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Applying the Unexplained Wealth Doctrine as a Basis for Confiscating Corruptors' Assets: Formulating a Fair Reversed Burden of Proof and Strengthening Its Application to Law-Enforcement Officers

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Abstrak

Pemulihan aset hasil korupsi di Indonesia masih menghadapi keterbatasan karena mekanisme perampasan pada umumnya bergantung pada proses pidana dan keterkaitan aset dengan tindak pidana yang dapat dibuktikan. Penelitian ini menganalisis legitimasi doktrin unexplained wealth, merumuskan desain pembuktian terbalik yang proporsional, dan menguji kebutuhan pengawasan yang lebih kuat terhadap kekayaan aparat penegak hukum. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan perbandingan hukum. Hasil penelitian menunjukkan bahwa pembalikan beban pembuktian dapat dirancang tanpa meniadakan praduga tidak bersalah apabila ditempatkan dalam mekanisme in rem dan didahului kewajiban negara menunjukkan ketidakwajaran kekayaan secara objektif. Penelitian menawarkan model pembuktian terbalik berimbang bertingkat yang terdiri atas pemicu objektif, pembuktian prima facie oleh negara, kesempatan pemilik menjelaskan asal-usul harta berdasarkan keseimbangan kemungkinan, dan putusan pengadilan dengan jaminan perlindungan hak. Terhadap aparat penegak hukum, model tersebut perlu dilengkapi pemeriksaan independen untuk mengurangi konflik kepentingan. Formulasi ini dapat menjadi salah satu rujukan dalam pembaruan hukum perampasan aset di Indonesia.

Kata Kunci: unexplained wealth; perampasan aset; pembuktian terbalik; aparat penegak hukum; non-conviction based forfeiture.

Abstract

Asset recovery in Indonesian corruption cases remains constrained because confiscation generally depends on criminal proceedings and proof linking property to a predicate offence. This study examines the legal legitimacy of the unexplained wealth doctrine, formulates a proportionate reversed-burden model, and assesses the need for stronger scrutiny of assets held by law-enforcement officers. It employs normative legal research using statutory, conceptual, case, and comparative approaches. The study finds that shifting the evidentiary burden can be designed consistently with the presumption of innocence when it operates within an in rem mechanism and only after the State establishes objective grounds showing a material disparity between assets and lawful income. The article proposes a tiered balanced reversed-burden model consisting of an objective trigger, a prima facie burden on the State, an opportunity for the asset holder to establish lawful origin on the balance of probabilities, and a judicial determination accompanied by procedural safeguards. For law-enforcement officers, the mechanism

should include independent examination to reduce structural conflicts of interest. This formulation may serve as a reference for future Indonesian asset-recovery reform.

Keywords: *unexplained wealth; asset forfeiture; reversed burden of proof; law-enforcement officers; non-conviction-based forfeiture.*

INTRODUCTION

Corruption in Indonesia is not only a question of punishing offenders; it is also a question of recovering property that has not returned to the State. Indonesia Corruption Watch (ICW), in its monitoring of corruption judgments for 2024, recorded state financial losses of approximately IDR 330.9 trillion, while the recovery rate was only 4.84 percent, consisting of IDR 316 billion in fines and IDR 16.58 trillion in replacement money. Of the 1,768 judgments monitored, the average prison sentence was only three years and three months.[1]

Existing confiscation instruments have likewise not been used optimally. Only 63.56 percent of defendants were ordered to pay replacement money under Article 18 of the Anti-Corruption Law, while money-laundering provisions were applied to only 25 defendants. At the investigation stage, of 364 cases, only 48 used Article 18 and only five used anti-money-laundering instruments.[2]

The difficulty becomes particularly acute when the person concerned is a law-enforcement officer. The Zarof Ricar case, involving a former official of the Supreme Court, is a prominent illustration. The court considered that no lawful income could plausibly explain cash equivalent to approximately IDR 915 billion and 51 kilograms of gold held by a civil servant, and the defendant failed to demonstrate a lawful origin for those assets. His declared lawful wealth in the 2023 tax return was approximately IDR 8.82 billion, creating a disparity of more than one hundred times the declared figure.[3]

The case demonstrates two points. First, the logic of unexplained wealth has already been used factually by Indonesian judges when assessing assets that cannot reasonably be reconciled with lawful income. Second, that logic still operates only because there is an underlying criminal case. Without a predicate proceeding, assets of a comparable scale may have no clear, autonomous confiscation pathway under existing law.

