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The Urgency Of Implementing Non-Conviction Based Asset Forfeiture As A Mechanism For Asset Confiscation In Corruption Criminal Acts In Indonesia

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Abstract. *This research analyzes the urgency of implementing non-conviction based asset forfeiture as a mechanism for asset recovery in corruption offenses in Indonesia. Corruption constitutes an extraordinary crime with systemic impacts on economic stability and public welfare, thus necessitating an effective and equitable mechanism for the recovery of state losses. In practice, Indonesia's asset forfeiture regime remains predominantly grounded in the conviction-based forfeiture paradigm, which requires a final and binding court judgment (inkracht van gewijsde) as a prerequisite for confidence. This requirement frequently generates obstacles in optimizing asset recovery, particularly where the offender has died, is absent, cannot be located, or where the criminal evidentiary process encounters substantial impediments. This study aims to reconstruct the regulatory framework asset governing forfeiture in corruption cases in Indonesia, identify its existing deficiencies, and formulate an ideal future regulatory model for asset recovery in addressing corruption offenses. Employing a normative legal research method and a statutory approach, this study examines relevant legislation, as well as the theories of legal certainty and legal effectiveness. The findings indicate that the current mechanism for confiscating assets derived from corruption in Indonesia continues to face normative and operational constraints, primarily because the national regulatory framework requires a final and binding court judgment (inkracht van gewijsde) as the legal basis for forfeiture. Regulatory reconstruction is therefore necessary to adopt a non-conviction based asset forfeiture (NCBAsset Forfeiture) mechanism employing an in rem approach, which offers an alternative paradigm by positioning the asset itself as the principal object of legal proceedings, thereby enabling forfeiture without dependence upon the criminal conviction of the offender. This approach also accommodates a reversal of the burden of proof and* *minimizes legal loopholes that might otherwise be exploited to evade accountability.*

Keywords: *Asset Forfeiture; Corruption Offenses; Non-Conviction Based Asset Forfeiture; Regulation.*

1. Introduction

Indonesia, as a developing nation with abundant natural resources and significant economic potential, continues to face a serious threat that hampers national progress: corruption. This phenomenon not only causes massive losses to the state but also undermines the social, economic, and political order and erodes public trust in government institutions.[1]The impact is widespread, including a decline in the quality of public services, increasing poverty, the emergence of monopolistic and nepotistic practices, and disruption to the investment climate and sustainable development.[2]Therefore, eradicating corruption is a national strategic agenda that requires a comprehensive and effective approach.

Corruption in Indonesia manifests in various forms and modus operandi, continually evolving with technological advances and the complexity of governance. These forms include bribery, gratuities, embezzlement, extortion, and abuse of authority, which cumulatively result in state losses of up to trillions of rupiah annually. These losses are not only material but also involve lost opportunities for infrastructure development, improved education quality, and adequate healthcare, thus impacting the fulfillment of basic human rights.

One crucial aspect of eradicating corruption that often presents an obstacle is the recovery of assets obtained from criminal activity. Assets confiscated from perpetrators have the potential to be returned to the state treasury and used to recover losses and support development. However, asset recovery mechanisms in Indonesia face various obstacles. The current legal system generally requires a final and binding court decision before assets can be seized and confiscated, making the process often lengthy and vulnerable to manipulation by perpetrators.[3]

The mechanisms used in Indonesia still rely heavily on conventional criminal justice processes. Before assets can be confiscated and returned to the state, they must first be legally and convincingly proven to be the proceeds of corruption. This proof encompasses the elements of criminal culpability, namely mens rea and actus reus, as well as a causal relationship between the unlawful act and the acquisition of the assets. Although this principle is a foundation of criminal law that guarantees the protection of the rights of suspects or defendants, in the practice of eradicating corruption, this provision is often exploited by perpetrators to conceal, divert, or destroy evidence, thus complicating confiscation and seizure.[4]

