

ASSET FORFEITURE AS A SOLUTION FOR FRAUDULENT INVESTMENTS: INSIGHTS FROM INDONESIA AND SOUTH KOREA

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Abstract

Fraudulent investment is an investment activity that offers to give a promise of maximum profit in a short time without the need to do a job that is physically, mentally and mentally exhausting and find information about the origin of the platform. Asset forfeiture by law enforcement aims to make the perpetrator fall into poverty to provide a deterrent effect and uphold a sense of justice for perpetrators of criminal acts such as money laundering. Poverty is a frightening thing in their lives. The purpose of the research is the general objective in conducting this research to find out how the recovery of asset forfeiture in handling cases of money laundering crimes. The specific objective is to analyze how the effectiveness of asset forfeiture implementation against fraudulent investment through legal comparison (Indonesia & South Korea). The research method that the author uses is in accordance with the title and relevant, so the author uses normative legal research methods. In this case, normative research is used because the characteristics of this normative legal research method are to examine legal comparisons regarding the Asset Forfeiture Law in Indonesia and South Korea. Asset forfeiture in South Korea shows effective enforcement of justice. The Indonesian people hope that this measure will be implemented to realize the 5th principle of Pancasila "Social justice for all Indonesian people" by impoverishing criminals through asset forfeiture.

Keywords: *fraudulent investment, asset forfeiture bill, comparison, Indonesia, South Korea*

A. Background

Indonesia has experienced rapid technological and informational development in line with its existence. With advancements becoming increasingly sophisticated and efficient, many benefits have been provided to society. The future has been planned by everyone through saving or making good investments. Investment activities enhance economic growth and safeguard retirement with financial freedom, and these activities have become a new world in investing, especially in Indonesia's capital market.² Applications used for online investments, such as Bibit, Ajaib, Forex, and others, make investing easier, faster, and come with varying risks, necessitating careful consideration due to fluctuating prices. Investment, of course, is an activity that generates profits by placing a certain amount of capital and yielding high returns.³ The rise of online investments offering high returns has attracted many people, but it has also led to

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² Nur Aliffah Hermawan dan Annisa Pattihahuan Sephia Nurul Susanti, "Kemajuan Teknologi Dan Pemahaman Terhadap Minat Generasi Z Dalam Berinvestasi Di Pasar Modal," *Jurnal Pijar Studi Manajemen Dan Bisnis* 1, no. 2 (2023): 76–82.

³ Novita Syarifah Nur, Febri Anggini, and Velissa Nadia Suciatty, "Studi Komparatif Tentang Aplikasi Investasi Online Berbasis HandphonNovita Syarifah Nur, Febri Anggini, and Velissa Nadia Suciatty, "Studi Komparatif Tentang Aplikasi Investasi Online Berbasis Handphone," *EKOMA : Jurnal Ekonomi* 3, no. 2 (2024): 539–51. <https://doi.org/10.56799/ekoma.v3i2.2753>.

financial fraud or Ponzi schemes. These schemes promise high profits not from legitimate sources but are obtained illegally.⁴

In 2022, the Binomo case began to emerge in the news regarding fraudulent investment schemes in Indonesia. One example is the Binomo application, which involved influencer Indra Kenz. Indonesia has gained international attention due to this case, in which influencer Indra Kenz became a hot topic as one of the affiliates of the Binomo investment application.⁵ Indra Kenz promoted Binomo through social media, specifically Instagram. With many followers, he created marketing tricks or targeted markets to gain profits from illegal activities.⁶ In the case of suspected investment fraud involving the binary option application known as Binomo, the crime of money laundering was committed. At the time, a victim claimed to have lost Rp 2.4 billion from the Binomo app.⁷ The suspected crimes included online gambling, spreading false information that harmed consumers through electronic transactions, fraud, and money laundering. Therefore, the state must impose asset confiscation penalties on perpetrators who harm the country or other victims.⁸ Fraudulent investments are used as a means of laundering illegally obtained money, the perpetrator converts illegal funds into a legal form. This is a criminal offense and violates the laws and regulations of Law No. 8 of 2010.⁹ The difficulty of asset confiscation, which has become a major issue in Indonesia, is due to the complexity of bureaucracy. It is crucial to monitor the development of these crimes and recover state losses without criminal prosecution in Indonesia.

Asset forfeiture is an activity that involves the process of tracing, securing, maintaining, seizing, and returning assets related to criminal offenses (crimes/violations) and/or other assets to the state or the rightful party, according to the Attorney General's Regulation No. 7 of 2020. Chapter V of the United Nations Convention Against Corruption (UNCAC), a derivative of the United Nations Convention Against Transnational Organized Crime (UNTOC), provides a broad explanation of asset recovery, emphasizing that countries acting unilaterally must provide mutual cooperation and assistance in accordance with the basic principles of the convention. In the recovery of criminal assets, there are fundamental policies for international cooperation in the

⁴ Diana Tambunan and Ida Hendarsih, "Waspada Investasi Ilegal Di Indonesia," *Jurnal Perspektif* 20, no. 1 (2022): 108–14, <https://doi.org/10.31294/jp.v20i1.12518>.

⁵ Dzakhrotul Mufidah and Hendra Setiawan, "Analisis Framing Berita Nasib Aset Indra Kenz Akibat Kasus Binomo Media Detik Dan Tirto," *Jurnal Pendidikan Tambusai* 6, no. 1 (2022): 2376–81, <https://doi.org/https://doi.org/10.31004/jptam.v6i1.3277>.

