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Beyond Conviction-Based Forfeiture: Legal Politics and Legislative Directions of Non-Conviction-Based Asset Forfeiture in the Recovery of Corruption Assets in Indonesia

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Abstract

The low rate of asset recovery resulting from corruption shows that Indonesia's asset forfeiture regime, which is still oriented towards conviction-based forfeiture, has not been effective in addressing the complex and transnational nature of modern corruption. In the 2021–2023 period, state financial losses due to corruption reached hundreds of trillions of rupiah, while the rate of asset recovery still showed a significant percentage, especially when the perpetrators could not be prosecuted because they had fled, died, or were outside the jurisdiction, resulting in the state losing its authority to confiscate corrupt individuals' assets. This study analyzes the legal politics of state asset forfeiture in corruption cases and assesses the urgency of implementing non-conviction-based asset forfeiture (NCB) in Indonesia's legal system. This study adopts a normative juridical approach with legal political analysis through a review of legislation, court decisions, and relevant literature. The results of the study show that the stagnation in the ratification of the Asset Forfeiture Bill is not solely due to technical legislative issues but reflects a legal political configuration that still places the punishment of perpetrators as the main orientation, while asset recovery is not yet a legal policy priority. Additionally, the absence of a specific asset forfeiture law has led to an excessive reliance on conventional criminal mechanisms and created a legal vacuum in certain situations. This is exacerbated by institutional capacity constraints, weak coordination among law enforcement agencies, and suboptimal cross-border asset-tracing mechanisms. This study concludes that the implementation of non-conviction-based asset forfeiture (NCB) is urgently necessary to strengthen asset recovery in Indonesia, as long as it is designed within the framework of the rule of law, which guarantees judicial oversight and the protection of human rights.

Keywords: *Legal Politics, Legislative Directions, Non-Conviction-Based, Corruption Asset Forfeiture*

Abstrak

Rendahnya tingkat pemulihan aset hasil tindak pidana korupsi menunjukkan bahwa rezim perampasan aset di Indonesia yang masih berorientasi pada

conviction-based forfeiture belum efektif menjawab karakter korupsi modern yang kompleks dan transnasional. Dalam periode 2021–2023, kerugian keuangan negara akibat korupsi mencapai ratusan triliun rupiah, sementara tingkat pengembalian aset masih menunjukan nilai persentase yang signifikan, terutama saat pelaku tidak dapat diadili karena melarikan diri, meninggal dunia, atau berada di luar yurisdiksi sehingga negara kehilangan otoritasnya untuk merampas aset dari tindak pidana korupsi. Penelitian ini bertujuan menganalisis politik hukum perampasan aset negara dalam perkara korupsi dan menilai urgensi penerapan *Non-Conviction Based Asset Forfeiture* (NCB) dalam sistem hukum Indonesia. Penelitian ini menggunakan pendekatan yuridis normatif dengan analisis politik hukum melalui kajian peraturan perundang-undangan, putusan pengadilan, serta literatur relevan. Hasil penelitian menunjukkan bahwa stagnasi pengesahan Rancangan Undang-Undang Perampasan Aset tidak semata disebabkan oleh persoalan teknis legislasi, melainkan mencerminkan konfigurasi politik hukum yang masih menempatkan pemidanaan pelaku sebagai orientasi utama, sementara pemulihan aset belum menjadi prioritas kebijakan hukum. Selain itu, ketiadaan undang-undang khusus perampasan aset menimbulkan ketergantungan berlebihan pada mekanisme pidana konvensional dan menciptakan kekosongan hukum dalam situasi tertentu, yang diperparah oleh keterbatasan kapasitas kelembagaan, lemahnya koordinasi antarlembaga penegak hukum, serta belum optimalnya mekanisme penelusuran aset lintas negara. Penelitian ini menyimpulkan bahwa penerapan *Non-Conviction Based Asset Forfeiture* (NCB) merupakan kebutuhan mendesak untuk memperkuat pemulihan aset di Indonesia, sepanjang dirancang dalam kerangka negara hukum yang menjamin pengawasan yudisial dan perlindungan hak asasi manusia.

Kata kunci: *Politik Hukum, Arah Legislasi, Non-Conviction-Based, Penyitaan Aset Korupsi*

Introduction

Efforts to eradicate corruption through the mechanism of confiscating assets derived from criminal acts are a very important instrument, not only as a form of deterrence but also to recover state losses and prevent the recurrence of crimes in the

future.[1] However, the effectiveness of this instrument is still hampered by the limitations of the legal framework. In Indonesia, corruption has developed into a systemic problem and has had a widespread impact on economic stability and the legitimacy of state institutions. In the 2021–2023 period, according to data from the Indonesia Corruption Watch (ICW), state financial losses due to corrupt practices were recorded at Rp152 trillion, while the rate of asset recovery by the Corruption Eradication Commission (KPK) was only approximately 5–10% per year.[2] In 2022, state losses even reached Rp48.786 trillion, but only about 7.83 percent of that amount was successfully recovered through existing legal mechanisms. This situation shows a huge gap between the losses incurred and assets successfully recovered.[3]

