



The Responsibility of Heirs in Settling Replacement Money Claims for State Losses: A Comparative Study of Indonesia and Malaysia

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ABSTRACT

This article conducts a comparative analysis of the liability of heirs in Indonesia and Malaysia with respect to the settlement of replacement money (*uang pengganti*) arising from corruption cases. Both legal systems emphasize the principles of justice, individual rights protection, and the separation of responsibilities, thereby affirming that heirs are not personally liable for the corruptor's actions. The liability of heirs is generally limited to the value of the estate actually inherited, and both jurisdictions recognize the right of heirs to renounce inheritance in order to avoid obligations linked to illicit assets. In Indonesia, the Anti-Corruption Law provides mechanisms for the confiscation of inherited property to recover state losses, although the legal framework remains general and lacks detailed regulation on the scope of heirs' liability. Malaysia, under the Malaysian Anti-Corruption Commission Act 2009 and related statutes, similarly authorizes the seizure of inherited assets connected to corruption, while safeguarding heirs who neither control nor benefit from such assets. The findings



highlight that, despite differences in regulatory clarity, both Indonesia and Malaysia adopt a balanced approach that allows the state to pursue restitution while protecting heirs' rights through the option of inheritance rejection.

Keywords: Heirs' Liability; State Loss Compensation; Anti-Corruption Law; Inheritance Rejection; Comparative Legal Study.

1. Introduction

Normatively, obligations (*perikatan*) under Indonesian law are understood to arise from two main sources: agreements (*perjanjian*) and statutory provisions (*undang-undang*).¹ Within this framework, an important legal question emerges regarding whether a civil lawsuit filed against heirs to bear responsibility for state losses, following the death of a testator convicted of corruption, should be categorized as an obligation arising out of law rather than agreement. The question becomes even more complex when examining whether a final and binding decision of the Corruption Court (*Pengadilan Tindak Pidana Korupsi*) which pursues a civil lawsuit through claims of unlawful acts (*perbuatan melawan hukum*) against the heirs of a deceased corruptor functions as a source of obligation equivalent in force to statutory law for the parties bound by such decision.

This inquiry is of particular academic and practical importance. In many cases that have arisen in Indonesia, the enforcement of such obligations has proven problematic. One central difficulty lies in the fact that heirs are often incapable of fulfilling the obligation to repay the state losses imposed upon them. In some cases, the assets presumed to belong to the corruptor and targeted for recovery are

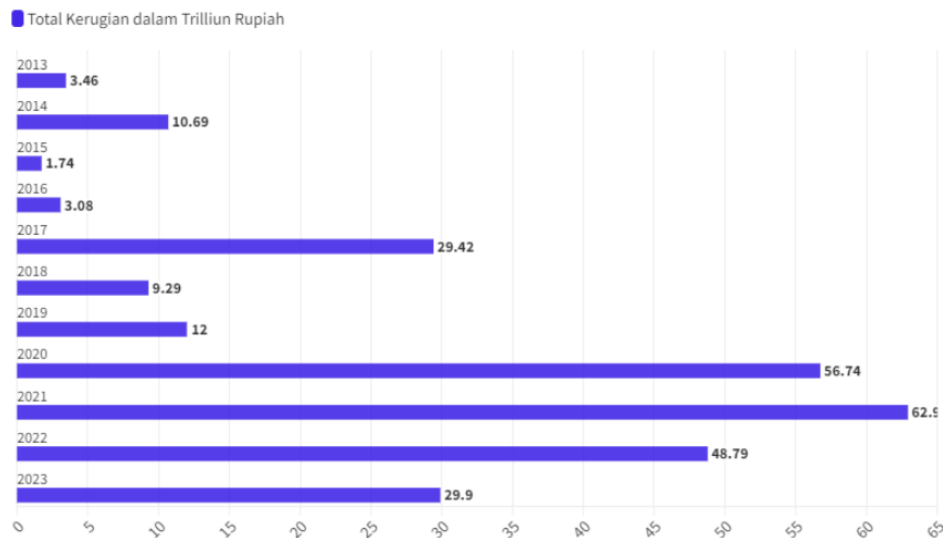
¹ Inri, Poltak Siringoringo, and Radisman Saragih, "Daya Ikat Norma Diluar Perjanjian Ke Dalam Perjanjian Dan Akibat Hukumnya," *Honeste Vivere* 33, no. 1 (January 24, 2023): 49–55, <https://doi.org/10.55809/HV.V33I1.185>.

not within the control of the heirs, making it impossible to restore the state's losses. Such circumstances raise concerns about the limits of liability, the protection of heirs' rights, and the extent to which civil law mechanisms can be employed to pursue obligations connected to criminal acts committed by the deceased.

Under Article 1(22) of Law No. 1 of 2004 on State Treasury, state or regional financial losses are defined as shortfalls in money, securities, or goods of a definite and certain amount, caused by unlawful acts, whether intentional or negligent. On this basis, any act that can be proven as unlawful whether analyzed from civil law, administrative law, or criminal law perspectives that results in state financial loss can be classified as an act of corruption. Consequently, anyone responsible for causing such losses due to their fault is obligated to provide restitution. This provision creates the normative bridge between corruption as a criminal act and civil law obligations that resemble debts enforceable against individuals or their successors.

The recognition of corruption (*tindak pidana korupsi*) as a crime that devastates both society and the state's economy further emphasizes the urgency of restitution.

