forfeiture can be carried out as an additional punishment after a court decision. The current asset forfeiture mechanism relies on a fairly long and complicated evidentiary process, which sometimes takes years before the assets can be taken over by the state.(Latif, 2016) In reality, this often impedes the recovery of losses arising from corruption offenses and sometimes allows perpetrators to hide or divert assets before forfeiture takes place.

The proposed *ius constituendum* concept aims to simplify the asset forfeiture process, so that it can be carried out before the final verdict. This can be realized through the application of the reverse proof mechanism, where the perpetrator of corruption must prove that his assets are not the result of corruption. In this context, Indonesia can learn from the practices in other countries such as the United Kingdom and the United States that have implemented non-conviction based asset forfeiture regulations, where assets can be confiscated even without a criminal verdict.(Parura & Arie Purnomo, 2023)

Corrective justice in asset forfeiture punishment aims to restore what has been harmed by acts of corruption to the state and society. In this case, corrective justice emphasizes the return of losses rather than simply punishing the perpetrator. This is in line with Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes which authorizes law enforcement agencies to confiscate assets suspected of being related to money laundering and corruption without having to wait for a criminal verdict.(Yudha, 2023) With this provision, law enforcement can be more effective in seizing assets that are the proceeds of corruption crimes.

However, this regulation is still limited in its implementation and scope. For this reason, the application of *ius constituendum* is needed to expand asset forfeiture authority that does not depend on court decisions, so that assets obtained from corruption can be immediately taken over by the state. This mechanism will increase the effectiveness of law enforcement and ensure that corruption assets do not change hands or are hidden during the legal process.(Sriwidodo, 2022)

Although the concept of *ius constituendum* has great potential, there are several challenges that need to be overcome in its application. One of the main challenges is the protection of human rights, where asset forfeiture without a court decision could be considered a violation of the rights of the perpetrator.(Miladmahesi, 2020) Therefore, it is necessary to formulate strict and clear regulations so that asset forfeiture procedures can be carried out while still respecting the basic rights of perpetrators, such as the right to a fair trial and the right to property. In addition, the institutional aspect is also an important factor in the implementation of this *ius constituendum*. Law enforcement agencies, such as the KPK, the Attorney General's Office and the Police, need to be empowered and provided with adequate training in order to effectively manage the asset forfeiture process. This implementation requires good coordination between institutions as well as the support of a fair and transparent judicial system.(Az Zanubiya et al., 2023)

On the other hand, the implementation of this concept offers a great opportunity for Indonesia to strengthen the current corruption eradication framework. With more effective asset forfeiture regulations, it is hoped that there will be a greater deterrent effect for perpetrators of corruption. In addition, the return of corrupt assets to the state will increase public confidence in the justice system and a government committed to eradicating corruption.(Wajdi et al., 2024)

Many countries have successfully implemented non-conviction-based asset forfeiture mechanisms as an effort to increase the effectiveness of asset forfeiture in corruption crimes. For example, the United States and the United Kingdom have regulations that allow asset forfeiture to be carried out without the need for a final criminal judgment.(Nurdin, 2024) Through this mechanism, assets that are indicated to be derived from the proceeds of crime can be temporarily confiscated by the state, and the burden of proof that the assets are not related to crime falls on the owner of the assets.

Indonesia can adopt some aspects of this approach in the *ius constituendum* applied in the context of criminal asset forfeiture. This adaptation needs to be adjusted to the applicable legal principles in Indonesia and pay attention to human rights values so as not to conflict with the constitution (Swastika et al., 2023). One way to adopt this approach is to establish provisions that allow provisional measures at the beginning of the investigation process, provided that the final decision must still be taken by the court.(Miladmahesi, 2020)

In order to strengthen efforts to eradicate corruption in Indonesia, there is a need for the concept of *ius constituendum* of asset forfeiture crimes oriented towards corrective justice. With the application of this mechanism, law enforcers are expected to be more effective in seizing assets obtained through corruption crimes, so that the process of recovering state losses can be carried out more quickly and efficiently.(Reza, 2024) To realize this, it is necessary to revise and update existing regulations, as well as the preparation of special rules governing asset forfeiture that are more flexible but still respect human rights principles. The next step is to strengthen the capacity and coordination between law enforcement agencies, and increase public awareness of the importance of recovering assets from corruption. In addition, the government and policymakers need to continue to review and evaluate existing regulations, to ensure that the rules produced are able to answer the needs of the community for a fair, effective and transparent justice system.(Chandra, 2023)

## **Challenges and Opportunities in Implementing Corrective Justice through Criminal Asset Forfeiture as Part of Corruption Law Enforcement in Indonesia**

Corruption is an extraordinary crime that undermines the legal and social order in Indonesia. Its impact is far-reaching, economically, politically and socially (Disantara et al., 2022). Effective handling of corruption cases requires an approach that not only aims to punish the perpetrators, but also to recover state losses and restore public confidence.(Dewantara et al., 2022) In this context, corrective justice implemented through asset forfeiture offers a more comprehensive solution. However, the application of this concept in Indonesia faces various challenges and opportunities that need to be identified and evaluated to achieve more effective law enforcement.