This situation confirms that corruption not only weakens the national economy but also erodes public trust in the government. In addition, there are no regulations that explicitly regulate non-conviction-based asset forfeiture, creating a normative vacuum that affects law enforcement optimization.[4] Although the Draft Law on Asset Forfeiture has repeatedly been included in the National Legislation Program agenda, to date, there has been no significant progress towards its ratification, reflecting serious problems in the realm of political law. This stagnation is not solely due to technical legislative obstacles but also indicates a lack of political will on the part of lawmakers to prioritize asset recovery as part of anti-corruption policies.[5]

Additionally, the tug-of-war between political actors, concerns over the implications of asset forfeiture regulations without criminal prosecution, and political calculations to protect the interests of certain elites have contributed to the slow pace of deliberations on the bill. As a result, although there is a normative urgent need for effective asset forfeiture regulations, the political orientation of the law, which still

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[1] Dian Dewi Purnamasari, "RUU Perampasan Aset Tak Masuk Prolegnas 2025, Bukti Lemahnya Komitmen Antikorupsi Elite," Kompas.Id, 2024, https://www.kompas.id/artikel/ruu-perampasan-aset-tak-masuk-prolegnas-2025-bukti-lemahnya-komitmen-antikorupsi-elite.

[2] Azzahra Aulia Putri and Chindi Jania, *Dampak Korupsi Terhadap Perekonomian Dan Kehidupan Sosial*, 2, no. 2 (2025): 381–89.

[3] Aviva Khalila, "Rejuvenasi KPK : Urgensi Pemberlakuan Rancangan Undang-Undang Perampasan Aset Dengan Pendekatan In Rem Dan Tinjauan Pendekatan Serupa Pada Regulasi Unexplained Wealth Di Australia," LK2 FHUI, 2023, https://lk2fhui.law.ui.ac.id/portfolio/rejuvenasi-kpk-urgensi-pemberlakuan-rancangan-undang-undang-perampasan-aset-dengan-pendekatan-in-rem-dan-tinjauan-pendekatan-serupa-pada-regulasi-unexplained-wealth-di-australia/.

[4] Ananda Ridho Sulistya, "Sampai Mana Perkembangan RUU Perampasan Aset," Tempo, 2025, https://www.tempo.co/politik/sampai-mana-perkembangan-ruu-perampasan-aset--1220693.

[5] Mahfud MD, *Politik Hukum Di Indonesia*, 4th ed. (jakarta: Rajawali Pers, 2011).

focuses on prosecuting perpetrators, has caused legislative efforts to remain at a standstill, so that the goal of recovering state losses has not been optimally realized through comprehensive legal instruments.[6]

Several previous studies have shown that the main problem in eradicating corruption in Indonesia is not the prosecution of perpetrators but the weak asset recovery mechanism. Yudi Kristiana emphasizes that the absence of specific regulations on Non-Conviction Based Asset Forfeiture (NCB) creates a serious legal vacuum and hinders the state's ability to confiscate assets when perpetrators cannot be prosecuted.[7] The UNODC study (2021) also revealed that countries that have adopted NCB have a much higher asset recovery rate than countries that rely solely on conviction-based mechanisms.[8] In addition, Santosa's study shows that corrupt assets in Indonesia are often transferred, disguised, or moved to other jurisdictions before a court decision is handed down, rendering criminal conviction-based mechanisms ineffective in recovering state losses.[9] On the other hand, legal policy literature reviews, such as Mahfud MD and Bivitri Susanti, also discuss the direction of law formation in Indonesia. However, this research has not touched on studies that specifically map the legal policy of asset forfeiture, the stagnation of the Asset Forfeiture Bill, and the urgency of the NCB in Indonesia.

Conceptually, legal reform on asset confiscation is a consequence of the principle of supremacy of law, which places law as the primary instrument for protecting public interests, as well as the embodiment of the constitutional mandate regarding state financial management for the greatest prosperity of the people.[10] From a political-legal perspective, law is not understood as a stand-alone and neutral norm but rather as a product of power configurations, policy orientations, and legislative priorities that determine the direction and effectiveness of its regulation. This framework is relevant for analyzing asset forfeiture because the state's choice to continue to rely on conviction-

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[6] Hukum Online, "PPATK Sayangkan RUU Perampasan Aset Tak Masuk Prolegnas Prioritas 2025," Hukum Online.Com, 2024, https://www.hukumonline.com/berita/a/ppatk-sayangkan-ruu-perampasan-aset-tak-masuk-prolegnas-prioritas-2025-lt673d83938408e/?page=all.

[7] Yudi Kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia," *Jurnal Ius Quia Iustum* 2, no. 27 (2020).

[8] Jean-pierre Brun et al., *Asset Recovery Handbook* (n.d.).

[9] Mas Achmad Sentosa, "Asset Recovery and Corruption Control in Indonesia," *ICW Working Paper*, 2022.

[10] J.-P. Brun and A. Sotiropoulou, "Asset Recovery in Developing Countries: Assessing Successes and Failures and Overcoming Challenges," in *Global Anti-Money Laundering Regulation: Developing Countries Compliance Challenges* (2024), 254–77, https://doi.org/10.4324/9781003253808-16.

based forfeiture mechanisms or to adopt non-conviction-based asset forfeiture (NCB) is not merely technical-juridical in nature but reflects the political orientation of the law in combating corruption.

