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Repositioning And Re-Empowering The Corruption Eradication Commission In Indonesia

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ABSTRACT
The revision of the Corruption Eradication Commission (KPK) Law has been viewed as weakening the institutional independence and effectiveness of the KPK. Several changes have raised concern, particularly the placement of KPK under the executive branch, the conversion of KPK employees into State Civil Apparatus, and the requirement that certain coercive measures obtain approval from the Supervisory Board. These developments show the need to re-empower the KPK in the fight against corruption. This article examines the ideal institutional position of the KPK and the proper focus of its authority so that it can perform its duties effectively. The purpose of this research is to formulate an institutional framework that strengthens the KPK's role in eradicating corruption. This study uses a normative juridical method with a statutory approach. The analysis is based on secondary legal materials, including literature on corruption eradication and asset recovery, and is presented descriptively analytically. The findings of this study are expected to contribute to legislative policy reform aimed at repositioning and strengthening the KPK. In particular, KPK should be placed as the primary investigative body in corruption cases, granted authority to carry out Non-Conviction Based Asset Forfeiture, and encouraged to work in synergy with the prosecutor's Office as a prosecution institution. This arrangement would support a system of checks and balances in the law enforcement process. Ultimately, these reforms are necessary to make eradication of corruption and the recovery of state losses more effective.

Keywords: *Reposition, Rearmament, Investigation, Asset Confiscation.*

I. INTRODUCTION

Following the amendment of Law No. 30 of 2002 concerning the Corruption Eradication Commission (KPK), the independence of the Commission in carrying out its anti-corruption mandate has been significantly questioned. The amendment, enacted through Law No. 19 of 2019, is considered by many observers to contain provisions that may restrict the operational

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freedom and authority of the KPK in performing its duties. Several changes introduced by the law are viewed as having the potential to affect the effectiveness of enforcement, investigation, and prosecution of corruption cases, which have long been central to the KPK's mandate. These regulatory changes have also raised concerns about the weakening of the KPK's independence as a state institution that should remain free from government intervention and political interests. As a result, the amendment has triggered public criticism and debate, particularly because independence is a key factor in enabling the KPK to combat corruption professionally, objectively, and fairly (Fuady, 2025).

One major concern relates to the position of the KPK is an institution within the executive branch. This shift can be seen as an ahistorical step backward, considering that the KPK was originally established to respond to long-standing weaknesses in corruption law enforcement, particularly the Attorney General's Office and the National Police (Paramitha & Husodo, 2023). In addition, the classification of KPK employees as State Civil Aparatus may weaken the performance of the KPK, which was initially designed as an independent state commission. The status may become a serious obstacle because the bureaucracy has historically been vulnerable to political co-optation and struggles for power. These factors may prevent the KPK from acting independently and freely in carrying out its duties and exercising its authority. Another significant issue concerns the use of coercive measures during investigations, particularly wiretapping, which now requires approval from the Supervisory Board. In practice, oversight of law enforcement authority, including the authority exercised by the KPK, can be sufficiently maintained through the horizontal control mechanisms within the criminal justice system (Huda, Yunan, et al., 2025).

In practice, efforts to weaken the KPK can be divided into two main categories. The first involves regulatory measures, such as the enactment of new legislative policies that directly affect the Commission. The second involves non-regulatory measures, including criminalization, intimidation, and other actions aimed at disrupting the work of the KPK's commissioners and employees (Narendro Setyo Pratomo Baskoro, 2024). The criminalization of KPK officials, as reflected in the "Cicak vs. Buaya" cases Volume I (2009), Volume II (2012–2015), and Volume III (2015–2016), significantly weakened the institution. These cases affected the collective leadership of the omission, particularly when several commissioners were named as suspects. Similar efforts were also directed at KPK staff, including fabricated cases against the Commission's lead investigator, which even threatened his employment status (Sumardiana et al., 2024). The amendment to the KPK through Law No. 19 of 2019 can therefore be seen as the culmination of a long process of institutional weakening. This was followed by the dismissal of several KPK employees

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through Decree No. 652 of 2021 after they were declared to have failed the National Ideology Test. Ironically, many of these employees had long been regarded as the most committed figures in the fight against corruption. This development may be understood as a form of weakening of the KPK (Nurhaliza Trie Anna Dewi, 2025).

The weaknesses described above have also been examined in several previous studies. One of them is Rita Kalalinggi's study (2021), entitled "The Weakening of the Corruption Eradication Commission: The Death of Democracy," which discusses various provisions in the KPK Law that weaken the Corruption and explores implications for democracy (Kalalinggi, 2021). Another relevant study is Nurhaliza Trie Anna Dewi (2025), entitled "The Role of the Corruption Eradication Commission in Combating Corruption in Indonesia," Which focuses on the role of the KPK under the revised legal framework (Nurhaliza Trie Anna Dewi, 2025). A different perspective is offered by W. Winingsih et al. in their study, "A Critical Discourse Analysis Using Van Dijk's Model of the Issue of the Weakening of the Corruption Eradication Commission in Narasi Newsroom Coverage." This study examines how media discourse represents the weakening of the KPK through critical discourse analysis (Winingsih et al., 2022). Another study examining was conducted by Yuni Amanda et al., entitled "Resolution of Jurisdictional Disputes Between the Corruption Eradication Commission and the Attorney General's Office at the Constitutional Court." This study focuses on Constitutional Court decisions concerning overlapping authority between the KPK and the Attorney General's Office in corruption eradication (Amanda et al., 2025).