2. Research Methods

In legal research, various approaches are known to be used to obtain information from various aspects regarding the issues raised in the legal writing. Peter

Mahmud Marzuki suggests that there are several types of approaches that can be used in legal writing, including the statute approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.[5]

The research approach that the author uses in this research is the statute approach, where according to Peter Mahmud Marzuki, in the statute approach, what is sought is to examine all laws and regulations related to the legal issues being studied with the legal issues being faced.[6]

3. Results and Discussion

3.1. Construction of Asset Confiscation Regulations for Corruption Crimes in Indonesia

1. International Legal Instruments Concerning Non-Conviction Based Asset Forfeiture

In the narrow sense, a source of law refers to the origin or place where the law is found. Meanwhile, in a broader sense, a source of law is understood as any means or instrument that can be used by a ruler or authorized official to determine the appropriate law to be applied.[7]In legal studies, sources of law are generally classified into two categories, namely material sources of law and formal sources of law.

Material sources of law are the substance or content that forms the basis for the formation of formal sources of law, which can be examined from various dimensions, including economic, sociological, and historical aspects. Formal sources of law include: (1) statutory regulations, (2) customs, (3) jurisprudence, (4) international treaties or agreements, and (5) doctrines or opinions of legal experts.[8]

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[1]\Kurniawan, AS, Rahmawati, S, The Impact of Corruption on National Economic Development, Journal of Development Economics, Vol 19 No 1, 2021, pp 45-62.
[2]Corruption Eradication Research Center. Analysis of State Losses Due to Corruption and Recovery Efforts. Research Report. KPK. 2020
[3]Wicaksono, P., & Hartono, R, Legal and Practical Obstacles in Efforts to Return Assets Proceedings of Corruption in Indonesia. Journal of Advocacy & Public Policy, Vol. 5 No. 1, 2023, pp. 15-32.
[4]Siregar, MA The Effectiveness of Conventional Criminal Mechanisms in Recovering Corruption Assets. Journal of Law & Development, Vol 52 No 4, 2022, pp 567-585.
[5]Ibid p. 133
[6]Ibid p. 134
[7]Theresia Ngutra, Law and Sources of Law, Volume XI No. 2, 2016, Makassar State University, p. 194.
[8]CST Kansil, Introduction to Legal Science, Balai Pustaka, Jakarta, 2002, p. 19.

When examining the position of international law, it is undeniable that international law is an integral part of the general legal system, both from a theoretical and practical perspective. This is because international law is a set of legal norms and principles that effectively relate to other legal provisions, including national laws that govern human life within a state.[9]Therefore, international law influences other areas of law, especially national law.[10]In the current global political context, the importance of national law also raises questions regarding the relationship between various national laws and international law.

In international legal doctrine, two main theories are recognized that explain the need for implementing regulations at the national level to enforce an international treaty. These two theories are adoption theory and incorporation theory.[11]

Adoption theory assumes that an international treaty can have direct legal consequences within a national legal system. While the treaty retains its international character and nature, its application is possible within the domestic legal environment. This view is based on monism, which views international law and national law as part of a single, unified legal system.

In contrast to adoption theory, incorporation theory states that international treaties can only be enforced under national law after they have first been formally incorporated into the national legal system. This theory rests on the dualistic view, which asserts that international law and national law constitute two separate and independent legal regimes.[12]From a monist perspective, a country's participation in an international treaty through ratification simultaneously causes its provisions to become part of national law. Conversely, from a strict dualist perspective, international treaties must first be transformed into applicable national legislation to be enforceable domestically.