As of September 2026, the Asset Forfeiture Bill remained under deliberation in Commission III of the House of Representatives, and its substantive design had not yet been finalised. Parliamentary leaders stated a target of completing deliberations by 15 December 2026. This fluid legislative position reinforces the relevance of the present study because the architecture of unexplained-wealth confiscation, standards of proof, and procedural safeguards remain open to legislative design.[4]

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[1] Kompas, "Potret Suram Pemidanaan Korupsi 2024: Ringan di Vonis, Berat di Kerugian Negara," December 5, 2025; Indonesia Corruption Watch, "Tren Vonis Kasus Korupsi 2024," 2025; CNN Indonesia, "Tren Vonis 2024: Korupsi Kerugian Negara Mendominasi," December 4, 2025.

[2] Indonesia Corruption Watch, Laporan Hasil Pemantauan Tren Korupsi Tahun 2024 (Jakarta: ICW, 2025); Tirto, "ICW Rilis Tren Vonis Korupsi 2024: Sumut Jadi Provinsi Terbanyak," December 4, 2025.

[3] Metro TV, "Zarof Ricar Dituntut 20 Tahun Penjara dalam Kasus Vonis Bebas Ronald Tannur," 2025; CNN Indonesia, "Uang Rp915 Miliar & Emas 51 Kg Kasus Zarof Ricar Dirampas Negara," June 18, 2025.

[4] Sekretariat Jenderal DPR RI, "Saan Pastikan RUU Perampasan Aset Ditargetkan Tuntas Sebelum 15 Desember," Parlementaria, September 22, 2026.

The central research questions are therefore threefold: how the unexplained wealth doctrine and a reversed evidentiary burden can be justified within the Indonesian legal system in light of the presumption of innocence and property rights; how a fair reversed-burden model should be formulated for assets whose lawful origin cannot be explained; and why, and by what mechanism, the doctrine should be applied with strengthened scrutiny to law-enforcement officers.

This study seeks to formulate norms as ius constituendum for possible incorporation into future asset-forfeiture legislation. Its principal contribution is a tiered balanced reversed-burden model combined with a specific clause for law-enforcement officers. Earlier Indonesian scholarship has discussed the balance-of-probabilities approach and non-conviction-based asset forfeiture, while international literature has examined illicit enrichment and unexplained wealth more generally. The gap addressed here lies in integrating a staged evidentiary structure with a heightened, independently administered framework for law-enforcement officers.[5]

RESEARCH METHOD

This research is prescriptive normative legal research. It examines positive law and comparative legal materials in order to formulate the legal norms that should govern unexplained-wealth confiscation.[6]

Table 1. Research Approaches

Approach	Object of Analysis
Statutory approach	The 1945 Constitution; Anti-Corruption Law; Anti-Money Laundering Law; Law No. 28 of 1999; KPK Law; 2023 Criminal Code; 2025 Criminal Procedure Code; Law No. 7 of 2006 ratifying UNCAC
Conceptual approach	Unexplained wealth, illicit enrichment, in rem forfeiture, and the balance-of-probabilities principle
Case approach	Constitutional Court Decision No. 77/PUU-XII/2014; the Zarof Ricar case; Salabiaku v. France; Phillips v. United Kingdom; Gogitidze and Others v. Georgia; NCA v. Hajiyeva
Comparative approach	United Kingdom, Australia, Hong Kong, Philippines, Ireland, and the European Union

Primary legal materials consist of legislation, international instruments, and court decisions. Secondary materials include books, reputable journal articles, and reports from international institutions such as UNODC, the World Bank/StAR Initiative, FATF, and the Basel Institute on Governance, as well as national materials from ICW and the House of Representatives. The comparative framework also draws on major works concerning non-conviction-based confiscation, proceeds-of-crime law, and international anti-corruption standards. The materials are analysed qualitatively through systematic, teleological, and comparative interpretation.[7]

[5] Lilik Mulyadi, Pembalikan Beban Pembuktian Tindak Pidana Korupsi dalam Sistem Hukum Pidana Indonesia Pasca Ratifikasi Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi 2003 (Bandung: Alumni, 2007); Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia," Integritas: Jurnal Antikorupsi 3, no. 1 (2017): 115-130; Lindy Muzila et al., On the Take: Criminalizing Illicit Enrichment to Fight Corruption (Washington, DC: World Bank/StAR Initiative, 2012); Andrew Dornbierer, Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth (Basel: Basel Institute on Governance, 2021).