⁶ Mufidah, Dzakhrotul, and Hendra Setiawan. "Analisis Framing Berita Nasib Aset Indra Kenz Akibat Kasus Binomo Media Detik Dan Tirto." *Jurnal Pendidikan Tambusai* 6, no. 1 (2022): 2376–81. <https://doi.org/https://doi.org/10.31004/jptam.v6i1.3277>.

⁷ Purnama Ramadani Silalahi et al., "Pentingnya Literasi Keuangan Bagi Masyarakat Agar Tidak Tertipu Investasi Bodong: Studi Kasus Binomo," *El-Mujtama: Jurnal Pengabdian Masyarakat* 2, no. 3 (2022): 346–55, <https://doi.org/10.47467/elmujtama.v2i3.1901>.

⁸ D A Meisyadina, "Pertanggungjawaban Hukum Dalam Dugaan Tindak Pidana Perjudian Yang Berkedok Trading Binomo Dalam Perspektif Uu Ite," ... *Journal: Indonesia Journal of ...* 3, no. 2 (2023): 1251–61. <https://doi.org/10.53363/bureau.v3i2.245>.

⁹ Anang Shophan Tornado, "Penetapan Tersangka Investasi Bodong (Binary Option) Dalam Perspektif Tindak Pidana Pencucian Uang," *Jurnal Sagacious* 10, no. 1 (2023): 15–26. <https://rumahjurnal.net/sagacious/article/view/1198>.

seizure, return, and search for criminal assets.¹⁰ This asset forfeiture applies to the proceeds of economic crimes that evolve with the times, as stipulated in Law No. 7 (drt) of 1955 concerning Economic Crimes, which covers offenses such as smuggling, customs fraud, banking crimes, commercial crimes, money laundering, capital market offenses, financial services authority crimes, brand counterfeiting, environmental crimes, including violations of the Fisheries Law, the EEZ Law, the Forestry Law, the Plantation Law, and others.¹¹

One of the crimes associated with asset forfeiture is money laundering.¹² Money laundering is a crime committed across countries by transferring, moving, and mixing clean assets with wealth obtained from criminal activities to seek financial gain. Money laundering, as an implicit crime, uses various methods to erase the origin of the money, making it appear as a legitimate source and extremely difficult to trace.¹³ The "follow the money" approach is an effort to discover other assets that can be used as evidence in tracking down perpetrators to strengthen proof and avoid assumptions. This activity harms the state, law enforcement officials (investigators, public prosecutors, judges) must pay attention to victims who suffer material and non-material losses. Not only do they carry out their duties and responsibilities to punish the perpetrators of crimes but they must enforce the legal norms that are violated to create order and security to create legal certainty because the law was created to uphold justice.¹⁴ The lack of public understanding of financial literacy is the cause of the high number of victims of fraudulent investments. Many of them do not understand the basic principles of investment, investment products, and the associated risks.¹⁵ These are important aspects that must be understood for someone to start investing. As the proceeds of the crime will be seized by the state, and the perpetrator has no right to receive or enjoy the wealth obtained through illegal or criminal means.¹⁶ Fraudulent investments are illegal investment activities that generate large profits and can cause losses to the public, usually by promising instant wealth without the need to work.¹⁷ Empirically, this activity is absurd for obtaining instant wealth, as true investment is used with the intention of

¹⁰ Lonna Yohanes Lengkong, "Urgensi Penerapan Perampasan Aset Dalam Tindak Pidana Pencucian Uang," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 9, no. 3 (December 2023): 351–64, <https://doi.org/10.55809/tora.v9i3.278>.

¹¹ Dini Ramdania, "Eksistensi Undang-Undang DRT Nomor 7/1955 Dalam Penegakan Hukum Di Bidang Ekonomi (Economic Crimes)," *Wacana Paramarta* XX No.1 (2021): 1–14. <https://doi.org/10.32816/paramarta.v20i1.95>.

¹² Rusdiana, Shelvi, and Winda Fitri. "Rethinking Indonesian Anti-Money Laundering Laws in the Age of Online Gaming Economies." Nurani: jurnal kajian syari'ah dan masyarakat 24, no. 2 (2024): 360-374.

¹³ Yuni Priskila Ginting, "Pemberantasan Pencucian Uang Dengan Pendekatan Follow the Money Dan Follow the Suspect," *Mulawarman Law Review* 6, no. 32 (December 2021): 105–14, <https://doi.org/10.30872/mulrev.v6i2.442>. <https://doi.org/10.30872/mulrev.v6i2.442>.

¹⁴ Fitri Arianti, "Legal Protection Against Victims Of Share Results Application Fraud," *Ipsa Jure* 1, no. 2 (2024): 1–7, <https://doi.org/10.62872/ssgi9n20>.

¹⁵ Gumilang Fuadi, Windy Virdinia Putri, and Trisno Raharjo, "Tinjauan Perampasan Aset Dalam Tindak Pidana Pencucian Uang Dari Perspektif Keadilan," *Jurnal Penegakan Hukum Dan Keadilan* 5, no. 1 (2024): 53–68, <https://doi.org/10.18196/jphk.v5i1.19163>.

¹⁶ Fuadi, Putri, and Raharjo.