Picture 1. Total State Losses Due to Corruption Cases in Indonesia, 2013–2023



Source: Indonesia Corruption Watch (ICW)

In 2021, state financial losses due to corruption reached their peak at nearly IDR 63 trillion. However, although there was a decline in 2023, the losses remained significant at IDR 29.9 trillion, while recovery through the payment of replacement money (uang pengganti) was still far from optimal.² This enormous disparity demonstrates that restitution remains ineffective, and that existing enforcement mechanisms have not ensured the return of misappropriated assets. The statutory framework under Law No. 20 of 2001, which amended Law No. 31 of 1999 on the Eradication of Corruption, does not specifically define the concept of “replacement money”.³ Instead, the statute only regulates assets believed to have been acquired through corruption. Article 38B(2) provides that if, after a judgment has become

² GoodStats, “Jumlah Kerugian Negara Dalam Satu Dekade Terakhir Akibat Koruptor,” [goodstats.id](https://goodstats.id/article/berapa-jumlah-kerugian-negara-akibat-pejabat-yang-korupsi-6lcwg), 2024, <https://goodstats.id/article/berapa-jumlah-kerugian-negara-akibat-pejabat-yang-korupsi-6lcwg>.

³ Erlangga Erlangga et al., “Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption,” *International Journal of Social Science and Human Research* 07, no. 01 (January 26, 2024): 536–43, <https://doi.org/10.47191/IJSSHR/V7-I01-69>.

final and binding, additional assets belonging to the convicted person are discovered and reasonably suspected to originate from corruption but have not yet been confiscated, the state may initiate a civil lawsuit against the convicted person or their heirs.⁴

This provision highlights the intersection between criminal sanctions and civil liability. Replacement money emerges as a consequence of a court decision with permanent legal force, ordering the convicted person to return losses to the state, either by payment into the state treasury, regional treasury, or through state-owned or regional-owned enterprises. Should the convicted person fail to comply, imprisonment may be imposed as a subsidiary punishment. Through this mechanism, the state effectively constructs the criminal sanction of replacement money as analogous to a debt under civil law. In practice, however, the recovery of state losses remains problematic due to the absence of specific statutory regulation concerning the liability of heirs when the corruptor dies before fulfilling the obligation.

The absence of a dedicated legal framework governing heirs' liability raises profound normative dilemmas. One central issue concerns the fairness of burdening heirs with responsibility for unlawful acts committed by the deceased. This raises questions about the principle of individual liability and whether civil law constructs, such as debt succession, can justifiably extend to corruption-related obligations. From a civil law perspective, debts of the deceased may indeed be inherited by heirs, yet the unique nature of corruption and its treatment as a criminal offense complicates this parallel. Consequently, it is unclear whether

⁴ Yuli Asmara, "Pemulihan Aset Negara Melalui Gugatan Perdata Dan Tahapan Pengembalian Aset Hasil Tindak Pidana Korupsi (Suatu Terobosan Konstruktif Dalam Penegakan Hukum Yang Progresif)," *Solusi* 21, no. 3 (September 1, 2023): 333–53, <https://doi.org/10.36546/SOLUSI.V21I3.1058>.

heirs should be treated as civil debtors responsible for state losses arising from corruption.

The matter becomes even more complicated in the context of Indonesia's pluralistic inheritance system. Indonesian inheritance law recognizes three main regimes, Islamic inheritance law, customary inheritance law, and civil inheritance law rooted in the Dutch *Burgerlijk Wetboek*.⁵ Each system approaches the issue of inherited obligations differently. For instance, under Islamic inheritance law, heirs may be liable for the debts of the deceased, but only to the extent of the estate received and provided that the debts are legitimate and not derived from unlawful activities. The question then arises: is it consistent with Islamic inheritance law to impose liability on heirs for debts arising from corruption, an act explicitly prohibited by both state law and religious norms?

Islamic law, which serves as a primary reference for inheritance matters in Indonesia due to the Muslim-majority population, offers certain guiding principles.⁶ Generally, heirs bear responsibility for the estate and are expected to ensure that assets are lawfully obtained and properly distributed. The moral dimension in Islamic inheritance law underscores the importance of ensuring that ill-gotten wealth is not perpetuated through inheritance. Nonetheless, whether heirs can be legally compelled to repay state losses arising from corruption remains contested, particularly when the heirs neither received nor controlled the corruptor's assets.

⁵ Sergio Felix Asalim, Sugianto Sugianto, and Setyabudhi Setyabudhi, "Ketidakseragaman Pewarisan Dalam Penerapan Hukum Waris Secara Nasional," *Aktivisme: Jurnal Ilmu Pendidikan, Politik Dan Sosial Indonesia* 1, no. 3 (June 24, 2024): 301–9, <https://doi.org/10.62383/AKTIVISME.V1I3.398>.

⁶ Abdul Ghofur Anshori, "Sources and Legal Principles of Islamic Inheritance* Dynamics in Indonesia," *Journal Equity of Law and Governance* 2, no. 2 (October 27, 2022): 157–65, <https://doi.org/10.55637/ELG.2.2.5767.157-165>.

A comparative study with Malaysia provides valuable insight into these questions. Malaysia, like Indonesia, is a Muslim-majority country that incorporates Islamic legal principles into its legal framework, including in matters relating to corruption and inheritance. Malaysia's legal regime is anchored in the Malaysian Anti-Corruption Commission Act 2009 (Act 694) and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFA).⁷ These statutes provide mechanisms for civil lawsuits and asset forfeiture in corruption cases, and similarly recognize the possibility of pursuing heirs for assets linked to corruption. However, Malaysia's system emphasizes principles of justice, responsibility, and fairness, ensuring that heirs are not personally liable for corruption-related debts unless they benefit from or control the illicit assets.

