

CORRUPTION, ASSET RECOVERY AND PUBLIC TRUST: POLICY DESIGN BEYOND CRIMINAL PUNISHMENT

Manswab Mahsen Abdulrahman¹, Nur Fadillah Atmajid²

¹ University in Uganda (Mbale)

² Universitas Islam Negeri Sumatera Utara Medan, Indonesia

Email: manswab83@yahoo.com afadillahatmajida@gmail.com

Info Articles	Abstract
Article History Received : 08-13-2026 Revised : 09-18-2026 Published : 10-01-2026 Keywords: <i>Asset recovery; Corruption; Ghulūl; Non-conviction based forfeiture; Public trust.</i> Kata Kunci: <i>Ghulūl; Kepercayaan publik; Korupsi; Perampasan aset; Perampasan tanpa pidana.</i>	Abstract Indonesian anti-corruption policy has been built primarily around criminal punishment, yet recovery of the proceeds of corruption has remained a small fraction of established state losses, which suggests that the design privileges retribution over restitution. This study aims to analyse the structural limits of a conviction-centred model, to examine non-conviction based forfeiture as a policy alternative together with its due process risks, and to assess the contribution of Islamic legal doctrine on misappropriated public property to the design of recovery policy. The research applies normative juridical research with statutory, conceptual, case and comparative approaches, supported by a reading of the doctrines of ghulūl, khiyāna and the restitution of unlawfully acquired property, drawing on Indonesian anti-corruption and anti-money laundering legislation, the United Nations Convention against Corruption, and comparative forfeiture regimes. The findings show that recovery fails at three points: liability is attached to persons while assets are held by entities and relatives, the burden of tracing rests on an under-resourced prosecution, and the death or absence of the accused terminates the proceeding together with the claim to the assets. Islamic doctrine treats misappropriated public property as recoverable independently of punishment. The study recommends a statutory in rem forfeiture mechanism with judicial authorisation, evidentiary safeguards and third-party protections. Abstrak Kebijakan antikorupsi Indonesia dibangun terutama di atas pidana, namun pemulihan hasil korupsi tetap merupakan bagian kecil dari kerugian negara yang terbukti, sehingga desainnya lebih mengutamakan pembalasan daripada pemulihan. Penelitian ini bertujuan menganalisis batas struktural model yang berpusat pada pidana, menelaah perampasan aset tanpa pidana sebagai alternatif kebijakan beserta risiko due process-nya, serta menilai sumbangan doktrin hukum Islam tentang harta publik yang diselewengkan bagi desain kebijakan pemulihan. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, kasus dan perbandingan, ditopang pembacaan doktrin ghulūl, khiyāna,

	dan pengembalian harta yang diperoleh secara tidak sah. Hasil penelitian menunjukkan kegagalan pemulihan terjadi pada tiga titik: pertanggungjawaban melekat pada orang sementara aset dikuasai badan hukum dan kerabat, beban penelusuran berada pada penuntut yang sumber dayanya terbatas, serta meninggal atau tidak hadirnya terdakwa menghentikan perkara sekaligus klaim atas asetnya. Doktrin Islam memperlakukan harta publik yang diselewengkan sebagai dapat ditarik kembali terlepas dari hukuman. Penelitian merekomendasikan mekanisme perampasan in rem dalam undang-undang dengan izin pengadilan, pengamanan pembuktian, dan perlindungan pihak ketiga.
--	---

I. INTRODUCTION

Corruption is ordinarily described as a crime, and Indonesian policy has been constructed accordingly. The anti-corruption legislation defines offences, establishes an aggravated penalty structure and creates specialised courts and a dedicated commission; the anti-money laundering framework adds predicate offence liability and reporting obligations.¹ Measured by convictions, the framework performs. Measured by recovery of what was taken, it does not: the value returned to the treasury has consistently represented a minority share of judicially established state losses.

This divergence is not accidental but structural. A conviction-centred model attaches liability to persons, while proceeds are held by companies, nominees, family members and foreign accounts. It requires proof beyond reasonable doubt of individual culpability before any asset consequence follows, so that the death, flight or incapacity of the accused terminates the claim to property along with the prosecution. And it places the entire burden of tracing on prosecutors whose resources are calibrated to case counts rather than to forensic accounting across jurisdictions.

