

Seizure of Corruption Proceeds Through Non-Conviction-Based Asset Forfeiture as a Means of Recovering State Losses From Corruption Crimes

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Abstract. Corruption in Indonesia drains state finances, stifles national development, and harms public welfare. The Non-Conviction Asset Forfeiture (NCB AF) mechanism has been seen as a strategic way to recover lost state funds without waiting for criminal cases to conclude, providing a means to tackle this issue effectively. This study explores how NCB AF works and its importance in speeding up the recovery of state losses. The research uses a normative juridical approach focusing on legislation and concepts and finds that NCB AF effectively reduces state losses and improves asset recovery. However, strict regulations must support this mechanism to protect legal rights and prevent misuse of power. The study highlights the need for more precise rules to ensure NCB AF's success in Indonesia.

Keywords: Non-Conviction Based Asset Forfeiture; Corruption; Recovery of State Losses.

INTRODUCTION

Corruption has become a severe problem in our country, affecting the state's finances and citizens' social and economic rights. It stalls our national progress and development, making building a fair and thriving society harder. The real victims of corruption are the state and its people, as these corrupt acts disrupt our financial stability and economic well-being. Corruption makes our country a victim, suffering the consequences of these selfish actions [1]. Even though corrupt individuals are supposed to pay fines, the regulations often allow these fines to be replaced with prison time; this shows that recovering the state's losses from corruption is far from simple and straightforward [2].

To combat corruption, governments and law enforcement agencies must prioritise recovering the state's funds, ensuring that the money 'stolen' by corrupt individuals is redirected to public welfare, such as funding education, healthcare, providing necessities, supporting religious activities, and other social services; this is highlighted by the concept of 'state financial losses' in Articles 2 and 3 of Law No 31 of 1999 on the Eradication of Corruption, as amended by Law No 20 of

2001. This concept implies that combating corruption is about imposing heavy prison sentences on perpetrators and recovering state finances, as emphasised in the considerations and general explanations of the Anti-Corruption Law [3]. Failure to recover assets from corruption can undermine the effectiveness of punishing corrupt individuals [4].

The Anti-Corruption Law has been in effect in Indonesia for 23 years, during which many corrupt individuals have been tried and convicted. However, it is unfortunate that asset recovery has not yet met the expectations of justice. According to data from Indonesia Corruption Watch (ICW), the potential state losses in 2023 were around IDR 28.4 trillion, a decrease from IDR 42.7 trillion in 2022. Yet, only about IDR 3.8 trillion has been recovered [5]. This empirical evidence shows that corruption cases in Indonesia threaten social, economic, and political stability, posing a serious threat to achieving a just and prosperous society.

Thus, merely imprisoning corrupt individuals (following the suspect) has proven ineffective in reducing corruption levels unless accompanied by efforts to seize and recover assets obtained

through corruption forcibly. The principle behind asset forfeiture is rooted in fundamental justice, which holds that crime should not benefit the perpetrator. Allowing corrupt individuals to retain their ill-gotten gains allows them or their associates to enjoy or reinvest these assets, potentially even committing further crimes for profit.

In simple terms, asset forfeiture is a legal enforcement system where the state, as a victim of corruption, revokes, confiscates, and removes the right to assets obtained through corruption from the perpetrators; this involves tracking, freezing, seizing, and returning these assets to the state treasury, both domestically and internationally [6]. To address asset recovery, the United Nations Convention Against Corruption (UNCAC) 2003 included asset forfeiture mechanisms, which Indonesia ratified on April 18, 2006, through Law No 7 of 2006 (UN Anti-Corruption Convention, 2003).

UNCAC addresses global cooperation on corruption and mandates member countries to pursue asset forfeiture, as outlined in Article 54(1)(c) of UNCAC. The article urges all member states to take necessary actions to enable asset forfeiture in cases where offenders cannot be prosecuted due to death, flight, or other reasons. Member countries are encouraged to adopt non-conviction-based asset forfeiture (NCB) to address legal system differences and recover assets from corruption across all jurisdictions [7].

Law No 31 of 1999 concerning Corruption Crimes, as amended by Law No 20 of 2001, explains that the mechanism that can be applied to seize assets resulting from corruption crimes can be pursued through criminal channels and civil channels. Asset forfeiture from the criminal route is carried out through a trial process if the public prosecutor can prove the defendant's guilt in committing the corruption crime and the assets that have been confiscated in the case in question are the proceeds of crime from corruption crimes as stipulated in Article 18 of Law No 31 of 1999 concerning Corruption Crimes as amended by Law No 20 of 2001 [8].