In both Indonesia and Malaysia, therefore, heirs possess the right to reject inheritance. By renouncing inheritance, heirs can avoid liability for the debts and obligations of the deceased, particularly those stemming from corruption. This legal strategy highlights the tension between the state's interest in recovering financial losses and the protection of heirs' rights under inheritance law. In practice, heirs often rely on inheritance rejection to shield themselves from obligations they neither created nor benefitted from.

The normative vacuum in Indonesia intensifies legal uncertainty. Articles 33 and 34 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, provide only a limited basis for initiating civil lawsuits against the heirs of a corruptor who dies before state losses are recovered. These provisions merely stipulate that when a suspect or defendant passes away, and the state's financial losses have been proven, the prosecutor or relevant state institution may file a civil claim against

⁷ Aspalella A. Rahman, "Anti-Money Laundering Law: A New Legal Regime to Combat Financial Crime in Malaysia?," *Journal of Financial Crime* 23, no. 3 (July 4, 2016): 533–41, <https://doi.org/10.1108/JFC-07-2014-0033>.

the heirs. However, the law does not set out detailed rules regarding the scope and limits of heirs' liability. In the absence of a clear statutory framework, the state's efforts to recover assets through heirs risk clashing with fundamental principles of justice and human rights. Imposing liability on heirs for crimes they did not commit raises concerns of proportionality and fairness, especially in situations where heirs neither possess nor benefit from the assets alleged to originate from corruption.

The absence of detailed regulation also threatens to create a broader problem of legal certainty. Without clear rules, the enforcement of civil lawsuits against heirs risks leading to arbitrary outcomes, undermining public confidence in the legal system. Moreover, the potential conflict with human rights norms especially the principle that liability should be personal and not inherited further complicates the legitimacy of such measures. The pursuit of state financial recovery must therefore balance the imperative of combating corruption with the need to protect heirs' rights and ensure fairness in the application of the law.

In the context of Islamic inheritance law, Malaysia provides a model that emphasizes moral responsibility alongside legal accountability. The principles of inheritance, responsibility, and justice in Islamic law affirm that heirs must ensure the estate they inherit is lawfully obtained.⁸ Thus, while heirs are not directly liable for the corruptor's debts, they may bear moral obligations to refuse assets derived from corruption. This perspective highlights the role of inheritance rejection as both a legal and ethical mechanism to prevent the perpetuation of illicit wealth.

By comparing Indonesia and Malaysia, one observes both similarities and divergences. Both legal systems allow for civil lawsuits against heirs under specific circumstances, and both recognize inheritance rejection as a legitimate mechanism

⁸ Nunung Rodliyah and Dheanilla Esa Lintang, "Heirs' Liability for State Losses Arising from a Deceased Corruption Offender under Islamic Inheritance Law," *Corruptio* 5, no. 2 (July 10, 2024): 137–44, <https://doi.org/10.25041/CORRUPTIO.V5I2.4022>.

to avoid liability. Yet, Indonesia's framework remains underdeveloped, creating risks of legal uncertainty and injustice. Malaysia, through its statutory framework, provides a clearer basis for addressing such cases, though questions of fairness and human rights remain.

The broader concern lies in the potential legal vacuum (*wet vacuum*) in Indonesia, which could lead to inconsistencies in judicial decisions and undermine the state's efforts to recover corruption-related losses. The absence of clear regulations on heirs' liability may result in unfair burdens being placed on individuals who did not commit corruption and who may not even benefit from the corruptor's assets. This situation raises a critical normative question: can the pursuit of state restitution justify extending liability to heirs, or does such practice conflict with the principles of justice and the protection of individual rights?

2. Research Methods

This article employs a normative juridical research method.⁹ Normative juridical research also serves to uphold the critical aspect of legal scholarship as a *sui generis* normative science. Accordingly, the theoretical foundation used in this study derives from the contemplative and normative framework of legal theory. Normative juridical research is conducted primarily through the examination of legal literature or secondary data, including statutes and regulations, legal theories, and the opinions of leading legal scholars.¹⁰ Normative legal research regards law as a system of norms. Such a system encompasses principles, norms,

⁹ Emelia Kontesa and Zico Junius Fernando, "Reclaiming Our Roots: Agrarian Law's Battle Against Land Grabbing," *Lex Scientia Law Review* 8, no. 2 (November 30, 2024): 1–10, <https://doi.org/10.15294/LSLR.V8I2.10681>.

¹⁰ Septa Candra and Zico Junius Fernando, "Anti-Corruption Village: A Solution to Preventing Crime of Corruption and Good Governance in Village," *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 1 (May 29, 2024): 49–66, <https://doi.org/10.25041/FIATJUSTISIA.V18NO1.3110>.

and rules derived from legislation, court decisions, contracts, and legal doctrines.¹¹ This research aims to describe the extent of heirs' responsibility in the settlement of replacement money claims for state losses arising from corruption in Indonesia and Malaysia, and to explain the mechanism by which heirs may contest liability for such claims in Indonesia. The approach applied to address these research problems is primarily a comparative approach, through which the rules and legal foundations in Indonesia are compared with those in Malaysia regarding heirs' liability in corruption-related restitution. In addition, the study employs a case study approach, focusing specifically on the District Court of Depok Decision No. 02/PDT.G/2010/PN.DPK, analyzed from multiple legal perspectives. The article relies on primary legal materials, which are binding in nature and include statutes and regulations directly relevant to the issues under study. It also uses secondary legal materials, such as legal literature, books, and scholarly journals, that provide interpretation and clarification of primary sources. Tertiary legal materials, including internet-based articles, are also consulted to supplement the primary and secondary sources. The collection of legal materials was conducted through several steps: (a) identifying and compiling data and legal materials directly related to the issues, events, or legal objects examined; (b) analyzing the relevant statutory norms, jurisprudence, and customary legal rules; and (c) reviewing the opinions of prominent legal scholars.¹² The legal materials obtained were then classified in accordance with the research questions and subsequently analyzed. The analysis applied various methods of interpretation, with a particular emphasis

¹¹ Hendra Karianga and Zico Junius Fernando, "The Damage of the Shadow Economy: The Urgency of Addressing Foreign Bribery in Indonesia," *Pakistan Journal of Criminology* 16, no. 2 (April 1, 2024): 783–96, <https://doi.org/10.62271/PJC.16.2.783.796>.