Furthermore, the need to establish implementing regulations for an international agreement is basically determined by the substance and character of the agreement itself, especially whether the agreement is self-executing or non-self-executing.[13]If an agreement is self-executing and automatically enforceable, legal issues may arise if its provisions conflict with existing national legal norms. In relation to transformation theory, international agreements that have been

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[9]Mochtar Kusumaatmadja and Etty R. Agoes, Introduction to International Law, Publisher PT. Alumni, 2010, p. 55.
[10]Ibid.
[11]Syahmin AK in Damos Agusman, 2017, Implementation of International Agreements in the National Legal Atmosphere (online), http://perjanjian-internasional.blogspot.com/p/oleh-syahmin ak-sebagai-kita.html (30 January 2026).
[12]Loc cit.
[13]Loc cit, self-executing means that the agreement applies automatically.

transformed into national law through a transformation mechanism will have equal standing with other national laws and regulations. Therefore, in situations of conflicting norms, the principle of lex posterior derogat legi priori becomes relevant.

Conversely, if we refer to the adoption theory, which positions international treaties as international law applied within the national sphere, the status of such treaties is not automatically equated with national law. In such situations, a stance must be determined through national law, international law, and state practice. Both monists and dualists agree in principle that the effectiveness of an international treaty ultimately depends heavily on the national practices of each country. However, it must be emphasized that states remain responsible for implementing international treaties within their national legal systems. If such implementation conflicts with international law, states cannot use national legal provisions as justification or defense for the violation.

*United Nations Convention Against Corruption (UNCAC)*The 2003 Act was born in response to the global reality that corruption had become a serious problem posing a real threat to the stability and security of society. Corrupt practices not only undermine state institutions but also undermine the values of democracy, ethics, and justice, and hinder sustainable development and the effectiveness of law enforcement. These impacts are further complicated by the close linkages between corruption and various other forms of crime, particularly organized crime and economic crime, including money laundering. In many cases, corruption involves the control of large amounts of assets that constitute state resources, potentially disrupting political stability and the sustainability of national development.

Besides being national in nature, corruption is also a transnational phenomenon that impacts global social and economic systems. Therefore, international cooperation is seen as a crucial element in efforts to prevent and eradicate corruption. This situation demands a comprehensive and multidisciplinary approach for effective anti-corruption efforts. One strategic supporting instrument in this context is the provision of technical assistance, which plays a crucial role in increasing state capacity, strengthening institutions, and enhancing national capabilities to prevent and eradicate corruption sustainably.[14]

The United Nations (UN) has been paying serious attention to the problem of corruption since 2000. This was reflected in the 53rd UN General Assembly Session which resulted in UN General Assembly Resolution Number 55/61 on December

[14]Mahrus Ali, Principles, Theory, and Practice of Criminal Law on Corruption, (Yogyakarta: UII Press, 1st Edition, 2013), pp. 32-33.

4, 2000.[15]The resolution emphasized the need to establish an international legal instrument that specifically regulates criminal acts of corruption as a collective effort to combat corruption which has developed into a transnational crime.[16]As a follow-up to the resolution, an Ad Hoc Committee was formed in Vienna, tasked with negotiating the drafting of an international anti-corruption instrument, under the coordination of the United Nations Office on Drugs and Crime (UNODC).

The negotiation process for the UNCAC text was carried out through seven Ad Hoc Committee sessions which took place from January 21, 2002 to October 1, 2003. After going through a series of meetings and producing a number of follow-up resolutions, the UN General Assembly officially ratified the UNCAC on December 9–11, 2003 at a High-Level Conference held in Merida, Mexico.[17]Since then, December 9 has been designated as World Anti-Corruption Day. The Convention entered into force on September 14, 2005, after ratification by at least 30 countries.

Indonesia is one of the countries that ratified the UNCAC, namely on April 18, 2006 through Law Number 7 of 2006. This ratification has important implications for the national legal system, including through adjustments and strengthening of laws and regulations in the field of eradicating corruption and money laundering. In addition, the implementation of the UNCAC also became the basis for the establishment and strengthening of strategic institutions, such as the Corruption Eradication Commission (KPK) and the Financial Transaction Reports and Analysis Center (PPATK), as well as encouraging the birth of Law Number 46 of 2009 concerning the Corruption Crime Court.

