

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

Devira Alfitri¹, Joko Setiyono²

¹Student Master of Law Program, Diponegoro University, Semarang.

²Lecturer Master of Law Program, Diponegoro University, Semarang.

ABSTRACT: Cross-border corruption asset recovery has historically operated under a state-centric paradigm, returning repatriated assets into general state revenues as Non-Tax State Revenue (PNBP) while neglecting the socio-economic rights of impacted communities. This study aims to conduct a comparative analysis between UNCAC's asset recovery framework and the victim-centric reparation model of the ICC Trust Fund for Victims (TFV), evaluating their integration into the Non-Conviction Based (NCB) asset forfeiture mechanism under Indonesia's draft Asset Forfeiture Bill. Utilizing normative legal research with statutory, comparative, and conceptual approaches, the findings reveal that UNCAC Chapter V primarily addresses state financial loss, whereas the ICC TFV directly restores community harm. Consequently, implementing NCB forfeiture in Indonesia must transcend mere property confiscation by institutionalizing an earmarked fund for repatriated assets, effectively offsetting the social cost of corruption borne by society. Building on this framework, the study further constructs an operational disbursement model that legally traces PNBP-funneled forfeiture proceeds back to the specific affected community through an earmarked functional PNBP account, positioning the Prosecutorial Asset Recovery Agency (Badan Pemulihan Aset/BPA) of the Indonesian Attorney General's Office as the central implementing body, without violating the unity-of-treasury principle.

KEYWORDS: Asset Recovery; Cross-Border Corruption; Non-Conviction Based (NCB); Trust Fund for Victims; UNCAC; Earmarked PNBP; Badan Pemulihan Aset.

INTRODUCTION

Cross-border corruption has evolved into an organized transnational crime that not only undermines state financial stability but also systematically strips communities of their socio-economic rights. Within the international legal framework, Chapter V of the United Nations Convention Against Corruption (UNCAC) provides the juridical basis for asset recovery mechanisms. However, the dominant paradigm in UNCAC's implementation to date remains state-centric: assets successfully repatriated from abroad are simply channeled back into the state treasury as Non-Tax State Revenue (PNBP). This approach overlooks the fact that the destructive impact of corruption generates a social cost of corruption borne directly by the community as the true victim.

UNCAC's state-centric orientation reveals a conceptual gap when compared with developments in international criminal law. Through the Rome Statute and the Trust Fund for Victims (TFV) scheme of the International Criminal Court (ICC), international law has given rise to a victim-centric paradigm that places reparative justice at the forefront. The TFV scheme isolates and distributes the proceeds of crime directly to victims through restitution, compensation, and rehabilitation. The absence of a mechanism bridging the TFV's reparative philosophy into the corruption asset recovery scheme means that communities' right to recovery is consistently marginalized in the judicial process.

Indonesia's criminal law reform is currently at a critical juncture amid deliberations on the draft Asset Forfeiture Bill. The bill adopts the *in rem*, or Non-Conviction Based (NCB), asset forfeiture doctrine—a progressive instrument enabling the state to forfeit the proceeds of crime without depending on the offender's conviction. Although NCB has proven effective in overcoming cross-border procedural obstacles, the normative framework of Indonesia's draft Asset Forfeiture Bill still focuses on the technical dimension of enforcement. No legal formulation yet governs the allocation of NCB-derived assets through an earmarked fund aimed at restoring the rights of affected communities.

Based on these legal issues, this study aims to conduct a comparative analysis of UNCAC's asset recovery mechanism and the ICC's Trust Fund for Victims reparation model. This study seeks to reconstruct the application of the NCB instrument within Indonesia's draft Asset Forfeiture Bill, so that assets repatriated from cross-border corruption not only restore state finances but are also genuinely deployed as a vehicle for reparative justice in restoring communities' rights.

THEORETICAL FRAMEWORK

This study draws on four complementary theoretical frameworks and concepts to analyze the research problem.

1) Reparative Justice Theory

The concept of reparative justice was comprehensively developed by Pablo de Greiff (2006) in *The Handbook of Reparations*, which positions reparation not merely as a material transfer to victims, but as an instrument for the recognition of victim status and the restoration of civic trust damaged by crime. De Greiff identifies five interrelated components of reparation: restitution, which returns victims to the condition preceding the violation; compensation, in the form of financial redress for losses suffered; rehabilitation, encompassing medical, psychological, and social recovery; satisfaction, involving truth disclosure and formal apology; and guarantees of non-repetition, which demand institutional reform to prevent similar violations from recurring. This theory serves in the present study as an analytical tool for assessing the extent to which the ICC's Trust Fund for Victims (TFV) scheme fulfills these five components, while also functioning as a normative benchmark for designing an earmarked fund within the NCB Asset Forfeiture framework in Indonesia—so that forfeited assets serve not merely a restitutive material function, but also carry the symbolic dimension of restoring victims' rights as legal subjects, rather than treating them merely as statistical objects of state loss.

2) Social Cost of Corruption Theory

Pradiptyo (2019) and Pradiptyo and Wibowo (2020) developed a framework for calculating the social cost of corruption that goes beyond the conventional economic analysis of law approach, which measures only the state's financial loss based on the nominal value of the corrupted assets. This theory distinguishes three layers of loss: direct loss, being the monetary value of assets unlawfully transferred; indirect loss, being the opportunity cost arising from delayed public infrastructure development, health services, and education that should have been funded by the misappropriated budget; and follow-up cost, comprising law enforcement expenditure and the multiplier effect on the economy of the directly affected community. Chaikin (2010) affirms that, from a law-and-economics perspective, proceeds of corruption that are not promptly recovered further inflate this social cost, as criminal assets continue to circulate within the international financial system through money laundering. This social-cost-of-corruption framework is used to build the argument that the object to be restored through asset recovery is not merely the nominal value of the state's loss, but also the accumulated social cost borne by the community—meaning that the allocation of forfeited assets must proportionately account for this dimension.