¹⁷ Diana Tambunan and Ida Hendarsih, "Waspada Investasi Ilegal Di Indonesia," *Jurnal Perspektif* 20, no. 1 (2022): 108–14, <https://doi.org/10.31294/jp.v20i1.12518>.

generating profit. However, many people misplace their investments without proper understanding, failing to use it as a foundation for securing their future and old age.¹⁸

South Korea (hereinafter referred to as the Republic of Korea) has its own mechanism for asset recovery by enhancing international cooperation, which serves to take action against the proceeds of crime. South Korea is also a member of the UN Convention Against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Egmont Group, and the Asia-Pacific Group on Money Laundering (APG).¹⁹ Therefore, this research aims to identify issues and make comparisons regarding asset forfeiture by examining international law comparisons.

B. Identification Problems

Based on these similar cases, it laid the foundation for the author's research on how the Republic of Korea handles such cases with its national law. The Republic of Korea also faces a similar issue. In a case in South Korea, The Financial Supervisory Service (FSS) uncovered a fraud method in which scammers promised profits by sending emails to local importers, pretending to be business partners, and requesting immediate payment transfers for goods. They also urged importers to verify bank accounts before sending money. If successful, they would profit from trading counterfeit goods.²⁰

Based on this similar case, it lays the groundwork for the author's research on how the Republic of Korea handles such cases with its national laws. Previous comparative research was conducted by Manguni Wd Sinulingga and Jelly Leviza, who studied asset forfeiture comparisons between Indonesia, Singapore, and Hong Kong. The results of their research indicated that these countries also have institutions authorized to seize assets derived from money laundering crimes.²¹ On the other hand, the United States also has a Civil Asset Forfeiture Reform Act that speeds up the recovery process by allowing asset forfeiture without criminal penalties.²²

The novelty of this research is that the author uses a legal comparison to examine the comparison of the Draft Law on Asset Forfeiture between Indonesia and South Korea. The aim is to implement asset confiscation against perpetrators and impoverish them as a deterrent, as imprisonment and fines alone have not been sufficient to make offenders feel remorse. Asset forfeiture impoverishes the perpetrators, serving as a deterrent that provides a sense of justice. Poverty is a nightmare for those involved in money laundering. The comparison with South Korea is relevant because Indonesia and South Korea have international cooperation formalized in the Arrangement on Cooperation Between the Financial Intelligence Units of Indonesia and Korea.

¹⁸ Ibnu Arif Risyat, "Korelasi Antara Afiliator Aplikasi Binomo Dengan Tindak Pidana Pencucian Uang," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 6 (2022): 2997–3003.

¹⁹ "Ministry of Justice of the Republic of Korea International Criminal Affairs Division," 2020, 1–7.

²⁰ YONHAP NEWS, "About 2,600 Fraud Cases Targeting Trading Firms Reported over 5 Years," 01 DECEMBER 2021, 2021.

²¹ Manguni WD Sinulingga and Jelly Leviza, "Perbandingan Hukum Perampasan Aset Hasil Tindak Pidana Korupsi Di Indonesia, Singapura Dan Hongkong," *Jurnal Normatif* 3, no. 2 (2023): 329–35, <https://doi.org/10.54123/jn.v3i2.319>.

²² Jesella Ramayanti Nainggolan et al., "Asset Recovery in Eradication Illicit Enrichment : Indonesia with the United States and South Korea" 3, no. 12 (2024): 2809–24.

C. Research Methods

The research method used is normative legal research. In this case, normative research is used due to its characteristics as an approach to examine comparative law regarding the Asset Forfeiture Bill in Indonesia and South Korea.²³ The type of approach used in this research is a comparative law approach between Indonesia and South Korea (Comparative Law). The technique used in collecting secondary data is through literature study.²⁴ In this research, the author uses secondary data. The type of secondary data consists of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Secondary legal materials include journals, books, or articles. The data analysis used by the author in this research is descriptive qualitative, which is not determined by numbers. Descriptive qualitative is used in this research method because the author examines the research strategy that occurs as a human-made phenomenon in society.

D. Research Findings and Discussions

Law Enforcement for Asset Forfeiture of Fraudulent Investments in Indonesia

The development theory by Mochtar Kusumaatmadja emphasizes that performance must involve the entirety of stakeholders within the social community with the intention of accelerating development goals. Development law encourages changes that are more beneficial and serve the community's well-being. The initial thoughts of this development theory arose from concerns about societal and national life, particularly observing the weaknesses in the function of law and the lack of trust amidst ongoing development efforts. The concept put forth by Mochtar Kusumaatmadja also serves as a framework for community development, asserting that law must play a role in the realization of development.²⁵

In analyzing this research regarding the core issue of asset confiscation, the study utilizes the theory of legal development. This legal system emphasizes that development plays a role in society by upholding legal values, which can be realized if the community works dynamically and in a structured manner. In Indonesia, the Asset Confiscation Bill (RUU Perampasan Aset) has faced obstacles and has become a point of contention in public discourse. The difficulties regarding the approval process of the Asset Confiscation Bill have created problems originating from legislative members or other individuals involved. Since it has not received widespread approval, the approval process of the Asset Confiscation Bill has led to stagnation in Indonesia's legal system. Human rights and fears surrounding the probability of its approval have also emerged. As members of the "House of Representatives", with an emphasis on representing the people, this issue could undermine the independent status of the institution. This situation indicates that the institution is being influenced by those in power. There is a need for

²³ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

²⁴ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78.