[6] Peter Mahmud Marzuki, Penelitian Hukum, rev. ed. (Jakarta: Kencana, 2017).

[7] Theodore S. Greenberg et al., Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture (Washington, DC: World Bank/StAR Initiative, 2009); Jean-Pierre Brun et al.,

RESULTS AND DISCUSSION

Legitimacy of the Unexplained Wealth Doctrine and the Reversed Burden of Proof

A reversed burden concerning the lawful origin of assets can be designed consistently with constitutional guarantees and international human-rights law, provided that the mechanism is formulated as restorative in rem confiscation rather than as a substitute form of criminal punishment.

Unexplained wealth refers to property whose value is materially inconsistent with the owner's lawful income and whose origin cannot be reasonably explained. The doctrine may take two different legal forms. Illicit enrichment treats an unjustified increase in wealth as an offence against a person (in personam), whereas an unexplained wealth order or comparable civil-recovery mechanism treats the unexplained asset itself as the object of an in rem proceeding. This article adopts the second model because it is more compatible with the presumption of innocence when accompanied by appropriate procedural safeguards.[8]

The United Nations Convention against Corruption (UNCAC), ratified by Indonesia through Law No. 7 of 2006, provides several normative entry points. Article 20 invites States Parties to consider criminalising illicit enrichment of public officials; Article 31(8) allows consideration of a requirement that an offender demonstrate the lawful origin of alleged proceeds of crime; and Article 54(1)(c) encourages measures for confiscation without a criminal conviction in appropriate circumstances.

FATF Recommendation 4 likewise encourages effective confiscation mechanisms, including non-conviction-based confiscation and, where consistent with domestic law, mechanisms requiring an offender to demonstrate the lawful origin of property liable to confiscation. In Europe, Article 16 of Directive (EU) 2024/1260 requires Member States to provide a form of unexplained-wealth confiscation, with implementation due by 23 November 2026. Its minimum scope concerns property linked to criminal organisations, while Member States may adopt broader rules.[9]

The principal objection is that reversing the evidentiary burden may conflict with Article 8(1) of Law No. 48 of 2009 on Judicial Power. That objection can be answered through three distinctions.

1. Object of proof. The presumption of innocence protects a person against an unproven attribution of criminal guilt. The lawful origin of property, however, is a factual matter often most readily explained by the person who controls the relevant records and transactions. A limited duty to explain can therefore

Asset Recovery Handbook: A Guide for Practitioners, 2nd ed. (Washington, DC: World Bank/StAR Initiative, 2021); Michelle M. Gallant, Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies (Cheltenham: Edward Elgar, 2005); Jon Petter Rui and Ulrich Sieber, eds., Non-Conviction-Based Confiscation in Europe (Berlin: Duncker & Humblot, 2015); Colin King, Clive Walker, and Jimmy Gurulé, eds., The Palgrave Handbook of Criminal and Terrorism Financing Law (Cham: Palgrave Macmillan, 2018); Thomas R. Snider and Won Kidane, "Combating Corruption through International Law in Africa: A Comparative Analysis," Cornell International Law Journal 40, no. 3 (2007): 691-748.

[8] Lindy Muzila et al., On the Take: Criminalizing Illicit Enrichment to Fight Corruption (Washington, DC: World Bank/StAR Initiative, 2012); Andrew Dornbierer, Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth (Basel: Basel Institute on Governance, 2021).

[9] Andrew Dornbierer, "Targeting Unexplained Wealth: Implications of the EU's 2024 Directive on Asset Recovery," Policy Brief 14 (Basel: Basel Institute on Governance, 2024); Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (Paris: FATF, updated 2012-2025), Recommendation 4.

be shifted once the State has established an objectively verifiable disparity and has first discharged a prima facie burden.[10]

2. Restorative character. In rem confiscation does not, by itself, impose imprisonment, create a criminal record, or determine criminal guilt. Its legal function is to remove property that cannot be established as lawfully held after the State has met the statutory trigger. The principle nemo commodum capere potest de injuria sua propria also expresses the broader proposition that no person should obtain legal advantage from wrongful conduct. Scholarship supporting civil recovery nevertheless emphasises that legitimacy depends on genuine procedural safeguards and judicial supervision.[11]
3. International human-rights jurisprudence. In Salabiaku v. France, the European Court of Human Rights accepted factual and legal presumptions when kept within reasonable limits. In Phillips v. United Kingdom, assumptions used for confiscation of criminal proceeds were held compatible with Convention rights. In Gogitidze and Others v. Georgia, confiscation of property held by a former public official and family members was found not to violate property rights where the applicants retained a reasonable opportunity to contest the measures and a fair balance was maintained between public interest and individual rights.[12]