Meanwhile, Article 32 § (1), Article 33, Article 34, and Article 38C of Law No 31/1999 on the Crime of Corruption regulate the seizure or return of assets from corruption through civil proceedings. Civil lawsuits in the context of confiscating assets from corruption crimes have specific characteristics, namely that they can only be carried out when criminal efforts are no longer possible to

be used in efforts to recover state losses to the state treasury [9]. Law enforcement agencies cannot pursue the crime in circumstances such as failing to find enough evidence, the suspect or defendant's death, the defendant's acquittal, or allegations that proceeds of corruption remain unrecovered by the state despite the court's final decision.

To fulfil the UNCAC mandate regarding asset forfeiture from criminal activities, Indonesia has proposed a legal draft bill (RUU) to the Parliament since 2012, following the creation of an Academic Paper. Generally, the contents of the Asset Forfeiture Bill are considered revolutionary in the legal process concerning crime proceeds; this is evident in three fundamental paradigm shifts in criminal law enforcement: First, the accused in a criminal case is not only considered a legal subject but also the assets obtained from the crime. Second, the judicial mechanism for handling crimes is through civil proceedings. Third, court rulings do not impose criminal sanctions as they do for other criminal offenders.

Looking back at the current status of corruption in Indonesia, the level of corruption crimes has fluctuated over the past five years. According to data from the Anti-Corruption Clearing House, in 2019, the Corruption Eradication Commission (KPK) handled corruption cases with details as follows: 164 cases in investigation, 199 in prosecution, 151 in court, 106 in final rulings, and 113 executed. Additionally, Indonesia Corruption Watch reported 580 suspects in 271 corruption cases in 2019, causing state losses of 8.41 trillion rupiah. However, according to the KPK's 2018 Performance Report, KPK managed to recover 500 billion rupiah, while the Indonesian National Police recovered 2.3 trillion rupiah and the Attorney General's Office recovered 326 billion rupiah.

The high number of corruption cases and significant state losses negatively impact the country's financial stability and government integrity. Law enforcement agencies have been unable to optimally recover assets due to the lack of effective mechanisms addressing the current urgency. If left unaddressed, this could have long-term implications for reducing the welfare of Indonesian society [10].

As a rule-of-law state, all state actions must be based on democratically established laws, ensuring that these laws have supremacy and that everyone is equal before the law; this shifts the crim-

inal paradigm from merely prosecuting offenders (following the suspect) to the method of following the money, which tracks and identifies the assets obtained from crimes. After tracking assets, authorities implement asset forfeiture to ensure that offenders cannot enjoy the proceeds of their crimes [10]. The follow-the-money approach offers a new dimension in combating corruption by mitigating its impact on the state [11].

Indonesia is still often hampered in its development by corruption. Legal authorities must prioritise addressing the inability to recover many state losses. They must tackle the impact of corruption and ensure that law enforcement efforts actively facilitate the recovery of state losses. As a UNCAC member country, Indonesia has yet to establish a comprehensive regulatory framework for non-conviction-based asset forfeiture. Law No 31 of 1999 on Corruption Eradication, as amended by Law No 20 of 2001, is considered not optimal for asset recovery through criminal and civil means [11].

Based on this background, this research aims to achieve several objectives. First, it will identify and analyse the mechanism of asset seizure in corruption cases using the Non-Conviction Asset Forfeiture approach to recover state losses from corruption. Second, it will explore and analyse the urgency of updating the asset seizure process by applying the Non-Conviction Asset Forfeiture concept to enhance the effectiveness of recovering state losses.

METHOD

This research falls under normative legal studies [12], focusing on analysing the substance of legal rules in statutes relevant to the issues discussed. By examining literature or secondary data, this study will focus on library-based legal research [13].

Several legal research approaches are used in this legal research, including the Statute Approach and the Conceptual Approach.

Primary legal materials, which form the principal basis of legal research, include various regulations such as the Constitution of the Republic of Indonesia, the Indonesian Penal Code (KUHP), the Indonesian Criminal Procedure Code (KUHP), the Draft Bill on Asset Forfeiture in Criminal Offenses, and Law No 20 of 2001 on Corruption Eradication. Secondary legal materials consist of publications related to legal science,

including legal textbooks, legal journals, and the views and comments of legal experts on court decisions. Tertiary legal materials, such as legal dictionaries and encyclopedias, provide further explanations regarding primary and secondary legal materials, facilitating a deeper and more comprehensive understanding of the research process.