3) The In Rem / Non-Conviction Based (NCB) Asset Forfeiture Doctrine

The Non-Conviction Based (NCB) Asset Forfeiture doctrine—also known as civil forfeiture or in rem forfeiture—is a legal mechanism that directs proceedings not against the offender (in personam) but against the property alleged to constitute the proceeds or instrumentality of crime (in rem). Greenberg, Samuel, Grant, and Gray (2009), in *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture*, explain that NCB was developed to overcome the limitations of conviction-based forfeiture, particularly in four situations: where the offender has died, has fled the jurisdiction (in absentia), enjoys legal immunity, or where the available evidence fails to meet the criminal standard of proof beyond reasonable doubt but satisfies the civil standard of the balance of probabilities. Stephenson, Gray, Power, Brun, Dunker, and Panjer (2011) add that NCB's principal advantage lies in its ability to overcome cross-border jurisdictional barriers, as it does not depend on extradition or conviction-based mutual legal assistance processes. Young (2009) emphasizes that NCB's application must nonetheless remain subject to due process of law and protection for bona fide third parties, so that the mechanism does not become an instrument of arbitrary state power. This doctrine constitutes the principal analytical framework for examining the formulation of NCB in Indonesia's draft Asset Forfeiture Bill, particularly with respect to the standard of proof, the scope of forfeitable objects, and the post-forfeiture asset management mechanism.

4) Legal System Theory

Lawrence M. Friedman (1975), in *The Legal System: A Social Science Perspective*, argues that the success of legal reform is determined by the interaction of three components of the legal system: legal structure, comprising the institutions and procedures of law enforcement; legal substance, comprising the applicable norms, rules, and doctrines; and legal culture, comprising the values, attitudes, and expectations that society holds toward the law. This legal system theory serves as a holistic analytical framework for assessing whether the reconstruction of NCB Asset Forfeiture norms and the earmarked fund within Indonesia's draft Asset Forfeiture Bill coherently integrates all three components—since reforming legal substance alone, without strengthening the institutional structure managing the fund and without cultivating acceptance among both law enforcement officials and the community, risks leaving such progressive norms ineffective in practice.

Gap Analysis and Problem Statement

In terms of *das sollen* (the ideal), Chapter V of UNCAC on asset recovery, together with developments in international criminal law through the ICC's Trust Fund for Victims scheme, ought to place the restoration of victims' rights at the center of asset return, and Indonesia's draft Asset Forfeiture Bill should ideally formulate norms for post-forfeiture asset management oriented toward the

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

reparative justice envisioned by De Greiff (2006). In terms of *das sein* (the actual), however, asset recovery practice both in Indonesia and globally shows that the proceeds of cross-border corruption repatriation are generally deposited merely as Non-Tax State Revenue (PNBP), without any earmarking mechanism that directly restores the socio-economic losses of affected communities. The Basel Institute on Governance (2020) notes that in a number of international asset recovery cases, most jurisdictions still practice a general revenue return model without transparency as to the fund's ultimate use. A study by Indonesia's Corruption Eradication Commission (2021) likewise indicates that the implementation of non-conviction-based forfeiture in Indonesia remains constrained at the technical enforcement level, without further regulation on allocating forfeiture proceeds to restore victims' rights.

This gap between *das sollen* and *das sein* gives rise to four principal problems addressed in this study. First, to what extent does the state-centric paradigm of UNCAC Chapter V fall short compared with the victim-centric model of the ICC's Trust Fund for Victims in restoring the rights of cross-border corruption victims. Second, how can the Non-Conviction Based (NCB) Asset Forfeiture doctrine be formulated as a legal instrument to overcome cross-border procedural obstacles within Indonesia's draft Asset Forfeiture Bill. Third, how can the reconstruction of post-NCB asset governance through the establishment of an earmarked fund be formulated so that assets repatriated from cross-border corruption genuinely function as an instrument of reparative justice for the community as the primary victim. Fourth, what model and operational procedure can be formulated so that forfeiture proceeds already channeled into Non-Tax State Revenue (PNBP) can still be traced and lawfully "returned" to the community or parties specifically harmed under the draft Asset Forfeiture Bill, including the role the Attorney General's Office's Asset Recovery Agency (Badan Pemulihan Aset/BPA) may assume in its implementation.

State of the Art (Novelty of the Research)

Academic studies on asset forfeiture and the restoration of corruption victims' rights have to date been dominated by three main strands of thought. The first strand focuses on the effectiveness of the Non-Conviction Based (NCB) Asset Forfeiture doctrine within the draft Asset Forfeiture Bill as a technical enforcement instrument for pursuing cross-border assets; however, studies in this strand position NCB merely as a state-centric tool for state financial recovery. The second strand examines the victim-centric reparation mechanism of the ICC's Trust Fund for Victims (TFV), but confines its scope to serious international crimes and has yet to extend to cross-border corruption. The third strand emphasizes the law-and-economics analysis of the social cost of corruption, but has yet to formulate a normative framework for transforming repatriated assets into a genuine instrument for restoring community rights. This academic gap leaves unfilled space concerning the integration of a victim-centric approach into the norms of non-conviction-based asset forfeiture in Indonesia.

This study seeks to fill that gap by offering a conceptual novelty through an interdisciplinary comparative synthesis of UNCAC's asset recovery scheme and the ICC's TFV reparation mechanism. Its principal novelty lies in reconstructing the definition of corruption victims—shifting the paradigm from the state as sole victim toward recognizing society as primary victim, bearing the burden of corruption's social cost. This study further transforms the function of NCB within the draft Asset Forfeiture Bill from a mere property-seizure mechanism into an earmarked-fund-generating instrument. This allocation model ensures that repatriated assets are not left simply as general Non-Tax State Revenue, but are channeled in a structured manner to finance reparative justice for restoring communities' socio-economic rights. The study's operational novelty lies in constructing a disbursement model and procedure that concretely traces assets already deposited in functional PNBP accounts, so that they can still be lawfully "returned" to the community or specifically harmed parties—positioning the Attorney General's Office's Asset Recovery Agency (BPA), an institution that already holds a normative mandate to return assets to "victims or entitled parties" under Attorney General's Regulation No. 3 of 2024, as the implementing institutional node, without conflicting with the unity-of-treasury principle applicable within Indonesia's state financial system.