Article 28H(4) of the 1945 Constitution protects property against arbitrary deprivation, while Article 28J(2) permits statutory limitations for legitimate public purposes. Accordingly, unexplained-wealth confiscation can be constitutionally defensible where it is clearly regulated by statute, imposed by a court, proportionate to the proven unexplained portion of the assets, and accompanied by a meaningful right of defence. Constitutional Court Decision No. 77/PUU-XII/2014, concerning evidentiary provisions in the Anti-Money Laundering Law, further demonstrates that a limited reversed burden is not inherently incompatible with the Constitution.

Indonesian positive law already recognises limited forms of reversed proof, but they remain tied to specific offences or criminal proceedings.

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[10] Indriyanto Seno Adji, Korupsi dan Pembalikan Beban Pembuktian (Jakarta: Kantor Pengacara & Konsultasi Hukum Prof. Oemar Seno Adji & Rekan, 2006); Lilik Mulyadi, Pembalikan Beban Pembuktian Tindak Pidana Korupsi dalam Sistem Hukum Pidana Indonesia Pasca Ratifikasi Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi 2003 (Bandung: Alumni, 2007).

[11] Anthony Kennedy, "Justifying the Civil Recovery of Criminal Proceeds," Journal of Financial Crime 12, no. 1 (2004): 8-23, https://doi.org/10.1108/13590790510624990; Stefan D. Cassella, "The Case for Civil Forfeiture: Why In Rem Proceedings Are an Essential Tool for Recovering the Proceeds of Crime," Journal of Money Laundering Control 11, no. 1 (2008): 8-14, https://doi.org/10.1108/13685200810844451; Johan Boucht, The Limits of Asset Confiscation: On the Legitimacy of Extended Appropriation of Criminal Proceeds (Oxford: Hart Publishing, 2017); Jennifer Hendry and Colin King, "How Far Is Too Far? Theorising Non-Conviction-Based Asset Forfeiture," International Journal of Law in Context 11, no. 4 (2015): 398-411, https://doi.org/10.1017/S1744552315000269.

[12] Salabiaku v. France, App. No. 10519/83, European Court of Human Rights, October 7, 1988; Phillips v. United Kingdom, App. No. 41087/98, European Court of Human Rights, July 5, 2001; Gogitidze and Others v. Georgia, App. No. 36862/05, European Court of Human Rights, May 12, 2015; Catherine Behles, "European Court of Human Rights Rules Forfeiture of Wrongfully Acquired Property Did Not Violate Applicant's Right to Protection of Property," ASIL International Law in Brief, 2015.

Table 2. Reversed Proof in Indonesian Positive Law

Provision	Rule	Limitation
Article 12B Anti-Corruption Law	Recipient of a gratification of at least IDR 10 million must prove that it was not a bribe	Applies only to the gratification offence
Articles 37 and 37A Anti-Corruption Law	Defendant may prove that he or she did not commit corruption and must explain assets	The result merely strengthens or weakens the existing prosecution evidence
Article 38B Anti-Corruption Law	Undeclared assets may be confiscated if the defendant fails to prove their lawful origin	Requires an underlying criminal case that has been proven
Articles 32-34 Anti-Corruption Law	Civil action is possible where evidence is insufficient or the alleged offender dies	Burden remains on the State
Articles 77-78 Anti-Money Laundering Law	Defendant must prove that assets are not proceeds of crime	Still operates within criminal proceedings
Article 67 Anti-Money Laundering Law and Supreme Court Regulation No. 1 of 2013	Property may be confiscated where no owner successfully asserts a claim	Limited to property with no identified or successful claimant
Article 5 Law No. 28 of 1999 and LHKPN regime	Public officials must report and permit examination of their wealth	No direct confiscation consequence for unexplained disparity

The Zarof Ricar case shows that the absence of a satisfactory explanation for the origin of property has already been treated judicially as relevant to confiscation. Yet the construction still depends on an underlying gratification prosecution. The regulatory gap is therefore the absence of a self-standing unexplained-wealth mechanism.