²⁵ M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan?," *Undang: Jurnal Hukum* 1, no. 2 (March 2019): 363–92, <https://doi.org/10.22437/ujh.1.2.363-392>.

leaders who understand the importance of interaction and discussion with the community regarding the approval of the Asset Confiscation Bill.

Fraudulent investments easily attract the attention of individuals with low financial literacy, who are quick to trust without seeking or analyzing detailed information first. Therefore, the primary factor leading someone to engage in such activities is their own lack of caution.²⁶ The online trading platform currently being used by the public, Binary Option, is essentially an online gambling activity based on guessing whether an asset will go up or down, with unclear regulations. Binomo, for example, does not have licenses from BAPPEBTI (Commodity Futures Trading Regulatory Agency) or OJK (Financial Services Authority), making it an illegal application that constitutes fraudulent crime. It has already claimed victims by luring them with promises of large, unrealistic profits. Binomo will likely continue to deceive many investors, and there is strong evidence that Binomo circulates users' money, leading to frequent losses and the inability to gain profits. Thus, it can be analyzed that there are indications of money laundering activities.²⁷

The author recommends several applications for investments that are legal, safe, and registered with the OJK (Financial Services Authority).

Table 1. Applications for Investments that are Legal, Safe, and Registered with the OJK (Financial Services Authority)

No	System Name	URL Address	Company Name
1	Ajaib	www.ajaib.co.id	PT Takjub Teknologi Indonesia
2	Ajaib Sekuritas	https://play.google.com/store/apps/details?id=ajaib.co.id	PT Ajaib Sekuritas Asia-PT Takjub Teknologi Indonesia
3	Aplikasi Belanja Reksa Dana Valbury Online (BRAVO)	https://bravo.valbury.co.id/	PT Valbury Capital Management
4	Aplikasi BliBli	https://bravo.valbury.co.id/	PT Valbury Capital Management
5	Aplikasi Bmoney	https://play.google.com/store/apps/details?id=com.bmoney.android	PT Buka Investasi Bersama

Source: OJK (Financial Services Authority)

Money laundering in Indonesia has improved significantly. Indonesia has made efforts to develop an electronic reporting system and improve the quality of data monitoring. This is done to improve procedures and monitor transactions used for money laundering and is committed to fulfilling FATF recommendations in the Mutual Evaluation Review (MER) evaluation.²⁸ To address this, the country has established and implemented Law No. 8 of 2010 on the Prevention and Eradication of the Crime of

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Silalahi, Purnama Ramadani, Rima Rizki Syahputri, Rendi Prayoga, and Ardhia Meianti. “Pentingnya Literasi Keuangan Bagi Masyarakat Agar Tidak Tertipu Investasi Bodong: Studi Kasus Binomo.” *El-Mujtama: Jurnal Pengabdian Masyarakat* 2, no. 3 (2022): 34.

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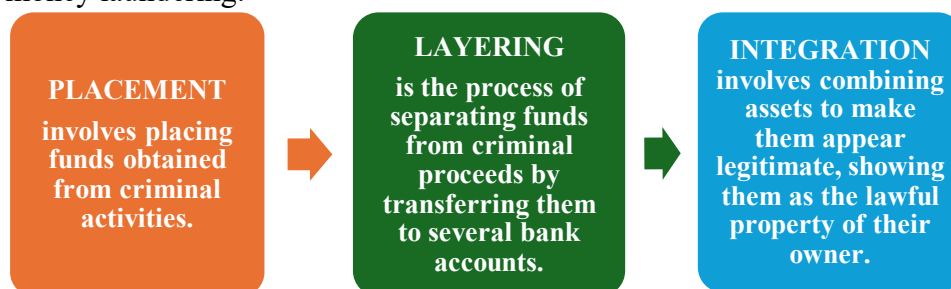
Risyat, Ibnu Arif. “Korelasi Antara Afiliator Aplikasi Binomo Dengan Tindak Pidana Pencucian Uang.” *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 6 (2022): 2997–3003. <http://jurnal.um-tapsel.ac.id/index.php/>.

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“Laporan kinerja Deputy Bidang Pelaporan Dan Pengawasan Kepatuhan,” 2024.

Money Laundering (TPPU), which covers the following aspects: the definition and regulation of money laundering; the determination of criminal acts; sanctions and penalties; financial reporting obligations; the establishment of law enforcement institutions; international cooperation; and the eradication of money laundering on a national scale. These roles and measures are tailored to strengthen the government's efforts to protect the financial system and prevent money laundering crimes in Indonesia.²⁹

The following are the stages or processes involved in committing the crime of money laundering.



Law Enforcement for Fraudulent Investments in General under the Criminal Code

In the Binomo case involving Indra Kenz, he was held legally accountable based on Article 378 of the Indonesian Criminal Code in conjunction with Article 55 of the Criminal Code (KUHP).

1. Article 378 KUHP

Whoever, with the intent to unlawfully benefit themselves or others, uses a false name or false title (*hoedanigheid*); through deceit or a series of lies, compels another person to hand over something to them, or to grant a loan or cancel a debt, shall be threatened with the charge of fraud and may be sentenced to imprisonment for up to four years.

2. Article 55 of the Indonesian Criminal Code (KUHP)

Shall be punished as the perpetrator (*dader*) of a criminal act:

- a. Those who commit, order to commit, or participate in committing the act;
- b. Those who, by giving or promising something, by abusing power or position, by force, threat, or deception, or by providing an opportunity, means, or information, intentionally incite another person to commit the act.