RESEARCH METHODS

This study employs doctrinal (normative) legal research, focusing on the examination of legal principles, the systematic synchronization of legislation, and the comparison of international legal doctrines and norms with national law. The research approach integrates three principal analytical tools: the statutory approach, the comparative approach, and the conceptual approach. The statutory approach is used to examine the consistency of norms and identify regulatory gaps concerning asset recovery within UNCAC Chapter V, the ICC's Rome Statute, and Indonesia's draft Asset Forfeiture Bill. The comparative approach is employed to critically compare UNCAC's state-centric asset forfeiture scheme with the victim-centric reparation mechanism of the ICC's Trust Fund for Victims (TFV). The conceptual approach, meanwhile, is used to reconstruct legal thinking on the Non-Conviction Based (NCB) Asset Forfeiture doctrine, reparative justice theory, and the concept of the social cost of corruption, in order to formulate an earmarked-fund allocation framework.

The legal materials used comprise primary, secondary, and tertiary sources. Primary legal materials consist of international legal instruments such as the United Nations Convention Against Corruption (UNCAC, 2003) and the Rome Statute of the International Criminal Court (1998), together with national legal instruments including the draft Asset Forfeiture Bill, the Corruption Eradication Law, and the Anti-Money Laundering Law. Secondary legal materials were drawn from reputable scholarly literature,

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

accredited journals, academic manuscripts, and international guidance reports from the World Bank/UNODC Stolen Asset Recovery (StAR) Initiative and the Global Survivors Fund. Tertiary legal materials, such as legal dictionaries and encyclopedias, were used to provide supplementary guidance and clarification of the primary and secondary materials.

Legal materials were collected through library research, involving the systematic inventorying, categorization, and classification of relevant legal documents. All collected materials were analyzed qualitatively using prescriptive deductive reasoning, aimed at comprehensively elaborating legal reasoning so as to produce an objective academic assessment together with concrete recommendations for formulating penal policy within Indonesia's draft Asset Forfeiture Bill.

RESULTS AND DISCUSSION

1. The Limitations of UNCAC's State-Centric Paradigm Compared with the ICC's Victim-Centric Trust Fund for Victims Model

Chapter V of UNCAC (Articles 51–59) establishes a comprehensive asset recovery framework, encompassing obligations to prevent and detect the transfer of criminal proceeds (Article 52), direct asset recovery mechanisms through civil action (Article 53), international cooperation for forfeiture purposes (Articles 54–55), and the return and disposition of assets under Article 57. Vlasis (2012) affirms that Chapter V of UNCAC represents a significant breakthrough, being the first international legal instrument explicitly obligating states parties to cooperate in returning the proceeds of corruption. Nevertheless, Article 57(3)(c) of UNCAC essentially grants the requesting state broad discretion to determine the disposition of the returned assets, such that in practice repatriated assets are generally recorded as general state revenue without any legal obligation to allocate them toward restoring affected communities.

This condition differs fundamentally from the Trust Fund for Victims (TFV) scheme established under Article 79 of the ICC's Rome Statute. McCarthy (2009) explains that the TFV carries two principal mandates: a reparations mandate, which channels court-ordered funds to identified victims, and a general assistance mandate, which allows the TFV to provide rehabilitative support to victims even before a judgment becomes final and binding. Moffett (2014) adds that the TFV's fundamental strength lies in its victim-centric character, whereby the process of determining the form of reparation involves direct victim participation, ensuring that the relief provided corresponds to victims' actual needs rather than a nominal transfer determined unilaterally by the state.

Evans (2012), in her study of the right to reparation for victims of armed conflict, emphasizes that the TFV model reflects a paradigm shift in international law away from a purely retributive orientation toward reparative justice that recognizes victims as active legal subjects. Syahrin (2021) argues that the victim-centric principle underlying transnational asset recovery mechanisms should ideally also be applied to cross-border corruption, given that the impact of corruption on society is, in substance, comparable to human rights violations—albeit in a more disguised yet systemic form. This view is reinforced by the UNCAC Coalition (2025), which explicitly calls for a shift from repatriation toward reparation within the future UNCAC framework, and by the Global Survivors Fund (2025), which urges that proceeds of corruption that have financed conflict be directed to fund reparation schemes for victims.

Based on this comparative analysis, it can be concluded that the framework of UNCAC Chapter V remains philosophically confined to restoring the state's financial loss, and has yet to accommodate the socio-economic loss of communities as measured by the social-cost-of-corruption framework. By contrast, although designed for serious international crimes, the TFV's institutional architecture provides an institutional and procedural precedent relevant for adaptation into the design of an earmarked fund within Indonesia's draft Asset Forfeiture Bill—particularly regarding victim participation, transparency in fund disbursement, and the independence of the managing institution.

2. The Non-Conviction Based (NCB) Asset Forfeiture Doctrine as an Instrument for Overcoming Cross-Border Obstacles in the Draft Asset Forfeiture Bill

The draft Asset Forfeiture Bill adopts a stand-alone civil (in rem) forfeiture mechanism that does not depend on the criminal conviction of the offender. Utama (2019) notes that the urgency of regulating NCB in Indonesia stems from the limitations of the forfeiture mechanism under Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption, which requires a prior criminal conviction (conviction-based forfeiture)—meaning that in cases where offenders flee abroad or die, the proceeds of corruption often cannot be fully forfeited. Prasetyo and Seno Adji (2022) affirm that NCB's formulation in the draft Asset Forfeiture Bill is designed to overcome the limitations of foreign jurisdiction, as proceedings are directed at the object of property and may be filed without the offender's physical presence or the completion of extradition proceedings.