International practice has developed a response. The United Nations Convention against Corruption requires states to enable confiscation, to provide for mutual assistance in recovery, and invites consideration of confiscation without criminal conviction in cases where the offender cannot be prosecuted by reason of death, flight or absence.² Indonesia ratified the Convention in 2006, and a bill on asset forfeiture has been under discussion for well over a decade without enactment.³

¹ Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001; Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering.

² United Nations Convention against Corruption (2003), Articles 31, 54(1)(c) and 57.

³ Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption, 2003.

The ideal condition would combine punishment with restitution, treating the two as complementary rather than sequential. The actual condition treats recovery as an incident of conviction. The result is a policy that satisfies the demand for retribution while leaving the material consequences of corruption largely undisturbed, which is precisely the configuration most corrosive of public trust: visible prosecutions accompanied by visibly unrecovered wealth.

The literature divides. Asset recovery scholarship, developed substantially through the work associated with the Stolen Asset Recovery initiative, documents the practical mechanics of tracing and the comparative performance of in rem regimes.⁴ Criminal law scholarship has raised sustained objections to forfeiture without conviction, concerning the presumption of innocence, the reversal of evidentiary burdens and the protection of third parties. Islamic legal scholarship has examined misappropriation of public property through the doctrines of *ghulūl* and *khiyāna*, generally in an ethical register.

The gap lies in the absence of an integrated treatment. Recovery scholarship rarely engages the constitutional objections seriously enough to answer them; criminal law scholarship rarely engages the empirical failure that motivates the reform; and Islamic legal doctrine, which contains a developed law of restitution operating independently of punishment, is almost never brought into the design conversation. This article asks: where does conviction-centred recovery structurally fail; what safeguards would make in rem forfeiture constitutionally defensible; and what does Islamic legal doctrine contribute to the separation of restitution from punishment?

II. RESEARCH METHODS

The research is normative juridical, applying statutory, conceptual, case and comparative approaches.⁵ The statutory approach examines the anti-corruption and anti-money laundering legislation, the Criminal Procedure Code provisions on seizure, the state finance and treasury legislation, and the Convention as incorporated. The conceptual approach reconstructs the distinction between in personam and in rem proceedings, the standards of proof attaching to each, and the Islamic doctrines governing unlawfully acquired property. The case approach analyses judicial reasoning on state loss and on substitute payment. The comparative approach considers Italy, Ireland and Australia as jurisdictions with established civil forfeiture regimes of differing designs.

Primary materials comprise legislation, the Convention, judicial decisions and classical Islamic sources on misappropriation, trusteeship and restitution. Secondary materials consist of peer-reviewed scholarship and institutional reports

⁴ Theodore S. Greenberg et al., *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, DC: World Bank, 2009), 13–21.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

from the last fifteen years. Analysis proceeds through qualitative content analysis, comparative tabulation of forfeiture designs and their safeguards, and normative evaluation against criteria derived from due process guarantees and from the maqāṣid framework. The study relies on published aggregate recovery data and does not undertake original quantitative measurement.

III. RESULTS AND DISCUSSION

A. Three Structural Failure Points

The first finding identifies where recovery fails. The initial failure point is the mismatch between the subject of liability and the location of assets. Criminal liability attaches to natural persons; proceeds are held by legal entities, relatives and nominees who are not accused of anything. Unless the prosecution can establish that the holder knew of the unlawful origin, the asset is beyond reach, and the standard of proof required makes that demonstration difficult precisely where structuring has been most sophisticated.

The second failure point is evidentiary and resource-based. Tracing proceeds through layered corporate structures and across borders requires forensic accounting capacity, sustained international cooperation and time measured in years. Prosecutorial resources are allocated to case completion, and a case is complete on conviction. The institutional incentive therefore terminates at precisely the moment when recovery work would need to intensify.

The third failure point is procedural termination. Where the accused dies, absconds or becomes permanently unfit, the criminal proceeding ends. Because the asset consequence is an incident of that proceeding, the claim to the property ends with it, notwithstanding that the property's unlawful origin may be independently demonstrable. This is the situation the Convention expressly contemplates in inviting states to consider confiscation without conviction, and it is the clearest case for reform because it involves no contested question of guilt at all.

B. In Rem Forfeiture and Its Due Process Objections

The second finding concerns the alternative and its costs. Non-conviction based forfeiture proceeds against the asset rather than the person, is characterised as civil, and applies the balance of probabilities rather than the criminal standard. Its attraction is that it detaches restitution from the fate of the accused. Its danger is that the same features can convert it into punishment without trial.