The methods of legal material analysis used in this research are systematic and grammatical interpretation. Unlike grammatical interpretation, which aims to understand the intent of statutory provisions through linguistic explanations, systematic interpretation involves interpreting provisions about other laws, legal regulations, or the entire legal system. Systematic interpretation views the law as a cohesive system of rules [14].

RESULTS AND DISCUSSIONS

Seizure of Corruption Proceeds Through Non-Conviction Based Asset Forfeiture as an Effort to Recover State Losses Due to Corruption Offenses. The seizure of corruption assets through non-conviction-based asset forfeiture is a crucial strategy in combating corruption, focusing on recovering state assets lost due to corrupt activities. Unlike traditional seizure systems, which require a criminal conviction first, non-conviction-based asset forfeiture allows for the seizure of assets obtained from corruption without waiting for a criminal court verdict. Although not yet fully regulated under Indonesian law, this mechanism shows excellent potential in expediting the process of recovering state losses and addressing challenges in the criminal justice system.

Constitutionally, the 1945 Constitution of the Republic of Indonesia affirms basic principles regarding protecting citizens' rights and maintaining state interests. Articles concerning property rights and protection provide a foundation for legal actions, including asset seizure. However, lawmakers and authorities must balance this protection with the state's interest in preventing losses caused by corruption that harms the broader society.

The Indonesian Penal Code (KUHP) and the Indonesian Criminal Procedure Code (KUHP) outline fundamental principles in criminal law and legal processes but do not provide specific provisions for asset seizure without a criminal conviction. KUHP focuses more on criminal offences

and penalties, while KUHP deals with the procedures of legal proceedings. In this context, both laws provide general foundations but are not sufficiently specific to effectively address the issue of asset seizure from corruption.

The Draft Law on Asset Forfeiture in Criminal Acts aims to address gaps in the current legal system by providing a more specific framework for asset seizure based on alleged criminal acts. Law No 20 of 2001 on the Eradication of Corruption Crimes, the primary regulation on corruption in Indonesia, grants authority to the Corruption Eradication Commission (KPK) to seize corruption-related assets. However, this law has limitations, particularly regarding proof and lengthy legal processes.

Excessive Self-Defense (Noodweer Excess) is treated differently in the Indonesian Penal Code compared to the Dutch legal system. In Indonesia, Article 49 (2) of the Penal Code regulates self-defence that exceeds necessary limits but can be justified under certain conditions, especially when the situation does not allow the suspect to control their reaction. Lawmakers and policy-makers apply the principle of proportionality to evaluate such actions, ensuring the response is balanced with the threat faced. However, in practice, applying Noodweer Excess presents challenges often. An example is Case Decision No 26/PID.B/2014/PN.ATB, where the court had to balance the individual's right to self-defence with existing social norms; this shows that applying this concept in Indonesia is often inconsistent, with varying judicial decisions and sometimes difficult to achieve fair justice for all parties involved.

Non-conviction-based asset forfeiture has the potential to be a more efficient solution, as it allows asset seizure even before a court decision; this is particularly useful to prevent corrupt perpetrators from escaping or concealing assets. This mechanism also provides an additional tool to mitigate the risk of state loss and accelerate asset recovery.

A significant challenge in implementing non-conviction-based asset forfeiture is protecting the legal rights of those claiming ownership of the assets. Lawmakers and authorities must design the system to ensure seizure actions are conducted with high transparency and accountability. They must also maintain legal protection, the right to a fair trial, and the right to defence to prevent abuse of power. Therefore, detailed

regulations and strict procedures are needed to avoid potential human rights violations.

Non-conviction-based asset forfeiture offers an innovative solution for law enforcement against corruption in many countries, including the United States and the United Kingdom, which have adopted this approach with varying degrees of success. The main advantage of this mechanism is its speed and efficiency in recovering state losses due to corruption without waiting for lengthy criminal processes; this allows law enforcement authorities to seize assets suspected of being the result of corruption, even if there has not been a criminal conviction against the asset owner.

However, implementing this mechanism in Indonesia requires adjustments to existing legal and social conditions. One of the main challenges is ensuring that individual rights are protected and that the seizure process is fair and transparent; this is where the importance of a clear legal framework and strict procedures comes into play. The seizure process must be based on solid evidence and conducted under judicial supervision to prevent abuse of authority.

Best practices from countries that have successfully implemented this mechanism can guide the development of similar policies in Indonesia. By adopting proven effective procedures and adapting them to the local context, Indonesia can enhance the effectiveness of recovering state assets due to corruption. Ultimately, the success of this mechanism will significantly depend on how Indonesia integrates principles of justice and transparency into the process of non-conviction-based asset seizure.