Based on previous studies, it is evident that the amendments to the Corruption Eradication Commission Law have reduced the effectiveness of corruption eradication efforts. However, these studies have not yet offered a balanced analysis of how the KPS's exercise of authority, particularly in conducting inquiries, inquiries, and prosecutions of corruption cases, has also produced certain negative consequences. These consequences mainly arise from weak accountability and the absence of adequate checks and balances. As a result, there has been a perception that the rights of suspects or defendants may, in certain situation, be overlooked. This perception later became one of the formal justifications for revising the KPK Law. In other words, previous research has largely focused on the negative impact of the legal revision on the institutional position of the KPK, but has not sufficiently examined the problems that may arise from the KPK's board of authority as a "super body." Nor has it fully attempted to provide an objective evaluation or a balanced solution to ensure that the KPK remains strong while also being accountable.

In regard to this background, the purpose of this study is rehabilitating KPK-independent agency in combating corruptions as well as re-enabling it by

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restricting its assignments within law enforcement and giving it a new authority. It aims to put the KPK in a better position against corruption in Indonesia. Thus, in this context, the KPK should only handle the investigation of corruption crimes while the prosecution is entirely assigned to Attorney General's Office. This kind of system will provide a more accountable and even due process compliant for law enforcement (Wardani, 2019). Simultaneously, the KPK must be re-empowered to seize assets without waiting for a criminal conviction. This is where the current study deviates from work that has come before. The originality of this study resides in its own development idea: a repositioning of the KPK in fighting against corruption.

In light of the foregoing, the main research question of this study is: what institutional framework is most appropriate for the KPK, and how should its authority be focused so that it carries out its duties effectively, remain accountable, and maintain checks and balances with prosecutorial institutions within the criminal justice system? This question is closely related to the need to reposition and re-empower the Corruption Eradication Commission in combating corruption in Indonesia.

II. RESEARCH METHODS

The study uses normative legal research method. Normative legal research is a form of legal research that applies a statutory approach, relies on secondary data sources, and uses descriptive analysis methods (Yustia et al., 2026). The main legal instruments examined in this study are Law No. 30 of 2002, as amended by Law No. 19 of 2019 concerning the Corruption Eradication Commission, hereinafter referred to as the KPK Law. This study examines Law No. 1 of 2023 concerning Criminal Code, Law No. 1 of 2026 concerning Criminal Penalty Adjustments, and Law No. 20 of 2025 concerning the Criminal Procedure Code, along with their implementing regulations.

Secondary data were analyzed and presented to emphasize the importance of repositioning and strengthening of the KPK. This approach was chosen because institutional reform, when understood as part of legislative policy, provides a more appropriate basis for repositioning and strengthening the KPK. In this context, when legal reform through an evolutionary judicial process is no longer sufficiently effective, a more progressive approach becomes necessary.

Furthermore, the principles developed in the 2023 Criminal Code and the 2025 Criminal Procedure Code contribute positively to determining the direction of the KPK's repositioning and strengthening, particularly by emphasizing the importance of checks and balances in the exercise of law enforcement authority (Hasna & Jaya, 2020). The authority of law enforcement officials, including investigators and prosecutors, is attributive in nature. This

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means that such authority is granted directly by law, and therefore any expansion of authority must be carried out through proper regulatory mechanisms.

In addition, the mechanism for supervising the exercise of authority by investigators and public prosecutors in corruption cases has changed the authority following the revision of the KPK Law. This supervisory function is now placed under the authority of the Supervisory Board. However, this arrangement may conflict with the concept of horizontal oversight within the criminal justice system, a concept that has been further strengthened in the 2025 Criminal Procedure Code. Therefore, in order to harmonize these authorities, a legislative approach is required.

III. RESEARCH RESULTS AND ANALYSIS

A. The Repositioning of the Corruption Eradication Commission

Enforcement of substantive criminal law and the protection of human rights in criminal justice have different traits. The criminal justice system consists of multiple subsystems and are run by separate entities. Though separate by purpose, these institutions must act in an integrated manner to accomplish the purposes of justice. Law enforcement is more than just about imposition of sanctions, but rather to support restore and rehabilitate social order. Thus, the justice in this system is not only legal justice but social justice (Huda, Yulia, et al., 2025).

Currently, in the criminal justice system, only the KPK is entitled to conduct investigations and prosecutions of corruption offenses. The Commission was established to regain public confidence over anti-corruption efforts, which were previously done under the Attorney General's Office and the Indonesian National Police but deemed inadequate. The inadequacy was mainly because of the position those instructions had in the executive branch. Hence, the establishment of the KPK as a new independent state institution in charge to eradicate corruption. This kind of sweeping authority has raised human rights concerns, especially the rights of suspects and defendants, in practice. That is due to the opinion of the KPK as having less oversight in performing its authorities. Simultaneously, the amendment of the KPK Law was also criticized by some circles as merely contextually weakening the institution.

Essentially, investigation attempts to uncover facts: gathering evidence in an effort to build a factual matrix of a criminal event. Establishing the legal conclusion of the facts established during the investigation is, however, a task belonging to the public prosecutor. That is, investigators want to prove that someone committed a crime; legal culpability lies with public prosecutors. Using witness testimony, documents, or physical evidence to confirm all factual elements of a case is how investigators get to the point of establishing an ambiguous finding of gilt. Investigators are also invested with several coercive powers like arrest, search, seizure, phone tapping recording conversations as a means to acquire such evidence. As such, investigators play a role that is "hard regime".

