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Implementing Pre-trial Conference to Indonesia's Criminal Justice System: Optimize the State Asset Recovery in Corruption Cases

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ABSTRACT

The corruption cases in Indonesia have been escalating over five years with a huge gap between state asset losses and state asset recovery. Moreover, it also getting worst with the lack of regulation in asset seizure and the low compensation verdicts for corruptors. These phenomena indicate a failure in the Indonesia's criminal justice system. This study aims to introduce the concept of Pre-Trial Conference in Indonesia's criminal justice system which can optimize the role of state victims and recover the state asset losses through the Plea Bargain concept. Several countries have implemented this concept in their criminal justice systems, including Singapore and Australia. The method used is a normative researchs with comparative legal analysis. The results of the study show that Pre-Trial Conference can be used as a formal and official judicial forum to provide corruptors with the opportunity to demonstrate their remorse by returning at least 60 percent of the total losses incurred. This concept aims to solve the legal issues by focusing on economic analysis and re-orientation on criminal sanction. The conclusion of this study is that Pre-Trial Conference is a solution to create a restorative justice and optimize the state asset recovery in corruption cases.

Keywords: corruption, state asset recovery, Pre-Trial Conference.

INTRODUCTION

The imposition of custodial sentences for perpetrators of corruption should not constitute the final objective of the criminal justice system (Suarbawa et al., 2019). Instead, the comprehensive fulfilment of criminal sanction orientations necessitates a proportional process that robustly integrates the assessment of offender culpability, the precise quantification of state asset losses, and the effective implementation of state asset recovery and restitution mechanisms.

In the Indonesian legal context, numerous high-profile corruption cases resulting in substantial state financial losses have been resolved through judicial processes that yield disproportionately lenient custodial sentences and minimal asset recovery. For instance, the

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tin trade system in the Mining Business Permit (IUP) area of PT Timah Tbk 2015-2022 case. It was the newest corruption case in Indonesia with huge state losses of 300 trillion rupiah (Sari, 2025). Through the Corruption Criminal Court decision, Harvey Moeis, as one of the defendants in this case, was only sentenced to 6 years and 6 months and given a fine of 1 billion rupiah and obliged to pay only 210 billion rupiah as the compensation for state losses. Despite the decision was annulled with a sentence of 20 years imprisonment and 420 billion rupiah of compensation through the decision of the Jakarta High Court, which was then strengthened in the cassation decision by the Supreme Court of Republic of Indonesia on June 25, 2025 through decision number 5009 K/Pid.Sus/2025 (Victoria, 2025).

This operational disparity is particularly detrimental since grand corruption, designated an extraordinary crime, inherently exerts a significant and negative impact on national economic growth and stability (Igbinedion & Osobase, 2025). Hence, the criminal sanction orientation must be developed with not only oriented to punitive-retributive sanction such as imprisonment, but also to create corrective, rehabilitative, and restorative orientation (Waluyo et al., 2022).

Based on Indonesia Corruption Watch (ICW) data, through the 2023 Corruption Trend Monitoring Report, the corruption cases in Indonesia have been escalating substantially over 5 years, from 271 cases with 580 suspects in 2019 to 791 cases with 1,695 suspects in 2023 (Anandya & Ramdhana, 2024).

ICW also shown that out of the 261 defendants in corruption cases, 73.94 percent of the perpetrators were sentenced to prison terms ranging from 1 to 4 years (light category), while 16.86 percent of the perpetrators were sentenced to prison terms ranging from 4 to 10 years (medium category), and only 1.53 percent of the 261 people, or in other words, only 4 defendants received a heavy sentence, namely with a prison sentence of more than 10 years. Meanwhile, 7.67 percent or 20 defendants were declared free by the court (as cited in Panggabean, 2020).

Moreover, the increase number of corruption cases were followed by a significant increase in state asset losses, which is disproportionate to the minimum of assets recovered by the state (Endah Wahyuningsih et al., 2024). Anandya and Ramdhana (2024) have shown that there was a huge gap between state asset losses and compensation trends in corruption cases verdicts. For example, with total state losses of 62.9 trillion rupiah in 2021, the compensatory fines imposed amounted to only 1.4 trillion rupiah, or in other words, only 2.2% of state asset recovery in a year. In previous year, the state losses of 56 trillion rupiah and only 19.6 trillion was recovered through criminal payments of compensation.

