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Recovering Proceeds of Corruption Through Non-Conviction-Based Asset Forfeiture: A Procedural Model for Indonesia's Attorney General's Office

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Abstract
Indonesia's asset-recovery regime remains fragmented and predominantly dependent on criminal conviction, even though corruption proceeds may be transferred, concealed, dissipated, or held by third parties before a final judgment is obtained. This study examines how non-conviction-based asset forfeiture (NCBAF) can be incorporated into Indonesia's legal system without weakening due-process guarantees. It applies normative legal research using statutory, conceptual, and comparative approaches. Primary materials include the United Nations Convention against Corruption (UNCAC), Indonesian anti-corruption and prosecutorial legislation, the Swiss Criminal Code and Foreign Illicit Assets Act, and Part 5 of the United Kingdom's Proceeds of Crime Act 2002. The analysis shows that the United Kingdom provides a distinct civil-recovery route based on property obtained through unlawful conduct and adjudicated on the balance of probabilities, while Switzerland combines criminal-law confiscation provisions, value-based claims, presumptions concerning criminal organisations, and a special regime for illicit assets of foreign politically exposed persons. Indonesia already recognises limited civil actions, reversal of the evidential burden, confiscation, and prosecutorial asset-recovery powers, but these mechanisms do not yet constitute an integrated and autonomous NCBAF procedure. The article proposes a court-supervised procedural model led by the Attorney General's Office through the Asset Recovery Centre. The model comprises statutory triggering conditions, financial investigation, provisional freezing, an in-rem-oriented application, an initial evidentiary threshold borne by the prosecutor, a proportionate shift of the evidential burden, protection for bona fide third parties, reasoned judgments and appellate review, professional asset management, and transparent return of recovered assets. This model reconciles effective recovery of corruption proceeds with legality, proportionality, judicial control, the right to be heard, and protection of property.

Keywords:
asset recovery; corruption; due process of law; Indonesia; non-conviction-based asset forfeiture; prosecutorial authority

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INTRODUCTION

Corruption enforcement is incomplete when it identifies and punishes an offender but leaves the economic benefit of the offence beyond the reach of the state. Contemporary asset-recovery policy therefore moves beyond a purely suspect-centred strategy and combines criminal accountability with the tracing, preservation, confiscation, management, and return of criminal proceeds. UNCAC treats asset recovery as a fundamental principle and requires States Parties to establish measures for freezing, seizure, confiscation, international cooperation, and return of assets. Article 54(1)(c) specifically requires states to consider confiscation without a criminal conviction where prosecution is impossible because of death, flight, absence, or other appropriate circumstances (United Nations, 2004). Indonesia ratified the Convention through Law No. 7 of 2006 (Republic of Indonesia, 2006). International guidance similarly emphasises that NCBAF should be available as a complementary, rather than substitutive, mechanism and should be accompanied by judicial control and safeguards for affected persons (Brun et al., 2021; Greenberg et al., 2009; UNODC, 2024).

The practical relevance of asset recovery in Indonesia is reflected in the gap between the number of corruption cases processed and the value of losses attributed to those cases. Indonesia Corruption Watch reported 364 corruption cases involving 888 suspects in 2024, a decline from the 2023 enforcement level. The same report estimated potential state losses of approximately IDR 279.9 trillion in 2024, although approximately IDR 271 trillion of that figure arose from the tin-trading case involving the mining business licence area of PT Timah Tbk (Indonesia Corruption Watch, 2025). These figures should not be treated as a direct measure of corruption prevalence or as judicially determined losses in every case; however, they demonstrate the scale and concentration of the economic harm under investigation and the need to preserve assets at an early stage.

The Attorney General's Office occupies a central position in this field. Article 30A of Law No. 11 of 2021 authorises the Prosecution Service to trace, confiscate, and return assets derived from criminal offences and other assets to the state, victims, or other entitled persons (Republic of Indonesia, 2021). The institutional framework is supplemented by prosecutorial regulations on asset recovery and by the Asset Recovery Centre, which coordinates tracing, safeguarding, maintenance, confiscation, and return (Republic of Indonesia, 2020). The 2025 Criminal Procedure Code also regulates the execution and return of confiscated assets following a court judgment. These developments strengthen the institutional basis for asset recovery, but they do not, by themselves, establish an autonomous NCBAF cause of action with clear jurisdiction, evidentiary rules, procedural triggers, third-party protections, and remedies.

Indonesian anti-corruption legislation already contains partial mechanisms that may operate when conviction-based confiscation is unavailable. Articles 32, 33, and 34 of Law No. 31 of 1999 provide civil routes in specified circumstances; Article 38B introduces a limited evidential burden concerning assets disproportionate to lawful income; and Article 38C allows a civil claim concerning assets discovered after a final judgment. Nevertheless, these provisions remain attached to particular procedural circumstances and do not form a unified property-focused proceeding. The result is a fragmented regime in which asset preservation and recovery may depend on the progress or outcome of the criminal case, while complex ownership structures and cross-border transfers create additional obstacles (Sosiawan, 2020; Tantimin, 2023).