In contrast, prosecution is but a "soft regime" on the law enforcement stage. That is, the public prosecutor determines something called impressions of fact through its investigations and then must apply those facts to law—determining whether they can serve as an evidentiary basis upon which the court can go on and proceed with evaluating innocence or guilt. Yes, facts which show that a crime was committed and a person was identified as a suspect need to be evaluated by the court order in order to provide legal compliance with the elements of the crime. The court will then determine whether the case has been proven beyond reasonable doubt, that an act of omission constituting a criminal offense was committed by the accused and he can be found guilty. Therefore, finding the truth is what an investigator must do, which is exactly they have arrest, search, seizure, wiretapping, and recording conversations powers. The determination of what part should survive those facts, however, belongs to the prosecutor's discretion.

To borrow the terms used by Rod Gehl and Darryl Plecas, the investigative process phase known as "task investigation." This phase involves activities such as examining the crime scene, summoning and questioning witnesses, and analyzing physical evidence. In addition, there is also a phrase referred to as "investigative thinking," which involves analyzing the case in order to determine the appropriate legal provision, the proper interpretation, and the relevant legal theory (Gehl, 2017). At this stage of investigative thinking, coordination between investigators and public prosecutors becomes essential. Such coordination must be carried out at the right time, in the appropriate forum, and through proper procedures, so that each institution can perform its respective functions effectively.

In this regard, functional differentiation is important because investigators and public prosecutors have different duties and responsibilities. Article 2(2) of the 2025 Criminal Procedure Code reaffirms this principle by stating that criminal proceedings are conducted through an integrated criminal justice system. This provision emphasizes the division of role among law enforcement institutions: investigation is carried out by the Indonesian National Police, prosecution by prosecutors, adjudication by judges, legal services and legal aid by attorneys, and the rehabilitation of inmates and convicted persons by probation officers. This principle should serve as a general guideline in law enforcement because it promotes a more balanced division of duties and strengthens the self-regulatory mechanisms of the criminal justice

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system. It also requires each subsystem to coordinate in carrying out its duties, particularly the coordination between investigators and public prosecutors. However, coordination is not merely a matter of legal rules; it is also closely related to legal culture. In particular, it requires each institution to set aside sectoral interests and institutional ego in order to build an integrated law enforcement system. Through this approach, accountability in the exercise of authority can be better protected.

Initially, the KPK Law defined the duties and authority of the KPK based on five principles: proportionality, public interest, accountability, transparency, and legal certainty (Sohilait et al., 2023). These principles form the foundation of the Commission's distinctive position as an independent state institution. This independence is clearly affirmed in Article 3 of the KPK Law, which states that no other institution or authority, including those within the executive branch, may interfere in the handling of corruption cases. The purpose of this provision is to ensure that the KPK can carry out its duties with integrity without influence from any individual, institution, or office that may be connected to act of corruption (Sohilait et al., 2023).

In addition to these five principles, the KPK has also promoted values of local wisdom through what are known as the Nine Anti-Corruption Values. These values include honesty, compassion, independence, discipline, responsibility, hard work, simplicity, courage, and justice. The internalization of these values, especially among law enforcement officers and public officials, is an important preventive strategy. They reflect strong moral and ethical principles rooted in integrity. By instilling these values in public officials and law enforcement personnel, corruption, collusion, and nepotism can be prevented more effectively.

The 2019 amendment to the KPK Law marked a significant turning point in the effectiveness of corruption law enforcement. The amendment limited several important powers of the Commission, including its independence in conducting wiretapping, introduced a Supervisory Board, and required greater coordination with other law enforcement institutions. Based on document analysis and reports from independent oversight bodies, the effectiveness of the KPK appears to have declined after the revision. This decline can be seen, among other things, in the reduced number of operations, known as *operasi tangkap tangan* or OTT, and the decrease in public trust toward the Commission (Maulana, 2025).

Meanwhile, other law enforcement bodies like the Attorney General's Office and the National Police are still being politically weakened in how they can address corruption cases. The Attorney General's Office has had success in number of major corruption cases. But these accomplishments have sometimes been eclipsed by questions about inconsistent charges and comparatively

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modest sentences. At the same time, the National Police also struggle with internal problems of corruption within their own institution which threaten to further undermine its credibility as a decent and effective law enforcer (Maulana, 2025).

However, the accomplishment of law enforcement against corruption in Indonesia still has some structural, institutional, or cultural problems. This requires systemic changes to enhance the capacity of law enforcement agencies, independence of institutions, reforming judiciary and increasing public oversight. Without tangible and consistent action from Indonesian government, all endeavors to eliminate corruption will be merely verbal and yield less than optimal outcomes (Maulana, 2025).

The Indonesian public perception towards the credibility of their government has also been affected by the weakening of the KPK. This effect is not only at national, but also local and international levels. This further undermines public trust, impacts Indonesia's Corruption Perceptions Index score, and reduces the image of the country in the international community. Indonesian government must give not only material and institutional efforts but also ideological-normative dimensions efforts in regards to international relations, to rebuild the credibility (Sopamena, 2024).

Aryanto Nur recognizes weaknesses in the legal system when dealing with corruption. According to this research, several major problems have been identified. Among these are the weaknesses in regulation and legislation, lack of autonomy in government enforcement agencies, limited impact of law enforcement on corruption eradication. Overall, the measures used in the research model demonstrated generally strong convergent reliability and validity, though a few indicators required further analysis. Yet, another problem was found in the study, between the concepts of weak law enforcement and lack of independence of law enforcement. This seemingly indicates a conceptual overlap between the two variables, or that their respective indicators are not strong. The most conspicuous result of Aryanto Nur's research findings was that the exogenous variable, a regulatory legislatiion weakness, to be lack of independence regarding law enforcement agency as well as weak implementation of law enforcement, not proven statistically influence on effective arrangements of corruption eradication. Stated otherwise, it confirmed that the assumption of direct effect of these three factors on corruption eradication was rejected by the data (Nur, 2025).