A Tiered Balanced Reversed-Burden Model

A fair model should operate through four sequential stages: an objective trigger, a prima facie burden on the State, a conditional shift of the burden to the property holder, and an in rem judicial determination supported by rights safeguards. The burden should not shift until the State first establishes objective grounds for questioning the lawful origin of the property.

Table 3. Tiered Balanced Reversed-Burden Model

Stage	Party Bearing the Burden	Standard	Consequence
1. Objective trigger	State/applicant	Measurable disparity above a statutory threshold	Application may be filed
2. Prima facie burden	State	Reasonable grounds to suspect an unexplained disparity	If not established, application is dismissed
3. Shifted burden	Property holder	Balance of probabilities	If adequately explained, property is released
4. In rem determination	Court	Assessment of the evidence as a whole	Only the unexplained portion is confiscated; appeal remains available

Stage 1 - Objective trigger. An application should be permitted only where a measurable disparity exists between the value of property and the holder's cumulative lawful income. Relevant data may include LHKPN declarations, tax records, PPATK information, land records, securities-market records, and other lawfully obtained financial data. Legislation should set a minimum value or materiality threshold so that

trivial discrepancies do not burden courts, while also allowing qualitative indicators such as nominee arrangements or transaction patterns to be considered.

Stage 2 - Prima facie burden on the State. The applicant must identify the property and its beneficial controller, including nominee or family arrangements where supported by evidence, and demonstrate why its value is materially inconsistent with lawful income. The proposed standard is reasonable grounds to suspect. The State need not prove a predicate offence at this stage because the purpose of the proceeding is to test the legal status and explainability of the property, not to convict the holder of a crime.

Stage 3 - Shifted burden. Once the State has met the prima facie threshold, the property holder should have a genuine opportunity to explain lawful origin, for example by inheritance, gift, business income, investment returns, or other legitimate sources. The standard should be the balance of probabilities, lower than the criminal standard of beyond reasonable doubt. Statements made solely to explain the property should not automatically be used to prosecute the holder criminally, except in proceedings concerning intentionally false statements, thereby preserving the privilege against self-incrimination.

Stage 4 - In rem determination and safeguards. The court should order confiscation only of the portion of property that remains unexplained after the full evidentiary process, not the entirety of the holder's assets. Mandatory safeguards should include access to counsel and case materials, protection of bona fide third parties, appeal and cassation, State compensation where a confiscation order is later shown to have been erroneous, and a clearly defined look-back period.

Table 4. Comparison between Existing Law and the Proposed Model

Aspect	Existing Law (Anti-Corruption/AML)	Proposed Model
Precondition	Underlying criminal proceeding	Self-standing in rem proceeding
Object	Property connected to the charge or identified offence	Unexplained property above the statutory threshold
Initial burden	Not consistently formulated	State bears a defined prima facie burden
Holder's standard	Not consistently formulated	Balance of probabilities
Legal consequence	Criminal punishment plus confiscation	Confiscation only; no criminal conviction by reason of the in rem order
Rights protection	General criminal-procedure guarantees	Specific safeguards, including compensation for erroneous confiscation

The model also reflects the classical legal values of justice, legal certainty, and utility. Justice is pursued by preventing unlawful economic benefit; legal certainty is strengthened by explicit triggers, standards, and procedural stages; and utility is advanced by reducing the economic incentive for corruption. From the perspective of progressive law, procedural innovation is defensible only insofar as it serves substantive justice while remaining controlled by legal safeguards.[13]

[13] Gustav Radbruch, "Gesetzliches Unrecht und Übergesetzliches Recht," Süddeutsche Juristen-Zeitung 1, no. 5 (1946): 105-108; Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia (Yogyakarta: Genta Publishing, 2009); Gary S. Becker, "Crime and Punishment: An Economic Approach," Journal of Political Economy 76, no. 2 (1968): 169-217, https://doi.org/10.1086/259394.

Strengthened Application to Law-Enforcement Officers and Comparative Lessons

Law-enforcement officers should be subject to the unexplained-wealth mechanism through heightened scrutiny and independent examination, not because their rights are diminished, but because the nature of their public powers and the structural risk of conflicts of interest justify more rigorous verification.