The low sentence verdicts in corruption cases and the minimum recovery of state assets stem directly from the criminal justice system's failure to exert an adequate economic deterrent effect on Perpetrators (Kumalasanti, 2022; Maulana & Ismunarno, 2023). ICW shows that punishments oriented towards economic deterrent against corruptors in practice are still far from ideal. This condition is a clear consequence of the failure of law enforcement to prosecute corruptors for money laundering. In 2021, out of 1.404 corruptors, only 12 were charged with money laundering (Kumalasanti, 2022).

Moreover, the deficiency in high-integrity law enforcement personnel, coupled with the insufficient comprehension of duties and responsibilities among existing enforcers, and the ineffectiveness of supervisory institutions, collectively exert deleterious effects upon the

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criminal justice system's handling or corruption cases (Latupeirissa & Titahelu, 2025; Suramin, 2021)

From the data above, the Indonesia's criminal justice system demonstrates suboptimal enforcement against corruption due to systemic weakness in its ineffectiveness of current sanctions in creating a deterrent effect for perpetrators of corruption (Hasna & Jaya, 2020). Moreover, it also failed to brings economic benefits for the state since the criminal justice system is failed to take back the state asset losses from corruptors.

In the contemporary framework of proportional criminal sanction, the corruption enforcement also needs to address the economic aspects regarding to the rising trend of huge state losses.

The corruption enforcement transcends the traditional objectives of establishing culpability (*mens rea*) and the criminal act (*actus reus*) (Ali et al., 2023),. A primary and increasingly vital, goal involves the restitution of state losses resulting from the offense. Consequently, the pursuit of criminal sanctions must be calibrated proportionally to align with the broader orientations of deterrence, retribution, and crime prevention, while simultaneously ensuring effective asset recovery.

The imperative for proportionality in criminal sanctioning, particularly within corruption enforcement, aligns directly with foundational theories in the economic analysis of law. As articulated by Cooter & Ulen (2016) in their seminal work, the efficacy and moral legitimacy of the penal system hinge upon promise that "the punishment's extent should be proportionate to the seriousness of the crime. Disproportionate punishment is wrong." This perspective frames undue severity or leniency as an inefficient misallocation of social resources, suggesting that an optimally calibrated sanction maximizes deterrence benefits while minimizing the external costs of overly harsh or ineffective penalties.

As stated in the Performance Accountability Report of the Corruption Eradication Commission ("KPK") 2023, the handling of corruption cases in 2023 is not only target to punish corruptors, but also aims to increase the asset recovery to the state as much as possible (Komisi Pemberantasan Korupsi, 2024).

As a serious legal response to optimize state asset recovery in corruption cases in Indonesia, the criminal justice system need to be reformed and reformulated. Pre-Trial Conference, as a formal judicial process which can be implemented before the main trial, is one of solution that creates an open and formal arena for plea negotiations between the Prosecutors and the Perpetrators of corruption. In this process, corruptors are obliged to show their remorse (Plead Guilty) and return back of state asset losses to the state victim (Panggabean, 2020). As the benefit, judges in the main trial may generate mitigation considerations to reduce the criminal sanction. As a vice versa, Judges of corruption criminal court are prohibited from giving mitigation considerations if the corruptor does not show their remorse by pleading guilty and returning the state asset losses and must be sentenced to the maximum criminal sanction.

As a judicial concept well-known in common law system countries, Pre-Trial Conference emphasizes the creation of more efficient justice and a faster evidentiary process, as well as reducing the burden of judicial costs (Chemin et al., 2024).

In Singapore, criminal process begins with give opportunities to the perpetrators to declare a stance: "Plead Guilty" or "Claim Trial" in the Mentions Courts. Pre-Trial Conference and/or Criminal Case Disclosure Conference (including for corruption case) is

implemented in order to create formal forum for the law enforcers and defendant to exchange evidence/disclosure of evidence, require an interpreter, defence indication, and plead guilty (State Courts of Singapore, 2021). If the perpetrators admit to Plead Guilty, then the Court will move to a Sentencing Court for deciding the sentence with mitigation factors that may to consider by the Judge (Utomo et al., 2017), including restitution such as compensate the victim or reduce the harm that incurred to the victim (State Courts of Singapore, 2021).

In the Australian criminal justice system, the main purpose of the Pre-trial Conference is to manage cases efficiently, expedite the resolution of criminal cases, ensure trials run as effectively as possible, exchange information and evidence between Prosecutors and Perpetrators, and confirm guilty pleas and/or plea negotiations (Atkinson, 1993). Pre-Trial Conference in Australia is regulated on the Criminal Procedures Acts 1986. In corruption cases, relating to the state asset recovery, Australia also implemented the unexplained wealth order as a part of Non-Conviction Based asset confiscation (Dewi et al., 2025).