Aryanto Nur said that these findings are theoretically and practically relevant. Theoretically, the results challenge existing theories and broaden conventional views about the connection between regulatory and legislative weaknesses; lack of independence of law enforcement; weaknesses in law enforcement and effectiveness of anti-corruption efforts. This indicates the need

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for a more thorough review of literature in order to find either other theories or additional factors that may be more relevant. With regard to the findings, practical applications must take into account that interventions limited only to regulatory and legislative weaknesses, independence of law enforcement agencies, or weaknesses in law enforcement operation alone are not by itself sufficient efforts to effectively enhance corruption eradication outcomes. Rather, it would be helpful to implement broader substance that consider other adopting or inhibiting factors (Nur, 2025).

Therefore, one of the weaknesses that is seen as causing difficulties or failures in fighting corruption may be the authority structure of the KPK. KPK is an institution which works on both areas, investigating and prosecuting cases creates; it has a unique position of overlapping authorities. While both investigative and prosecutorial powers are part of the same criminal justice process, together they out to be placed in separate subsystems where it makes more sense. The nature of the checks and balances becomes ineffective when KPK uses both powers simultaneously.

This is worrisome in the context of deteriorating oversight of the KPK and the lack of checks and balances on the exercise by prosecution-related investigative powers. In addition, there exists also the absence of horizontal control and coordination among the institutions that perform these functions. Such mechanisms exist little within the KPK itself, especially in light of its perceived excessive power expansion—one example being its expansive interpretation of anti-corruption laws regarding state financial losses. This is why the idea of moving the KPK back to only investigating cases has a vital space for study. This kind of repositioning could serve to establish checks and balances in the criminal justice system. The model places the Prosecutor's Office as the public prosecutor for corruption cases, and KPK would serve to primarily investigate those at KPK. High levels of formal and informal coordination between these two subsystems would normatively also support the ideal integrative law enforcement as denoted in the integrated criminal justice system. All the grounds used will also apply for existing institutions with investigative authority over corruption case, such as investigators from the police and the prosecutor's office, that should be reallocated and merged into a single body under the Eradicate Corruption Commission.

If KPK has exclusive power to investigate cases of corruption, it can be performed optimally. The existing functional framework will certainly be fortified with the consolidation of all corruption crime investigations under a single institution known as KPK. At the same time, the Prosecutor’s Office would be able to concentrate on the prosecution and in presenting evidence before the court in corruption cases. This arrangement would also mean the investigation of corruption crimes without double standards. Until recently,

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KPK investigators are still viewed as having as "superior" position due to the powers they have as mentioned, such as wiretapping and recording phone calls. It conferred them powers to conduct sting operations and directly arrest corruption offenders. Furthermore, the costs of KPK investigators are borne by actual expenses (not by targets), so selective enforcement is avoided. Together, these standards would be applicable to all corruption investigators working under a unified investigative system. In this sense, the "red and white" institutional identity of the KPK would replace two separate investigative identities in corruption cases; namely a prosecutorial investigative (the Attorney General's Office) and a police investigation one (the National Police).

Investigative authority becomes less meaningful when the use of coercive measures requires approval from the Supervisory Board under the amended KPK Law. This is especially concerning because the independence of KPK has been weakened, making it difficult for the institution to achieve its best possible performance. In this context, horizontal oversight of the KPK's investigative authority, whether exercised by the public prosecutor as *dominus litis* or through judicial scrutiny by the courts, is far more objective than relying solely on the Supervisory Board.

Horizontal oversight within the criminal justice system also better reflects democratic accountability. Indonesia's constitutional system is based on the separation of powers, balanced by principle of checks and balances. This principle serves as the foundation for functional differentiation and horizontal oversight within the criminal justice system. Such an arrangement is also intended to prevent conflicts over investigative authority among the Attorney General's Office (*Kejaksaan*), the National Police (*Polri*), and the Corruption Eradication Commission (KPK) in handling corruption cases. Although each institution is legally authorized to address corruption, overlapping jurisdictions and inconsistent regulations often create tension and lead to jurisdictional disputes. Ultimately, these conflicts seriously undermine the effectiveness of the corruption eradication system (Huda, Yulia, et al., 2025).

On the one hand, the status of the KPK as part of the executive branch has been affirmed by Decision "No. 36/PUU-XV/2017 of the Constitutional Court of the Republic of Indonesia (MKRI)", which departed the Court's earlier decisions No. 012–016 -109/PUU-IV/2006. In its final ruling, the Constitutional Court stated that investigation, inquiry, and prosecution are essentially executive functions. The implication of this ruling is that, because the KPK exercises these functions, it is considered part of the branch. Nevertheless, the Constitutional Court also emphasized that the KPK remains an independent institution. Following this decision, the second amendment to the KPK Law positioned the KPK as a state institution within the executive branch that is independent and free from interference by any other branch of government in

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carrying out its powers and duties (Kishan, 2024). At this point, however, the continued existence the Supervisory Board becomes questionable. If the KPK's independence should be checked by other branches of government, for example by the judiciary through judicial review, then the creation of the Supervisory Board through amendments to the KPK Law raises serious concern. The key issue is how the establishment of the Supervisory Board has affected, or even weakened, the independence of the KPK itself.