Caught by the police based on a report from the Jakarta Police Criminal Investigation Agency (*bareskrim*) that many victims had experienced fraud until the victim's money was lost reaching hundreds of millions, Indra Kenz's actions included spreading fake news, money laundering, online gambling. Indra Kenz's actions were found guilty by the Panel of Judges by sentencing the defendant to 10 (ten) years in prison, and a fine of Rp. 5,000,000,000, - (five billion rupiah) if not paid, replaced with 10 (ten) months in prison as seen through the decision of the Tangerang District Court.

However, the effectiveness of such punishment in deterring offenders remains questionable. The author argues that the most appropriate form of punishment in this context is through the mechanism of asset confiscation. Imprisonment alone is not

²⁹ Maura Lysandra, "Pencucian Uang Yang Dilakukan Rafael Alun Sesuai Dengan Uu Nomor 8 Tahun 2010 Tentang Tppu" 3 (2023): 382–88, <https://jinnovative.org/index.php/Innovative/article/view/4853>.

enough to reduce economically motivated crimes in Indonesia. Asset forfeiture serves to break the chain of crime by depriving perpetrators of the proceeds of their crimes, thereby reducing the incentive to continue illegal activities. Indonesia's current legal system only focuses on imposing penalties, fines and imprisonment, without removing the potential financial gains made by perpetrators.³⁰ By passing this bill, the state can narrow the space for perpetrators to continue repeating their actions and provide a stronger deterrent effect. This asset confiscation also applies to corruptors who are very happy to take people's money to increase their wealth to enjoy.

PPATK in carrying out the function of preventing and eradicating money laundering, PPATK has the authority;

1. Requesting and obtaining data and information from government agencies and/or private institutions that have the authority to manage data and information, including from government agencies or private institutions that receive reports from certain professions;
2. Establish guidelines for identifying suspicious financial transactions; coordinate efforts to prevent money laundering with related agencies;
3. Providing recommendations to the government regarding efforts to prevent money laundering crimes;
4. Representing the government of the Republic of Indonesia in international organizations and forums related to the prevention and eradication of money laundering crimes;
5. Organizing anti-money laundering education and training programs;
6. Conducting socialization of prevention and eradication of money laundering crimes.³¹

Law Enforcement for Asset Forfeiture of Fraudulent Investment in South Korea

South Korea adopts a developmental welfare state policy that these elites carry out a systematic strategy to increase economic growth through social policies.³² This strategy can be said to be successful in creating social policies to realize economic growth, the key to the country's success is through transparency and accountability in achieving social policies. South Korea has a massive economic policy, so it is able to compete on an international scale. And they also recruit investors, manage bank accounts and launder money. This crypto fraud mode is a gathering place for scammers who target victims with quite large profits.³³ Korea Financial Intelligence Unit (KoFIU) established in November 2001 and based on the Financial Transaction Reports Act (Financial Transaction Reports Act, FTRA). KoFIU is under the Ministry of Finance and Economy (MOFE). KoFIU serves as a liaison between financial institutions and law enforcement

³⁰ Muhammad Ghulam Reza, "Kebijakan Hukum Pidana Perampasan Aset 'Non-Conviction Based Asset Forfeiture' Dalam Tindak Pidana Pencucian Uang," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 1167–81, <https://doi.org/https://doi.org/10.31316/jk.v8i1.6557>.

³¹ Risyat, Ibnu Arif. "Korelasi Antara Afiliator Aplikasi Binomo Dengan Tindak Pidana Pencucian Uang." *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 6 (2022): 2997–3003. <http://jurnal.um-tapsel.ac.id/index.php/>.

³² Herinto Sidik Iriansyah, "Krisis Asia, Kapitalisme Dan Negara Kesejahteraan (Tinjauan Analisis Kapitalisme Korea Selatan)," *Jurnal Ilmu Pendidikan (JIP) STKIP Kusuma Negara* 12, no. 1 (2020): 53–60, <https://doi.org/10.37640/jip.v12i1.277>.

³³ Bisdan Sigalingging, "Bantuan Hukum Timbal Balik Dalam Perampasan Aset Korupsi Antar Lintas Batas Negara," *Iuris Studia: Jurnal Kajian Hukum* 2 (2021): 387–98, <https://doi.org/10.55357/is.v2i3.152>.

by receiving Suspicious Transaction Reports (STRs) from the reporting party, analyzes the report, and directs it to law enforcement agencies for further action. KoFIU is complemented by the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) of the FSC, the Ministry of Justice (MOJ), the National Police Agency (NPA), the National Tax Service (NTS), the Korea Customs Service (KCS), the Financial Supervisory Service (FSS), and other law enforcement agencies. KoFIU develops good financial practices and protects the country from the spread of serious anti-social crimes by preventing money laundering activities through financial institutions.³⁴ To provide a deterrent effect on money launderers, South Korea also has a law enforcement system through asset confiscation.