¹² Akhmad Akhmad, Zico Junius Fernando, and Papontee Teeraphan, "Unmasking Illicit Enrichment: A Comparative Analysis of Wealth Acquisition Under Indonesian, Thailand and Islamic Law," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 899–934, <https://doi.org/10.15294/jils.v8i2.69332>.

on grammatical interpretation, in order to systematically and consistently examine the statutory provisions, jurisprudence, and doctrines relevant to the restitution of state losses, including comparative insights from other jurisdictions.

3. Result & Discussion

A. The Liability of Heirs in the Settlement of Replacement Money Claims for State Losses Arising from Corruption in Indonesia and Malaysia

Corruption in Indonesia has developed into a systemic phenomenon.¹³ For many people, it is no longer merely perceived as a legal violation but has become embedded as a destructive cultural practice. Corruption represents a serious threat to the state as it causes significant financial and economic losses, disrupting the effectiveness of national development programs.¹⁴ The progress of a nation is fundamentally determined by its capacity to implement sustainable development, and corruption directly obstructs this process by siphoning public resources into private hands.

Since the monetary crisis of the late 1990s, corruption cases in Indonesia have escalated sharply. This rise has not only undermined the stability of the national economy but has also corroded the foundations of governance, creating distrust in state institutions and obstructing the life of the nation.¹⁵ At its core, corruption constitutes the misuse of official power for private gain. In practice, it distorts economic growth, engenders inefficiency, and perpetuates inequities within the distribution of public goods. By weakening government services and

¹³ Zico Junius Fernando, "Perampasan Aset Pelaku Tindak Pidana Dalam Perspektif Hak Asasi Manusia Dan Prinsip Hukum Pidana," *Jurnal Legislasi Indonesia* 19, no. 1 (2022): 85, <https://doi.org/10.22212/jnh.v10i1.1217.84>.

¹⁴ Erdianto Effendi et al., "Trading in Influence (Indonesia): A Critical Study," *Cogent Social Sciences* 9, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2231621>.

¹⁵ Neng Nur Annisa and Maria Margarita R. Lavides, "The Impact of Corruption on Economic Stability and Community Life in Indonesia," *Jurnal Perpajakan Dan Keuangan Publik* 4, no. 1 (April 18, 2025): 1–10, <https://doi.org/10.15575/JPKP.V4I1.44798>.

infrastructure, corruption imposes additional burdens on state finances, thereby reducing the state's capacity to meet the needs of its people. The embeddedness of corruption within bureaucratic structures underscores its status as a structural crime, one that requires more than punitive responses but also systemic reforms to address its roots.

To combat this entrenched problem, Indonesia enacted Law No. 31 of 1999 on the Eradication of Corruption, later amended by Law No. 20 of 2001. This legislation emerged as a response to the inadequacy of previous legal instruments, particularly regarding sanctions and the restitution of state losses. One of the distinctive features of this law is its use of minimum and maximum penalties tailored to the gravity of the offense. Where the offense is considered particularly severe, imprisonment and fines are applied cumulatively rather than alternatively. In cases of lesser gravity, punishments may be imposed alternatively. The design of these provisions reflects the legislature's intent to strengthen deterrence and to ensure proportionality in sentencing.

The law provides for both principal and additional criminal sanctions in corruption cases. Principal penalties consist of imprisonment and fines, with capital punishment reserved as an extraordinary measure to be imposed only under specific circumstances, as stipulated in Article 2(2) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. Additional sanctions extend beyond those recognized in the Indonesian Penal Code (KUHP). Article 18(1) of the Anti-Corruption Law specifies four forms of additional penalties tailored to corruption offenses: (i) the confiscation of movable and immovable assets obtained from corruption, including corporate assets; (ii) the obligation to pay replacement money equivalent to the value of assets unlawfully acquired; (iii) the closure of a company, either permanently or for a maximum period of one year; and (iv) the revocation of licenses, concessions, or rights previously granted by the government.

Among these, the obligation to pay replacement money (*uang pengganti*) stands out as an innovative instrument within Indonesia's penal system. It was conceived not merely as a punitive measure but as a mechanism to restore state

losses arising from corruption. This sanction constitutes a special form of additional punishment, regulated under Article 18(1)(b) of Law No. 31 of 1999 as amended by Law No. 20 of 2001. The provision stipulates that, in addition to sanctions recognized under the Penal Code, judges may order the payment of replacement money up to the value of assets acquired through corruption. This mechanism underscores the restorative dimension of anti-corruption law, highlighting not only retribution but also restitution of financial harm inflicted upon the state.¹⁶

The significance of replacement money (*uang pengganti*) is reinforced by the legal recognition that a central element of corruption, as defined in Articles 2 and 3 of the Anti-Corruption Law, is the existence of state financial or economic losses. Consequently, the eradication of corruption cannot rely solely on imprisonment as a deterrent but must also ensure the recovery of state finances, enabling the government to sustain national development. In this context, replacement money serves as a crucial instrument to guarantee the restitution of illicit assets to the state treasury. This principle was further strengthened by the issuance of Supreme Court Regulation No. 5 of 2014 on Additional Penalties of Replacement Money in Corruption Cases, which provides detailed guidance on the imposition, calculation, and enforcement of such sanctions, thereby enhancing legal certainty in asset recovery efforts.¹⁷

In practice, the enforcement of replacement money (*uang pengganti*) sanctions follows a clearly defined procedure. Once a conviction becomes final and binding (*inkracht*), the convicted person is granted a one-month period to voluntarily pay the replacement money as stipulated in the judgment. Should the convict fail to comply within this timeframe, coercive measures are undertaken.