Meanwhile, in Constitutional Court Decision No. 87/PUU-XXI/2023, the Court affirmed that the KPK has the authority to conduct investigations, inquiries, and prosecutions in joint corruption cases involving individuals subject to both military and general courts, provided that the KPK has handled the case from the outset. The position is also supported by Article 50(3) of Law No. 30 of 2002 concerning the KPK, which provides that once the KPK has initiated an investigation, the Attorney General's Office and the Indonesian National Police may no longer investigate the same case. In this context, coordination becomes an essential tool for determining which institution has primary responsibility over a corruption case. Thus, even in cases involving individuals subject to military jurisdiction, the KPK remains at the forefront of corruption eradication. The main issue is that investigation and prosecution may proceed more efficiently if they are consolidated within a single institution, namely the KPK. Such consolidation could reduce the complicated bureaucratic obstacles that often delay case resolution (Kishan, 2024). However, this raises an important question: what happens to the principle of checks and balances? The weak coordination that has existed so far can only be addressed by consolidating all investigative authority over corruption crimes into one institution, namely the Corruption Eradication Commission.

B. Reorganization of the Corruption Eradication Commission in the Fight Against Corruption in Indonesia

To strengthen the effectiveness of corruption eradication, the KPK must be re-equipped with new powers following its repositioning as the sole investigator for corruption crimes. At the same time, to maintain checks and balances, prosecutorial authority should be transferred to the Attorney General's Office. In framework, the KPK's re-empowerment can be achieved by expanding its authority, particularly by strengthening its role in asset recovery.

The term "asset forfeiture" is not entirely equivalent to "asset recovery," a concept introduced in the 2003 United Nations Convention against Corruption (UNCAC) and ratified by Indonesia through Law No. 7 of 2006. This is because forfeiture or seizure is only one instrument within the broader process of recovering state losses or returning assets stolen through criminal

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acts, commonly known as stolen asset recovery. Asset recovery cannot be strictly classified as either a criminal procedure or a civil procedure mechanism. Rather, similar to pretrial proceedings. Therefore, the urgency of enacting an Asset Recovery Law depends largely on how the relevant legal mechanisms and procedures are designed and evaluated.

The fundamental principle of the Asset Recovery Law is non-conviction based (NCB) asset forfeiture. This means that assets can be forfeited without first requiring a criminal conviction against the offender. In this sense, NCB asset forfeiture serves as an alternative legal mechanism to ordinary criminal prosecution and gives law enforcement officials additional authority to recover or return assets obtained through criminal conduct.

Asset recovery generally refers to the forfeiture or return of assets derived from criminal acts., It is not limited only to assets connected to corruption crimes. However, it remains debatable whether such cases should be resolved through NBC asset forfeiture, ordinary criminal proceedings as introduced under the 2023 Criminal Code and the 2025 Criminal Procedure Code, or civil mechanisms. Specifically in relation to asset obtained through corruption, however, asset recovery should not necessarily have to wait for the enactment of a separate Asset Recovery Law. In this context, asset forfeiture without criminal prosecution is intended to restore the economic and social rights of the public that have been harmed by corruption. Therefore, when criminal prosecution fails or cannot be carried out, NCB asset forfeiture can serve as a faster and more effective mechanism to protect and recover state assets.

This application derives from the common law tradition, which lets a state seize proceeds of crime without putting someone through a long criminal trial. It takes a "going for the money" approach using its power to identify, freeze and confiscate the proceeds of criminal conduct. Thus, the mechanisms represent the state's attempt to tackle corruption at its roots by depriving those who commit unlawful conduct of their riches. Asset forfeiture allows the state to reactively regain public property that has been illegally taken by criminal offenders. Using this method is also an instrument with guidelines of the 2003 United Nations Convention Against Corruption (UNCAC) and Indonesia has ratified this treaty (Sunan & Surabaya, 2024).

The current asset forfeiture mechanism, which still relies on a conviction-based (CB) approach, often fails to address the challenges of corruption law enforcement, especially in recovering state losses. Under this approach, assets can only be forfeited after a final and binding court decision has been issued against the offender. In practice, this requirement can weaken the recovery of losses caused by corruption. Restitution, which is imposed as an additional penalty under the Corruption Crimes Act, may lose its effectiveness because

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criminal proceedings often take a long time. These proceedings also involve various safeguards, such as the presumption of innocence and the protection of the rights of suspects or defendants. As a result, by the time a final and binding judgment is issued, the assets that have been seized may no longer be sufficient to recover the state's financial losses.

In many cases, legal proceedings are lengthy and complicated. Problems may arise when offenders flee abroad, die before a judgment is delivered, or deliberately avoid legal process. In such situations, assets that should be returned to the state can become legally difficult to access. This directly affects the effectiveness of state loss recovery (Fitriyant & Suwandono, 2025). For this reason, a faster legal mechanism is urgently needed to recover assets lost through corruption. The *ex parte* nature of the process, where there is no respondent, is primarily intended to protect and secure assets when ordinary legal proceedings cannot be carried out or are no longer effective.

The KPK, as the institution with exclusive authority to investigate corruption crimes, is still considered not to have sufficient authority to fully recover financial losses to state finances or the national economy if it relies only on asset forfeiture (Arifin et al., 2023). In this context, the KPK should be entrusted with a stronger role in recovering assets from corruption, especially given its position as the sole investigative body for such crimes. With clear laws and regulations governing the authority to audit losses to the state economy, the relevant institutions or agencies would be able to perform their duties more effectively and accountably. In this framework, the KPK would be in the strongest position to detect assets and trace assets obtained from corruption. These regulations could then serve as a legal foundation for fair and effective law enforcement (Hartati et al., 2024).