A comparative study by King, Walker, and Gurulé (2018) shows that common-law jurisdictions such as the United States, the United Kingdom, and Australia have long practiced civil forfeiture using a civil standard of proof—preponderance of evidence or balance of probabilities—considerably lighter than the criminal standard of beyond reasonable doubt. Cassella (2015) adds that forfeiture and restitution function as dual, complementary instruments in compensating victims of financial crime, since forfeiture rapidly secures assets while restitution ensures the delivery of compensation to identified victims. The relevance of these two

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

instruments confirms that NCB should not be positioned merely as a seizure technique, but must be structurally linked to a postforfeiture victim compensation mechanism.

Nevertheless, NCB's application in Indonesia faces a number of structural challenges. Ramadhan (2020) identifies that Indonesia's criminal justice system, rooted in the civil-law tradition, has yet to develop adequate judicial precedent for in rem proceedings, necessitating the strengthening of special procedural law governing the allocation of the burden of proof, including an illicit-enrichment mechanism for assessing the unexplained wealth of parties whose assets are subject to claim. At the same time, the principle of bona fide third-party protection, as emphasized by Young (2009), must also be explicitly adopted in the draft Asset Forfeiture Bill, so that the NCB mechanism does not create legal uncertainty for parties who lawfully acquired assets without knowledge of their criminal origin.

The NCB Asset Forfeiture doctrine has thus proven, both theoretically and in comparative practice, capable of overcoming the procedural deadlock that has hindered the recovery of cross-border corruption proceeds, particularly in situations involving an absent offender (in absentia) and differences between legal systems across jurisdictions. Its effectiveness in Indonesia, however, depends heavily on the clarity of norms concerning the standard of proof, in rem procedural law, and guarantees protecting thirdparty rights, as required by the principle of due process of law.

3. Reconstructing Post-NCB Asset Governance through the Establishment of an Earmarked Fund for Restoring Victims' Rights

The analysis in the two preceding sub-sections shows that NCB Asset Forfeiture's technical effectiveness does not, by itself, guarantee reparative justice for the community as corruption's primary victim, unless accompanied by a reconstruction of postforfeiture asset governance. The World Bank and UNODC (2020), in the Asset Recovery Handbook, recommend that states establish a transparent and accountable mechanism for managing repatriated assets, noting that the experience of several countries shows that the absence of clear governance risks a second misappropriation of forfeited assets (re-looting risk). The Stolen Asset Recovery Initiative (2022) likewise affirms that best practice in managing returned assets requires multi-stakeholder oversight, including civil society participation in monitoring fund disbursement.

Drawing on Friedman's (1975) Legal System Theory, this governance reconstruction must be designed simultaneously across three dimensions. On the dimension of legal substance, the draft Asset Forfeiture Bill needs to include an explicit norm requiring that a specific percentage of NCB-derived assets—particularly those originating from cross-border repatriation—be allocated into an earmarked fund, rather than being fully absorbed into general PNBP. Azhar and Waspiyah (2020) argue that reconstructing asset-forfeiture regulation on the basis of justice requires a clear qualification of asset categories subject to mandatory earmarking, including criteria for determining the proportion allocated between state financial recovery and social reparation funding.

On the dimension of legal structure, the institutional need for an earmarked-fund manager need not be met by establishing a new ad hoc body, given that the Indonesian Attorney General's Office already possesses an Asset Recovery Agency (Badan Pemulihan Aset/BPA), established under Article 30A of Law No. 11 of 2021 amending Law No. 16 of 2004 on the Attorney General's Office, and further strengthened by Attorney General's Regulation No. 3 of 2024. Under Article 691B of that regulation, the BPA has in fact already been given an explicit mandate to trace, forfeit, and return the proceeds of crime “to the state, victims, or entitled parties”—a textual formulation that has, in substance, already opened space for a victim-centric orientation, though it has not yet been operationalized in detail at the technical level once assets are deposited into PNBP. Hafid (2021), from a lawand-economics perspective, emphasizes that the efficiency of recovery-fund management would be optimized if entrusted to an institution that already possesses a database, technical authority, and a network extending down to the regional level—as the BPA does, through its Assistant for Asset Recovery structure in every High Prosecutor's Office and its asset recovery units at the District Prosecutor's Office level. Santoso (2022) and Arifin (2021), in their respective doctoral studies, likewise recommend that Indonesia's asset repatriation legal reform focus on strengthening existing state asset management institutions, with open public reporting mechanisms, rather than adding new institutional complexity.

On the dimension of legal culture, the success of implementing an earmarked fund depends heavily on the acceptance by law enforcement officials and the public of the paradigm shift from state as sole victim toward society as primary victim. Without such a shift in perspective, earmarked-fund provisions risk remaining mere law in the books without genuine implementation as law in action, as Friedman (1975) cautions. Strengthening legal culture therefore needs to be accompanied by public outreach, legal education, and the active involvement of law enforcement institutions—including the Attorney General's Office in its role as the state's legal counsel and as the enforcement agency exercising an intelligence function—in educating the public about their right to recovery from the social cost of corruption. Cornelius (2025) notes that public prosecutors play a central role in realizing law enforcement, particularly within the sphere of criminal law, and that the enforcement process is inseparable from the prosecutor's authority as case controller under the principle of dominus litis inherent in the office.

The synthesis of these three dimensions confirms that reconstructing post-NCB asset governance through an earmarked fund is not merely a technocratic proposal, but a logical consequence of recognizing the community as corruption's primary victim, as established through Reparative Justice Theory and the Social Cost of Corruption framework. This model positions NCB Asset

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

Forfeiture not as the endpoint of the legal process, but as the entry point for a sustained cycle of reparative justice—from forfeiture, through management, to the delivery of tangible benefits to affected communities.