¹⁶ Egiardus Bana, "Implementation of Additional Criminal Sanctions in The Form of Payment of Money in Crime of Corruption in Indonesia (Critical Review of The Principle of Legal Certainty in Decision Number 5035 K/Pid.Sus/2022)," *Khairun Law Journal* 6, no. 2 (March 20, 2023): 85–93, <https://doi.org/10.33387/KLJ.V6I2.6578>.

¹⁷ Rahma Noviyanti, Elwi Danil, and Yoserwan Yoserwan, "Penerapan Perma Nomor 5 Tahun 2014 Tentang Pidana Tambahan Uang Pengganti Dalam Tindak Pidana Korupsi," *Jurnal Wawasan Yuridika* 3, no. 1 (March 31, 2019): 1–22, <https://doi.org/10.25072/JWY.V3I1.236>.

The public prosecutor is authorized to seize and auction the convict's assets, with the proceeds directed to the state treasury in order to recover state losses. In cases where the convict's assets are insufficient to cover the full amount, the unpaid portion is substituted with imprisonment, the duration of which is predetermined by the court in its ruling and may not exceed the maximum sentence prescribed for the principal offense. This enforcement scheme demonstrates the dual character of replacement money: it operates simultaneously as a punitive sanction under criminal law and as a restitutionary mechanism resembling a civil debt aimed at restoring state finances.

The complexity arises when the convicted individual dies before fulfilling the obligation to pay replacement money. In such circumstances, questions emerge about whether heirs should be held liable for state losses, and if so, to what extent. Indonesian inheritance law complicates the issue further, given its pluralistic nature, encompassing Islamic inheritance law, customary law, and civil law derived from the Dutch tradition. Within civil law, heirs may be liable for the debts of the deceased, but such liability is typically limited to the extent of the estate inherited. Under Islamic law, heirs also bear responsibility for the estate but are morally and legally bound to ensure that the assets are lawful. This raises critical questions: should heirs inherit the obligation to return illicit assets, and does their liability extend beyond the assets they receive?

To gain deeper insight, it is useful to compare Indonesia's approach with that of Malaysia, a neighboring jurisdiction whose statutory system also incorporates certain Islamic legal principles. Under the Malaysian Anti-Corruption Commission Act 2009 (Act 694), assets derived from corruption are subject to confiscation. Crucially, if the perpetrator of corruption dies, the process of recovering illicit assets may still proceed against the estate, thereby safeguarding the state's interest in restitution.¹⁸ This mechanism reflects the

¹⁸ Sigit Kamseno, "Analisis Perbandingan Sistem Hukum Pidana Di Indonesia Dengan Malaysia Terhadap Kejahatan Tindak Pidana Korupsi," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 1 (January 30, 2024): 01–23, <https://doi.org/10.62383/AMANDEMEN.V1I1.518>.

principle that heirs are not personally liable for the corruptor's wrongdoing or debts; rather, liability is attached to the estate as the legal continuation of the deceased's property. Accordingly, the Malaysian framework ensures that state losses can be remedied without imposing unjust burdens on heirs who neither committed the offense nor personally benefited from its proceeds.

In Malaysia, judicial practice has also confirmed the possibility of confiscating assets from the estate of a deceased corruptor, as reflected in cases where the courts upheld the Malaysian Anti-Corruption Commission's authority to proceed against properties demonstrably linked to corruption, even when these assets had passed to heirs. This jurisprudence underscores that liability does not attach personally to heirs but to the estate itself, thereby safeguarding heirs from unjust burdens while still preserving the state's right to restitution. A further point of distinction arises from the systemic differences between Indonesia's civil law tradition and Malaysia's common law system. In Indonesia, the logic of heirs' liability is framed through codified statutory provisions and general inheritance principles, whereas in Malaysia, judicial precedents play a more prominent role in shaping the contours of liability. Consequently, while both jurisdictions recognize the principle that heirs' liability is limited to inherited assets, Malaysia's reliance on case law allows courts greater flexibility in adapting doctrines of asset confiscation to specific factual contexts, in contrast to Indonesia's more rigid reliance on statutory interpretation. This divergence in legal tradition influences how far the courts can extend or limit heirs' responsibility, and highlights the importance of integrating jurisprudential developments into the comparative analysis of both systems.

Both Indonesia and Malaysia thus recognize the state's right to pursue recovery from the estate of a deceased corruptor. However, in both systems, heirs retain the right to accept or renounce inheritance. This right to renunciation serves as a safeguard, allowing heirs to avoid being burdened with obligations or assets that are tainted by illegality. In Indonesia, this principle resonates with the broader recognition that liability for debts, including obligations arising from corruption, is limited to the assets inherited. Similarly, in Malaysia, heirs may avoid liability

by rejecting inheritance, thereby distancing themselves from the corruptor's estate and ensuring that they are not unfairly burdened with obligations they neither created nor benefitted from.

The key issue arising from this comparison is the need to strike a balance between two competing principles: the state's legitimate interest in recovering financial losses caused by corruption and the protection of heirs' rights under inheritance law. On the one hand, corruption inflicts massive harm on the state, with data from Indonesia Corruption Watch showing that state losses reached approximately IDR 193.7 trillion in 2023, underscoring the urgency of restitution.¹⁹ On the other hand, extending liability to heirs for obligations derived from acts of corruption they did not commit raises serious concerns regarding justice, human rights, and the fundamental legal principle of personal responsibility.