At the same time, the rights of third parties acting in good faith must remain protected. This protection is already reflected in Article 19 of the Corruption Crimes Act, in conjunction with Supreme Court Regulation No. 2 of 2022. As explained by Phillipus M. Hadjon, authority as a concept in public law consists of at least three components: influence, legal basis, and legal conformity (Muti'ah et al., 2025). The element of influence means that the exercise of authority is intended to regulate the conduct of legal subjects. The legal basis element requires that the source of such authority must always be identifiable. Meanwhile, the element of conformity refers to the existence of standards governing the exercise of authority, both general standards that apply to all types of authority and specific standards that apply to particular forms of authority (Syamsuddin, 2020). In this case, asset recovery through the NCB mechanism would still remain under judicial control. This is because it requires a court order and provides space for third parties acting in good faith to defend their rights over the seized assets.

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In this context, seizure in asset recovery remains a mechanism recognized under the Criminal Procedure Code. However, when criminal prosecution against a suspect or defendant cannot proceed, civil procedures within the criminal justice system becomes necessary to secure the state's rights over the seized assets. Therefore, if asset recovery is generally understood as a coercive measure carried out through mechanisms resembling civil lawsuits and/or *ex parte* applications, it may still require revisions to the HIR/ RBG, which continue to serve as the basis of civil procedural law. This is because, under the existing framework, the plaintiff or petitioner is usually understood as representing a "person," either a natural person or a legal entity, and not necessarily the state. By granting this authority to the KPK, the state would be properly represented in pursuing asset recovery. In this case, the KPK's authority arises from its position as the sole investigative body for corruption crimes.

Specifically, NCB asset forfeiture by the KPK, namely the forfeiture of assets to recover state financial resulting from corruption, should only be permitted under certain conditions, including:

a. When criminal prosecution is not possible, for example, where the perpetrator has died, has diplomatic immunity, has fled, cannot be located, or where the case has exceeded the statute of limitations; and
b. When criminal prosecution is unsuccessful, for example, due to insufficient evidence or other technical legal reasons.

Thus, the public interest in restoring economic and social rights after state financial losses caused by corruption becomes the main justification for granting this authority to the KPK, especially when those losses can no longer be addressed through criminal prosecution. This approach is consistent with internationally recognized principles that distinguish between two forms of forfeiture: *in personam* forfeiture and *in rem* forfeiture. *In personam* forfeiture, also known as criminal forfeiture, is directed personally against an individual. Since it forms part of a criminal sanction, it can only be imposed through criminal court judgment. By contrast, *in rem* forfeiture is known by several terms, including civil forfeiture, civil confiscation, and non-conviction-based (NCB) asset forfeiture. The key distinction is that the claim is brought against the asset itself, not against the person. This mechanism operates separately from the criminal judicial process and requires proof that a property is connected to, or tainted by, a criminal act. This connection is explained through the taint doctrine, which holds that property used in or obtained from that criminal act is considered tainted by that crime (Sembung et al., 2025).

The idea of NCB asset forfeiture emerged from a shift in the law enforcement paradigm: from a suspect-oriented approach, or "follow the suspect," to a money-oriented, or "follow the money." This shift is important crucial because crimes such as corruption and money laundering cause financial losses to the state, and

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the proceeds of these crimes should be returned as quickly as possible. In practice, however, there are often situations where the offender cannot first be brought before the court (Sembung et al., 2025).

For this reason, asset forfeiture without criminal prosecution should be used as fully as possible to recover state losses more quickly and effectively. This approach is also consistent with the principles of economic analysis of law. From this perspective, perpetrators of economically motivated crimes are assumed to consider the costs and benefits of their actions before committing a crime. When crime is easy to commit, involves minimal risk, and offers maximum profit, the likelihood of committing such crimes increases. Conversely, when risk and cost are higher, potential offenders are more likely to refrain from committing them (Hafid, 2024).

From the perspective of the economic analysis of law, the relationship between asset forfeiture without criminal conviction and corruption eradication can be understood through the offender's goal of maximizing profits. Since the main motivation behind corruption and other economically driven crimes is financial gain, the most effective response is to recover the profits held by the offender. The use of the NCB asset forfeiture mechanism also does not require excessively high costs, while the benefits gained from its implementation are often greater than the costs involved. For this reason, NCB asset forfeiture can serve as a faster, more efficient, and more effective mechanism for recovering state financial losses (Hafid, 2024).

In general, assets that may be forfeited through NCB asset forfeiture proceedings include the following (Sakinah et al., 2023):

1. Proceeds of crime, **namely** assets obtained directly or indirectly from criminal acts;
2. Instrumentalities, **namely** assets that are reasonably suspected of having been used to commit criminal acts;
3. Substitution assets, namely assets that have been transferred or converted into the personal assets of an individual, another person, or a corporation, including any profits derived from them; **and**
4. Lost and found assets, namely assets known or reasonably suspected to have originated from criminal acts.

As for other assets, such as disproportionate earnings to the owner's income, assets with evidence of lawful origin but not verification of its source or also given as seized evidence would not have a solid enough philosophical foundation by which we could justify that these should be confiscated by operation of this mechanism. Nevertheless, in some situations, the KPK is capable of seizing these assets when the owner fails to prove that they were legally obtained and/or lawfully acquired. Assets that have no apparent relation to the legitimate income of the owner may naturally be assumed to prove further

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criminal origin. Yet, the owner should still get an opportunity to show the assets acquired were obtained lawfully and through no legal violation.

This will take time but it should be part of the strategy in removing impediments to the investigation process where KPK must be given authority on this mechanism. The KPK, as Indonesia's premier anti-corruption agency, is a key player in the prevention and public enforcement of corruption. It is the designated state institution independent to end all corrupt practices. This has a preventive aspect of establishing systems and policies conducive to transparency and accountability as well as raising awareness of the risks of corruption amongst the citizenry. As for law enforcement, KPK can examine and prosecute corruption offenders in the public service sector as well as the private sector. In an effort to make its corruption eradication efforts even more effective, the KPK also cooperates with other institutions, including government agencies and law enforcement (Ramadhani, 2024).