Reasons for Special Treatment

1. Coercive authority. Police officers, prosecutors, judges, investigators, and other justice officials may arrest, detain, seize, prosecute, or adjudicate. Such powers support a correspondingly high fiduciary obligation to the public.
2. Low-visibility corruption. Bribery connected with case handling may not produce a readily measurable state-financial loss. ICW monitoring indicated that state-loss offences dominated corruption cases, while trading in influence, bribery, or case brokerage may leave unexplained asset accumulation as one of the most visible financial traces.[14]
3. Structural conflicts of interest. Institutions may be required to investigate their own members, creating the classic problem expressed in quis custodiet ipsos custodes. The principle nemo judex in causa sua supports independent review where the home institution has an institutional interest in the outcome.
4. Existing normative foundation. The elucidation of Article 2 of Law No. 28 of 1999 includes judges, prosecutors, investigators, and court clerks among public officials subject to wealth-reporting obligations. The missing element is a legal consequence for objectively unexplained and materially disproportionate wealth.

Table 5. Comparative Regulation of Unexplained Wealth for Public Officials

Jurisdiction	Instrument	Relevance to Law-Enforcement Officers
Hong Kong	Section 10, Prevention of Bribery Ordinance (Cap. 201)	A public servant living beyond or controlling property disproportionate to official emoluments must provide a satisfactory explanation; enforcement is supported by the independent ICAC
Philippines	Republic Act No. 1379 (1955)	Property manifestly disproportionate to a public official's salary and lawful income may be presumed unlawfully acquired and forfeited through the statutory process
United Kingdom	Criminal Finances Act 2017	Unexplained Wealth Orders may be directed at politically exposed persons and certain persons suspected of serious crime; the property-value threshold is GBP 50,000
Georgia / ECtHR	Gogitidze and Others v. Georgia (2015)	Civil confiscation of unexplained property associated with a former public official was found compatible with Convention property rights in the circumstances of the case
Indonesia	Zarof Ricar case (2025)	The court confiscated substantial assets that could not be satisfactorily explained, but the mechanism remained attached to a gratification prosecution

[14] Media Indonesia, "ICW: Tren Korupsi 2024 Didominasi Kasus Kerugian Negara," December 4, 2025.

Elements of a Heightened Standard

1. A lower materiality trigger than for ordinary subjects may be justified because the lawful income profile of many law-enforcement officers can be verified from public salary and employment records.
2. LHKPN examination should be substantive and periodic rather than merely administrative, including a legally regulated lifestyle-audit component.
3. The look-back period may encompass the period in office and a defined period after retirement or departure, subject to reasonable document-retention expectations.
4. Assets registered in the name of a spouse, child, or nominee may be examined where evidence indicates beneficial control, while retaining a rebuttable presumption and protection for bona fide third parties.
5. Ethical and employment consequences may operate in parallel under their own legal bases, while criminal liability remains subject to the separate criminal process and criminal standard of proof.

Applications involving law-enforcement officers should not be controlled exclusively by the institution in which the officer serves. The proposed design places application authority in the Corruption Eradication Commission (KPK) or an independent asset-recovery unit, subject to adjudication by a designated Anti-Corruption Court panel. Where judges are concerned, external oversight by the Judicial Commission may support accountability without displacing the court's adjudicative authority.

Heightened scrutiny does not mean diminished rights. All safeguards applicable at Stage 4 remain available to law-enforcement officers. The differentiation is based on legally relevant differences in public authority, fiduciary responsibility, and structural conflict risk rather than on an assumption of guilt. The framework must therefore continue to comply with Article 28D(1) and Article 28I(2) of the 1945 Constitution.

The proposed reform is a dedicated chapter on unexplained-wealth confiscation within future asset-forfeiture legislation, accompanied by a specific law-enforcement-officer clause and coordinated amendments to related statutes.

1. A tiered balanced reversed-burden model. The balance-of-probabilities idea is developed from its traditional criminal-procedure context into a four-stage in rem procedure, with a different evidentiary standard at each stage.
2. A heightened standard for law-enforcement officers. Rather than treating law-enforcement officers in exactly the same way as all public officials, this article formulates enhanced scrutiny based on their greater coercive power and fiduciary duties.
3. An independent-examiner principle. Nemo judex in causa sua is operationalised as a procedural requirement rather than being left as an ethical aspiration.
4. A reorientation of LHKPN. Wealth declarations are treated not merely as an administrative reporting duty but as one lawful source of objective triggering evidence.
5. Express rights safeguards, including State compensation for wrongful confiscation, to answer due-process concerns raised in debates over non-conviction-based confiscation.[15]

[15] Fair Trials, "Non-Conviction Based Confiscation and Unexplained Wealth Orders: A Contradiction in Terms?," 2024.