4. A Model and Procedure for Channeling PNBP-Deposited Forfeiture Proceeds to Communities or Affected Parties: The Role of the Attorney General's Office's Asset Recovery Agency

Building on the three preceding findings, the earmarked-fund concept still requires concrete operationalization if it is not to remain a purely normative idea. Structurally, Article 2 of Law No. 17 of 2003 on State Finance, read together with Law No. 1 of 2004 on the State Treasury, embodies the unity-of-treasury principle, which requires that all state revenue—including the proceeds of corruption asset forfeiture—be deposited in full into the State General Treasury. This provision is further reinforced by Law No. 9 of 2018 on Non-Tax State Revenue (PNBP), which classifies forfeiture proceeds as Functional PNBP under the relevant ministry or agency. Consequently, once NCB-derived assets are converted into cash and deposited, their identity and connection to the victim or specifically harmed party is administratively absorbed into the general state budget—a phenomenon this study terms the fiscal funneling effect—severing the traceable link between the forfeited assets and the harmed party.

A key finding of this study is that the mandate to return assets “to the state, victims, or entitled parties” already exists normatively under Article 691B of Attorney General's Regulation No. 3 of 2024, which forms the basis for the duties and authority of the BPA. This provision shows that the Attorney General's Office is not unfamiliar with an asset-return orientation toward harmed parties, as also affirmed by the Head of the Asset Recovery Agency in a public discussion forum, who noted that strengthening the BPA's institutional capacity has the potential to substantially increase state financial recovery precisely within the sphere of Non-Tax State Revenue (PNBP). However, this provision has not yet been followed by technical procedures governing how “the return to victims or entitled parties” is carried out once assets are converted into cash and deposited into a PNBP account. This regulatory vacuum at the technical level is precisely the focus of the model constructed in this study, which positions the BPA as the central actor operationalizing the normative mandate it already holds.

To operationalize this mandate without violating the state's unity-of-treasury principle, this study constructs a disbursement model that adapts precedents in PNBP management already recognized within Indonesia's state financial system: the Public Service Agency (Badan Layanan Umum/BLU) scheme under Government Regulation No. 23 of 2005 and its amendments, which allows a portion of functional PNBP to be flexibly managed for specific purposes without first being deposited in full into the State General Treasury; the Revenue-Sharing Fund (Dana Bagi Hasil/DBH) scheme, which provides a precedent for earmarked transfer mechanisms from the Central Government to Regional Governments based on specific revenue sources; and the courtordered restitution mechanism under Supreme Court Regulation No. 1 of 2022 on Procedures for Awarding Restitution to Child Victims of Crime, which demonstrates that funds arising from criminal proceedings can be lawfully and directly channeled to harmed parties without losing their fiscal legal basis. These three precedents confirm that functional earmarking of PNBP is not foreign to Indonesia's state financial system, and can therefore be replicated specifically for PNBP originating from the forfeiture of corruption proceeds, with the BPA as the implementing institutional node.

The model constructed in this study involves four institutional actors operating in a tiered structure, with the BPA serving as the central hub connecting the enforcement stage to the benefit-disbursement stage. First, the law enforcement agencies conducting the NCB Asset Forfeiture process (the Prosecutor's Office/the courts), assisted by the BPA's Asset Tracing and Forfeiture Center, are responsible for establishing the legal status of forfeited assets while including a community identification clause in the forfeiture order or court judgment, so that the origin of the loss and the harmed party are officially recorded from the judicial stage onward. Second, the BPA's Asset Settlement Center—which under Attorney General's Regulation No. 3 of 2024 already holds authority over the valuation, auction, return, utilization, and settlement of criminal assets—is tasked with converting assets into cash and coordinating with the Ministry of Finance (the Directorate General of Budget and the Directorate General of Treasury) to record forfeiture proceeds under a special functional PNBP account code, proposed under the nomenclature “PNBP for the Recovery of Assets from Corruption”—administratively separated from other general PNBP so as to remain traceable even while being deposited into the State General Treasury. Third, the BPA, together with the Assistant for Asset Recovery at each High Prosecutor's Office and the asset recovery units at each District Prosecutor's Office, conducts beneficiary verification and field-level assessment of recovery needs, given that the BPA's structure already extends down to the district prosecutor's office level, as affirmed by the Attorney General at the inauguration of the BPA's Head. Fourth, the community or specifically harmed party serves as the ultimate beneficiary, determining funding-use priorities through a participatory mechanism, consistent with the principle of victim participation in De Greiff's (2006) Reparative Justice Theory.

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

Table 1. Stages and Actors in the Model for Channeling Forfeiture Proceeds to Communities/Affected Parties through the Attorney General's Office's Asset Recovery Agency

	Stage	Implementing Actor	Output
1.	Determination and Identification	Prosecutor's Office/Courts (NCB), together with the BPA's Asset Tracing and Forfeiture Center	Forfeiture order/judgment containing a clause identifying the victim and affected party
2.	Conversion and Functional Deposit	BPA's Asset Settlement Center, together with the Ministry of Finance (Directorate General of Budget/Treasury)	Auction/conversion of assets and deposit under the special functional PNPB account code 'Recovery of Corruption Assets'
3.	Verification and Assessment	BPA, together with the Assistant for Asset Recovery at the High Prosecutor's Office, asset recovery units at the District Prosecutor's Office, Regional Inspectorate/Ministry of Villages	Recovery proposal and determination of allocation amounts for the affected party
4.	Disbursement	BPA proposes the allocation to the Ministry of Finance for official transfer (e.g., additional Village Fund/Village-Owned Enterprise allocation or other programs)	Funds received by the community/affected party
5.	Oversight and Accountability	BPA, Audit Board (BPK)/Financial and Development Supervisory Agency (BPKP), District Prosecutor's Office (Intelligence/Civil Affairs), civil society	Audit report and public accountability report on disbursement