Prior Indonesian scholarship has largely established the urgency of NCBAF, assessed its compatibility with UNCAC, or compared Indonesia with jurisdictions such as the United States and the United Kingdom. The unresolved question is more specific: how should an Indonesian procedural model allocate authority, burdens of proof, judicial supervision, third-party rights, asset management, and avenues of review after the entry into force of the new Penal Code and Criminal Procedure Code? This study addresses that gap by comparing the functional architecture of Switzerland and the United Kingdom and translating the comparison into a prosecutor-led, court-controlled procedural model for Indonesia.

The article advances two arguments. First, NCBAF should not be understood as automatic confiscation based on suspicion or as a general reversal of the burden of proof. It is a judicial process in which the enforcement authority must first establish a legally defined nexus between the property and unlawful conduct; only then may an evidential burden concerning lawful origin shift proportionately to the respondent. Second, the comparative models cannot be transplanted mechanically. The United Kingdom's civil-recovery regime and Switzerland's confiscation framework arise from different legal traditions and institutional structures. Their transferable elements are therefore procedural principles—early preservation, property-focused adjudication, value-based recovery, judicially controlled presumptions, third-party protection, and transparent asset management—rather than wholesale replication of foreign statutes.

This study accordingly asks: (1) how do Switzerland and the United Kingdom structure property-focused recovery in a manner consistent with UNCAC; and (2) what procedural norms should govern NCBAF applications brought by Indonesia's Attorney General's Office while preserving due process of law?

METHODS

This study uses normative legal research. The statute approach examines Indonesian, Swiss, British, and international legal instruments governing confiscation and asset recovery. The conceptual approach analyses NCBAF, civil recovery, in-rem-oriented proceedings, value-based confiscation, evidentiary burdens, and due process. The comparative approach uses functional comparison: instead of assuming that identical terminology has identical legal effects, it asks how each jurisdiction solves the practical problem of recovering property linked to unlawful conduct when a criminal conviction is unavailable, delayed, or insufficient.

Primary legal materials comprise UNCAC; Law No. 31 of 1999 as amended by Law No. 20 of 2001; Law No. 7 of 2006; Law No. 11 of 2021; Law No. 1 of 2023; Law No. 20 of 2025; relevant prosecutorial regulations; Articles 70–72 of the Swiss Criminal Code; the Swiss Foreign Illicit Assets Act; and Part 5 of the United Kingdom's Proceeds of Crime Act 2002. Secondary materials include the Stolen Asset Recovery Initiative guides, FATF standards and guidance, UNODC's regional study on NCBAF, relevant case law, and Indonesian legal scholarship. Enforcement statistics are used only to contextualise institutional workload and potential state losses; they are not used to infer causal effectiveness.

The materials were analysed through four stages. First, the study identified the legal basis, object, triggering conditions, competent authority, standard of proof, and remedies in each jurisdiction. Second, it distinguished conviction-based confiscation, non-conviction confiscation, civil recovery, extended confiscation, and value-based claims. Third, it assessed each mechanism against due-process criteria: legality and foreseeability; judicial authorisation; notice and the right to be heard; access to evidence and counsel; proportionality; protection of bona fide third parties; reasoned decisions; and effective review. Fourth, it formulated a prescriptive model for Indonesia by combining transferable comparative principles with the Attorney General's existing statutory mandate and institutional infrastructure.

Progressive legal theory is used as a reform-oriented lens: legal procedure should respond to the social and economic reality of corruption rather than allow formal dependence on conviction to defeat recovery. The theory of justice supplies the counterweight: institutional effectiveness is legitimate only when procedures distribute risks fairly and protect persons who may lose property. The analysis therefore rejects both extremes—an ineffective regime that permits unjust enrichment and an overbroad regime that treats unexplained wealth as conclusive proof of criminal origin (Mahmud, 2020; Rawls, 1999).

RESULTS AND DISCUSSION

3.1. International baseline: NCBAF as a complementary and judicially controlled mechanism

UNCAC does not require every state to adopt a single universal model of civil forfeiture. Article 54(1)(c) uses the language of consideration, leaving room for domestic legal traditions, but it clearly recognises that confiscation may be necessary when conviction cannot be obtained. Article 31 protects the rights of bona fide third parties, while Chapter V links domestic confiscation to international cooperation and return. The Convention therefore supports a system in which the property nexus is adjudicated separately from the criminal liability of an individual, provided that the measure is ordered by a court or competent authority and subject to legal safeguards (United Nations, 2004).