Therefore, as there are several benefits of Pre-trial Conference for the successful trial in criminal justice system in Singapore and Australia, this article will discuss the problems of state asset recovery in corruption cases in Indonesia and a possible solution to optimize the state asset recovery through the implementation of Pre-Trial Conference (PTC) in Indonesia's criminal justice system.

METHODS

This research utilises normative legal research methods and use the comparative approach to analyse the legal issues. This research aims to analyse the concept of Pre-Trial Conference as an effort to optimize the state asset recovery in corruption. Comparative legal approach provides a tool to compare, contrast, and expose legal issue and legal system (Kumar, 2022). This research will compare the implementation of Pre-Trial Conference in Singapore and Australia, specifically on how the Pre-Trial Conference and Plea Bargain, Plead Guilty or Plea Negotiation can be conducted and greater the chance of recovering state asset losses in Indonesia. Through the idea of Plea bargain concept, Pre-Trial Conference can be a forum for corruptors to show their remorse (plead guilty) and returning back minimum of 60 percent of the total state losses to gain a mitigation consideration in the main trial (Panggabean, 2020).

RESULTS AND DISCUSSION

1. Problems of State Asset Recovery in Corruption Cases

Corruption has a profound negative impact on the state. These negative impacts are directly visible and felt by the public, including a decline in the quality of public services, economic, and social disparities, reduced social welfare spending, and the loss of state revenue (Hartati et al., 2024).

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As explicitly regulated in Article 2 and 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as subsequently amended by Law Number 20 of 2001 (hereinafter referred to as "Law 31/1999"), state losses on corruption is divided into two types: state financial losses and state economic losses.

State financial losses on corruption cases refer to the actual losses that are real and definite in amount, as a result of the Judicial Review conducted on Article 2 and Article 3 of Law 31/1999 and contained in the Constitutional Court Decision No. 25/PUU-XIV/2016 (Saputra et al., 2018). Whereas the state economic losses in corruption cases are often overlooked due to the many obstacles in proving and calculating them since it refers to potential losses (Despinola et al., 2024).

Table 1. The difference of state asset losses and state financial losses

Aspects	**State Financial Losses vs. State Economic Losses**
Nature of Losses	**State Financial Losses** Real/concrete, direct and quantifiable (actual loss) **State Economic Losses** Abstract, indirect, and more difficult to measure precisely in a single monetary value, concerns potential losses or systemic impacts (potential loss).
Measuring instrument	**State Financial Losses** Usually measured based on the audit results of the Audit Board of Indonesia, the Financial and Development Supervisory Agency or other calculations of state losses. **State Economic Losses** Requires analysis by economic experts and/or academics to prove the existence of a significant impact on the national economy.

Even though there is a different definition of both types of state losses, the absence of clear parameters regarding the elements of the state economic losses still causes complex problems in the process of criminalizing corruption cases (Simanjuntak, 2023). In Indonesia, there are three paths of mechanisms and procedure of recovering state losses on corruptions crimes: 1) the civil path; 2) the criminal path; and 3) the confiscation path, that are basically regulated in Articles 32, 33, 34, and 38 of Law 31/1999 (Mustaghfirin & Efendi, 2016).

First, the State Attorney or the injured agency can file a civil lawsuit against the corruptors and/or their heirs regarding the state losses using civil law instrument (Aryono et al., 2018). Second, according to Romli Atmasasmita (2004), Law 31/1999 stipulates that there are regulations regarding the recovery of state financial losses through a prosecution mechanism against corruptors using criminal instruments, namely confiscation, seizure, and fines.

Last, as regulated in Article 38B (2) Law 31/1999, if a defendant cannot prove that the assets in question were not obtained through a criminal act of corruption, then the assets are deemed to have been obtained through a criminal act of corruption and the judge

has the authority to decide on the confiscation of the assets for the state (Mustaghfirin & Efendi, 2016).

However, those three paths of mechanisms and procedures proved ineffective in optimizing state losses on corruption cases since there is a huge gap between state asset losses and state asset recovery as mentioned in the introduction section (Karunia, 2022).

a. Ineffectiveness of the criminal justice system in corruption cases

The ineffectiveness of Indonesia's criminal justice system plays significant role of its failure to optimize the state asset recovery on corruption cases.

Firstly, the lower sentences for corruptors reflect an inequitable in the judicial process. According to Behuku et al. (2025), corruption verdicts in Indonesia tend to show a disparity and dualism when confronting political and economic actors. Moreover, in addition to high levels of political intervention, the corruption enforcement in Indonesia also faces a weak coordination between institutions and a permissive culture towards corruption (Jawa et al., 2024).