Systematically, the 2003 UNCAC consists of eight chapters containing 71 articles, which oblige state parties to implement their provisions. The general objectives of this convention include: first, strengthening measures to prevent and eradicate corruption more effectively; second, increasing and facilitating international cooperation and providing technical assistance in efforts to prevent and prosecute corruption, including asset recovery; and third, encouraging increased integrity, accountability, and good governance in the management of public assets.

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[15]See General Assembly resolution 58?4 of 31 October 2003, United Nations Convention Against Corruption (UNCAC), p. 1.
[16]See Article 3 of the United Nations Against Corruption (UNCAC), "Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential," which means that corruption is not only a local problem but a transnational phenomenon that has an impact on the environment and the economy.
[17]See General Assembly resolution 58/4 of October 2003, United Nations Convention Against Corruption (UNCAC), Op.Cit., p. 2.

The eight chapters of the UNCAC cover general provisions; preventive measures; criminalization and law enforcement; international cooperation; asset recovery; technical assistance and information exchange; implementation mechanisms; and concluding provisions. This overall structure demonstrates that the UNCAC is designed as a comprehensive global instrument for combating corruption.

The 2003 UNCAC essentially embraces five interrelated strategic pillars: prevention, criminalization and law enforcement, international cooperation, technical assistance and information exchange, and asset recovery. Ratification of this convention provides broader opportunities for state parties to recover assets derived from corruption held abroad. Furthermore, states that have ratified the UNCAC are obligated to criminalize various forms of corruption and to cooperate in providing technical and financial assistance to support efforts to trace, seize, and recover assets derived from corruption.

In the 2003 UNCAC, the confiscation of assets resulting from corruption can be carried out through criminal or civil mechanisms. Asset confiscation through criminal channels consists of four stages. First, the asset tracing stage, which aims to identify evidence of ownership and the storage location of assets suspected of being related to corruption. Second, the freezing or temporary confiscation stage in accordance with the provisions of Chapter I Article 2 letter (f) of the 2003 UNCAC, namely a temporary prohibition on the transfer, assignment, or control of assets based on a court order or competent authority. Third, the permanent confiscation stage as regulated in Article 2 letter (g) of the 2003 UNCAC, namely the revocation of ownership rights to assets based on a court decision or competent authority. Fourth, the stage of returning and handing over assets to the state that is the victim of the crime. In addition to the criminal route, the 2003 UNCAC also regulates a direct return mechanism through the judicial process with a negotiation plea or plea bargaining system, as well as indirect return through confiscation based on a court decision (Articles 53–57 UNCAC).[18]

The existence of these international instruments demonstrates the importance of global cooperation in preventing and enforcing the law against crime, including corruption. Ratification of these international instruments is relevant given the increasing frequency and complexity of crimes, which are now transnational in nature, transcend national borders, and utilize developments in modern information and communication technology.[19]

As an international instrument for eradicating increasingly complex and multidimensional corruption, the UNCAC provides a normative basis through Article 54 paragraph (1) letter (c), which requires state parties to consider non-

[18]Ibid
[19]Ibid p. 33.

conviction-based asset confiscation mechanisms. The UNCAC does not favor a particular legal system, and does not consider differences in legal traditions as an obstacle to its implementation. Thus, the UNCAC encourages state parties to implement non-conviction-based asset confiscation as an instrument that can be used across jurisdictions.