The operational procedure of this model can be described in five interconnected stages, as presented in Table 1. In the first stage—determination and identification—law enforcement officials handling the NCB case, together with the BPA's Asset Tracing and Forfeiture Center, are required to include data on the source of loss and the specifically harmed party within the case file or the operative part of the judgment, so that this information forms the legal basis for subsequent stages. In the second stage—conversion and functional deposit—assets that have been executed or auctioned by the BPA's Asset Settlement Center are converted into cash and deposited into the State General Treasury account under a special functional PNPB account code, rather than being mixed with the general PNPB account code, so that the trail of the fund's source remains traceable by both the Ministry of Finance and the BPA at subsequent stages. In the third stage—verification and assessment—the BPA, together with the Assistant for Asset Recovery at the High Prosecutor's Office and the asset recovery units at the District Prosecutor's Office, crosschecks the victim/affected-party data recorded in the judgment against actual field conditions, in cooperation with relevant technical agencies—for instance, the Regional Inspectorate or the Ministry of Villages, Disadvantaged Regions and Transmigration for cases involving the Village Fund—to develop a recovery proposal proportionate to the value of the loss and the resulting social cost.

In the fourth stage—disbursement—the allocated funds are channeled through transfer mechanisms that already have a valid legal basis, so that no new and complex transfer mechanism needs to be established. The BPA proposes the amount and purpose of the allocation to the Ministry of Finance, which then disburses it through the administrative channel most relevant to the characteristics of the affected party. For instance, in cases of Village Fund corruption, disbursement may be carried out by increasing the non-regular Village Fund transfer ceiling to the village concerned through the existing State General Treasury Account–Village Treasury Account mechanism, or through a Village-Owned Enterprise (BUMDes) to finance productive programs directly benefiting village residents; whereas for corruption cases harming other community groups—such as fishers, farmers, or consumers of public services—disbursement may be directed through social assistance programs or sectoral subsidies administered by the relevant technical ministry or agency. In all such variants, the BPA assigns the local District Prosecutor's Office, through its intelligence and civil/state administrative affairs (Datun) functions, to provide accompaniment ensuring accountability in fund use. Channeling disbursement through existing administrative pathways is important so that reconstructing the earmarked fund does not require establishing new institutions that would burden the bureaucracy, while remaining subject to the unity-of-treasury principle, since funds continue to flow through the lawful state/regional/village budget mechanism rather than being handed directly by the Attorney General's Office to the community.

Cross-Border Corruption Asset Recovery as an Instrument for Restoring Victims' Rights: A Study of UNCAC and Asset Recovery Practice

In the fifth stage—oversight and accountability—fund disbursement must be audited by the Audit Board (Badan Pemeriksa Keuangan) and/or the Financial and Development Supervisory Agency (BPKP), accompanied by an obligation of periodic public reporting by the BPA and the involvement of civil society participation in monitoring, to prevent the risk of repeated misappropriation (re-looting risk), as cautioned by the Stolen Asset Recovery Initiative (2022). Where irregularities are found in the use of disbursed funds, the BPA is authorized to temporarily suspend the next disbursement stage and report the matter to the relevant law enforcement authorities.

The model and procedure thus constructed bridge the gap between the normative ideal of the earmarked fund and the operational needs of state financial administration, while filling the technical vacuum in the mandate to “return assets to victims or entitled parties” that the BPA already holds under Article 691B of Attorney General's Regulation No. 3 of 2024. Through source-of-funds labeling from the judicial stage, the separation of functional PNPB account codes, victim-data-based verification via the BPA's network down to the District Prosecutor's Office level, disbursement through legally established transfer channels, and layered oversight, the proceeds of corruption asset forfeiture can be lawfully “returned” to the community or harmed parties without needing to alter the basic architecture of Indonesia's state finances or establish any new institution. This model simultaneously serves as an operational elaboration of Friedman's (1975) Legal System Theory, as it integrates the strengthening of legal substance (earmarking norms and distribution authority within the draft Asset Forfeiture Bill), legal structure (the BPA as the institutional hub across the tiers of the Attorney General's Office), and legal culture (community participation in determining recovery priorities), simultaneously.

CONCLUSIONS

Based on the findings and discussion above, four conclusions can be drawn, each responding to one of the research questions. First, the asset forfeiture framework under UNCAC Chapter V suffers from a philosophical limitation in being state-centric, whereby repatriated assets flow merely into general Non-Tax State Revenue (PNBP) without accounting for the social cost of corruption borne by the community. By contrast, the Trust Fund for Victims (TFV) scheme under the ICC's Rome Statute offers a victim-centric paradigm grounded in reparative justice, prescriptively allocating forfeiture proceeds toward victims' restitution, compensation, and rehabilitation.

Second, the adoption of the Non-Conviction Based (NCB) Asset Forfeiture doctrine in Indonesia's draft Asset Forfeiture Bill is a crucial legal instrument for overcoming the procedural deadlock of in personam criminal proceedings. By shifting the epicenter of the case to an in rem civil/administrative claim against the object of property, based on the preponderance of evidence (balance of probabilities), NCB can effectively overcome obstacles posed by differences in legal systems, foreign jurisdictions, and the offender's absence (in absentia), while still upholding due process of law and protection for bona fide third parties.

Third, the successful application of NCB within the draft Asset Forfeiture Bill requires a reconstruction of post-repatriation asset governance through the establishment of an earmarked fund. The institutional need for managing such a fund need not be met by establishing a new body, but can instead make use of the BPA, already established under Article 30A of Law No. 11 of 2021 and Attorney General's Regulation No. 3 of 2024, which already holds a normative mandate to return assets to “victims or entitled parties.” This reform transforms the face of asset recovery from mere property seizure by the state into a responsive legal instrument for restoring the fundamental rights of the community as corruption's primary victim.