From the perspective of criminal law theory, the dilemma of heirs' liability can be analyzed through the framework of *strict liability*. This theory essentially negates the element of fault (*mens rea*) and allows punishment solely on the basis of a prohibited act or consequence. Its application is often criticized for potentially conflicting with the principle of *nullum crimen sine culpa*. If the logic of *strict liability* is applied to the context of heirs, the obligation to pay restitution (*uang pengganti*) may be viewed as a form of liability without fault. Heirs, though entirely uninvolved in the act of corruption, nonetheless bear the financial consequences attached to the estate of the deceased. This raises a philosophical problem: to what extent can justice be ensured when the state demands recovery of losses from parties who are not criminally culpable?. This issue can also be examined through the lens of *vicarious liability*, namely the concept whereby a person or entity bears legal responsibility for unlawful acts committed by another with whom they share a specific relationship. In both civil and criminal law, *vicarious liability* typically

¹⁹ Amelia Rahima Sari, "State Losses in Pertamina Corruption Case Could Exceed Rp193.7 Trillion," *en.tempo.co*, 2025, <https://en.tempo.co/read/1980169/state-losses-in-pertamina-corruption-case-could-exceed-rp193-7-trillion-says-ago>.

arises in hierarchical relations such as employer–employee or corporation–staff.²⁰ If applied in the context of corruption, the state effectively treats heirs as the “extension” of the deceased, thereby positioning inherited assets as objects of collective responsibility. While inheritance law indeed entails the transmission of rights and obligations, applying the logic of *vicarious liability* in criminal matters undermines the fundamental principle that criminal sanctions are personal. Accordingly, both *strict liability* and *vicarious liability* provide critical lenses through which to understand the ambiguity of heirs’ position. *Strict liability* highlights the problem of liability without fault, whereas *vicarious liability* emphasizes the relational construction that may lead to injustice when heirs are compelled to bear the consequences of another’s wrongdoing. In this context, the article asserts that the mechanism of inheritance renunciation (*recht van beraad* or *erfenis verwerpen*) serves as an essential instrument to restore the balance between the state’s interest in recovering losses and the principle of justice for heirs.

The duality of replacement money as both a criminal sanction and a civil obligation complicates the matter further. From a criminal law perspective, punishment should be personal, applying only to the perpetrator of the crime. From a civil law perspective, debts may pass to heirs as part of the estate, but only insofar as the heirs accept the inheritance. The intersection of these two perspectives creates a grey area in Indonesian law, one that Malaysia addresses more directly through statutory provisions but which still raises questions about fairness and proportionality.

In analyzing the liability of heirs, it is essential to consider not only statutory provisions but also the jurisprudence of courts. In Indonesia, court decisions have varied in their application of civil lawsuits against heirs for unpaid replacement money. Some courts have treated the obligation as part of the deceased’s estate, while others have questioned whether heirs can be compelled to repay debts

²⁰ J. W. Neyers, “A Theory of Vicarious Liability,” *Alberta Law Review*, December 7, 2005, 287–326, <https://doi.org/10.29173/ALR1254>.

arising from corruption when they did not directly benefit from the assets.²¹ This inconsistency underscores the need for clearer statutory guidance. In Malaysia, the legal framework provides a stronger basis for confiscating assets, but here too, the rights of heirs are protected through the mechanism of inheritance rejection.

The issue also implicates broader theoretical debates about the nature of legal obligations and the relationship between criminal and civil law. In normative theory, obligations arising from law differ fundamentally from those arising from agreement. The imposition of replacement money as an obligation upon heirs blurs this distinction, as it transforms a criminal sanction imposed on the deceased into a civil obligation enforceable against successors. This raises the question of whether such transformation aligns with the principles of justice and legality, particularly when heirs did not participate in or benefit from the crime.

Furthermore, the comparative approach reveals that while Indonesia and Malaysia share similarities in their reliance on statutory provisions to authorize asset confiscation, they differ in the extent to which heirs' liability is clearly defined. Indonesia's legal framework remains underdeveloped in this respect, relying on general inheritance principles and limited statutory references. Malaysia's framework, by contrast, explicitly allows for the continuation of confiscation proceedings against the estate, thereby ensuring that the state can recover losses even after the death of the perpetrator.²² This difference highlights the importance of legislative clarity in ensuring both effective restitution and the protection of heirs' rights.

At a practical level, heirs in both Indonesia and Malaysia may use inheritance renunciation as a legal strategy to avoid liability. By rejecting

²¹ Putu Aditya Witanaya Putra, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma, "Tanggung Jawab Ahli Waris Dalam Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Oleh Terpidana Yang Meninggal Dunia," *Jurnal Interpretasi Hukum* 2, no. 1 (March 26, 2021): 126–31, <https://doi.org/10.22225/JUINHUM.2.1.3080.126-131>.

²² Zaiton Hamin et al., "The Legal Framework of Asset Forfeiture for Money Laundering in the United Kingdom and Malaysia," *International Journal of Research and Innovation in Social Science* 9, no. 2 (2025): 4404–14, <https://doi.org/10.47772/IJRISS.2025.9020345>.

inheritance, heirs prevent themselves from acquiring both assets and obligations associated with the estate. This mechanism reflects the principle that heirs should not be unfairly burdened with debts they did not incur. However, inheritance rejection also raises practical challenges, particularly when heirs are unaware of the extent of the estate's obligations or when the process of renunciation is procedurally complex.