Proposed Norms (Ius Constituendum)

The following clauses are academic proposals for future asset-forfeiture legislation and are not presented as enacted law.

Article A - Confiscation of Unexplained Wealth

1. Property whose value is materially disproportionate to the owner's lawful income and whose lawful origin cannot be reasonably explained may be confiscated for the State by court order.
2. An application may be filed only where the difference between the value of the property and cumulative lawful income exceeds a threshold prescribed by law.
3. The applicant must establish reasonable grounds for suspecting the material disparity referred to in paragraph (1).
4. Where the applicant has satisfied paragraph (3), the property holder must establish the lawful origin of the property on the balance of probabilities.
5. Information supplied by the property holder solely in the confiscation proceeding may not be used as evidence to prosecute that person criminally, except in proceedings concerning intentionally false statements.

Article B - Law-Enforcement Officers

1. A lower statutory trigger and a longer defined look-back period may apply to investigators, public prosecutors, judges, and court clerks, taking account of the term of office and a specified period after office.
2. An application against a law-enforcement officer may not be filed or controlled exclusively by the institution in which that officer serves.
3. Property registered in the name of a spouse, child, or another person but demonstrably controlled for the benefit of the law-enforcement officer may be treated as property of the officer unless the contrary is established.

Article C - Protection of Rights

1. A bona fide third party may object to an application and submit evidence of independent lawful ownership.
2. Where a confiscation order is annulled by a final and binding decision, the State must return the property and provide compensation in accordance with law.

Table 6. Required Harmonisation of Legislation

Legislation	Required Adjustment
Law No. 28 of 1999	Add legal consequences and verification procedures for materially unexplained LHKPN disparities
Anti-Corruption Law	Align Articles 37A and 38B with an autonomous in rem mechanism without weakening criminal-procedure safeguards
Anti-Money Laundering Law	Integrate lawful access to PPATK data as one source for the objective trigger
KPK Law	Clarify authority to initiate applications involving law-enforcement officers
Police, Prosecution, and Judicial-Power legislation	Provide a legal basis for verified lifestyle audits and appropriate employment or ethical consequences
State-asset management regulations	Regulate professional management, valuation, audit, and disposal of confiscated assets

Implementation Constraints, Safeguards, and Solutions

The principal implementation difficulties lie less in the basic concept than in legislative politics, data quality, institutional resistance, cross-border tracing, judicial capacity, and safeguards against abuse.

Table 7. Implementation Constraints and Proposed Responses

No.	Constraint	Problem	Proposed Response
1	Legislative politics	Asset-forfeiture legislation has been delayed and core design points remain contested	Maintain transparent legislative scrutiny of unexplained-wealth provisions and law-enforcement-officer safeguards
2	Presumption-of-innocence objection	Potential constitutional challenge	Frame the process as non-punitive in rem confiscation; retain a State prima facie burden, judicial control, and full rights of defence
3	Quality of wealth data	LHKPN is declaration-based and asset data are dispersed	Legally integrate verified data from LHKPN, tax authorities, PPATK, land administration, civil registration, financial regulators, and vehicle records
4	Nominee-held assets	Property may be held through relatives, nominees, corporations, or crypto-assets	Use rebuttable beneficial-ownership presumptions and verified beneficial-ownership disclosure, while protecting bona fide third parties
5	Institutional resistance	Home institutions may be reluctant to examine their own members	Use an independent applicant or asset-recovery unit and external oversight, with whistle-blower protection
6	Abuse of power	A mechanism could be misused against political or institutional opponents	Require objective triggers, mandatory court orders, appeal rights, compensation for wrongful confiscation, and public statistical reporting
7	Foreign assets	Property may be transferred abroad	Optimise mutual legal assistance under Law No. 1 of 2006 and relevant StAR, ARIN-AP, and FATF cooperation channels
8	Judicial and enforcement capacity	Judges and prosecutors may be unfamiliar with in rem procedure	Provide specialist training, procedural rules, and certified or designated panels
9	Management of confiscated property	Assets may depreciate or be mismanaged during proceedings	Establish professional asset management, audited interlocutory sale where justified, and BPK oversight
10	Legal certainty and temporal scope	Historic property may pre-date the new statute and old records may be unavailable	Define the mechanism as status-based in rem procedure, include clear transitional rules, and adopt a precise look-back period

Institutional resistance is particularly important for the law-enforcement-officer clause. A heightened evidentiary standard will be ineffective if the body responsible for initiating the process has a structural interest in protecting its own members. Independence of the applicant and transparency of the judicial process are therefore essential design features.