1. South Korea has Anti-money Laundering Laws Including

- a. The Act on Reporting and Use of Specific Financial Transaction Information (Anti Money Laundering Act): The main section in South Korea that regulates AML (Anti Money Laundering) efforts. This law also requires reporting when an institution experiences something suspicious in a financial transaction.
- b. The Financial Transactions Reporting Act (FTRA): Provides provisions regarding financial transaction reporting.
- c. The Act on the Prohibition of Financing of Terrorism (APFT): Specifically discusses terrorism regarding funding at financial institutions.
- d. The Act on the Regulation and Supervision of Credit Services: Applies to credit card companies.
- e. The Criminal Proceeds (Recovery) Act: To confiscate and recover the proceeds of crime, including those involved in money laundering.
- f. The Foreign Exchange Transaction Act: Regulates cross-border financial transactions and foreign exchange activities with the aim of preventing illicit flows and cross-border money laundering.
- g. Financial Services Commission (FSC) and Financial Supervisory Service (FSS): Issue regulations and guidance to effectively implement AML laws. Covers customer due diligence, risk assessment, and internal controls.
- h. FATF Recommendations and Guidelines: South Korea also adheres to the recommendations and guidelines provided by the FATF, which serve as benchmarks for effective AML measures. The country undergoes periodic evaluations by the FATF to assess its compliance with these standards.

2. Penal Code or Criminal Code in South Korea or E-law in Korea

- a. Article 347 (Fraud)

A person who defrauds another, thereby taking property or obtaining pecuniary advantage from another, shall be punished by imprisonment for no more than ten years or by a fine not exceeding twenty million won.
- b. Article 347-2 (Fraud by Use of Computers, etc.)

Any person who acquires any benefits to property or has a third person acquire them, by making any data processed after inputting a false information or improper order, or inputting or altering the data without any

³⁴ "AML Regime," n.d.

authority into the data processor, such as a computer, etc. , shall be punished by imprisonment for not more than ten years, or a fine not exceeding twenty million won.

3. The Legal Mechanism or Framework Regarding the Crime of Money Laundering in South Korea is As Follows

- a. Restraint Orders: Authorities may apply for an asset freeze order. To prevent the loss of assets suspected of being related to money laundering. This order temporarily freezes assets, preventing the release of assets pending the outcome of the investigation and legal process.³⁵
- b. Confiscation Orders: After establishing the origin of illegal assets, authorities may seek a seizure order to permanently seize and forfeit the assets to the government. A seizure order is usually issued by a court and requires a legal determination of guilt or a finding that the assets are proceeds of crime.³⁶
- c. Civil Forfeiture: South Korea allows civil forfeiture in cases where it is difficult to establish criminal liability. Under civil forfeiture, assets can be seized and confiscated without a criminal conviction, provided there is evidence of a connection to money laundering or other criminal activity.³⁷

As case comparison, Haru Crypto Case in South Korea deserved an explanation as the example of asset recovery progress. In February 2024, South Korean authorities arrested three executives of Haru Invest, including its two co-CEOs, for allegedly defrauding 16,000 investors out of 1.1 trillion won (\$828 million) in a crypto investment scheme. The company, which promised high yields on crypto deposits, was accused of engaging in a "rug pull" between March 2020 and June 2023 by misrepresenting its investment strategies and diverting client funds to a single individual. Following the suspension of withdrawals and the dismissal of 100 employees in mid-2023, Haru Invest also filed a criminal complaint against B&S Holdings, accusing the consignment operator of contributing to a \$260 million loss during the FTX collapse. Investigators revealed that the company's fraudulent activities amounted to 1.4 trillion won, severely impacting creditors and investors worldwide.³⁸

Declared bankrupt by the Seoul Rehabilitation Court on November 20, 2024, Haru Invest was deemed insolvent due to its inability to repay customer damages. A creditors' meeting is set for February 2025 to assess its financial standing and oversee asset liquidation, which is expected to partially compensate affected investors. CEO Hugo Lee announced plans for phased asset recovery and distribution but cited ongoing legal and investigative hurdles that make precise timelines uncertain. While Haru opposes bankruptcy, arguing it limits negotiation power in recovering assets tied to FTX, the company assured equitable distribution to all creditors, including its international user base. However, with unresolved disputes and legal complexities, the rehabilitation process remains in its early stages.³⁹

³⁵ "Anti-Money Laundering: Comprehensive Analysis in South Korea (2024)," .

³⁶ "Anti-Money Laundering: Comprehensive Analysis in South Korea (2024)."

³⁷ "Anti-Money Laundering: Comprehensive Analysis in South Korea (2024)."

³⁸ Trisha Husada, "Haru Invest Declared Bankrupt amidst Alleged \$1b Investor Fraud," 2024.

³⁹ "South Korean Authorities Arrest Three Executives In Haru Crypto Fraud Scheme," 2024, n.d.

Indonesia is still in the stage of drafting the Asset Confiscation Bill, currently asset confiscation still refers to the Criminal Code but Indonesia has drafted and is still in the prolegnas stage. The Republic of Korea has been more mature in regulating money laundering crimes because the country has strict regulations, namely the FATF (Financial Action Task Force) and has an independent institution in managing asset confiscation, therefore a table will explain to review the comparison of asset confiscation between Indonesia and South Korea as follows:

Tabel 2. The Comparison of Asset Confiscation between Indonesia and South Korea

No	Indonesia	South Korea
1. Investigator/ Investigation	Officials of the Republic of Indonesia National Police, Republic of Indonesia Attorney General's Office, National Narcotics Agency, Civil Servants. (Asset Confiscation Bill, Article 8 paragraph (3)).	Police administrative officials, police superintendents, police captains or police lieutenants shall investigate crimes as police judicial officers under instructions of a public prosecutor. (Criminal Procedure Act, Article 196).
2. Blocking and Seizure	In the case of assets being seized in the form of land or other immovable property, the investigator shall immediately notify, register or note the seizure of the land or other immovable property to the official authorized to handle land affairs or the official authorized to handle the immovable property, accompanied by a report of the seizure. (Asset Confiscation Bill, Article 15 paragraph (5)).	Seizure without Warrant: A public prosecutor or judicial police officer may seize an article which has been discarded by a suspect or any other person, or those which have been voluntarily produced by their owner, possessor, or custodian without a warrant. (Criminal Procedure Act, Article 218).
3. Filing and Submission of Confiscation Requests	Investigators within a maximum of 7 (seven) days from the time the Blocking and/or Confiscation is carried out must prepare files for the Assets as referred to in Article 5 paragraph (1) and paragraph (2) letter a which are blocked and/or confiscated, accompanied by evidence to support the application for confiscation of the Assets. (Asset Confiscation Bill, Article 21 paragraph (1)).	A member of a collegiate court may be ordered to make a seizure or search, or a judge of a district court having jurisdiction over the place where such a seizure or search is to be effected may be requested to do so, by a court or a judge of a district court having jurisdiction over the place where such a seizure or search is to be effected may be requested to do so, by a court. (Criminal Procedure Act, Article 136).
4. Summons	The clerk, on the orders of the Head of the District	Summons (Request for Appearance of Suspect) Any

	<p>Court, shall submit a letter of summons to the State Attorney who has submitted a request to attend the trial day.⁴⁰</p> <p>(Asset Confiscation Bill, Article 33 paragraph (1)).</p>	<p>public prosecutor or judicial police officer may, whenever necessary for investigation, request a suspect to make an appearance to hear his statements.⁴¹</p> <p>(Criminal Procedure Act, Article 200).</p>
5. Court Proceedings	<p>In the examination of a case of an application for Asset Confiscation, the State Attorney who submits the application is obliged to submit the arguments that form the basis of the application and is obliged to prove that the Assets requested for confiscation are Criminal Assets.</p> <p>(Asset Confiscation Bill, Article 37).</p>	<p>a. The presiding judge shall fix the date for public trial.</p> <p>b. The defendant, his representative or proxy shall be summoned on the date for public trial.</p> <p>a. Notice of the date set for public trial shall be given to the public prosecutor, defense counsel and assistant.</p> <p>(Criminal Procedure Act, Article 267).</p>
6. Duties and Warranties	<p>a. Asset Management Duties as Referred to In Paragraph (1) Include:</p> <ol style="list-style-type: none"> 1) Storage of Criminal Assets; 2) Securing Criminal Assets; 3) Maintenance of Criminal Assets; 4) Assessment of Criminal Assets; 5) Transfer of Criminal Assets; 6) Use of Criminal Assets; 7) Utilization of Criminal Assets; 8) Return of Criminal Assets. <p>(Asset Confiscation Bill, Article 51).</p> <p>b. In Carrying Out the Duties as Referred to In Article 51, The Attorney General Has The Authority To:</p>	<p>Investigation and Prosecution of crimes: Prosecutors have the authority to investigate, establish charges, and enforce asset forfeiture for financial crimes and money laundering.</p> <p>Collaboration with the Team: South Korea has its own team, the Virtual Asset Crime Joint Investigation Team, which helps prosecutors to seize assets in a transparent manner in the seizure process.</p>

⁴⁰ "Rancangan Undang-Undang Republik Indonesia Tentang Perampasan Aset Terkait Tindak Pidana," n.d.

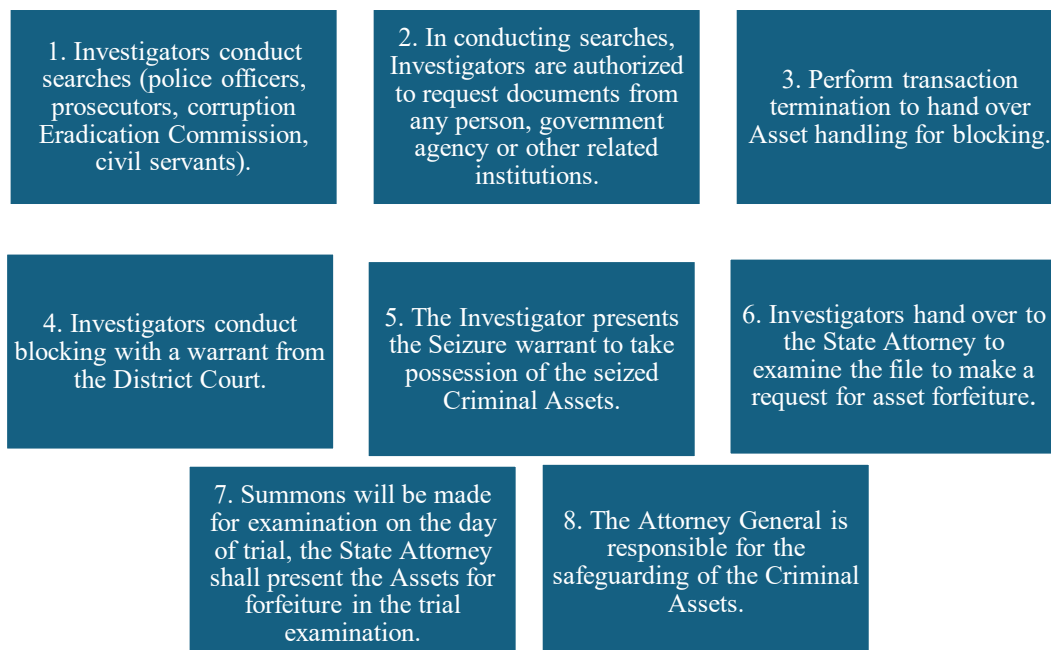
⁴¹ Law Viewer, "Certified Public Accountant Act (Law Act)," n.d.