B. Mechanisms of Objection by Heirs Against Liability for the Settlement of Replacement Money in State Losses Arising from Corruption in Indonesia

Economic crimes have undergone significant transformations over time. Whereas earlier forms of economic crime were relatively conventional, contemporary developments have produced new levels of sophistication.²³ Corruption, money laundering, and illicit narcotics trafficking are illustrative examples of economic crimes that now display far greater complexity in their execution than traditional economic offenses.²⁴ The methods employed in these crimes reflect advanced techniques, particularly in concealing and transferring assets. For example, the proceeds of corruption can now be transferred or hidden through electronic means, the use of internet networks, or digital platforms, all without the need for physical cross-border movements. Such processes may occur in a matter of seconds, making detection and recovery particularly challenging for law enforcement agencies.

Asset confiscation, as a legal instrument in response to criminal acts, is not a novel concept within the Indonesian legal system. Provisions for the seizure and confiscation of the proceeds of crime have long existed, both in the Indonesian Penal Code (KUHP) and in various special criminal statutes. Within the KUHP,

²³ William Tupman, "The Characteristics of Economic Crime and Criminals," in *Research Handbook on International Financial Crime* (Edward Elgar Publishing Ltd., 2015), 3–14, <https://doi.org/10.4337/9781783475797.00009>.

²⁴ Rahman, "Anti-Money Laundering Law: A New Legal Regime to Combat Financial Crime in Malaysia?"

confiscation is recognized as an additional punishment that supplements the principal sentence. Beyond the general provisions of the KUHP, sectoral legislation has developed more specific mechanisms for asset recovery. For example, the Anti-Corruption Law (Law No. 31 of 1999, as amended by Law No. 20 of 2001), the Narcotics Law (Law No. 35 of 2009), and the Anti-Money Laundering Law (Law No. 8 of 2010) all contain explicit provisions regarding the confiscation of assets derived from crime or instrumentalities used in its commission.

Despite the presence of such legal frameworks, law enforcement authorities in Indonesia often face substantial obstacles in seizing and confiscating the proceeds of crime. Practical difficulties range from insufficient institutional instruments for asset recovery, inadequate international cooperation, to the limited technical expertise of law enforcement officers in handling asset confiscation procedures. Moreover, the lengthy judicial process required before assets can be lawfully confiscated by the state culminating only after a final and binding court decision further hampers timely recovery. This complexity often allows perpetrators to dissipate or conceal their assets, reducing the effectiveness of restitution efforts.

At the international level, there has been growing recognition of asset confiscation as an essential component of combating crime. The United Nations Convention Against Corruption (UNCAC), particularly in Chapter V, underscores the importance of confiscation of illicit assets as a central strategy in curbing corruption and related crimes. Although UNCAC primarily addresses corruption, the mechanisms it prescribes for confiscation have been adopted more broadly as models for asset recovery in other forms of crime, especially in cases involving cross-border transfers of illicit wealth. This reflects the universal acknowledgment that the deprivation of criminal proceeds is vital to reducing incentives for crime.²⁵

In the Indonesian legal system, additional penalties such as asset confiscation cannot stand independently but must accompany principal

²⁵ Anton Moiseienko, "The Ownership of Confiscated Proceeds of Corruption Under The Un Convention Against Corruption," *International & Comparative Law Quarterly* 67, no. 3 (July 1, 2018): 669–94, <https://doi.org/10.1017/S002058931800012X>.

punishments. This means that confiscation may only be imposed after the court has examined the principal case, and the defendant has been found guilty. In this sense, confiscation follows the principle of dependency on the main case. Once a conviction is established, assets obtained through corruption or other crimes may be ordered to be confiscated for the benefit of the state, destroyed, or otherwise used to serve state interests. This may include converting confiscated assets into state property through auction or repurposing them for public benefit.

Specifically within the Anti-Corruption Law, restitution of state financial losses can be pursued through both criminal and civil instruments. Criminally, the mechanism operates through the imposition of additional sanctions in the form of replacement money (*uang pengganti*). This sanction requires the convicted person to return the value of state losses caused by their corrupt conduct. Civilly, lawsuits may be filed against the perpetrator or their heirs, particularly when illicit assets remain unrecovered after criminal proceedings. This dual approach underscores the hybrid nature of asset recovery in corruption cases, it involves both penal sanctions and civil remedies aimed at restoring the state's financial position.

The issue becomes more complex when the convicted person dies before fulfilling their obligation to pay replacement money. In such cases, the liability may be pursued against the heirs. Article 32(1) of Law No. 31 of 1999, as amended, provides the legal basis for transferring responsibility to heirs, but only to the extent of the inheritance received. This provision reflects a balance between the state's interest in restitution and the heirs' protection from personal liability. The heirs' responsibility is thus not absolute but limited to the value of the assets inherited from the deceased.

Heirs' liability in such contexts raises significant legal and ethical questions. On the one hand, corruption causes immense state losses, and restitution is essential to restoring financial integrity. On the other hand, imposing liability on heirs risks contravening the principle of personal responsibility in criminal law, as heirs did not commit the crime. To address this tension, Indonesian law grants heirs the right to object to or contest the imposition of replacement money obligations. This objection mechanism represents a vital safeguard within the legal

system, ensuring that heirs are not unduly burdened beyond their legal obligations.

The mechanisms of objection available to heirs are multifaceted and involve both substantive and procedural dimensions. The legal basis for these objections lies not only in the Anti-Corruption Law but also in the KUHP, the Civil Code (KUHPer), and procedural laws governing appeals and extraordinary remedies. Heirs may object to replacement money obligations through several avenues, including resistance (*verzet*), appeals, cassation, and judicial review (*peninjauan kembali*).