The StAR principles add operational content. NCBAF should be autonomous from criminal proceedings, apply to proceeds and instrumentalities, permit substitute-value claims where the original asset is unavailable, allow provisional measures without prior notice where dissipation is likely, and preserve the claimant's ability to contest the action. The enforcement authority must establish the factual foundation of the claim; statutory presumptions may assist the court but should be rebuttable and proportionate (Brun et al., 2021; Greenberg et al., 2009). FATF's revised standards likewise emphasise early financial investigation, asset management, international cooperation, and mechanisms that do not depend exclusively on conviction (FATF, 2023, 2025).

Human-rights jurisprudence confirms that non-conviction confiscation is not inherently incompatible with property rights. In Gogitidze and Others v. Georgia, the European Court of Human Rights treated the proceeding as a civil action in rem and accepted a balance-of-probabilities approach where the respondents had a reasonable opportunity to contest the prosecutor's evidence. The judgment is not a blank authorisation for confiscation; its significance lies in the combination of a legitimate anti-corruption purpose, a sufficiently clear legal basis, adversarial proceedings, access to review, and proportionality (European Court of Human Rights, 2015).

3.2. Switzerland: confiscation, equivalent-value claims, and the foreign-PEP regime

Swiss law should be characterised carefully. Articles 70–72 of the Swiss Criminal Code are confiscation provisions within a criminal-law framework; they are not a direct equivalent of the United Kingdom's separate civil-recovery cause of action. Their functional relevance to NCBAF lies in the fact that confiscation may focus on the asset and may, in appropriate circumstances, proceed independently of the conviction or even the criminal liability of a particular person. Article 70 permits forfeiture of assets acquired through an offence or intended to induce or reward an offence, subject to restitution to the injured person and protection for a good-faith third party who provided adequate value. Article 71 authorises an equivalent-value claim when the original assets are no longer available. Article 72 creates a rebuttable presumption concerning assets over which a criminal organisation has power of disposal (Swiss Confederation, 1937/2026).

Three features are transferable. First, confiscation targets the economic connection between the property and the offence, while victim restitution takes priority over transfer to the state. Second, equivalent-value claims prevent offenders from defeating recovery by consuming, transferring, or transforming the original property. Third, third-party protection depends on knowledge, consideration, and proportionality rather than formal title alone. These features are important in corruption cases involving nominees, commingled property, corporate vehicles, or cross-border layering.

Switzerland also maintains a specialised framework for assets held by foreign politically exposed persons. The Foreign Illicit Assets Act, in force since 2016, governs freezing, confiscation, and restitution where mutual legal assistance is likely to fail because the state of origin is unable to satisfy the ordinary requirements. The regime is exceptional and condition-dependent; it should not be presented as a general power to confiscate any suspicious foreign asset. Its importance for Indonesia lies in the integration of preventive freezing, judicial confiscation, international cooperation, and restitution for the benefit of the population of the state of origin (Federal Department of Foreign Affairs, 2026; Swiss Confederation, 2015).

Table 1. Functional elements of the Swiss asset-recovery framework

Instrument	Core rule	Procedural significance	Due-process safeguard
Swiss Criminal Code, art. 70	Forfeiture of assets acquired through or intended for an offence.	Property nexus; restitution to injured persons.	No forfeiture against qualifying good-faith third parties; proportionality.
Swiss Criminal Code, art. 71	Equivalent-value state claim when the original asset is unavailable.	Prevents dissipation or transformation from defeating recovery.	Third-party liability remains subject to art. 70(2).

Instrument	Core rule	Procedural significance	Due-process safeguard
Swiss Criminal Code, art. 72	Forfeiture of assets controlled by a criminal organisation; rebuttable presumption.	Facilitates recovery from organised structures and nominees.	The presumption is rebuttable and adjudicated by a court.
Foreign Illicit Assets Act	Freezing, confiscation, and restitution of illicit assets of foreign PEPs in exceptional circumstances.	Links domestic measures to international restitution.	Statutory conditions, judicial confiscation, and purpose-bound restitution.

Source: Authors' analysis of the Swiss Criminal Code and the Foreign Illicit Assets Act.

3.3. United Kingdom: civil recovery under Part 5 of the Proceeds of Crime Act 2002

Part 5 of the Proceeds of Crime Act 2002 (POCA) establishes a distinct civil-recovery regime. Section 240 enables an enforcement authority to recover property that is, or represents, property obtained through unlawful conduct, irrespective of whether criminal proceedings have been brought in connection with that property. Section 241 defines unlawful conduct and expressly provides that whether the conduct occurred is determined on the balance of probabilities. Proceedings for a recovery order may be brought in the High Court against a person believed to hold recoverable property under section 243, while section 245A permits a property-freezing order where there is a good arguable case that the property is recoverable or associated property. A final recovery order is governed principally by section 266 (Hamin et al., 2025; United Kingdom, 2002).