Thus, this study aims to analyze the legal politics of state asset forfeiture in corruption cases and assess the urgency of implementing non-conviction-based asset forfeiture (NCB) in Indonesia's legal system. The analysis of asset forfeiture in this study does not stop at a normative assessment of the adequacy of legislation but also examines how the dynamics of political interests, weak political will, and legislative priorities influence regulatory stagnation and the low effectiveness of state asset recovery. Asset forfeiture should not be viewed merely as an additional sanction but as a strategic instrument to recover state losses, narrow the space for corruptors to operate, and restore public trust.

Method

This study uses a normative legal approach combined with legal policy analysis, which examines the law as a set of applicable norms while also assessing the political dynamics that influence the formation, direction, and effectiveness of the regulations.[11] The normative legal approach was carried out by examining laws and regulations related to the confiscation of assets derived from criminal acts, including the non-conviction-based asset forfeiture (NCB) mechanism, the Corruption Eradication Law, the Money Laundering Law, and a draft Asset Confiscation Bill. Data were collected through a literature study examining primary legal materials in the form of Law No. 31/1999 jo. Law No. 20/2001, Law No. 8/2010, the draft Asset Seizure Bill, and Constitutional Court decisions. The research data were analyzed descriptively and qualitatively using a normative juridical approach and legal policy analysis by examining legislation, court decisions, and scientific literature related to the confiscation of assets resulting from criminal acts. The analysis process was carried out by inventorying and classifying primary and secondary legal materials, interpreting legal norms to identify regulatory patterns, gaps, and weaknesses, and examining the dynamics of political interests, power relations, and institutional factors that influence the formation and effectiveness of asset forfeiture policies.

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[11] Soerjono Soekanto, *Pengantar Penelitian Hukum* (jakarta: UI Press, 1986), 51.

The results of the normative and political-legal analyses were then synthesized to formulate research findings and recommendations for the direction of legal reform of asset forfeiture, oriented towards the effectiveness of state loss recovery, legal certainty, and justice. This research uses artificial intelligence (AI) in a limited and responsible manner, particularly in the preparation of academic language and writing structure. All substantive analyses, legal interpretations, and conclusions remain the full responsibility of the author, in accordance with academic ethics principles.

Results and Discussion

The Politics of Asset Seizure Law in Indonesia

Discussions on asset seizure legal policy show that regulatory stagnation is not merely a technical legislative issue but reflects weak political will to eradicate corruption. Data from the National Legislation Program (Prolegnas) show that the Asset Seizure Bill has been on the agenda since 2010 but has been repeatedly removed from the priority list without substantial discussion. This confirms that lawmaking is heavily influenced by elite political calculations. As stated by Mahfud MD, legal politics is a fundamental tool in determining the direction of lawmaking, implementation, and reform so that it is in line with the values of justice and social needs.[12]

From a historical perspective, the political aspect of asset forfeiture in Indonesia shows a pattern of strong continuity in the orientation of criminal punishment since the early days of modern criminal law in Indonesia. The post-reform legal framework for combating corruption, including the Corruption Eradication Law and the Money Laundering Law, still places asset forfeiture as a consequence of the punishment of perpetrators.[13] This orientation reflects the dominance of the conviction-based forfeiture paradigm inherited from the classical criminal law system, in which the state only obtains the legitimacy to confiscate assets after a final and binding criminal verdict is issued.[14] In the context of increasingly complex and transnational corruption crimes, this historical

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[12] MD, *Politik Hukum Di Indonesia.*
[13] Brun et al., *Asset Recovery Handbook.*
[14] J. Hendry and C. King, "How Far Is Too Far? Theorising Non-Conviction-Based Asset Forfeiture," *International Journal of Law in Context* 11, no. 4 (2015): 398–411, Scopus, https://doi.org/10.1017/S1744552315000269.

legacy has become a structural limitation that continues to influence the political direction of asset forfeiture laws.[15]

Philosophically and sociologically, the asset forfeiture policy is based on the values of distributive justice and social benefit, namely returning state wealth seized by perpetrators of corruption to the community. From a legal perspective, this foundation should be manifested in legal norms that are effective and adaptive to developments in modern corrupt crimes, including money laundering and transnational crimes. However, several studies show that Indonesia's legal framework is still oriented towards a classical (conviction-based) approach, and is not yet fully in line with social demands for the rapid and effective recovery of state assets.[16] This lack of synchronization between the philosophical basis and normative regulations characterizes the political problems of Indonesia's asset forfeiture laws.

In the context of asset forfeiture, legal policy determines the extent to which the state is committed to using progressive legal instruments to combat corruption and recover assets. The issue of asset forfeiture is not a standalone technical legal matter but is closely related to the state's capacity to respond to complex corruption threats, including organized crime and transnational money laundering.[17] Therefore, the legal policy on asset forfeiture must be directed toward establishing mechanisms that not only punish perpetrators but also return illegally obtained assets.[18]

The lawmaking pattern also reveals a legal political culture that is not yet sufficiently progressive. The Asset Seizure Bill has been on the National Legislation Program since 2010 but has yet to be passed and is often moved in and out of the priority list of legislation.[19] This situation shows that although there is normative recognition of the urgency of asset seizure, politically, the policy has not been prioritized.[20] Bivitri

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[15] D. Priyatno, "Non Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia," *Journal of Advanced Research in Law and Economics* 9, no. 1 (2018): 219–33, https://doi.org/10.14505//jarle.v9.1(31).27.