Three objections deserve direct answers rather than dismissal. The presumption of innocence objection is met by confining the proceeding to the lawful origin of property and by prohibiting the use of forfeiture findings as evidence of guilt in any criminal case. The burden of proof objection is met by requiring the state to establish a prima facie case of unlawful origin before any evidential burden shifts, rather than by imposing a general obligation on individuals to justify their wealth.

The third party objection is met by mandatory notice, a right of intervention and protection for purchasers in good faith without notice.

Comparative experience indicates that these safeguards are workable. The Irish regime, operated through a specialised bureau with judicial authorisation at each stage, has functioned for decades without the systemic abuses predicted at its introduction, largely because judicial control is continuous rather than terminal.⁶ The Italian preventive measures regime, by contrast, illustrates the opposite lesson: where the link between the asset and specified unlawful conduct is loosened too far, the regime attracts sustained human rights challenge. The design margin is therefore narrow but real.

C. Islamic Doctrine: Restitution Independent of Punishment

The third finding is doctrinal and, for the Indonesian debate, decisive. Islamic law treats the misappropriation of public property as a distinct wrong, *ghulūl*, understood as the covert taking of property from a common fund by one entrusted with it, and the Qurʾānic treatment emphasises that what is misappropriated remains attached to the taker as a liability.⁷ The prophetic tradition concerning the collector who claimed part of the revenue as a gift establishes that property received by reason of office belongs to the public fund rather than to the officeholder.⁸

Two structural features follow. First, the obligation to return is a civil liability attaching to the property, distinct from any discretionary penalty imposed for the wrong; restitution and punishment operate on separate tracks, and the extinction of the second does not extinguish the first. Second, classical practice developed a public inspection of unexplained wealth among officeholders, associated with the second caliph's requirement that officials account for property acquired in office, which is functionally an accounting obligation rather than a criminal charge.⁹

Read as policy design rather than as moral exhortation, this tradition supports precisely the separation that in *rem* forfeiture requires: the state's claim to misappropriated public property is not derivative of its power to punish, and the death of the wrongdoer transfers the obligation of restitution to the estate rather than extinguishing it. Indonesian reform can therefore be defended on doctrinal grounds internal to the tradition, which matters because forfeiture legislation is frequently resisted as an alien importation inconsistent with established criminal law principle.

⁶ Proceeds of Crime Act 1996 (Ireland), sections 2–4.

⁷ Qurʾān 3:161.

⁸ Muḥammad b. Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Muḥammad Zuhayr al-Nāṣir (Beirut: Dār Ṭawq al-Najāt, 2001), 9:29, no. 7174.

⁹ Ibn Qayyim al-Jawziyya, *al-Ṭuruq al-Ḥukmiyya fī al-Siyāsa al-Sharʿiyya*, ed. Nāyif al-Ḥamad (Mecca: Dār ʿĀlam al-Fawāʾid, 2007), 1:301–306.

D. Comparative Forfeiture Architectures

Table 1. Comparative Non-Conviction Based Forfeiture Designs

Jurisdiction	Institutional locus	Standard and safeguards	Principal criticism
Indonesia	No dedicated regime; recovery incident to criminal conviction	Criminal standard; substitute payment where assets insufficient	Low recovery ratio; claim ends with the proceeding
Ireland	Specialised bureau with continuous judicial authorisation	Civil standard with notice, intervention and good faith protection	Concentration of investigative power in one body
Italy	Preventive measures applied by specialised courts	Civil standard with wealth disproportion indicators	Attenuated link between asset and specific unlawful conduct
Australia	Statutory proceeds of crime regime administered federally	Civil standard with hardship and third party relief	Complexity and cost of contested proceedings

Source: Processed from primary legal materials and comparative literature, 2026.

The comparison suggests that the durability of a forfeiture regime correlates with the continuity of judicial control rather than with the strictness of its standard of proof. Regimes in which a court authorises each coercive step survive constitutional challenge; regimes relying on administrative determination with subsequent review do not. For Indonesia this indicates that the pending bill should be evaluated primarily by the density of judicial authorisation it requires, not by the breadth of assets it reaches.