The British model is property-focused but procedurally adversarial. The enforcement authority must identify the property and plead the unlawful conduct that gives it recoverable status. The civil standard does not eliminate the claimant's burden; it changes the degree of persuasion required. The respondent receives notice, may dispute the alleged conduct and tracing analysis, may establish legitimate ownership interests, and may seek exclusion of property required for living or legal expenses subject to statutory conditions. Associated-property rules allow the court to address commingled interests without automatically confiscating the lawful share of another owner.

The model's principal strengths are institutional separation from the criminal trial, access to early freezing orders, tracing of substituted and mixed property, and a clear civil standard of proof. Its risks are equally instructive. Freezing may cause severe economic effects before final adjudication, complex tracing can create informational asymmetry, and litigation costs may impair effective participation. An Indonesian model should therefore adopt the architecture only together with time limits, disclosure duties, judicial reconsideration of interim orders, legal representation, and explicit proportionality review.

Table 2. Core provisions of the United Kingdom's civil-recovery regime

POCA provision	Legal function	Evidentiary/procedural effect	Safeguard
s. 240	General purpose of civil recovery.	Recovery may proceed whether or not related criminal proceedings have been brought.	Court-supervised civil proceedings.
s. 241	Meaning of unlawful conduct.	Occurrence of unlawful conduct is decided on the balance of probabilities.	The authority must prove the pleaded unlawful conduct and property nexus.
s. 243	Proceedings for a recovery order.	Claim brought against a person believed to hold recoverable property; notice to affected holders.	Service, participation, and opportunity to contest.
s. 245A	Property-freezing order.	Interim preservation where there is a good arguable case.	Judicial order; affected persons may seek variation or discharge.
s. 266	Recovery order.	Vests recoverable property in a trustee for civil recovery.	Exclusions and third-party interests remain subject to statutory adjudication.

Source: Authors' analysis of Part 5 of the Proceeds of Crime Act 2002.

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3.4. Indonesia's existing framework and the remaining normative gap

Indonesia's positive law is no longer accurately described as containing only post-conviction confiscation. Law No. 31 of 1999, as amended, contains several civil and evidentiary mechanisms. Article 18 authorises confiscation and substitute-payment orders as additional criminal sanctions. Articles 32–34 permit civil proceedings in specified situations, including insufficient evidence of the criminal offence despite an actual state loss, the death of a suspect during investigation, and the death of an accused during trial. Article 38B requires the accused to explain assets disproportionate to income in the context of the criminal case, and Article 38C permits a civil claim for assets discovered after a final judgment. These provisions demonstrate legislative acceptance of recovery beyond ordinary confiscation, but their fragmented triggers and connection to the criminal process limit their use as a comprehensive NCBAF regime (Republic of Indonesia, 1999, 2001).

The new Penal Code recognises confiscation of specified property as an additional penalty, while the 2025 Criminal Procedure Code regulates seizure, auction, and return after court orders. Article 345(4) requires the prosecutor to return confiscated assets to victims or entitled persons within the statutory period when the court orders asset recovery. This provision strengthens execution and victim-oriented return, but it does not create a separate non-conviction application, define recoverable property, prescribe a civil standard, or establish the relation between an NCBAF judgment and later criminal proceedings (Republic of Indonesia, 2023, 2025).

The institutional foundation is stronger. Article 30A of Law No. 11 of 2021 gives the Prosecution Service express authority over tracing, confiscation, and return. Prosecutorial regulations establish an integrated asset-recovery system and the Asset Recovery Centre. The regulatory gap is therefore procedural rather than merely institutional: legislation must define when the Attorney General may commence the action, what evidence is required, which court has jurisdiction, how interim orders are reviewed, how third parties participate, and how assets are managed and returned.

The continuing legislative relevance of this gap is confirmed by the status of the Asset Forfeiture Bill. As of 4 August 2026, the bill remained in the 2026 National Legislation Programme and was still under discussion in the House of Representatives; it had not become an enacted statute (House of Representatives of the Republic of Indonesia, 2026). Any journal submission must therefore avoid referring to the bill as positive law.