The guidelines contain 36 key concepts developed by experts based on in-depth research. These concepts provide guidance for UNCAC member states in implementing prevention, law enforcement, international cooperation, transparency, accountability, and asset recovery.[20]The 36 concepts are grouped into eight main areas, namely:

(1) The Prime Imperatives consist of four concepts;

(2) The definition of assets and offenses in NCB Asset Forfeiture consists of five concepts;

(3) Measures for Investigation and Preservation of Assets consist of three concepts;

(4) Procedural and Evidentiary Concepts consist of five concepts;

(5) The Parties to Proceedings and Notice Requirements consist of five concepts;

(6) Judgment Proceedings consists of four concepts;

(7) Organizational Considerations and Asset Management consists of four concepts; and

(8) International Cooperation and Asset Recovery consists of six concepts.[21]

In the mechanism for recovering assets from corruption, various law enforcement agencies play a role, both through criminal and civil channels. In both channels, assets can be traced, frozen, seized, confiscated, and returned to the state, whether held domestically or abroad. The objectives of this process are:

(1) Recovering state financial losses;

(2) Preventing the use of assets as a means to commit other crimes such as money laundering, terrorism, or transnational crimes; and

[20]Ibid
[21]Ibid, p. 34.

(3) Provides a deterrent effect for potential criminals.

Article 54 paragraph (1) letter (b) of the UNCAC requires state parties to ensure the ability to confiscate the proceeds of crime in other countries related to money laundering, and opens up the possibility of confiscation in rem. In the context of asset recovery, there are two fundamental aspects, namely:[22]

(1) Determination of the types of assets that can be subject to confiscation; and

(2) Determination of the legal basis for the seizure of the assets.

In addition to ratifying the United Nations Convention Against Corruption (UNCAC), Indonesia has also become a party to the United Nations Convention Against Transnational Organized Crime (UNCTOC), better known as the Palermo Convention of 2000. Ratification of the convention was carried out through Law Number 5 of 2009 concerning the Ratification of the United Nations Convention Against Transnational Organized Crime. With this ratification, Indonesia expressed its commitment to participate in international efforts to combat various forms of transnational and organized crime.

The Palermo Convention establishes five main categories of transnational organized crime that fall within its scope of regulation. These include corruption, money laundering, human trafficking, particularly targeting women and children, migrant smuggling, and the illicit trafficking of firearms.[23]Furthermore, the Palermo Convention affirms that its fundamental purpose is to enhance and strengthen cooperation between state parties in order to effectively prevent and eradicate all forms of crime within the convention's jurisdiction. In this context, the convention serves not only as an instrument of international cooperation but also as a normative foundation for the development of various concepts in modern criminal law. One important idea that emerged and developed within the framework of this convention is the concept of the justice collaborator, which was later adopted in the criminal justice system as a mechanism to support the disclosure of organized crime.

2. Asset Confiscation Regulations in Indonesia

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[22]I Ketut Sudiharsa, Return*Asset CrimeCorruption,*inhttp://dongulamo.com/joomlaoverview/category/7-artikel.html, last accessed January 30, 2026

[23]https://jdih.kemenkeu.go.id/fullText/2009/5TAHUN2009UU.HTM, accessed on January 10, 2026, at 14.40 WIB

Based on the 2009 publication of The World Bank, the concept of asset takeover through the non-conviction based asset forfeiture (NCB asset forfeiture) mechanism shows similarities and differences in its implementation in the civil law and common law legal systems.[24]. The similarity lies in the purpose of the two legal systems, namely to confiscate property or assets (in rem) without being preceded by a criminal decision against the perpetrator, but still requiring proof of a violation of the law.

The difference lies in the standard of proof applied in the asset forfeiture process through the NCB Asset Forfeiture mechanism. In civil law systems, proof requires a sufficient level of certainty to dispel reasonable doubt. In contrast, in common law systems, the standard used emphasizes the balance of probabilities, namely based on the preponderance of the evidentiary weight.