[16] yudi kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia."

[17] K. Maulidah et al., "The Urgency of Enacting the Asset Confiscation Bill for the Eradication of Corruption and Money Laundering in Indonesia," *Prophetic Law Review* 7, no. 1 (2025): 95–116, Scopus, https://doi.org/10.20885/PLR.vol7.iss1.art5.

[18] Jimly Assiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Konstitusi Press, 2010).

[19] Martin Yogi Pardamean, "Seluk Beluk RUU Perampasan Aset Tak Kunjung Masuk Prolegnas Prioritas DPR," eMedia DPR, 2024, https://www.tempo.co/hukum/seluk-beluk-ruu-perampasan-aset-tak-kunjung-masuk-prolegnas-prioritas-dpr-1173194.

[20] T.I. Sakinah, T.Z. Rahman, and A. Setiawan, "Indonesia's Imperative Asset Forfeiture Bill to Combat Illicit Enrichment," *Indonesian Journal of Criminal Law Studies* 8, no. 1 (2023): 75–106,

Susanti asserts that the legislative process in Indonesia is often determined not by the urgency of the legal substance but by short-term political calculations and the interests of the elite.[21] This explains the stagnation of the Asset Seizure Bill despite relatively strong support from civil society and anti-corruption institutions.

From a power relations perspective, dominant political institutions, particularly the House of Representatives and political parties, play a central role in determining the direction of asset forfeiture legislation. Resistance to asset forfeiture regulations without criminal charges cannot be separated from the concerns of some political elites that such regulations could be used to ensnare influential actors in the political elite. Political-legal analyses show that anti-corruption regulations tend to encounter obstacles when they directly affect the interests of those in power.[22] Thus, the politics of asset forfeiture in Indonesia are caught in a tug-of-war between the interests of eradicating corruption and protecting elite interests.

However, social demands for stronger asset recovery are growing as public awareness of the magnitude of state losses due to corruption increases. Data from the Indonesia Corruption Watch (ICW) and the KPK's annual report show a significant gap between state losses and the assets that have been successfully recovered. The response to these social demands has emerged in public discourse and government policy statements, including the issuance of a Presidential Letter to encourage discussion of the Asset Seizure Bill in 2023. However, this response has not been followed by political consistency at the legislative level; therefore, social demands have not been fully articulated in concrete legal policies.[23]

From the perspective of implementation and law enforcement, the asset forfeiture policy is also reflected in the choice of legal instruments used by law enforcement officials. The reliance on conviction-based forfeiture mechanisms indicates that the state remains cautious about adopting more progressive instruments, such as non-conviction-

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https://doi.org/10.15294/ijcls.v8i1.43728; S. Fikri, "The Urgency of Regulating Forfeiture of Assets Gained from Corruption in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 292–310, https://doi.org/10.22219/ljih.v32i2.35243.

[21] Bivitri Susanti, "Reformasi Regulasi Dan Politik Hukum," *Jurnal Legislasi Indonesia* 18 (2021).

[22] Mark Tushnet, "Political Corruption and Constitutional Design," *International Journal of Constitutional Law* 14 (2016).

[23] Indonesia Corruption Watch |, *Laporan Hasil Pemantauan Tren Korupsi Tahun 2023* (2024).

based asset forfeiture (NCB).[24] International practices formulated by the UNODC place the NCB as an important part of an effective asset-recovery regime.[25] The unwillingness to adopt this mechanism reflects a legal policy orientation that is still defensive and not yet fully oriented towards effective asset recovery.

Finally, the policy for monitoring and evaluating asset forfeiture laws has yet to be systematically designed. The absence of specific asset forfeiture laws has resulted in policy evaluation mechanisms being scattered across various legal regimes, such as the Anti-Corruption and Anti-Money Laundering Laws. This situation hinders the integrated monitoring and comprehensive evaluation of the effectiveness of asset forfeiture policies. Therefore, from a legal policy perspective, the establishment of a comprehensive Asset Seizure Law is an important prerequisite to ensure a clear, consistent policy direction oriented towards the recovery of state losses as a primary public interest.

Weaknesses in Asset Forfeiture Laws in Corruption Cases

The regulation of asset forfeiture in corruption cases in Indonesia is still dominated by a conviction-based forfeiture approach, as stipulated in Law No. 31 of 1999 jo. Law No. 20 of 2001 on Eradicating Corruption Crimes and Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes are also relevant. Through this mechanism, asset forfeiture can only be carried out after a court decision with permanent legal force (inkracht van gewijsde).   This model reflects the classical criminal law paradigm that places the punishment of individuals as a major prerequisite before the state has the authority to seize assets derived from criminal acts. However, this approach becomes less relevant when faced with contemporary patterns of corruption that are increasingly complex, organized, and often involve money laundering schemes to disguise the proceeds of crime. There are several weaknesses in the law on asset forfeiture in corruption cases, as shown in the following table.