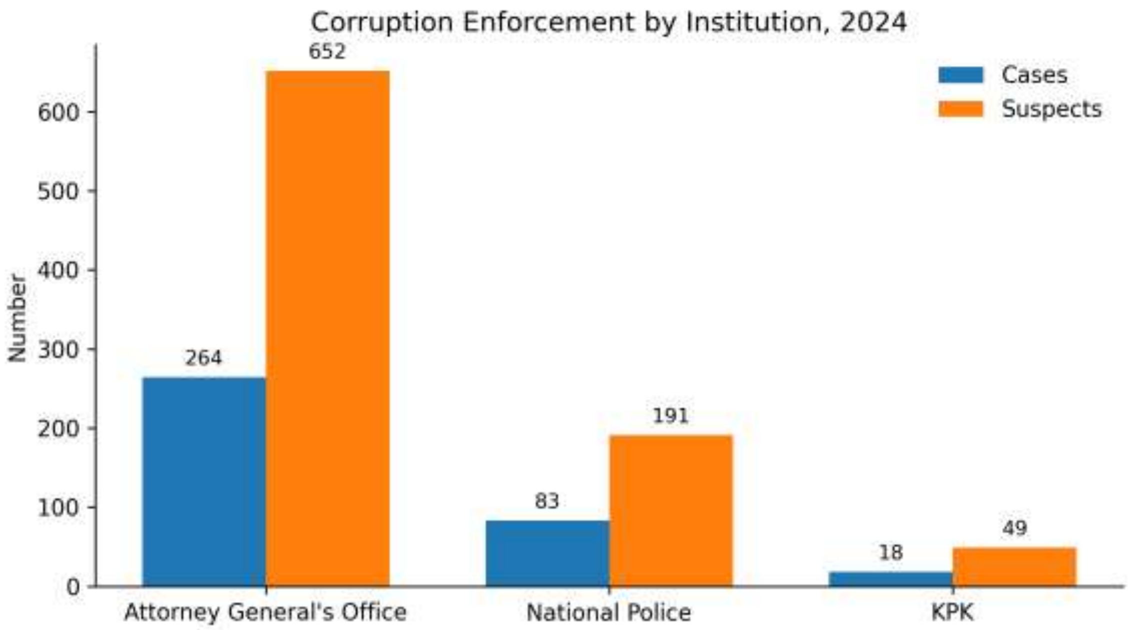

Figure 1. Corruption enforcement by institution in 2024.

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Source: Reconstructed from Indonesia Corruption Watch (2025).

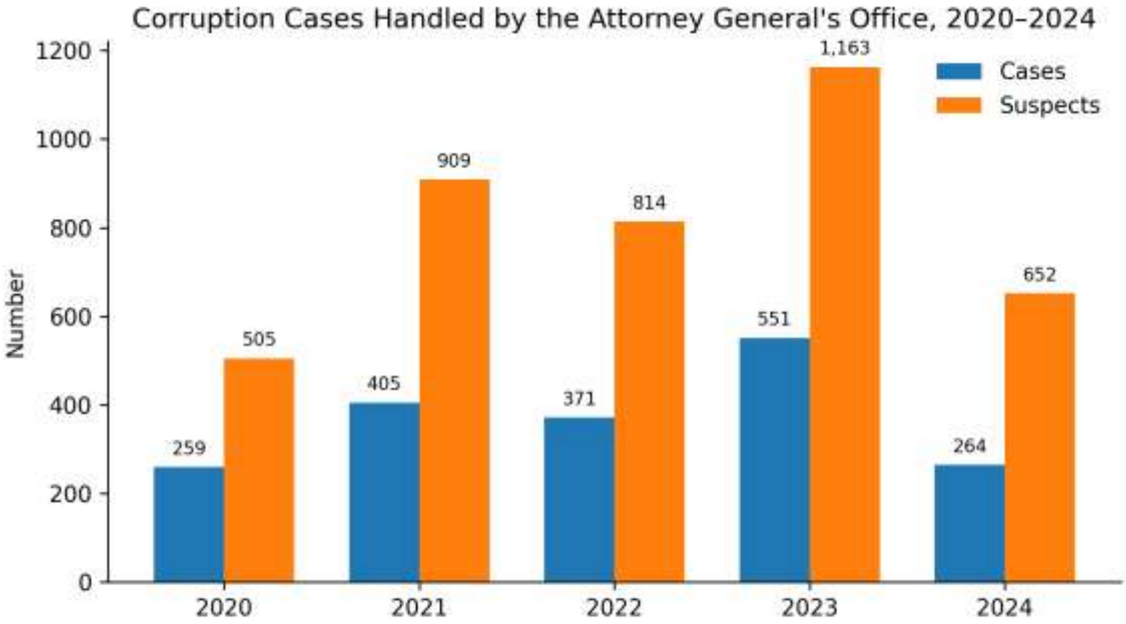

Figure 2. Corruption cases and suspects handled by the Attorney General's Office, 2020–2024. Source: Reconstructed from Indonesia Corruption Watch (2025).