Furthermore, it is also exacerbated by the many cases of legal violations that have emerged among law enforcers with serious integrity challenges, including bribery, abuse of power, and corrupt actions by judges, clerks, and judicial staff in courts (Hersriavita et al., 2019; Putra & Linda, 2022).

Secondly, the minimum state asset recovery in corruption criminal court's decisions. The low level of recovery of state losses in corruption cases can be seen from several court decisions which give very light economic sanctions to corruptors, in the form of: 1) criminal fines; and 2) very light criminal payments of compensation (even though Article 18 (1) letter b of Law 31/1999 clearly stipulates that "payment of compensation in an amount that is **equal** to the maximum amount of assets obtained from criminal acts of corruption).

For instance, the corruption cases involving misuse of location permits and plantation business permits in the Indragiri Hulu area, Riau, in 2023. In this case the defendant, Surya Darmadi as the owner of PT Darmex Group/PT Duta Palma, with total state losses of 78 trillion rupiah, he was sentenced to 15 years in prison with 1 billion rupiah as fine and obligate to pay 2.2 trillion rupiah as compensation plus 39.7 trillion for the state economic losses or can be replaced with property confiscation or 5 years in sentenced if failed to pay (Mahkamah Agung Republik Indonesia, 2023). It means that the payment of compensation is only 2.82% and the obligation to pay the state economic losses is only 50.90% of the total losses with the Perpetrators prefer replace it with additional/alternative period of imprisonment.

For the second example, the 4G Base Transceiver Station (BTS) Ministry of Communication and Information Technology ("Kominfo") in 2023. The state losses in this case are 8.03 trillion rupiah. The defendant of this case is Anang Achmad Latif, the director of BAKTI Kominfo. Anang was sentenced to 18 years in prison and 1 billion as a fine. He also sentenced to pay the compensation 5 billion rupiah. Ironically, this verdict is controversial since he returned 6.7 billion rupiah to the Prosecutor before the trial. The 1.7 billion was returned to the defendant.

Thirdly, the costs of litigation on corruption conducted by the Corruption Eradication Commission (KPK), the General Attorney (state prosecutors), and the Police are continuously burdensome for the state. Based on the Budget Implementation List

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(DIPA), the total budget for the preliminary corruption investigation in 2022 reached up to 449 billion rupiah (Anandya & Easter, 2023), excluding the prosecution, trial, and execution budgets.

Lastly, the lengthy and multi-stage judicial process, including investigation, prosecution, trial, and execution, not only strains the budget for handling corruption cases but also provides opportunities for criminals and their allies to commit further illicit acts, including bribery and asset concealment.

Corruption perpetrators tend to utilize all available means to conceal their assets, either through money laundering or transferring them overseas, making them difficult to trace. This has given rise to the urgency of implementing the confiscation of stolen assets without going through the criminal justice process, based on the principle of "crime doesn't pay" in Non-Conviction-Based Asset Forfeiture (Rozah & Nashriana, 2023).

b. The Lack of Regulation on State Asset Recovery

Acoording to Endah Wahyuningsih et al., p. (2024b), preventing and addressing corruption is becoming extremely difficult in Indonesia, driven by the trend of low penalties for corruptors. This situation is further exacerbated by the negative tendencies and habits of prisoners who are reluctant to pay compensation in corruption cases and prefer to replace it with additional prison sentences, as permitted by court decisions in corruption cases.

Given the widespread failure of state asset recovery proven by research and legal facts, the Asset Forfeiture Bill is intended to provide a more effective mechanism (Kurniawan, 2023). However, despite being drafted in 2003 and first discussed in 2009 a persistent lack of political will has prevented its enactment as a binding law (A & Fakih, 2025).

2. PTC as a Solution to Optimizing the State Asset Recovery

The high level of state asset losses due to corruption is a major focus and legal issues that must be addressed in the corruption enforcement. According to Berkovich et al. (2019), the increasing amount of state asset losses in corruption cases, among other things, is caused by the existence of justifications for corruptors in committing corruption: 1) corruption acts are deemed not to harm others; and 2) the perception that social obligations have a higher value in the society.

The mechanism of state asset recovery in corruption cases is developing in various countries. One mechanism that being intensively developed to optimize the state asset recovery is the implementation of Non-Conviction-Based ("NCB") asset forfeiture, as stipulated in the 2003 United Nations Convention Against Corruption (Sudarto et al., 2017; Tantimin, 2023).