### **Challenges in Implementing Corrective Justice through Criminal Asset Forfeiture 1. Regulatory and Policy Limitations**

Although Indonesia has several regulations related to the eradication of corruption, such as Law Number 31 Year 1999 jo. Law No. 20/2001 on the Eradication of Corruption, the legal framework for asset forfeiture is still considered inadequate. Asset forfeiture in Indonesia is often constrained by lengthy legal processes and complicated bureaucracy. Existing regulations focus more on the imposition of criminal sanctions, such as imprisonment and fines, than on the return of assets that have been corrupted.(Atmoko & Syauket, 2022)

One of the regulations related to asset forfeiture is Supreme Court Regulation (Perma)Number 1 of 2013 concerning Procedures for Filing Objections to Confiscation and Seizure of Assets in Corruption Crimes. However, this regulation is more administrative and technical in nature, without explicitly regulating a comprehensive and corrective justice-oriented asset forfeiture mechanism. Other regulations, such as Presidential Regulation No. 13/2018 on the Prevention and Eradication of Money Laundering, are also relevant in the context of asset forfeiture, but their focus is still limited to corruption-related money laundering offenses.(Gunawan, 2022)

### **2. Evidentiary Issues in Asset Forfeiture**

The biggest challenge in the asset forfeiture process is proving that the assets owned by the perpetrators of corruption are the proceeds of corruption. Proof in corruption cases is often complex as corruptors usually hide their assets through complicated financial networks, such as the use of third-party names, shell companies, or

the transfer of funds abroad.(Jati, 2021) This makes it difficult for law enforcement to trace and prove that the assets are the proceeds of crime.

Proving the proceeds of corruption in Indonesia is still based on the traditional system of evidence, where the state must prove that the assets owned by the perpetrator are the proceeds of crime. The concept of reversal of the burden of proof stipulated in Article 12B of Law Number 31 Year 1999 on the Eradication of Corruption, in which the perpetrator is obliged to prove that his assets are not the proceeds of corruption, is still rarely applied optimally.(Arifin, 2019) This is due to varying interpretations at the judicial level and a lack of mechanisms to support consistent implementation of these rules.

### 3. Bureaucratic and Institutional Barriers

The asset forfeiture process in Indonesia is also often hampered by complicated bureaucracy and suboptimal inter-agency coordination. Law enforcement related to corruption involves many institutions, such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the National Police, as well as relevant financial institutions that play a role in asset tracing. Poor coordination between these institutions often results in slow and inefficient handling of asset forfeiture cases.(Ramadhan & Triadi, 2024)

In addition, limited human resources competent in asset tracing are also a challenge. Handling asset forfeiture cases requires specialized expertise in financial forensics and cross-border financial investigations, which are still lacking in Indonesia. As a result, many assets resulting from corruption cannot be traced or returned to the state due to a lack of technical and institutional capacity.(Shofiati et al., 2021)

### 4. Protection of Human Rights

The implementation of asset forfeiture must take into account human rights principles. Asset forfeiture without going through a fair and transparent legal process can violate the rights of the perpetrator, especially if there is no clear court decision regarding the origin of the assets. While corrective justice aims to restore the harm caused by a criminal offense, the process must remain in line with the principle of due process of law.(Anggraini et al., 2024)

In Indonesia, the debate on the balance between corruption eradication and human rights protection remains a sensitive issue. The use of Non-Conviction Based Asset Forfeiture (NCBAF), i.e. asset forfeiture without a criminal conviction, is often considered controversial as it could potentially violate the constitutional rights of the

perpetrator.(Fuadi et al., 2024) Therefore, the implementation of this policy requires a clear legal framework and strict supervision so that it is not misused.

## Opportunities in Implementing Corrective Justice through Criminal Asset

### Forfeiture 1. Increased Effectiveness of State Asset Recovery

The implementation of corrective justice through asset forfeiture provides a great opportunity for the state to recover losses incurred by corruption crimes. With proper and quick asset forfeiture, the state can return the funds lost due to corruption and reuse them for development.(Anugerah et al., 2013) This can be a concrete step in improving the effectiveness of corruption eradication and restoring public trust in government.