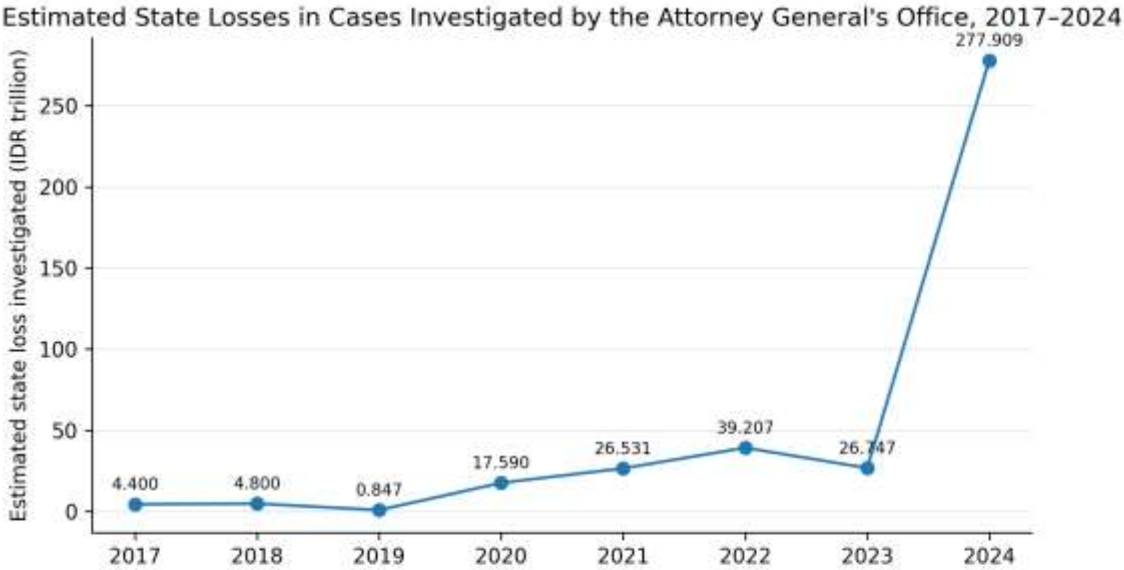

Figure 3. Estimated state losses in cases investigated by the Attorney General's Office, 2017–2024. Source: Reconstructed from Indonesia Corruption Watch (2025). The 2024 value is dominated by the PT Timah case and should not be interpreted as a general annual trend.

3.5. Comparative assessment

The comparison reveals different legal forms but convergent operational principles. The United Kingdom offers the clearest autonomous civil-recovery procedure. Switzerland provides a broader confiscation toolkit within criminal law and a specialised foreign-PEP statute. Indonesia has important building blocks but no single procedure connecting them. The relevant distinction is therefore not a binary choice between 'criminal' Indonesia and 'civil' foreign systems. It is the degree to which each system permits early preservation and property-focused adjudication without making final conviction the exclusive gateway to recovery.

A legally sound Indonesian model should incorporate six comparative lessons. It should: (1) define recoverable property, including direct proceeds, transformed property, mixed property, instrumentalities, and equivalent value; (2) authorise an application only under specified triggering conditions; (3) require an initial evidentiary showing by the prosecutor before any burden concerning lawful origin shifts; (4) preserve property through time-limited, reviewable freezing orders; (5) protect bona fide third parties and proportional lawful interests; and (6) integrate confiscation with professional management, victim compensation, state-loss recovery, and international return.

Table 3. Comparative matrix and implications for Indonesia

Indicator	Indonesia	Switzerland	United Kingdom
Primary legal form	Criminal confiscation plus limited civil claims and evidential mechanisms.	Criminal-law confiscation, equivalent-value claims, and a special foreign-PEP regime.	Autonomous civil recovery under POCA Part 5.
Dependence on conviction	Usually central; limited statutory exceptions exist.	Not invariably dependent on conviction or personal criminal liability.	Civil recovery may proceed irrespective of criminal proceedings.
Object	Specific assets, substitute payment, and assets subject to limited civil claims.	Proceeds, instrumentalities, equivalent value, and criminal-organisation assets.	Recoverable property, associated property, cash, account funds, and listed assets.
Proof	Criminal standard in prosecution; limited reverse evidential burden and civil routes.	Court evaluates the offence-property nexus; statutory presumptions are limited and rebuttable.	Balance of probabilities under POCA s. 241.
Interim preservation	Seizure and blocking powers exist, but no integrated NCBAF timetable.	Seizure/freezing under criminal procedure and specialised statutes.	Property-freezing order on a good arguable case.
Third-party protection	Recognised but dispersed across statutes and procedure.	Good-faith acquisition and adequate value protected.	Notice, associated-property adjudication, exclusions, and variation/discharge remedies.
Institutional lead	Attorney General's Office and Asset Recovery Centre have express asset-recovery authority.	Prosecutorial, judicial, mutual-assistance, and federal authorities.	Designated enforcement authorities and the High Court.
Reform implication	Create a single court-supervised NCBAF procedure integrated with existing prosecutorial powers.	Adopt value-based recovery and calibrated presumptions.	Adopt autonomous proceedings, civil proof, and reviewable freezing orders.

Source: Authors' comparative analysis.