Table 1 Weaknesses in the Law on Asset Forfeiture in Corruption Cases

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[24] A.A. Wicaksono et al., "Non-Conviction-Based Confiscation as a Tool of Asset Forfeiture through an Indonesia's Ecological Concept," *Journal of Law, Environmental and Justice* 3, no. 3 (2025): 641–72, https://doi.org/10.62264/jlej.v3i3.180.
[25] Brun et al., *Asset Recovery Handbook.*

Weaknesses	Description of Substance	Impact on State Asset Recovery
Dependence on Criminal Proceedings	Asset forfeiture is entirely dependent on successful prosecution. When perpetrators flee, die, or are outside the jurisdiction, criminal proceedings are halted and there are no alternative mechanisms for asset forfeiture.	This creates a legal deadlock and allows assets derived from corruption to remain outside the control of the state despite their illegal origin.
Strict Standards of Proof and Regulatory Disharmony	The application of reverse burden of proof in the Anti-Money Laundering Law is limited and still requires a criminal conviction. The standard of beyond reasonable doubt limits the flexibility of law enforcement officials in securing assets.	The confiscation process becomes slow and ineffective, especially when assets have been transferred, hidden, or obscured through various legal schemes.
Technical Obstacles to Asset Tracing	Assets derived from corruption are often concealed through third parties, shell companies, or stored overseas. The absence of an in rem confiscation mechanism weakens the legal response.	The state lags behind the strategies of perpetrators and fails to anticipate the increasingly complex and transnational modus operandi of corruption.

Source: compiled by the author

Table 1 shows that the weaknesses of asset forfeiture laws in corruption cases in Indonesia are structural and interrelated, ranging from normative design to technical implementation. The first weakness is practical, namely, complete dependence on the success of criminal proceedings. In many corruption cases, perpetrators cannot be prosecuted until a final verdict is reached because they have fled, died, or are outside the state's jurisdiction. This situation causes the criminal proceedings to be halted and at the

same time eliminates the legal basis for the state to confiscate assets, even though these assets clearly originate from criminal acts of corruption.[26] This condition creates a legal deadlock in asset recovery efforts because the existing system does not provide alternative mechanisms when prosecution cannot be carried out, so that the state's financial losses cannot be optimally recovered.[27]

The second weakness relates to the inconsistency of regulations and high standards of proof in criminal law. Although the Anti-Money Laundering Law recognizes the concept of the reverse burden of proof to a limited extent, its application still depends on the existence of a criminal verdict declaring the perpetrator guilty of a crime. The Constitutional Court has consistently emphasized that evidence in criminal cases must meet the standard of beyond reasonable doubt, as a consequence of the principle of the presumption of innocence and protection of human rights.[28] In the context of asset forfeiture, this strict standard of proof limits law enforcement officials' ability to immediately secure state assets, especially when the assets have been transferred or hidden across various jurisdictions.

The third weakness arises at the technical level of implementation, particularly in asset-tracing. Law enforcement officials often face obstacles because assets derived from corruption are transferred to third parties, disguised as shell companies, or placed overseas.[29] Without legal instruments that enable in rem asset forfeiture, the state tends to lag behind criminals, who continue developing strategies to conceal assets.[30] This shows that the national legal framework is not yet fully adaptive to developments in the modus operandi of corrupt crime.[31] This situation further highlights the gap between national regulations and international standards on asset recovery.[32] The lag in Indonesian regulations compared to international standards further emphasizes the urgency of legal

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[26] PUTUSAN Nomor 21/PUU-XII/2014 (2014).

[27] yudi kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia."

[28] PUTUSAN Nomor 21/PUU-XII/2014.

[29] Hasanal Mulkan and Serlika Aprita, "Asset Recovery Dalam Tindak Pidana Korupsi Sebagai Upaya Pengembalian Kerugian Keuangan Negara," *The Juris* 7, no. 1 (2023): 174–80, https://doi.org/10.56301/juris.v7i1.870.

[30] Brun et al., *Asset Recovery Handbook*.

[31] B.S. Rukmono, P. Suwadi, and M.S. Islam, "The Effectiveness of Recovering Losses on State Assets Policy in Dismissing Handling of Corruption," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024): 299–330, https://doi.org/10.53955/jhcls.v4i2.259.

[32] S.D. Cassella, "Nature and Basic Problems of Non-Conviction-Based Confiscation in the United States," *Veredas Do Direito* 16, no. 34 (2019): 41–65, https://doi.org/10.18623/rvd.v16i34.1334.

reform. Many countries have used civil forfeiture or NCB instruments to reach assets derived from crimes that cannot be touched by criminal law.[33] If Indonesia does not immediately formulate an Asset Forfeiture Law, corrupt actors will continue to exploit this legal loophole to avoid asset recovery.