Asset recovery also does not end when a court makes a confiscation order. Property that is perishable, costly to maintain, or exposed to market fluctuation may lose value if it is not professionally managed. Legislation should therefore regulate inventory, valuation, storage, audited early sale in appropriate circumstances, reporting, and transparent use of proceeds. A State that requires individuals to explain

the provenance of property should itself be able to account publicly for the management of property it confiscates.

The relationship between provisional restraint and final confiscation must also be defined. Temporary freezing or seizure may be necessary to prevent dissipation, but it should be based on judicial authorisation or prompt judicial review, limited in time, and subject to challenge. The law should permit reasonable living expenses, legal costs, and the continuation of legitimate business activities where these do not dissipate the value of the restrained property. These limitations preserve proportionality while keeping asset-conservation measures effective.

A clear look-back period is equally important. Without a temporal limit, a property holder may be required to explain transactions so old that supporting documents can no longer reasonably be expected to exist. For law-enforcement officers, the period may be linked to the time in office and a defined period thereafter, but it should remain compatible with reasonable record-retention expectations. Transitional rules are also necessary so that a new in rem mechanism is not perceived as retroactive criminal punishment.

The objective trigger should combine quantitative and qualitative indicators. A quantitative indicator may consist of a minimum disparity between lawful income and total asset value. Qualitative indicators may include transaction patterns, nominee structures, control inconsistent with the person's economic profile, or verified financial intelligence. A large asset is not necessarily unlawful, and a complex ownership structure is not necessarily criminal. The relevant question is whether a combination of verifiable facts creates reasonable grounds to require an explanation.

Normative Parameters to Prevent Arbitrary Confiscation

The strength of an unexplained-wealth regime should not be measured by how easily the State can confiscate property. Its legitimacy depends on its ability to reconcile effective asset recovery with control over public power. Rules that are too weak leave criminal proceeds beyond practical recovery, while rules that are too broad threaten legal certainty and property rights. A staged, measurable, rebuttable, and judicially supervised design is therefore the central condition for compatibility with the rule of law.

The law must also distinguish in rem consequences from criminal, ethical, and administrative consequences. A finding that property remains unexplained should not automatically amount to a criminal finding that the holder committed corruption. If the evidence creates reasonable suspicion of a criminal offence, criminal proceedings must follow the applicable criminal procedure and evidentiary standards. This separation prevents asset-recovery law from becoming a shortcut around the higher standard of criminal proof.

For legislative drafting, open-ended expressions such as "unreasonable wealth" should be accompanied by measurable indicators. The statute should specify how lawful income is calculated, how assets are valued, how appreciation is treated, how inheritance and gifts are verified, how jointly owned property and debt are handled, how business income is assessed, and how foreign assets are treated. Defined parameters assist courts in achieving consistent decisions and enable the public to understand what evidence may reasonably be required to explain the origin of property.

The proposed model thus requires the legislature to separate three questions that are often conflated: when the State may begin examining a wealth disparity; when the

evidentiary burden may shift to the property holder; and when a court may finally order confiscation. Administrative suspicion or an inconsistency in data is only a gateway to verification, not proof of criminal proceeds. The burden should shift only after the State establishes an objectively reviewable factual basis, and confiscation should remain the final step after judicial assessment of the evidence as a whole.

CONCLUSION

The unexplained wealth doctrine can be developed as an autonomous basis for asset confiscation in Indonesia if it is constructed as a clearly regulated in rem mechanism under judicial control and with meaningful rights of defence. A reversed evidentiary burden becomes legitimate only after the State objectively demonstrates a material disparity between property and lawful income and satisfies a defined prima facie burden.

The proposed fair formulation is a tiered balanced reversed-burden model: an objective trigger; prima facie proof by the State; an opportunity for the property holder to establish lawful origin on the balance of probabilities; and a judicial determination directed only at the portion of property that remains unexplained. The structure seeks to reconcile the public interest in recovering illicit assets with legal certainty, property rights, and due process.

Application to law-enforcement officers requires stronger verification because of their coercive authority and the structural conflicts that may arise when institutions examine their own members. That strengthening should take the form of verified wealth scrutiny, independent initiation and examination, and transparent judicial oversight, while preserving the same due-process guarantees and protections for bona fide third parties.

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