3.6. Proposed procedural model for the Attorney General's Office

The proposed model is not a power of administrative confiscation. It is a special judicial proceeding initiated by the Attorney General's Office and adjudicated by a designated court. The proceeding should be classified by statute as civil or sui generis for procedural purposes, while expressly stating that its judgment does not determine the criminal guilt of any person. The central issue is whether the identified property is recoverable property within the statutory definition.

Jurisdiction should lie with a specialised chamber of the general court or corruption court, with territorial rules based on the location of the property, the respondent, or the predicate conduct. Centralised jurisdiction may be appropriate for cross-border or high-value cases, but access to local courts is necessary where affected third parties would otherwise face disproportionate cost. The Attorney General, acting through authorised prosecutors and coordinated by the Asset Recovery Centre, should have standing to apply. Other investigative bodies should be required to transmit asset intelligence through a legally regulated coordination mechanism.

The statute should define triggering conditions exhaustively. An application may be brought where: the alleged offender has died; absconded or remains absent after reasonable efforts; is permanently unfit to stand trial; enjoys immunity that prevents prosecution but not property adjudication; the prosecution is legally impossible for reasons not amounting to an acquittal on the merits; the property is held by a third party or legal person and cannot effectively be recovered through the criminal case; or a final conviction cannot reach newly discovered, substituted, or foreign-located assets. The phrase 'other appropriate cases' should not be left open-ended without criteria, because broad discretion would undermine foreseeability.

Before filing, the prosecutor should conduct a parallel financial investigation that identifies the property, beneficial owner, transaction path, lawful income profile, third-party interests, and risk of dissipation. Access to banking, tax, company, land, customs, and beneficial-ownership data must be based on statute and subject to confidentiality and data-protection controls. The case file should separate intelligence from admissible evidence and preserve a documented chain of custody.

A provisional freezing order may be granted without notice where advance notice creates a real risk of transfer, concealment, destruction, or depreciation. The prosecutor should establish a good arguable case that the property is recoverable and that the order is necessary. An ex parte order must be short in duration, served promptly, and followed by an inter partes review. The court should be empowered to allow reasonable living expenses, business continuity, asset maintenance, and legal costs when these do not frustrate recovery.

The originating application should identify the property with reasonable precision, describe the alleged unlawful conduct, explain the tracing methodology, specify the statutory trigger, disclose known third-party interests, and state whether equivalent-value recovery is sought. Public notice may be used for unknown claimants, but publication should not replace direct service on persons whom the prosecutor can reasonably identify.

The burden of proof should be structured in two stages. First, the prosecutor must prove on the balance of probabilities that the alleged unlawful conduct occurred and that the property constitutes proceeds, transformed proceeds, commingled value, an instrumentality, or substitute value. A mere discrepancy between wealth and reported income is insufficient by itself. Second, after the prosecutor establishes a prima facie property nexus through objective evidence, the respondent bears only an evidential burden to explain lawful origin or a protected interest. The ultimate legal burden remains with the applicant. This design prevents the phrase 'reverse burden of proof' from becoming a presumption of guilt.

Third parties should be permitted to intervene and assert ownership, security, inheritance, matrimonial, contractual, or trust interests. Protection should depend on good faith, value provided, knowledge or constructive knowledge of the unlawful origin, and the proportional extent of the lawful interest. Formal title should not automatically defeat recovery where the holder is a nominee, but family relationship alone should not establish bad faith.

The court's final order may dismiss the application, recover all or part of the property, order equivalent value, protect or compensate a lawful interest, return property to a victim, or establish conditions for sale and distribution. The judgment must contain findings on the unlawful conduct, property nexus, evidence, third-party claims, proportionality, and destination of the recovered value. Appeal should suspend irreversible disposal unless the asset is perishable or rapidly depreciating; in that event, sale proceeds should be held in escrow pending final resolution.

Asset management should begin at the preservation stage, not after final confiscation. The Asset Recovery Centre should maintain a national inventory, valuation record, maintenance plan, conflict-of-interest controls, audit trail, and disposal strategy. Businesses, securities, digital assets, vehicles, commodities, and real property require different management protocols. Net proceeds should be allocated according to a transparent hierarchy: restoration to identifiable victims or entitled persons; satisfaction of legally established state loss; return to a requesting foreign state under UNCAC and applicable agreements; and deposit of residual proceeds into the state treasury.