The Urgency and Challenges of Implementing Asset Forfeiture through a Non-Conviction Based Asset Forfeiture Framework

The non-conviction-based asset forfeiture (NCB) mechanism is a legal breakthrough that focuses on proving the origin of assets, rather than the guilt of the perpetrator.[34] Thus, the NCB offers a more flexible approach to dealing with modern corruption crimes, especially when the criminal prosecution process encounters serious obstacles that could result in the loss of state assets.[35] The urgency of implementing the NCB in Indonesia is evident from its low asset recovery rate. In 2023, the Corruption Eradication Commission (KPK) was only able to recover Rp 525.4 billion in assets from corruption, and from January to May 2024, only Rp 296.5 billion was recovered.[36] These amounts are very small compared to state losses, which reach tens of trillions of rupiah annually. This shows that the conviction-based mechanism has not yielded optimal results because many assets are transferred or concealed before the court has handed down a verdict.[37]

Comparisons between countries show that the implementation of NCBs significantly improves asset recovery effectiveness. The United Kingdom requires asset owners to explain the source of their wealth through unexplained wealth orders (UWOs).[38] Ireland's Criminal Assets Bureau (CAB) has successfully established an

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[33] Lily Solichul Mukminah,et al., "The Importance of Regulating Non- Conviction Based Asset Forfeiture in Corruption Cases in Indonesia," *IBLAM LAW REVIEW* 3 (2023): 31–45.

[34] Riskyanti Juniver Siburian and Denny Wijaya, *Korupsi Dan Birokrasi : Non-Conviction Based Asset Forfeiture Sebagai Upaya Penanggulangan Yang Lebih Berdayaguna*, 3, no. 1 (2022): 1–16, https://doi.org/10.18196/jphk.v3i1.12233.

[35] Muhammad Fuad Azwar R and M Said Karim, *The Concept of Non-Conviction Based Asset Forfeiture As a Legal Policy in Assets Criminal Action of Corruption*, 11, no. 5 (2022): 2613–22, https://doi.org/10.35335/legal.The.

[36] Kpk, *Laporan Tahunan KPK 2023* (Jakarta, n.d.).

[37] A.S. Lukito, "Revealing the Unexplained Wealth in Indonesian Corporation: A Revolutionary Pattern in Non-Conviction-Based Asset Forfeiture," *Journal of Financial Crime* 27, no. 1 (2020): 29–42, https://doi.org/10.1108/JFC-11-2018-0116.

[38] "Unexplained Wealth Orders," Uk Home Office, 2023, https://www.gov.uk/government/publications/unexplained-wealth-orders-2022-to-2023-annual-report/unexplained-wealth-orders-2022-to-2023-annual-report?

independent and efficient asset recovery agency.[39] The success of these models can serve as a reference for Indonesia in developing NCB implementation in accordance with the principles of the Rule of Law.

As a concrete step, the implementation of non-conviction-based asset forfeiture (NCB) in Indonesia must be placed within the framework of simultaneous legislative reform and institutional strengthening.[40] The enactment of the Asset Forfeiture Law as lex specialis is a key prerequisite for providing a clear legal basis for in rem asset forfeiture, including regulating standards of proof, protecting the rights of bona fide third parties, and integrating it with the TPPU regime.[41] The implementation of the NCB must also be accompanied by strong judicial oversight, with the courts playing a central role in every stage of asset forfeiture to ensure due process of law and to prevent abuse of authority. However, the effectiveness of the NCB is highly dependent on the readiness of law enforcement institutions to strengthen asset tracing and financial forensics capabilities, as well as inter-agency coordination and international cooperation.[42] This approach enables the NCB to function as an effective and accountable asset recovery instrument that remains in line with the principles of the rule of law and the protection of human rights. Furthermore, the challenges of implementing asset forfeiture in Indonesia are not only related to regulatory aspects but also closely related to the protection of human rights and institutional readiness.

Table 2. Challenges in Implementing Asset Seizure in Indonesia

Challenges	Form of the Problem	Implications for Law Enforcement
Regulatory Framework	Absence of an Asset Forfeiture Law as lex specialis; dominance of conviction-based forfeiture mechanisms.[43]	Legal uncertainty and limited scope for asset forfeiture when perpetrators cannot be prosecuted.

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[39] Criminal Assets Bureau, *Annual Report 2022* (2022).
[40] MD, *Politik Hukum Di Indonesia*.
[41] yudi kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia."
[42] Brun et al., *Asset Recovery Handbook*.
[43] yudi kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia."

Human rights protection	Concerns about violations of the presumption of innocence and property rights.[44]	Normative resistance to the implementation of NCB and excessive caution on the part of officials.
Legal Paradigm	The dominance of the *in personam* approach in criminal law.[45]	The difficulty of transitioning to the *in rem* approach in asset forfeiture.
Standard of Proof	Application of the beyond reasonable doubt standard in criminal cases	The difficulty of asset forfeiture without a criminal conviction
Institutional Capacity	Limitations in human resources, asset tracing technology, and financial forensics	Low effectiveness of asset tracing and recovery
Institutional Coordination	Weak synergy between the Corruption Eradication Commission, the Attorney General's Office, the National Police, and the Financial Transaction Reports and Analysis Center	The asset forfeiture process is slow and suboptimal
Transnational Dimension	Assets are transferred overseas or through shell companies	Failure to recover assets across jurisdictions

Source: compiled by the author

Based on Table 2, it can be seen that the challenges of implementing asset forfeiture in Indonesia form a pattern of mutually reinforcing structural weaknesses,

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[44] Jimly Assiddiqie, *Pengantar Ilmu Hukum Tata Negara.*

[45] Mochamad Januar Rizki, "Akademisi FHUI Paparkan Berbagai Tantangan Implementasi RUU Perampasan Aset," Hukum Online.Com, 2023, https://www.hukumonline.com/berita/a/akademisi-fhui-paparkan-berbagai-tantangan-implementasi-ruu-perampasan-aset-lt653b6b10b6c66/.