The first mechanism, *verzet*, allows heirs to challenge a decision rendered *verstek*, or in absentia, without their participation. This provides heirs with an opportunity to present their case, ensuring procedural fairness. If heirs were not adequately represented during the proceedings against the deceased, *verzet* offers a remedy to rectify this absence.

Beyond *verzet*, heirs may also pursue appellate remedies. If a decision of the district court imposes liability on heirs, they may file an appeal to the high court. Should the appellate decision remain unfavorable, cassation may be pursued before the Supreme Court. These hierarchical remedies allow heirs to challenge both the factual and legal grounds of the decision, ensuring multilayered scrutiny of their liability.

In extraordinary circumstances, heirs may also file for judicial review (*peninjauan kembali*). This mechanism applies when new evidence emerges or when substantial legal errors are identified in the final decision. Judicial review ensures that even final and binding decisions (*inkracht*) are not immune to correction where justice so demands. For heirs, this represents a crucial safeguard, especially in cases where their liability may have been determined on the basis of erroneous calculations or incomplete consideration of the estate's value.

Central to these objection mechanisms is the requirement of proof. Heirs must substantiate their claims with clear evidence, particularly regarding the extent of the estate received. For example, if heirs demonstrate that the inheritance was insufficient to cover the state's claim, they may argue that their liability should not extend beyond the actual assets inherited. Documentary evidence such as

inheritance certificates, estate inventories, and asset valuations become vital in this context. Without such evidence, heirs risk being held liable for amounts exceeding their inheritance, contravening the principle of limited liability in succession law.

Equally important is the strength of legal argumentation. Heirs must articulate sound legal reasoning, drawing on statutory provisions, principles of inheritance law, and judicial precedents. They may argue, for instance, that obligations arising from corruption cannot be equated with civil debts, given their penal origin. Alternatively, they may emphasize that liability for debts in inheritance law is strictly confined to assets received, and that imposing obligations beyond this threshold would violate both legal certainty and the principle of fairness.

The objection mechanism also highlights broader systemic issues in Indonesia's legal framework. The absence of detailed statutory provisions on heirs' liability for replacement money creates legal uncertainty, leaving courts to interpret the scope of liability on a case-by-case basis. This inconsistency can produce unequal outcomes, undermining the legitimacy of the system. It also risks burdening heirs who neither benefitted from nor controlled the illicit assets of the deceased.

In practice, heirs' objections are often complicated by disputes among family members over the distribution of inheritance. Conflicts may arise when certain heirs attempt to dominate or conceal portions of the estate, driven by greed or ignorance of inheritance law. Such disputes exacerbate the difficulty of determining the precise value of inheritance available to satisfy state claims. They also highlight the importance of a robust inheritance framework that ensures clarity about heirs, their respective shares, and the grounds upon which individuals may be disqualified from inheritance.

Indonesian inheritance law, with its pluralistic foundations in Islamic law, customary law, and civil law, provides varying answers to these questions. Islamic law, which governs the majority population, emphasizes both legal and moral responsibilities of heirs to ensure that estates are lawfully obtained and distributed. Under this system, heirs may reject inheritance if it is tainted by illegality, thereby avoiding liability for corruption-related debts. This reflects the

broadier principle that unlawful wealth should not be perpetuated across generations.

Against this backdrop, the objection mechanisms available to heirs serve not only as legal remedies but also as expressions of broader principles of justice. They ensure that while the state retains the right to recover losses from corruption, heirs are protected from excessive or unfair burdens. They also encourage procedural fairness, requiring courts to carefully examine the evidence and legal arguments presented by heirs before imposing liability.

The multiplicity of legal avenues *verzet*, appeals, cassation, judicial review — illustrates the layered nature of Indonesia's legal system in addressing heirs' objections. These mechanisms provide checks and balances against potential overreach, ensuring that liability is confined within the boundaries set by inheritance law and constitutional protections. Yet, their effectiveness depends heavily on the availability of legal representation, the quality of judicial reasoning, and the consistency of jurisprudence.

4. Conclusion

The liability of heirs in settling replacement money claims for state losses arising from corruption, both in Indonesia and Malaysia, is principally attached as a consequence of their status as recipients of the decedent's estate. However, such liability is strictly limited to the value of the inheritance actually received. In Indonesia, specific provisions under the Anti-Corruption Law authorize the confiscation of inherited assets to cover state losses. Similarly, in Malaysia, the confiscation of inherited property is also permitted under anti-corruption legislation. Thus, in both legal systems, heirs retain the right to accept or reject an inheritance, with rejection functioning as a legal strategy to avoid liability for the debts and obligations of the deceased arising from acts of corruption. In addition, Indonesia provides heirs with mechanisms to challenge liability for the payment of replacement money. Heirs may file objections or legal remedies, including appeals, against court decisions imposing such obligations. These objections can

be submitted when there are strong grounds, such as when the value of the inheritance is insufficient to cover the state's losses or when errors in calculating the losses are identified. The objection process is pursued through the judiciary by submitting a petition to the competent court, thereby ensuring legal protection for heirs and preventing them from bearing burdens beyond the scope of the inheritance they are entitled to. Beyond these doctrinal findings, this article contributes to the development of legal scholarship by demonstrating that the normative vacuum in Indonesia creates significant legal uncertainty regarding heirs' liability. The absence of explicit statutory provisions governing the scope and limits of such liability risks inconsistency in judicial practice and potential violations of the principle of personal responsibility. Accordingly, the study underscores the urgent need for legislative reform particularly the revision of the Anti-Corruption Law (UU Tipikor) to incorporate explicit clauses on heirs' liability, thereby ensuring legal certainty, fairness, and the protection of human rights.

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