Table 4. Proposed NCBAF procedure and minimum due-process safeguards

Stage	Principal rule	Prosecutor/Asset Recovery Centre responsibility	Minimum safeguard
1. Trigger assessment	Verify a statutory ground for NCBAF.	Document why conviction-based recovery is unavailable or inadequate.	Exhaustive statutory grounds; written authorisation.
2. Financial investigation	Trace direct, transformed, mixed, and substitute assets.	Obtain records lawfully; identify beneficial owners and third parties.	Data protection, relevance, chain of custody.
3. Provisional preservation	Seek a freezing order where dissipation risk exists.	Show a good arguable case and necessity.	Judicial authorisation; prompt service; inter partes review; time limit.
4. Filing and notice	Submit a property-specific application.	Plead unlawful conduct, property nexus, evidence, and relief.	Direct notice, public notice for unknown claimants, access to case materials.
5. Evidentiary hearing	Court applies the balance of probabilities.	First establish a prima facie nexus through objective evidence.	Ultimate burden remains with applicant; respondent may rebut and cross-examine.
6. Third-party claims	Adjudicate lawful interests before final recovery.	Disclose known claims and nominee indicators.	Good-faith and proportional-interest protection.
7. Judgment and appeal	Issue a reasoned recovery, partial-recovery, equivalent-value, or dismissal order.	Propose destination and management of assets.	Reasoned judgment, appellate review, stay of irreversible disposal.
8. Management and return	Preserve value, dispose transparently, and return proceeds.	Inventory, valuation, audit, sale, compensation, and international return.	Independent audit, public reporting, conflict controls, victim priority.

Source: Authors' normative formulation based on UNCAC, StAR guidance, POCA Part 5, and the Swiss framework.

3.7. Due process as an operational constraint, not a rhetorical formula

Due process must operate at every stage. Legality requires precise definitions and prospective application. Judicial control requires that freezing and final recovery be ordered by an independent court. The right to be heard requires notice, access to the material case, sufficient time, representation, and the ability to challenge tracing and valuation evidence. Proportionality requires the court to distinguish tainted value from lawful value and to consider less restrictive measures where feasible.

The relationship with criminal proceedings must also be regulated. Evidence obtained in the NCBAF case may be used in a criminal case only under ordinary evidentiary rules. Statements compelled solely to explain property should not automatically be used to prove criminal guilt. An acquittal based on a judicial finding that the alleged conduct did not occur should ordinarily preclude an inconsistent NCBAF judgment concerning the same conduct, while dismissal for death, flight, incapacity, limitation, or procedural impossibility should not. The statute should contain rules on lis pendens, res judicata, and suspension to avoid contradictory judgments.

Effective remedies are essential. Affected persons should be able to seek variation or discharge of a freezing order, challenge excessive scope, request release for legitimate expenses, appeal the final judgment, and claim compensation where an interim order was obtained through material non-disclosure or misconduct. Public reporting should disclose aggregate values and destinations without prejudicing ongoing cases or privacy. These safeguards are not obstacles to recovery; they are conditions for the legitimacy and durability of the regime.

CONCLUSION

Switzerland and the United Kingdom demonstrate that the recovery of corruption proceeds need not depend exclusively on a final criminal conviction. Their systems differ in legal form: Switzerland relies on confiscation provisions within criminal law, equivalent-value claims, and an exceptional foreign-PEP regime, whereas the United Kingdom provides an autonomous civil-recovery route under Part 5 of POCA. The transferable common elements are property-focused adjudication, early preservation, a civil or proportionate evidentiary standard, value-based recovery, judicial supervision, and protection of bona fide third parties.

Indonesia already possesses substantial components of an asset-recovery system: limited civil actions under the Anti-Corruption Law, evidential mechanisms, confiscation and substitute-payment sanctions, express asset-recovery authority for the Prosecution Service, an Asset Recovery Centre, and new rules on execution and return in the 2025 Criminal Procedure Code. The deficiency is the absence of a coherent, autonomous, and court-supervised NCBAF procedure. The Asset Forfeiture Bill remained under legislative discussion as of 4 August 2026 and should be formulated with this procedural gap in mind.

The proposed model assigns the Attorney General's Office standing to bring a special property-focused application under exhaustive statutory triggers. It requires a parallel financial investigation, time-limited and reviewable freezing orders, an initial evidentiary threshold borne by the prosecutor, a calibrated evidential burden on the respondent, protection of lawful third-party interests, reasoned judgments, appellate review, professional asset management, and transparent return. This structure preserves the substantive objective that crime should not generate economic advantage while ensuring legality, proportionality, judicial control, and meaningful participation. It therefore offers a more defensible basis for recovering state losses than either continued dependence on conviction or an overbroad confiscation power based on suspicion alone.

Limitations and Future Research

This study is doctrinal and comparative. It does not measure recovery rates, litigation duration, administrative cost, or the institutional capacity of the Asset Recovery Centre. Publicly reported enforcement and loss figures describe allegations and investigative outputs and should not be equated with final judicial findings. Future research should test the proposed model through case mapping, interviews with prosecutors, judges, financial investigators, asset managers, defence lawyers, and affected third parties, and a regulatory-impact assessment of court workload, legal-aid needs, and asset-management costs.

Further comparative work should also examine jurisdictions with civil-law traditions closer to Indonesia and evaluate the interaction between NCBAF, anti-money-laundering proceedings, beneficial-ownership transparency, bankruptcy, inheritance, tax assessment, and international mutual legal assistance.

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