3.2. The Urgency of Non-Conviction Based Asset Forfeiture Regulations in Indonesian Positive Law in the Future

1. The Urgency of Asset Confiscation Using Non-Conviction Based Asset Forfeiture as an Instrument for Recovering State Losses Due to Corruption

Corruption is a fundamental and systemic problem that seriously impacts the stability and security of society, both nationally and internationally. This crime not only undermines the values of justice within a democratic system but also threatens the effectiveness of law enforcement and the sustainability of development.[25]Therefore, efforts to eradicate corruption must always be oriented towards the interests of the people, especially in the aspect of returning state financial losses as the main objective of law enforcement.[26]

The current concept of law enforcement and justice in handling corruption crimes is considered inadequate. This situation has led to the emergence of alternative ideas that can address the shortcomings of the conventional criminal justice process, one of which is through the mechanism of confiscation of the proceeds of crime. This idea is based on the fundamental principle of justice that crime should not benefit the perpetrator (crime does not pay). As emphasized at the 2017 Annual Police Experts Meeting held by the Organization for Security and Co-operation in Europe (OSCE) in Vienna, law enforcement is not sufficient merely to

[24]Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture, (The International Bank for Reconstruction and Development / The World Bank, 2009), p. 39.
[25]Manurung, AJT (2013). Effectiveness of the Implementation of Criminal Payment of Replacement Money by the Prosecutor's Office in Eradicating Criminal Acts of Corruption (Study at the Attorney General's Office of the Republic of Indonesia, Jakarta). Malang: Brawijaya University.
[26]Musahib, AR (2015). Return of State Finances Proceeds from Criminal Acts of Corruption. Katalogis, 3(1), 1–9.

punish perpetrators; it must also cut off the flow of funds and recover the proceeds of crime to eliminate the primary incentives for criminal activity.[27]

Uncovering and proving organized crime, such as corruption, is no simple matter. In this context, an approach focused on tracking and confiscating the proceeds of crime represents a significant breakthrough, rather than simply focusing on identifying and punishing perpetrators.[28]Efforts to recover state losses must be a priority, given that the intensity of white-collar crime, including corruption, has had a widespread and detrimental impact on society. Corruption results in the neglect of basic citizen rights such as clothing, food, shelter, education, and health, which should be met through optimal management of state finances. In addition to material losses in the form of lost state funds, corruption also creates public distrust in state institutions.[29]

Philosophically, the implementation of Non-Conviction Based Asset Forfeiture (NCB) as an effort to recover state financial losses arising from criminal acts of corruption is intended to realize general welfare through the recovery of state assets that have been harmed. The integration of the NCB Asset Forfeiture mechanism into the legislation on criminal acts of corruption is essentially part of the effort to achieve welfare within the framework of the Indonesian rule of law, as well as the realization of the principle of the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which places law as the highest norm and requires every state action to be carried out democratically based on law.[30]

Thus, the purpose of implementing NCB asset forfeiture is directed at strengthening and growing the national economy, which can essentially only be realized if the financial sector upholds democratic values, such as transparency, accountability, and participation. A healthy financial sector will encourage the creation of legal certainty, which ultimately contributes to the achievement of general welfare as implemented in laws and regulations. On the other hand, the implementation of NCB asset forfeiture does not conflict with the principle of presumption of innocence in criminal procedural law, because according to Choirul Huda, the NCB asset forfeiture mechanism is within the regime of formulating legal responsibility that sets aside the assessment of the perpetrator's

[27]OSCE. (2017). Crime shouldn't pay! Police experts discuss ways to disrupt criminal activities at annual OSCE meeting. https://www.osce.org/secretariat/345961 on January 2, 2026

[28]Saputra, R. (2017). Challenges in Implementing Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia. Integritas, 3(1), 115–130. https://doi.org/10.32697/integritas.v3i1.158

[29]Rambey, G. (2016). Restitution of State Losses in Corruption Crimes Through Payment of Compensation and Fines. DE LEGA LATA: Journal of Legal Studies, 1(1), 137–161.