E. Criteria for a Defensible Recovery Policy

Five criteria follow. First, statutory separation of restitution from punishment, establishing an *in rem* action that may proceed where prosecution is impossible by reason of death, flight or incapacity. Second, judicial authorisation at each coercive stage, from freezing to final forfeiture, with reasoned decisions subject to appeal. Third, a defined evidential sequence in which the state must first establish a *prima facie* case of unlawful origin, after which the holder may be required to account for the property's provenance. Fourth, third party protection through mandatory notice, a right of intervention and the exclusion of bona fide purchasers without notice. Fifth, transparent disposition, with recovered assets recorded in the state budget and reported publicly, since a recovery regime whose proceeds are untraceable reproduces the very opacity it exists to remedy.

Applied together, these criteria answer the objections that have stalled the reform without diluting its purpose. They also align with the doctrinal structure identified above, in which the obligation to restore misappropriated public property is a liability attaching to the property itself and surviving the person who took it.

IV. CONCLUSION

Indonesian anti-corruption policy recovers little because it is designed to punish rather than to restore. Liability attaches to persons while assets sit with entities and relatives; tracing capacity is not resourced past conviction; and the proceeding's termination through death or flight extinguishes the claim to property whose unlawful origin may be independently demonstrable. These are structural features of the model, not failures of effort.

Non-conviction based forfeiture addresses each failure point, and its due process objections are answerable by design rather than by assertion: confinement of the proceeding to the origin of property, a state-borne prima facie burden, continuous judicial authorisation, and protection of third parties. Islamic legal doctrine supports the same separation, treating the restitution of misappropriated public property as a liability attaching to the property and surviving the wrongdoer, with the accounting of officeholders operating independently of punishment.

The study recommends enacting an in rem forfeiture statute built on those five criteria, together with transparent recording of recovered assets in the state budget. Further research should examine the recovery ratio of Indonesian corruption judgments over a defined period, disaggregating substitute payments from actual asset recovery, since that disaggregation would establish the precise magnitude of the gap this reform is intended to close.

REFERENCES

- al-Bukhārī, Muḥammad b. Ismā'īl. *Ṣaḥīḥ al-Bukhārī*. Edited by Muḥammad Zuhayr al-Nāṣir. Beirut: Dār Ṭawq al-Najāt, 2001.
- Cassella, Stefan D. *Asset Forfeiture Law in the United States*. 2nd ed. Huntington: Juris Publishing, 2013.
- Greenberg, Theodore S., Linda M. Samuel, Wingate Grant, and Larissa Gray. *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture*. Washington, DC: World Bank, 2009.
- Ibn Qayyim al-Jawziyya. *al-Ṭuruq al-Ḥukmiyya fī al-Siyāsa al-Shar'īyya*. Edited by Nāyif al-Ḥamad. Mecca: Dār 'Ālam al-Fawā'id, 2007.
- Kennedy, Anthony. "Justifying the Civil Recovery of Criminal Proceeds." *Journal of Financial Crime* 12, no. 1 (2005): 8–23.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Revised edition. Jakarta: Kencana, 2017.
- al-Māwardī, Abū al-Ḥasan. *al-Aḥkām al-Sulṭāniyya wa-l-Wilāyāt al-Dīniyya*. Beirut: Dār al-Kutub al-'Ilmiyya, 1985.
- Rose-Ackerman, Susan, and Bonnie J. Palifka. *Corruption and Government: Causes, Consequences, and Reform*. 2nd ed. Cambridge: Cambridge University Press, 2016.

- Simser, Jeffrey. "Perspectives on Civil Forfeiture." In *Civil Forfeiture of Criminal Property*, edited by Simon N. M. Young, 13–41. Cheltenham: Edward Elgar, 2009.
- Vettori, Barbara. *Tough on Criminal Wealth: Exploring the Practice of Proceeds from Crime Confiscation in the EU*. Dordrecht: Springer, 2006.
- United Nations Convention against Corruption (2003).
- United Nations Convention against Transnational Organized Crime (2000).
- Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Republic of Indonesia).
- Law Number 20 of 2001 concerning the Amendment to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Republic of Indonesia).
- Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption, 2003 (Republic of Indonesia).
- Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (Republic of Indonesia).
- Law Number 1 of 2004 concerning the State Treasury (Republic of Indonesia).
- Proceeds of Crime Act 1996 (Ireland).
- Proceeds of Crime Act 2002 (Commonwealth of Australia).