The concept of Restorative Justice in corrective justice emphasizes the importance of recovery for victims, in this case the state and society harmed by corruption. In this context, asset forfeiture is an effective tool to ensure that justice not only punishes the perpetrator, but also restores the harm caused. If implemented optimally, asset forfeiture can provide a stronger deterrent effect than imprisonment alone.(Sriwidodo, 2022)

### 2. Best Practices Internasional Adoption

Indonesia can learn from international best practices in implementing corrective justice through criminal asset forfeiture. Several countries have successfully implemented effective asset forfeiture mechanisms, such as the United States and the United Kingdom with the concept of Civil Forfeiture, where assets can be seized even though there is no criminal verdict against the perpetrator (Gede Agus Kurniawan, 2023). In addition, European countries have adopted Directive 2014/42/EU on asset forfeiture and confiscation, which provides a strong legal basis for asset forfeiture in serious criminal offenses, including corruption.(Jaya, 2019)

The use of international mechanisms, such as the United Nations Convention against Corruption (UNCAC), can also be utilized to strengthen cross-border cooperation in tracking and seizing assets hidden abroad. Indonesia has ratified UNCAC through Law No. 7/2006, which allows the government to cooperate with other countries in tracing and returning assets from corruption that are outside of Indonesia's jurisdiction.(Hiariej, 2019)

### 3. Strengthening the Legal Framework through Ius Constituendum

A great opportunity in the application of asset forfeiture in Indonesia is to strengthen the ius constituendum or the law that is expected to apply in the future. In this case, there is a need for regulatory reforms that explicitly regulate asset forfeiture mechanisms that are oriented towards corrective justice. One important step is to draft a

special law on asset forfeiture that is not only related to corruption offenses, but also includes other criminal offenses that have a major impact on society.(Saputra, 2017)

The government and legislature can strengthen this legal framework by adopting principles of corrective justice and streamlining asset forfeiture mechanisms, including by expanding the application of reversal of the burden of proof and developing a court system that is more responsive to asset forfeiture claims. This will help speed up the asset recovery process and improve the effectiveness of law enforcement in dealing with corruption cases.(Satria, 2017)

#### 4. Technology Empowerment and Inter-Agency Cooperation

The utilization of modern technologies, such as blockchain, big data, and digital forensics, provides a great opportunity to accelerate the process of asset tracking and seizure. These technologies can be used to monitor the flow of funds, identify hidden ownership of assets, and reduce the risk of asset disappearance by perpetrators. In addition, inter-agency cooperation, both at the national and international levels, can also improve coordination and effectiveness in handling asset forfeiture cases involving multiple jurisdictions.(Syahronny & Dewayanto, 2024)

At the national level, the government can strengthen coordination between the KPK, the Financial Transaction Reports and Analysis Center (PPATK), and the Ministry of Finance to improve capabilities in asset tracking and management. At the international level, Indonesia can utilize international forums and bilateral agreements to strengthen cooperation in returning corruption-derived assets stored abroad.

Implementing corrective justice through asset forfeiture in corruption law enforcement in Indonesia requires comprehensive regulatory reform and strengthening of the existing legal framework. Despite facing various challenges, the opportunity to increase the recovery of state assets and strengthen the deterrent effect for corruption perpetrators through corrective justice is enormous. By adopting international best practices, strengthening inter-agency coordination, and utilizing technology, Indonesia can improve the effectiveness of law enforcement and build a fairer and more sustainable corruption eradication system.

#### 4. Conclusion

The concept of *ius constituendum* of corrective justice-oriented asset forfeiture can be applied in the enforcement of corruption crimes in Indonesia in several ways. First, by

simplifying the asset forfeiture process so that it can be carried out before the final verdict, for example through the application of the reverse proof mechanism. Second, by expanding the authority of asset forfeiture that does not depend on court decisions (non-conviction-based asset forfeiture), so that assets resulting from corruption can be immediately taken over by the state. Third, by adopting provisions that allow provisional measures at the beginning of the investigation process. Fourth, by revising and updating existing regulations, and drafting special rules governing asset forfeiture that are more flexible but still respect human rights principles. The application of this concept is expected to increase the effectiveness of law enforcement, accelerate the recovery of state losses, and create a greater deterrent effect for perpetrators of corruption.

The implementation of corrective justice through asset forfeiture in corruption law enforcement in Indonesia faces several challenges and opportunities. The challenges include: limitations of existing regulations and policies, difficulties in proving the origin of assets resulting from corruption, bureaucratic obstacles and suboptimal inter-agency coordination, and the need to balance corruption eradication efforts with the protection of human rights. Meanwhile, opportunities that can be utilized include: the potential to increase the effectiveness of state asset recovery, the opportunity to adopt international best practices in asset forfeiture, strengthening the legal framework through *ius constituendum* (laws that are expected to apply in the future), as well as the use of modern technology and increased inter-agency cooperation to accelerate the process of tracking and seizing assets. By addressing these challenges and capitalizing on opportunities, Indonesia can improve the effectiveness of law enforcement and build a more equitable and sustainable corruption eradication system.

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