[30]Moh. Mahfud MD, Indonesian Legal Politics (Jakarta: LP3S, 1998). Pp. 121–194 quoted in Kemenkumham, Academic Draft of the 2023 Asset Confiscation Bill (Jakarta, 2023). Pp. 147

guilt, and focuses more on assets suspected of being the proceeds of or related to criminal acts.[31]Although various regulations, ranging from laws to Supreme Court regulations, have explicitly contained regulations and technical instructions regarding the handling of criminal cases in the trial process, these regulations are not yet completely clear and are not directly oriented towards recovering state financial losses resulting from criminal acts that occur.

The emergence of the NCB asset forfeiture concept is based on a paradigm shift in law enforcement, which initially focused on prosecution of perpetrators (follow the suspect), shifting to an orientation toward tracing and recovering the proceeds of crime or financial losses (follow the money). This paradigm shift is crucial considering that criminal acts, such as corruption and money laundering, cause state financial losses, so that assets derived from the proceeds of these crimes must be immediately recovered and returned to the state. On the other hand, in practice, situations are often encountered where perpetrators of criminal acts have not or cannot be held criminally accountable first through the judicial process.[32]

The availability of an in rem mechanism in the confiscation of assets resulting from corruption is in principle able to cover various weaknesses inherent in the criminal mechanism, including the possibility of filing a lawsuit even though the suspect, defendant, or convict has died, thus potentially increasing the effectiveness of efforts to recover state financial losses due to corruption. However, on the other hand, the existence of a civil mechanism in the confiscation of assets resulting from corruption as regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 (hereinafter referred to as the Corruption Law) has not shown optimal results, considering that the civil process adheres to a formal evidentiary system which in practice is often more difficult than material evidence.

Based on these conditions, the implementation of asset forfeiture under the Corruption Eradication Law is deemed ineffective in recovering state financial losses. Therefore, alternative legal policies are needed, one of which is through the adoption of provisions regarding asset forfeiture without criminal prosecution, or NCB asset forfeiture, as stipulated in the 2003 United Nations Convention Against Corruption (UNCAC), while still making necessary adjustments according

[31]Chairul Huda, From No Crime Without Fault Towards No Criminal Responsibility Without Fault (Jakarta: Kencana, 2015).
[32]July Wiarti, Non-Conviction Based Asset Forfeiture as a Step to Recover State Losses (Economic Analysis Perspective on Law, UIR Law Review No. 1 (April 2017), p. 104.

to the characteristics and needs of the legal system in Indonesia. For this reason, its implementation is deemed necessary.[33]

The implementation of NCB asset forfeiture is an urgent need, considering that in law enforcement practice, asset confiscation in corruption cases is often carried out behind closed doors. According to Imelda FK Bureni, although the concept of non-conviction-based asset forfeiture (NCB asset forfeiture) initially developed in the common law legal system, this does not mean that the concept cannot be implemented in countries that adopt a civil law legal system. In Indonesia, there are still a number of legal issues that have not been adequately accommodated by applicable regulations, including situations where the suspect cannot be found, has fled, is mentally ill, has no heirs or cannot be found to file a civil lawsuit, even though there has been a clear state financial loss, and conditions where the assets in question are not placed in criminal confiscation. These problems cannot be resolved through the criminal process mechanism, considering that the criminal process is in personam which is attached to the subject of the criminal act.[34]

In line with this, Sudarto and Hari Purwadi emphasized the urgency of implementing NCB asset forfeiture, considering that the current asset confiscation mechanism in Indonesia can generally only be implemented if the perpetrator of the crime has been legally and convincingly proven guilty through a court decision that has permanent legal force (inkracht). Therefore, asset confiscation is carried out as part of a criminal decision, which in practice often faces various obstacles. One of the main obstacles is the perpetrator's ability to transfer or hide the proceeds or means of crime abroad, and it is not uncommon for perpetrators to flee outside Indonesian jurisdiction and cannot be extradited. This condition can be seen, among others, in the corruption case involving defendant Djoko S. Tjandra and the Edy Tansil corruption case, which is one of the most prominent cases in the history of corruption eradication in Indonesia. Therefore, it is deemed necessary to have a legal instrument that provides an asset confiscation system that allows for the confiscation of criminal proceeds through the NCB asset forfeiture mechanism. This mechanism focuses on the confiscation of assets in rem, not against the perpetrator (in personam), so that the existence of a criminal decision that has permanent legal force against the perpetrator of the crime is no longer an absolute prerequisite for the implementation of confiscation of assets.[35]