	<ol style="list-style-type: none"> 1) Carry Out Storage of Criminal Assets; 2) Securing Criminal Assets; 3) C. Carry Out Maintenance of Criminal Assets; 4) Conducting an Assessment of Criminal Assets; 5) Determine the Use of Criminal Assets; 6) Determining the Use of Criminal Assets; And 7) Transferring Criminal Assets 8) Return of Criminal Assets. <p>(Asset Confiscation Bill, Article 51).</p>	
7. Asset Management Procedures	<p>The Attorney General may appoint a State Confiscated Goods Storage House or another party to assist in maintaining said Assets. (Asset Confiscation Bill, Article 53 paragraph (3)).</p>	<ol style="list-style-type: none"> a. At the initial stage, the organizer provides participants country report on the completeness of the overview, organizational profile, state assets and management systems and issues. b. Second, the preparation of an action plan that begins with background, identification of current issues to develop strategies. Action, Action plan must be prepared with a complete description, explaining more specifically and must compile a SWOT team (strength weakness opportunity and threat) to assist the strategy development in providing an overview.

Sources: Authors Compilation

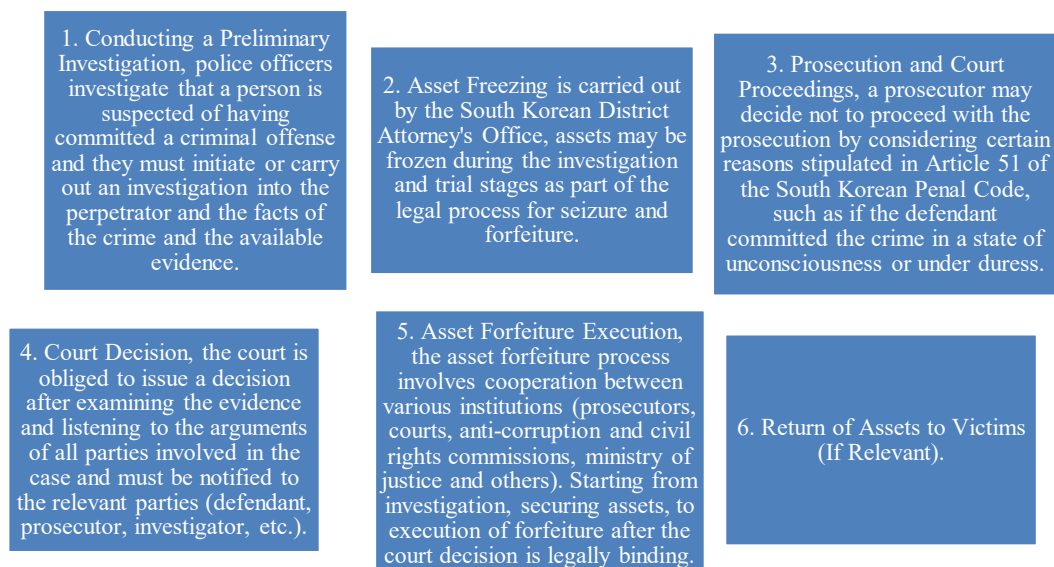
Institutions in carrying out asset seizures between Indonesia and South Korea also have differences. Here is the institutional scheme that the author created.

Indonesia



Sources: Asset Confiscation Bill

South Korea



Sources: Criminal Procedure Act (E-law Korea)

Based on the results of the research and comparison conducted by the authors between the regulations and law enforcement procedures of Indonesia's Draft Asset Forfeiture Law and South Korea's Asset Forfeiture Law, it can be analyzed that South Korea's regulations are already well-established. For instance, in a case that occurred in 2024, involving losses of nearly 1 billion US dollars, the process was completed in less than a year, with the company declared bankrupt and ordered to immediately arrange

asset restitution. Meanwhile, Indonesia still focuses on individual criminal liability and fines.

The second analysis also reveals that asset forfeiture in South Korea has a simpler enforcement process in terms of institutional transitions, with clear and easily monitored procedures. Therefore, it can be concluded that since Indonesia has yet to enact its Draft Asset Forfeiture Law, it would be beneficial to adopt the simplification of law enforcement and institutional procedures from South Korea's model, emphasizing restorative justice rather than retributive justice.

E. Conclusions

This study shows that asset confiscation is very necessary to provide a deterrent effect on perpetrators to impoverish their assets, their fear is losing their wealth. Asset confiscation in South Korea is very well-organized and massive regulations and fast and responsive law enforcement. The draft law on asset confiscation in Indonesia has not yet been passed, the bill on asset confiscation is likened to a double-edged sword and sheltered from the oligarchy of government, overlapping for ratification is actually protected behind the scenes by the authorities who make politics a tool of the authorities and hide behind the words of the people's representatives. Asset confiscation in South Korea realizes justice for its citizens in accordance with the regulations made by the government, Indonesia is also very responsive coupled with the power of netizens with the slogan "No viral, No justice" for the law in Indonesia. Students and the public are eagerly awaiting to realize the 5th principle of Pancasila "Social justice for all Indonesian people" to have their assets confiscated and impoverished for the perpetrators.

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