Essentially, NCB is an asset recovery mechanism that is implemented without criminal proceedings (Hafid, 2021). In Indonesia, this NCB concept is regulated in the Asset Forfeiture Bill. However, on the other hand, the NCB concept has not received an adequate political response in Indonesia.

Therefore, another approach is needed to bridge and increase the recovery of state losses in corruption cases. One approach that can be applied in Indonesia is to adopt the

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Pre-Trial Conference concept which has been implemented in common law system countries.

a. Definition and Benefits of PTC

Basically, PTC is a concept in the criminal justice system that creates an open and formal arena for plea negotiations. The initial goals of PTC were to reduced legal costs, created more efficient justice systems, increase the speed of trial, and addressed the need for faster evidence (Chemin et al., 2024; Heinz & Kerstetter, 1979).

Plea negotiations is also known as a plea bargain concept in the criminal justice procedure to settling criminal cases (Utama, 2021). Plea bargaining is a process where the defendant in a criminal case can admit their guilt. This concept appears in Anglo-Saxon and common law systems countries with aims to resolve a criminal case through discussions between the Defendant and the Prosecutor, ultimately providing more space for the victim of the crime (Fajrin et al., 2023; Ruchoyah, 2020; The Law Dictionary, n.d.).

This concept of plea bargain in a PTC process allows attorney interaction and expert witness testimony before the trial (Davis, 2017). PTC has several advantages in the criminal justice system that are considered effective and restorative.

First, PTC can increase court productivity. By providing a dedicated time for the parties to discuss the case before trial, it will lead to a plea agreement or settlement without the need for a full, costly, and time-consuming trial (American Bar Association, 2021; Dobbyn, 2022; Gillespie, 2024).

Moreover, even though several legal scholars argued that there is a lack of clarity regarding the binding effect of the plea agreement and the limitation of issues (Crawford, 1946), PTC opens up opportunities to strengthen the state victim role in the criminal justice system, especially to actively demand the state asset losses. Fredric Dubow and Theodore M. Becker (1976, p. 147) assert that the capacity of victims in PTC can also have an impact on reducing criminal cases over time since the conventional criminal justice system is considered to be less of a victim participation (as cited in Heinz & Kerstetter, 1979).

Furthermore, the PTC procedure in this process will be proposed as a plea guilty forum for the defendant. According to PTC, as a process which not only 'man-oriented' but also 'act-oriented' in the criminal justice system, it aims to give a formal forum to the defendants to show their remorse and return the state asset losses of a minimum of 60 percent out of the total losses (Panggabean, 2020). If the defendants failed to return the state asset losses, the Judge in the main trial is prohibited from giving a mitigating consideration nor low sentences.

The idea of implementing PTC in Indonesia is fundamentally motivated by the failure of the criminal justice system to effectively recover the state losses as an economic aspect in corruption cases.

b. Economic Aspects in Corruption Cases

Numerous studies have shown that corruption cases have a direct impact on the economic growth of a state. In Indonesia, the high number of corruption cases and state losses have negatively impacted the state's economic development (Irawan, 2022). Economically, it is clear that corruption cases cause the loss of state finances and economic losses for the state.

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Additionally, criminal acts of corruption also impose a financial burden on the state during the criminalization process. As previously mentioned, the criminalization process for corruption cases requires a significant budget. Furthermore, evidence suggests the need for a reconstruction of criminal sanctions for corruption, indicating that imprisonment (which also requires a significant state's budget to implement) is no longer relevant and has no deterrent effect (Muttaqi, 2023).

In order to increase the recovery of state losses in corruption cases in Indonesia, the implementation of the concept of criminalizing the burden of handling costs for corruption cases is considered as one of the efforts to address the weak deterrent effect and ineffectiveness of enforcing corruption cases in Indonesia (Lestari, 2023).

Corruption cases impose significant fiscal and macroeconomic burdens on the state that extend far beyond the immediate quantum of state losses. Specifically, the state must bear substantial, often overlooked, concomitant economic costs associated with the operation of the anti-corruption justice system itself.

These expenses encompass three key areas: 1) the direct financial cost of the judicial cycle, including the investigation, prosecution, adjudication, and execution of court decisions, a process that frequently spans a protracted duration of several years; 2) the substantial institutional expenditure dedicated to the operational budget of police forces, prosecutorial offices, and the judiciary, alongside the remuneration for expert witnesses and other involved personnel; and 3) the ongoing costs related to the maintenance, custody, and criminal process convicted parties during both pre-trial dentention and subsequent incarceration.

Consequently, in light of these considerable resource outlays, the criminal justice system in corruption must be fundamentally oriented toward achieving the optimal state asset recovery as a necessary mechanism to mitigate the holistic economic damage.