Recognizing this urgency, the Indonesian government introduced the Asset Forfeiture Bill as a strategic step toward addressing the regulatory need to adopt

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[33]Ibid., p. 115.
[34]Imelda FK Bureni, The Legal Void of Asset Confiscation Without Criminal Prosecution in the Corruption Crime Law, Journal of Legal Issues Volume 45 No. 4 (October 2016), p. 293.
[35]Sudarto and Hari Purwadi, Asset Confiscation Mechanism Using Non-Conviction Based Asset Forfeiture as an Effort to Recover State Losses Due to Corruption Crimes, UNS Postgraduate Law Journal Vol V No. 1 (January-June 2017), pp. 110-111

the in rem (Non-Conviction Based Asset Forfeiture) mechanism in Indonesia. The introduction of a law specifically addressing asset forfeiture will ensure legal certainty, as asset forfeiture must be regulated rigidly and comprehensively to achieve its objectives.

2. Implementation and Practice of Non-Conviction Based Asset Forfeiture in Several Countries

The Non-Conviction Based Asset Forfeiture (NCBAF) method has been adopted by a number of countries, with models and approaches tailored to the characteristics of their respective legal systems and criminal policies. Research findings indicate that several countries have successfully implemented regulations regarding NCB asset forfeiture and similar legal regimes, such as illicit enrichment and unexplained wealth, including the United States, the United Kingdom, Switzerland, Australia, the Philippines, Singapore, Thailand, and others.

In general, the implementation of Non-Conviction Based Asset Forfeiture shows an increasingly widespread trend, with various countries then adopting this mechanism. This approach has proven effective as an instrument for recovering state assets, as it allows the state to confiscate assets derived from criminal acts without having to wait for a final and binding court decision (inkracht van gewijsde). In the national context, the Indonesian Government has begun to adopt the Non-Conviction Based Asset Forfeiture approach by submitting a Draft Asset Forfeiture Law, which is intended to strengthen the effectiveness of eradicating corruption and cross-border economic crimes.[36]

4. Conclusion

Based on the analysis outlined by the author, the mechanism for confiscation of assets resulting from corruption in Indonesia still faces normative and operational obstacles, primarily because the national regulatory framework requires a final and binding court decision (inkracht van gewijsde) as the basis for confiscation. In this context, the Non-Conviction Based Asset Forfeiture mechanism with an in rem approach offers an alternative paradigm by placing assets as the primary object of the legal process, thus allowing confiscation without relying on a criminal verdict against the perpetrator, while accommodating a reversal of the burden of proof and minimizing legal loopholes exploited to avoid accountability. The implementation of Non-Conviction Based Asset Forfeiture (NCB) to recover state losses due to corruption is worthy of consideration based on philosophical, legal, and sociological grounds. Philosophically, NCB Asset Forfeiture reflects the state's

[36]Andi Nabila Azzahra, "The Urgency of Asset Confiscation Regulation in the Implementation of Non-Conviction Based Asset Forfeiture as an Instrument to Eradicating Corruption", Legal Dialogica, Volume 1, Number 3, (2026), pp. 185-186.

constitutional goal of realizing public welfare through protecting state finances. Legally, this mechanism is necessary to increase the effectiveness of law enforcement, particularly in optimizing the recovery of state losses. Sociologically, the regulation of NCB Asset Forfeiture is a response to public demands and the growing complexity of corruption, so that corruption eradication is not only oriented towards punishing perpetrators, but also towards recovering assets resulting from crime.

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