Singapore is one of the several countries, which have empowered the anti-corruption agency to confiscate property related to corruption. Under the Prevention of Corruption Act (PCA), the jurisdiction to freeze assets and add fines or penalties to those who commit corruption violations offenses is held by law, by the authority referred to as the Corrupt Practices Investigation Bureau (CPIB) (Sinulingga & Leviza, 2023). Looking first at Hong Kong, we find a parallel mechanism in the Independent Commission Against Corruption (ICAC), which is similarly given authority over assets gained through corrupt means. The ICAC is an independent body with strong enabling legislation that provides it powers to investigate corruption cases and confiscate assets suspected of being the proceeds of unlawful activity through corruption. This power forms part of Hong Kong government's pledge to combat corruption and uphold probity in both private and public sectors (Sinulingga & Leviza, 2023).

Based on these examples, the KPK, as an investigative institution in charge of corruption, should also be given the authority to confiscate assets within Indonesia's anti-corruption context. The main reason for the strengthening of KPK to fight corruption is that it should recover financial losses by the state or national economy and restore social and economic rights of our people.

IV. CONCLUSIONS

Repositioning the Corruption Eradication Commission (KPK) within the criminal justice system as the sole investigative body, without the prosecutorial authority, can strengthen its role in combating corruption while also improving accountability in law enforcement. Under this arrangement, the KPK would focus exclusively on investigating corruption cases, while prosecution would be fully delegated to the Attorney General's Office. This separation of functions would help activate the checks and balances mechanism within the integrated

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criminal justice system. Such a mechanism had long been a point of criticism regarding the KPK, particularly before the 2019 revision of the KPK Law.

One reformation that can be done is to equip the KPK with authority to confiscate evidence of assets during the investigating process in combating corruption. Such authority would enable tracking of assets, transaction and property freezes, and other forms of asset forfeiture without a criminal conviction, known as non-conviction-based forfeiture in the legal arena. These powers would complement the wider goal of dealing with corruption much more effectively, so it strengthens KPK's capability. But more importantly, they would mainly ensure that state financial losses can be compensated faster and better.

BIBILIOGRAPHY

Amanda, Y., Ahsanicka, A. S., Lubis, Y. E., & Priyantoro, L. (2025). Penyelesaian Sengketa Kewenangan Antara Kpk Dan Kejaksaan Di Mahkamah Konstitusi. *Causa: Jurnal Hukum Dan Kewarganegaraan*, *13*(11), 71–80. https://doi.org/https://doi.org/10.6679/dj9jpn97

Arifin, R., Riyanto, S., & Putra, A. K. (2023). Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era. *Legality: Jurnal Ilmiah Hukum*, *31*(2), 329–343. https://doi.org/10.22219/ljih.v31i2.29381

Fitriyant, L. D., & Suwandono, A. (2025). Perampasan aset sebagai sanksi tambahan : analisis pengembalian kerugian negara dalam penanganan tindak pidana korupsi di indonesia 1. *Jaksa : Jurnal Kajian Ilmu Hukum Dan Politik*, *3*(3), 13–27. https://doi.org/https://doi.org/10.51903/n9vpm692

Fuady, M. I. N. (2025). To What Extent Do Judges' Ideology and Institutional Justice Influence Corruption Adjudication? *Substantive Justice International Journal of Law*, *8*(2), 84–106. https://doi.org/10.56087/substantivejustice.v8i2.374

Gehl, R. (2017). *Introduction to Criminal Investigation: Processes, Practices and Thinking*. BCcampus.

Hafid, I. (2024). Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law. *Lex Renaissance*, *6*(3), 465–480. https://doi.org/https://doi.org/10.20885/JLR.vol6.iss3.art3

Hartati, Hafrida, Erwin, Arizyanto, R., & Saputra, B. (2024). Authority for Calculating State Economic Losses in Criminal Acts of Corruption in Indonesia. *Jurnal IUS Kajian Hukum Dan Keadilan*, *12*(3). https://doi.org/https://doi.org/10.29303/ius.v12i3.1480

Hasna, A., & Jaya, N. S. P. (2020). Implementation of Corruption on Law Enforcement in the Criminal Justice System in Indonesia. *Indonesian Journal of Criminal Law Studies*, *5*(2), 163–174.

https://doi.org/https://doi.org/10.15294/ijcls.v5i2.36411

Huda, C., Yulia, R., Romdoni, M., Saefudin, Y., & Ismail, N. (2025). Reassessing Functional Differentiation and Dominus Litis under Indonesia's New Criminal Procedure Code. *Jambe Law Journal*, *8*(2), 475–515. https://doi.org/https://doi.org/10.22437/ymmfk139

Huda, C., Yunan, P. D., & Paidi, Z. Bin. (2025). Discourse Using Blockchain Technology for the Enforcement of Money Laundering Crimes in Indonesia. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, *8*(2), 553–572. https://doi.org/10.24090/volksgeist.v8i2.13376

Kalalinggi, R. (2021). Pelemahan Komisi Pemberantasan Korupsi (KPK): Salah Satu MatinyaDemokrasi. *Journal of Government and Politics (JGOP)*, *3*(2), 107–118. https://doi.org/https://doi.org/10.31764/jgop.v3i2.6106

Kishan, M. C. (2024). Penguatan Komisi Pemberantasan Korupsi: Justifikasi Pelaksana Corruption Risk Analysis. *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara*, *2*(1), 317–352. https://doi.org/10.55292/j142nr29