rather than simply a list of isolated technical obstacles.[46] The absence of an Asset Forfeiture Law as lex specialis not only creates a legal vacuum but also locks the legal system into a conviction-based forfeiture mechanism that is entirely dependent on successful prosecutions.[47] Consequently, when perpetrators cannot be tried because they have fled, died, or are outside the jurisdiction, the state loses its legal legitimacy to confiscate criminal assets, severely limiting the effectiveness of state loss recovery.[48] This finding is in line with Kristiana's argument that a conviction-based approach is no longer adequate to reach the complex and transnational assets derived from corruption.[49]

The human rights protection aspect in the table shows that resistance to the implementation of non-conviction-based asset forfeiture (NCB) mainly stems from concerns about violations of the presumption of innocence and property rights in the Netherlands.[50] These concerns encourage excessive caution on the part of law enforcement officials and reinforce the reliance on conventional criminal mechanisms, even though there is room to design asset forfeiture without criminalization.[51] However, international guidelines formulated by the United Nations Office on Drugs and Crime emphasize that NCB does not conflict with human rights principles as long as it is accompanied by strong judicial oversight, proportional standards of proof, and protection for bona fide third parties.[52] Therefore, human rights issues are more appropriately understood as challenges to legal policy design rather than as absolute obstacles to NCB implementation.

The dominance of the in personam paradigm and the application of the beyond reasonable doubt standard of proof, as reflected in the table, show that the Indonesian legal system still places the personal guilt of the perpetrator at the center of the legitimacy of asset forfeiture.[53] In the context of modern corruption crimes involving money laundering and cross-jurisdictional asset concealment, this approach creates a mismatch

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[46] MD, *Politik Hukum Di Indonesia*.

[47] yudi kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia."

[48] UNODC, *Manual on Non-Conviction Based Asset Forfeiture* (vienna, 2021).

[49] yudi kristiana, "Non-Conviction Based Asset Forfeiture: Urgensi Pengaturan Dalam Sistem Hukum Indonesia."

[50] Bivitri susanti, *Kajian Kritis Legislasi Di Indonesia* (Jakarta: PSHK, 2021).

[51] PUTUSAN Nomor 21/PUU-XII/2014.

[52] L. Borlini and C. Rose, "The Normative Development of Laws on Asset Preservation and Confiscation: An Examination of Emerging Best Practices," 22, no. 2 (2024): 514–37, https://doi.org/10.1093/icon/moae036.

[53] Muladi, *Hak Asasi Manusia Dan Sistem Peradilan Pidana* (bandung, 2002).

between the nature of the crime and the available legal instruments.[54] Comparative research by the World Bank and UNODC through the Stolen Asset Recovery (StAR) Initiative shows that many countries are shifting to an in rem approach because conventional criminal mechanisms are ineffective in addressing modern economic crime.[55]

The weaknesses in institutional capacity and inter-agency coordination listed in the table show that normative issues cannot be separated from the implementation challenges.[56] Limited human resources, asset-tracing technology, and weak synergy between the KPK, Attorney General's Office, Police, and PPATK directly impact the low effectiveness of asset tracing and recovery.[57] Reports by the Indonesia Corruption Watch and UNODC show that the low level of asset recovery in Indonesia is caused more by weak institutional capacity and cross-sectoral and cross-border cooperation than by the absence of norms.[58] Overall, the challenges of asset forfeiture in Indonesia are multidimensional and interrelated, as demonstrated in various studies at both national and international levels.[59] These findings reinforce the argument that asset recovery reform cannot be carried out partially, but must include the establishment of an Asset Recovery Law as lex specialis, implementation of NCB with strong judicial oversight, and strengthening institutional capacity and coordination to ensure the effectiveness of state asset recovery.[60]

The Direction of Asset Forfeiture Legislation Reform: The Urgency of Lex Specialis and the Application of Non-Conviction Based Asset Forfeiture

Asset forfeiture legislation reform in Indonesia must begin with a fundamental step: the ratification of the Asset Forfeiture Bill as a lex specialis and stand-alone law.[61] The existence of this bill is crucial because the current legal framework relies on the Corruption Eradication Law and the Money Laundering Law, neither of which

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[54] Brun et al., *Asset Recovery Handbook.*

[55] United Nations Office on Drugs and Crime World Bank, *Stolen Asset Recovery* (Washington Dc, n.d.).

[56] Sentosa, "Asset Recovery and Corruption Control in Indonesia."

[57] U I N Sunan and Ampel Surabaya, *Tantangan Mekanisme Non-Conviction Based Asset Forfeiture Dalam Rancangan Undang-Undang Perampasan Aset Di Indonesia*, 5 (2024).

[58] Brun et al., *Asset Recovery Handbook.*

[59] UNODC, *Manual on Non-Conviction Based Asset Forfeiture.*

[60] Sentosa, "Asset Recovery and Corruption Control in Indonesia."