According to Romli Atmasasmita, the concept of imposing a criminal penalty of payment of compensation as regulated in Law 31/1999 is based on the idea that a corruptor must be punished as severely as possible to deter them, including in this case economic deterrence (as cited in Nurhayati, 2014).

In 2020, Indonesia had a pivotal regulatory shift, instituted to address the persistent issues of significant state financial losses and wide-ranging verdict disparities in corruption cases. In response to the challenges, the Supreme Court of the Republic of Indonesia, promulgated Supreme Court Regulation Number 1 of 2020 concerning Sentencing Guidelines, Articles 2 and 3 of Law 31/1999 (hereinafter refer as "PERMA 1/2020"). This regulation endeavors to standardize judicial practice by preventing the common tendency toward unduly lenient verdicts and establishing greater proportionality in the sentences imposed, particularly as they relate to the magnitude of state losses incurred.

While the central aim of PERMA 1/2020 is to curb disparity in the imposition of custodial sanctions against corruptors, the regulation's scope extends beyond simple quantitative uniformity (Muammar et al., 2021). It fundamentally redefines the judge's considerations for determining the overall severity of punishment, thereby facilitating the realization of broader judicial principle, including legal certainty, substantive justice, and proportional public benefit.

In Article 5 of PERMA 1/2020, there are 6 stages that must be considered by the judge in determining the severity of the sentence, namely: 1) the category of state financial

or state economic losses; 2) the level of culpability, impact, and benefits; 3) the range of sentencing; 4) aggravating and mitigating circumstances; 5) the imposition of the sentence; and 6) other provisions related to the imposition of the sentence.

Moreover, the high level of culpability, impact, and profit are also defined in detail in Article 8 of PERMA 1/2020. The high level of culpability is defined as the defendant having the most significant role in the corruption crime and being the "mastermind" or "main perpetrator" using a sophisticated modus operandi and during a national disaster or economic crisis.

Furthermore, the term "high impact" refers to the impact and losses on a national scale or resulting in suffering for vulnerable groups. Meanwhile, the term "high profit" refers to the value of the assets obtained by the defendant from the corruption crime exceeding 50% of the state's financial or economic losses in the case in question.

Although PERMA 1/2020 has attempted to address the issue of disparity in decisions and optimize the recovery of state losses by categorizing state losses and economic losses in corruption crimes, in practice, many judges still impose sentences that are lower and lighter than the level of error and losses suffered by the state (Hadi & Nova, 2023). Therefore, Indonesia still needs legal breakthroughs through the implementation of Pre-Trial Conference that create legal and official forum to conduct the concept of Plea Bargaining to can optimize state losses.

c. PTC in Singapore, Australia and Indonesia's criminal justice system

Even though implementing a PTC in corruption cases is a controversial idea that may draw significant criticism, this forum and its advantages could potentially offer a solution for optimizing state asset recovery.

PTC is often misinterpreted as a forum to terminate corruption cases. Basically, the termination of investigations and inquiries into corruption cases is possible if one of the factors that can be taken into consideration is the effort to recover state losses as stated in Article 109 (2) of the Criminal Procedure Code, as aimed at creating restorative justice and efforts to optimize the recovery of state losses (Poernomo et al., 2024). But, PTC in Indonesia will instead be interpreted as a formal forum intended to generate judges' considerations for the main trial (Sandra, 2022).

In Indonesia's criminal justice system, the negative evidentiary system, as stipulated in the *negative wettelijk bewijs theorie*, which requires at least two pieces of evidence and the judge's conviction, is essential to determining guilt. However, the problem that arises is the lack of clear parameters or boundaries regarding the judge's conviction itself (Triantono & Marizal, 2021).

In the corruption enforcement context, a judicial determination of guilt must be thoroughly explicated within the court's legal reasoning (*ratio decidendi*), a requirement that inherently encompasses the meticulous assessment of both mitigating and aggravating circumstances relevant to the final punitive measure. It is in line with the view that judges are currently required to apply various schools of legal thought that can balance legal certainty with substantive justice and be responsive to social change (Asa et al., 2025).

Crucially, given the prevailing philosophy of corruption enforcement, which fundamentally prioritizes the restitution of state financial losses and economic losses, the doctrine governing sentencing factors dictates that the sole permissible mitigating

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considerations for an offender should be a demonstrated admission of guilt or remorse and verifiable measures taken toward achieving full state asset recovery.