Fourth, a model and procedure for channeling PNPB-deposited forfeiture proceeds can be formulated through five tiered stages, with the BPA as the implementing hub: determination and identification of victims from the judicial stage by the Asset Tracing and Forfeiture Center; conversion and functional deposit into a special PNPB account code by the Asset Settlement Center; verification and assessment of recovery needs together with the BPA's network down to the District Prosecutor's Office level; disbursement through transfer channels that already have a valid legal basis; and layered oversight and accountability. This model demonstrates that the proceeds of corruption asset forfeiture can be lawfully “given” to the community or harmed parties without violating the unity-of-treasury principle or adding new institutional complexity—thereby bridging the ideal of reparative justice with the administrative needs of state finance and the mandate already held by the Attorney General's Office.

REFERENCES

- 1) Arief, B. N. (2018). Bunga rampai kebijakan hukum pidana: Perkembangan penyusunan konsep KUHP baru (4th ed.). Kencana.
- 2) Arifin, M. (2021). Rekonstruksi mekanisme perampasan aset hasil korupsi berbasis keadilan reparatif di Indonesia [Doctoral dissertation, Universitas Gadjah Mada]. UGM Institutional Repository.
- 3) Asset Recovery Agency, Attorney General's Office of the Republic of Indonesia. (2024). Kedudukan, tugas, dan fungsi Badan Pemulihan Aset. <https://bpa.kejaksaan.go.id>
- 4) Atmasasmita, R. (2018). Hukum pidana transnasional. Gramedia Pustaka Utama.

- 5) Attorney General of the Republic of Indonesia. (2024). Attorney General's Regulation No. 3 of 2024 on the Fourth Amendment to Attorney General's Regulation No. PER-006/A/JA/07/2017 on the Organization and Working Procedures of the Attorney General's Office of the Republic of Indonesia.
- 6) Attorney General's Office of the Republic of Indonesia. (2024). Badan Pemulihan Aset gelar FGD percepatan penyelesaian barang rampasan dan barang sita eksekusi di Kejaksaan Republik Indonesia. <https://kejaksaan.go.id>
- 7) Attorney General's Office of the Republic of Indonesia. (2024). Pelantikan Kepala Badan Pemulihan Aset: Pembentukan Badan Pemulihan Aset mewujudkan penegakan hukum yang berorientasi memulihkan kerugian negara. <https://kejaksaan.go.id>
- 8) Azhar, M., & Waspih. (2020). Rekonstruksi regulasi perampasan aset hasil tindak pidana korupsi berbasis nilai keadilan. *Jurnal Hukum Ius Quia Iustum*, 27(2), 312–333.
- 9) Badan Pembinaan Hukum Nasional. (2022). Naskah akademik Rancangan Undang-Undang tentang Perampasan Aset Terkait dengan Tindak Pidana. Ministry of Law and Human Rights of the Republic of Indonesia.
- 10) Basel Institute on Governance. (2020). Returning stolen assets: A policy guide for international asset recovery. Basel Institute on Governance. <https://baselgovernance.org>
- 11) Cassella, S. D. (2015). Restitution and asset forfeiture: Dual instruments for victim compensation in financial crimes. *Journal of Money Laundering Control*, 18(4), 410–428.
- 12) Chaikin, D. (2010). Controlling the international proceeds of corruption and money laundering: An economic and legal perspective. *Journal of Financial Crime*, 17(4), 432–448.
- 13) Corruption Eradication Commission [Komisi Pemberantasan Korupsi]. (2021). Laporan pengkajian hukum: Efektivitas perampasan aset tanpa pemidanaan dalam penanggulangan tindak pidana korupsi di Indonesia. Directorate for InterAgency Network Development, KPK.
- 14) De Greiff, P. (Ed.). (2006). *The handbook of reparations*. Oxford University Press.
- 15) Draft Law of the Republic of Indonesia. (2023). Draft Law on the Forfeiture of Assets Related to Criminal Offenses.
- 16) Evans, C. (2012). *The right to reparation in international law for victims of armed conflict*. Cambridge University Press.
- 17) Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.
- 18) Global Survivors Fund. (2025). If corruption fuels conflict, asset recovery must fund reparations. Global Survivors Fund Policy Series. <https://www.globalsurvivorsfund.org>
- 19) Government of the Republic of Indonesia. (2005). Government Regulation No. 23 of 2005 on the Financial Management of Public Service Agencies. *State Gazette of the Republic of Indonesia* 2005 No. 48.
- 20) Government of the Republic of Indonesia. (2024). Presidential Regulation No. 155 of 2024 on the Ministry of Law. *State Gazette of the Republic of Indonesia* 2024 No. 261.
- 21) Greenberg, T. S., Samuel, L. M., Grant, W., & Gray, L. (2009). *Stolen asset recovery: A good practices guide for nonconviction based asset forfeiture*. The World Bank & UNODC StAR Initiative.
- 22) Gulo, C. D. Z. (2025). Revitalisasi posisi jaksa sebagai dominus litis dalam mewujudkan peradilan cepat. *Justitia et Pax Jurnal Hukum*, 41(2), 267.
- 23) Hafid, I. (2021). Perampasan aset tanpa pemidanaan dalam perspektif economic analysis of law. *Jurnal Lex Renaissance*, 6(3), 465–480.
- 24) Hiariej, E. O. S. (2016). *Prinsip-prinsip hukum pidana*. Cahaya Atma Pustaka.
- 25) International Center for Transitional Justice. (2004). The Rome Statute provisions on reparations and the Trust Fund for Victims. ICTJ Briefing Paper. <https://www.ictj.org>
- 26) International Criminal Court. (1998). Rome Statute of the International Criminal Court (U.N. Doc. A/CONF.183/9).
- 27) King, C., Walker, C., & Gurulé, J. (Eds.). (2018). *The Palgrave handbook of criminal finances and asset recovery*. Palgrave Macmillan.
- 28) Marzuki, P. M. (2021). *Penelitian hukum (Rev. ed.)*. Kencana.
- 29) McCarthy, C. (2009). Reparations and the International Criminal Court: The Trust Fund for Victims and its broader implications. *The International Journal of Human Rights*, 13(5), 682–698.
- 30) Moffett, L. (2014). *Justice for victims before the International Criminal Court*. Routledge.
- 31) Nurmandi, A., & Purnomo, E. P. (2021). Tata kelola pengembalian aset hasil korupsi dana desa berbasis akuntabilitas sosial. *Jurnal Antikorupsi Integritas*, 7(1), 55–72.
- 32) Organisation for Economic Co-operation and Development. (2019). Identification and recovery of proceeds of corruption: OECD report to G20 Anti-Corruption Working Group. OECD Publishing. <https://www.oecd.org>
- 33) Pradiptyo, R. (2012). Does corruption pay in Indonesia? If so, who are benefited the most? (MPRA Paper No. 41384). Munich Personal RePEc Archive. <https://mpra.ub.uni-muenchen.de/41384/>