[61] B. Utama et al., "Islamic Law Analysis of the Prosecutor's Authority in Asset Forfeiture from Corruption," *Al-Ahkam* 35, no. 2 (2025): 313–48, Scopus, https://doi.org/10.21580/ahkam.2025.35.2.26343.

specifically regulates asset forfeiture without criminal conviction. Thus, there is a legal vacuum that hinders the state's efforts to recover criminal assets, especially when perpetrators flee, die, or cannot be prosecuted. The Indonesian House of Representatives stated that the draft Asset Seizure Bill needs to be further harmonized with other regulations to avoid overlapping of the authorities of law enforcement and judicial institutions.[62] If passed, this law will provide legal certainty, strengthen the state's position on asset recovery, and provide a solid normative basis for optimizing asset recovery.

In addition to the formulation of regulations, the success of the reform also depends on the accountable and strictly supervised implementation of non-conviction-based asset forfeiture (NCB).[63] Countries that have adopted NCB, such as the United Kingdom through Unexplained Wealth Orders (UWOs)[64] and Ireland through the Criminal Assets Bureau (CAB),[65] show that asset forfeiture without conviction can be carried out transparently and still respect the due process of law, as long as every seizure action is controlled by the court.[66] This model can serve as a reference for Indonesia to ensure that the NCB mechanism does not violate the rights of bona fide third parties while preventing the potential abuse of authority by law enforcement.[67]

However, legislative reform cannot be effective without strengthening the capacity of law enforcement institutions, including the Corruption Eradication Commission (KPK), Financial Transaction Reports and Analysis Center (PPATK), police, and the Attorney General's Office. The success of asset forfeiture depends heavily on officials' ability to conduct asset tracing, digital forensic analyses, and complex

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[62] Sri Warjiyati, "URGENSI RUU PERAMPASAN ASET: STRATEGI BARU DALAM PEMBERANTASAN KORUPSI MENUJU SISTEM HUKUM YANG LEBIH ADIL," Uinsa.Ac.Id, 2024, https://uinsa.ac.id/blog/urgensi-ruu-perampasan-aset-strategi-baru-dalam-pemberantasan-korupsi-menuju-sistem-hukum-yang-lebih-adil.

[63] L.G. Curlewis, "'Pay Back the Money' – a Paper on Criminal and Civil Asset Forfeiture within South Africa and Suggestions for Reform," *Journal of Financial Crime* 31, no. 4 (2024): 772–80, https://doi.org/10.1108/JFC-08-2023-0203.

[64] Uk Home Off., "Unexplained Wealth Orders."

[65] Criminal Assets Bureau, *Annual Report 2022*.

[66] Umi Rozah and Nashriana Nashriana, "Analisa Kebijakan Kriminal Dan Filsafat Pemidanaan Non-Conviction Based Forfeiture of Stolen Assets Dalam Tindak Pidana Korupsi," *Jurnal Pembangunan Hukum Indonesia* 5, no. 3 (2023): 411–32.

[67] G.R. Lekgowe, "A Rule of Law Analysis: Botswana's Non-Conviction-Based Confiscation and Forfeiture Regime Under the Proceeds and Instruments of Crime Act, 2014," *Statute Law Review* 44, no. 3 (2023), Scopus, https://doi.org/10.1093/slr/hmad006.

financial investigations.[68] In addition to improving technical capacity, reform must include public education and increased transparency, as public support is an important factor in maintaining the legitimacy of asset forfeiture policies.[69] Thus, legislative reform not only strengthens legal instruments but also creates an effective and accountable law enforcement ecosystem supported by the public.

Conclusion

This study concludes that Indonesia's asset forfeiture policy still shows a dominant orientation towards punishing perpetrators through conviction-based forfeiture mechanisms, which is not fully in line with the need to recover state losses in corruption cases. The absence of specific regulations on asset forfeiture without criminal punishment places the state in a weak position when criminal proceedings cannot be carried out, ultimately resulting in low effectiveness in recovering criminal assets. This condition shows that the issue of asset forfeiture is not merely a technical legal issue but is closely related to the direction of the legal policy chosen by the State.

Furthermore, the stagnation in discussions on the Asset Seizure Bill shows that asset seizure reform is heavily influenced by legal political dynamics, including power configurations, legislative priorities, and lawmakers' political will. In this context, asset recovery has not been fully positioned as a strategic objective of corruption eradication but is still treated as an additional consequence of the criminal prosecution. This type of legal policy orientation limits the state's ability to respond to the complex, organized, and often cross-jurisdictional nature of modern corruption.

Based on the overall analysis, this study confirms that the implementation of non-conviction-based asset forfeiture (NCB) is an urgent necessity in efforts to strengthen the asset forfeiture regime in Indonesia, as long as it is designed within the framework of the rule of law, which guarantees judicial oversight and the protection of human rights. Therefore, the enactment of the Asset Forfeiture Law as lex specialis, accompanied by institutional capacity building and coordination between law enforcement agencies, is a key prerequisite for establishing an asset forfeiture system that is not only effective and

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[68] Y Daeng et al., "Penegakan Hukum Pidana Dari Aspek Sumber Daya Manusia," *Innovative: Journal Of ...* 4 (2024): 12981–89.

[69] Mochamad Januar Rizki, "Akademisi FHUI Paparkan Berbagai Tantangan Implementasi RUU Perampasan Aset."

accountable, but also fair and responsive to the goal of recovering state losses as a key public interest

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