Therefore, as an answer to the judge's need to see the defendant's conscience in corruption cases, the PTC process can be an answer by providing an arena for pleading guilty and recovering state losses in the process.

As a plea-bargaining forum, by showing remorse and returning 60 percent of the total asset losses to the state victim, the judges of the main trial can focus on considering the economic aspects of criminal cases. By focusing on the economic aspect of the case and applying the economic analysis of law theory by proportionating the sentences between the economic sentence and the imprisonment (as a double track system in criminal justice system which balancing the penal and non-penal sanction), it will influence on the restorative and corrective criminal sanction rather than retributive.

In Singapore, PTC is implemented before a case reaches the main trial in court (Singapore Courts, n.d.). It is regulated in the Criminal Procedure Court Act 2010 and specifically regulated in the Rules of Court 2021 (Singapore Statues Online, 2025; Singapore Statutes Online, 2021).

As the starting point for the PTC mechanism, Singapore's criminal justice system strongly encourages pleading guilty as early as possible through sentencing incentives. A plea of guilt made at the PTC stage (before trial begins) is considered an Early Plea of Guilt and allows for several benefits, including: 1) sentence reduction; 2) clarity and certainty; and 3) efficiency in the trial process (Channel New Asia, 2023; Sentencing Advisory Panel Singapore, 2023).

If a defendant is willing to plea bargain/plead guilty, then the defendant's lawyer can submit a mitigation plea to request leniency and the public prosecutor will propose an appropriate sentence (State Courts of Singapore, 2021).

Specifically, for corruption cases, the PTC in Singapore follows the same procedures, but with a high degree of precision, given the sensitivity and complexity of the corruption cases themselves. In Singapore, the institution authorized to conduct investigations and inquiries into corruption cases is the Corrupt Practices Investigation Bureau ("CPIB") (van der Wal, 2021).

According to Transparency International's Corruption Perception Index 2024, out of 180 countries, Singapore ranks third in the world's cleanest, with a total score of 84 out of 100, after Denmark and Finland. Singapore is the only country in the Asia Pacific region to rank among the top three. This is due in part to the effectiveness of Singapore's criminal justice system and the strong and independent role of its anti-corruption agency, the CPIB (Transparency International, 2025).

In Australia, the PTC is regulated by Section 140(4) of the Criminal Procedure Act 1986 with the purpose of: 1) determining whether the Defendant and the Prosecutor can reach an agreement regarding the evidence to be presented at trial; 2) identifying the main issues; 3) identifying other issues relating to the Defendant's legal proceedings that require resolution before the commencement of trial; and 4) determining other matters as directed by the court (NSW Legislation Website, 2024).

Initially, late Guilty Pleas were a major obstacle and contributing to the high number of failed trials in Australia. However, a mechanism used across Australian jurisdictions to