- 34) Pradiptyo, R. (2019). Biaya sosial korupsi: Ketika kita adalah korban korupsi. Faculty of Economics and Business, Universitas Gadjah Mada.
- 35) Pradiptyo, R., & Wibowo, A. (2020). Menghitung biaya sosial korupsi sebagai dasar penetapan ganti rugi keadilan reparatif di Indonesia. *Jurnal Integritas: Jurnal Antikorupsi*, 6(2), 215–234.
- 36) Prasetyo, B., & Seno Adji, I. (2022). Formulasi perampasan aset tanpa pemidanaan (In Rem) dalam RUU Perampasan Aset untuk menembus yurisdiksi asing. *Jurnal Pembangunan Hukum Indonesia*, 4(3), 380–395.
- 37) Prasetyo, T. (2020). Earmarking Penerimaan Negara Bukan Pajak dalam perspektif hukum keuangan negara. *Jurnal Hukum dan Peradilan*, 9(2), 233–252.
- 38) Republic of Indonesia. (1999). Law No. 31 of 1999 on the Eradication of Corruption. State Gazette of the Republic of Indonesia 1999 No. 140.
- 39) Republic of Indonesia. (2001). Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption. State Gazette of the Republic of Indonesia 2001 No. 134.
- 40) Republic of Indonesia. (2003). Law No. 17 of 2003 on State Finance. State Gazette of the Republic of Indonesia 2003 No. 47.
- 41) Republic of Indonesia. (2004). Law No. 1 of 2004 on the State Treasury. State Gazette of the Republic of Indonesia 2004 No. 5.
- 42) Republic of Indonesia. (2004). Law No. 16 of 2004 on the Attorney General's Office of the Republic of Indonesia. State Gazette of the Republic of Indonesia 2004 No. 67.
- 43) Republic of Indonesia. (2010). Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering. State Gazette of the Republic of Indonesia 2010 No. 122.
- 44) Republic of Indonesia. (2014). Law No. 6 of 2014 on Villages. State Gazette of the Republic of Indonesia 2014 No. 7.
- 45) Republic of Indonesia. (2018). Law No. 9 of 2018 on Non-Tax State Revenue. State Gazette of the Republic of Indonesia 2018 No. 147.
- 46) Republic of Indonesia. (2021). Law No. 11 of 2021 on the Amendment to Law No. 16 of 2004 on the Attorney General's Office of the Republic of Indonesia. State Gazette of the Republic of Indonesia 2021 No. 250.
- 47) Rose-Ackerman, S., & Palifka, B. J. (2016). *Corruption and government: Causes, consequences, and reform* (2nd ed.). Cambridge University Press.
- 48) Smith, D. B. (2021). *Prosecution and defense of forfeiture cases*. Matthew Bender & Company.
- 49) Soekanto, S. (2014). *Faktor-faktor yang mempengaruhi penegakan hukum*. Rajawali Pers.
- 50) Stephenson, K. M., Gray, L., Power, R., Brun, J. P., Dunker, G., & Panjer, M. (2011). *Barriers to asset recovery: An analysis of the key barriers and recommendations for action*. The World Bank & UNODC STAR Initiative.
- 51) Stolen Asset Recovery Initiative. (2022). *Management of returned assets: Policy and practice*. World Bank & UNODC. <https://star.worldbank.org>
- 52) Supreme Court of the Republic of Indonesia. (2022). Supreme Court Regulation No. 1 of 2022 on Procedures for Awarding Restitution to Child Victims of Crime.
- 53) Syahrin, M. A. (2021). The implementation of victim-centric principles in transnational asset recovery mechanisms. *Indonesian Journal of International Law*, 18(3), 401–425.
- 54) UNCAC Coalition. (2025). *From repatriation to reparation: Promoting social justice through the recovery of stolen assets*. Civil Society Statement for UNCAC CoSP. <https://uncaccoalition.org>
- 55) United Nations Office on Drugs and Crime. (2004). *United Nations Convention Against Corruption (UNCAC)*. United Nations.
- 56) Utama, P. (2019). Tantangan dan prospek penerapan Non-Conviction Based (NCB) Asset Forfeiture dalam hukum pidana Indonesia. *Jurnal Integritas: Jurnal Antikorupsi*, 5(1), 45–62.
- 57) Vlasits, M. (2012). The United Nations Convention Against Corruption: A holistic approach in international legal order. *Journal of International Criminal Justice*, 10(4), 815–830.
- 58) Waluyo, B. (2018). *Pemberantasan korupsi dalam perspektif hukum pidana*. Sinar Grafika.
- 59) World Bank & UNODC. (2020). *Asset recovery handbook: A guide for practitioners* (2nd ed.). Stolen Asset Recovery Initiative.
- 60) Young, S. N. (Ed.). (2009). *Civil forfeiture of criminal property: Legal measures for confiscation of the proceeds of crime in the Western world*. Edward Elgar Publishing.
- 61) Zehr, H. (2015). *The little book of restorative justice: Revised and updated*. Good Books.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non-Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.