Maulana, C. (2025). EFEKTIVITAS PENEGAKAN HUKUM DALAM MENANGGULANGI TINDAK PIDANA KORUPSI DI INDONESIA. *Jurnal Ilmu Pendidikan Pancasila, Kewarganegaraan, Dan Hukum (PAKEHUM)*, *2*(2), 19–24. https://doi.org/https://doi.org/10.70134/pakehum.v2i2.570

Muti'ah, D., Habibullah, A. W., Djunarto, Y., & Cahyono, L. B. E. (2025). Reconceptualisation of State Financial Losses to Prevent Misuse of Village Funds. *Trunojoyo Law Review*, *7*(2), 361–390. https://doi.org/10.21107/tlr.v7i2.29856

Narendro Setyo Pratomo Baskoro, S. B. E. W. (2024). PERBANDINGAN UPAYA PELEMAHAN TERHADAP LEMBAGA ANTIKORUPSI KPK INDONESIA DAN ICAC HONG KONG. *JURNAL SYNTAX FUSION*, *2*(01), 306–312. https://doi.org/https://doi.org/10.54543/fusion.v2i01.132

Nur, A. (2025). Kelemahan Sistem Hukum dalam Memberantas Korupsi di Indonesia. *Jurnal Ekonomika Dan Bisnis (JEBS)*, *5*(1), 325–344. https://doi.org/https://doi.org/10.47233/jebs.v5i1.2634

Nurhaliza Trie Anna Dewi. (2025). Peran KPK Dalam Pemberantasan Korupsi Di Indonesia. *Nurhaliza Trie Anna Dewi*, *2*(2), 63–69. https://doi.org/10.62383/mahkamah.v2i2.543

Paramitha, D. A. H., & Husodo, J. A. (2023). SELF-REGULATORY BODY YANG IDEAL UNTUK MEMPERKUAT INDEPENDENSI KOMISI PEMBERANTASAN KORUPSI. *Res Publica Jurnal Hukum Kebijakan Publik*, *7*(1), 14–24.

Ramadhani, N. S. Y. (2024). RUU Perampasan Aset Hasil Tindak Pidana Korupsi oleh KPK: Perspektif Teori Kepentingan Sosial Rescoe Pound. *The Indonesian Journal of Law and Justice*, *2*(2), 8. https://doi.org/10.47134/ijlj.v2i2.3387

Sakinah, T. I., Rahman, T. Z., & Setiawan, A. (2023). Indonesia's Imperative Asset Forfeiture Bill to Combat Illicit Enrichment. *Indonesian Journal of Criminal Law Studies*, *8*(1). https://doi.org/https://doi.org/10.15294/ijcls.v8i1.36755

Sembung, A. J. P., Tampanguma, M. Y., & Bawole, H. Y. A. (2025). OPTIMALISASI PERAMPASAN ASET DALAM TINDAK PIDANA KORUPSI. *Lex Crimen*, *13*(1).

Sinulingga, M. W., & Leviza, J. (2023). PERBANDINGAN HUKUM PERAMPASAN ASET HASIL TINDAK PIDANA KORUPSI DI INDONESIA, SINGAPURA DAN HONGKONG. *Jurnal Normatif*, *3*(2), 329–335. https://doi.org/10.54123/jn.v3i2.319

Sohilait, R., Hehanussa, D. J. A., & Titahelu, J. A. S. (2023). Implementasi Tugas Hakim Pengawas Dan Pengamat Terhadap Pelaksanaan Putusan Pengadilan Pada Lembaga Pemasyarakatan Di Indonesia. *LUTUR Law Journal*, *4*(1), 27–52. https://doi.org/10.30598/lutur.v4i1.10498

Sopamena, C. A. (2024). KONSTRUKTIVISME : DAMPAK PELEMAHAN KONSTITUSI TERHADAP PEMERINTAH , STUDI KASUS KPK RI. *Jurnal Dinamika Global*, *9*(2), 275–298. https://doi.org/https://doi.org/10.36859/jdg.v9i2.3100

Sumardiana, B., Pujiyono, P., & Cahyaningtyas, I. (2024). Reforming Justice: Unpacking the Pre-Judication and Post-Judicate Dynamics of the Sarpin Case in Law and Practice in Indonesia. *Lex Scientia Law Review*, *8*(2). https://doi.org/https://doi.org/10.15294/lslr.v8i2.10744

Sunan, U. I. N., & Surabaya, A. (2024). Tantangan Mekanisme Non-Conviction Based Asset Forfeiture dalam Rancangan Undang-Undang Perampasan Aset di Indonesia. *Hutmi Amivia Ilma*, *5*(4). https://doi.org/https://doi.org/10.15642/mal.v5i4.373

Syamsuddin, A. R. (2020). Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa. *Jambura Law Review*, *2*(02), 161–181. https://doi.org/https://doi.org/10.33756/jlr.v2i2.5942

Wardani, I. E. K. (2019). Peran Mahkamah Konstitusi dalam Mengawal Prinsip Checks and Balances Terhadap Dewan Perwakilan Daerah di Indonesia. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, *2*(2), 239–252. https://doi.org/10.24090/volksgeist.v2i2.2883

Winingsih, W., Anshori, D., & Nurhadi, J. (2022). Analisis wacana kritis model Van Dijk terhadap isu pelemahan KPK dalam pemberitaan Narasi Newsroom. *Litera*, *21*(1), 94–103. https://doi.org/https://doi.org/10.21831/ltr.v21i1.40811

Yustia, rd. D. A., Jodi, F. F., Panjaitan, A. C. D., & Hassan, F. M. (2026). Restorative Justice : Finding Common Ground Between Justice and Recovery Shared Interests. *Jambura*, *8*(1), 229–249. https://doi.org/https://doi.org/10.33756/jlr.v1i1.32646