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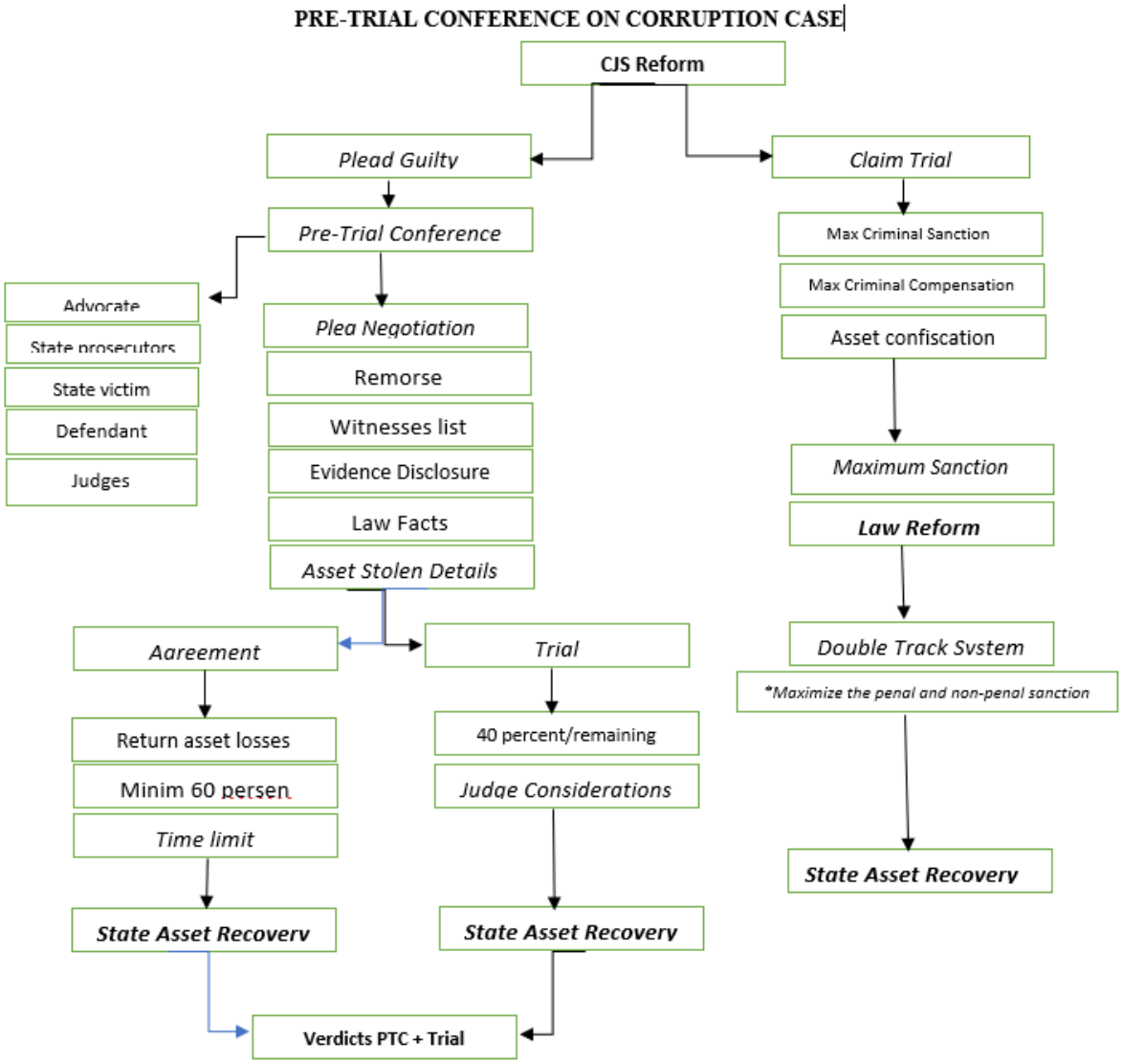
address this issue is sentence discounts, which are granted based on the defendant's admission of guilt during a Pre-Trial Conference or Plea Negotiation (Payne, 2007).

In the future Indonesia's criminal justice system, The PTC process could be implemented by giving a choice to the defendant of pleading guilty or claiming a trial as in Singapore's practice. This is a proposed process of PTC in Indonesia.



***Gambar 1**. Proposed PTC process in Indonesia*

Based on the table above, PTC in Indonesia is carried out by allowing corruptors to show guilt and demonstrate a cooperative attitude by disclosing evidence, legal facts, and providing stolen asset details, as well as returning a minimum of 60 percent of the total state losses incurred.

Afterwards, as regulated in Article 4 of Law 31/1999, the return of state losses in this context cannot eliminate the unlawful nature and can only be used as a reason for the judge to provide mitigating considerations at the main trial.

This PTC regulation is essentially in line with the concept of restorative juctice in the new Criminal Procedure Code ("New KUHAP") of Indonesia. Articles 74 and 75 of the

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RKUHAP essentially regulate the restorative justice mechanism in the form of out-of-court settlement with one of the conditions being that the perpetrator has restored the original condition and there has been a peace agreement between the Victim and the Perpetrator (Dewan Perwakilan Rakyat, 2025).

Article 191 of the New KUHAP which essentially states that "a peace agreement and/or the Defendant's willingness to be responsible for the losses and/or needs of the victim as a result of the crime becomes a reason to mitigate the sentence and/or become a consideration for imposing a supervisory sentence in accordance with the provisions of laws and regulations" becomes a basis that the PTC which essentially aims to accommodate the attitude of repentance and return of state losses in corruption cases is very likely to be implemented in Indonesia in the future criminal justice system.

CONCLUSION

Implementing PTC in Indonesia's criminal justice system promises a great potential to optimize state asset recovery in corruption cases. By implementing the theory of economic analysis of law, this eventually leads to creating court productivity, reducing litigation cost, speeding up the litigation process, and giving a formal forum to defendants to show their remorse (plead guilty) by returning back minimum 60 percent out of total losses and get a sole judge's consideration to decrease criminal sanctions. In a reverse versa, if the defendants failed to return the state asset losses, the Judge in the main trial is prohibited from giving mitigating considerations or low sentences. As the idea of Pre-Trial Conference in corruption cases aligns with the implementation of Indonesia's Criminal Procedure Code Bill, it is a solution to create a restorative justice and optimize the state asset recovery in corruption cases.

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