The Urgency of Updating Corruption Seizure Through the Non-Conviction Based Asset Forfeiture Concept in Recovering State Losses. The urgency of extending corruption seizure through the Non-Conviction Based (NCB) asset forfeiture mechanism in Indonesia is becoming increasingly relevant for effectively recovering state losses.

This innovative approach allows for the seizure of assets without waiting for the completion of criminal proceedings, thus swiftly addressing financial losses resulting from corruption.

NCB asset forfeiture is designed to provide a more efficient solution for recovering state losses; this is based on the reality that traditional methods often fail to achieve this goal due to lengthy and complex processes [15]. In Indone-

sia, NCB principles are starting to be adopted, but existing regulations still need refinement to maximise efforts in recovering assets derived from corrupt activities [16, 17].

The implementation of NCB also raises concerns, particularly regarding property rights and fair legal processes. Seizing assets without a criminal charge often separates criminal responsibility from asset ownership, potentially leading to issues related to human rights protection [16]. To ensure the effectiveness of NCB, the existing legislative framework must prioritise asset recovery without neglecting the need for justice and transparency in the seizure process [18, 19].

While NCB asset forfeiture has excellent potential to address corruption issues, authorities must balance its approach with protecting individual rights. Ongoing reforms related to NCB reflect the importance of a comprehensive legal approach in effectively combating corruption while ensuring justice for all parties involved.

Non-Conviction Based Asset Forfeiture (NCB AF) is a legal mechanism that allows the government to seize assets suspected to be derived from crimes such as corruption without requiring a criminal court conviction. The primary goal of NCB AF is to recover state losses from criminal acts, thereby providing justice for the state and society. This mechanism allows for asset seizure before a final court decision, giving the government authority to manage the assets promptly.

Legal regulations regarding Non-Conviction Asset Forfeiture (NCB AF) have been outlined in various international regulations, including the United Nations Convention Against Corruption (UNCAC), which Indonesia ratified through Law No 7 of 2006. In this context, NCB AF becomes crucial in combating corruption to recover state losses. However, achieving this goal requires additional national regulatory support and active involvement from law enforcement and the public. Political leaders must support this policy to implement it effectively and promote extensive socialisation to enhance public understanding and ensure optimal execution. The presence of a dedicated body, such as the Asset Handling Task Force (Satgas PATP), plays a vital role in managing seized assets, mainly to ensure that the seizure process adheres to legal procedures.

On the other hand, legal protection for affected parties, such as heirs or third parties acting in good faith, must be a serious consideration to

prevent human rights violations. Despite its significant potential in combating corruption, NCB AF faces challenges related to inadequate regulations. If authorities do not strictly enforce control mechanisms, they can abuse power, posing a severe threat. Therefore, balancing the state's interest in combating corruption with the rights of affected individuals must always be considered. Effective and transparent implementation of NCB AF is crucial to ensuring that this tool functions as a fair instrument in combating corruption in Indonesia.

Due to several key factors, updating the concept of corruption seizure through the Non-Conviction Asset Forfeiture (NCB AF) concept in recovering state losses is urgent. First, corruption has caused significant state losses, necessitating a more effective mechanism for recovering these losses. The financial damage caused by corruption is often substantial and requires a more efficient solution to ensure the recovery of state funds. Second, technological advancements have given corrupt actors advantages in hiding assets obtained from crimes, making existing legal systems potentially inadequate to address these challenges [20]. Therefore, updating the law to align with technological advancements and future conditions is necessary.

The NCB AF concept holds great potential in addressing the impact of corruption in Indonesia. This mechanism, regulated under the United Nations Convention Against Corruption (UNCAC) 2003 and ratified by Indonesia through Law No 7 of 2006, offers an alternative method for asset forfeiture without requiring a criminal conviction. It creates new opportunities for pursuing and recovering assets from corruption that may not be achievable through traditional criminal mechanisms. Furthermore, updating asset forfeiture mechanisms in criminal and civil law ensures that forfeiture efforts achieve optimal results. NCB AF introduces new instruments such as seizure and asset takeover through "in rem" or asset-based lawsuits, which can enhance the effectiveness of state loss recovery.

In combating corruption, updating asset seizure systems is crucial to addressing challenges in recovering state losses. The Non-Conviction Asset Forfeiture (NCBAF) concept offers a significant solution compared to conventional systems relying on criminal conviction for asset seizure. This method allows authorities to seize assets suspected of being from illegal activities even before

a court verdict. The urgency of this update lies in the effectiveness of NCBAF in addressing common issues in corruption cases, such as the depreciation of seized assets during lengthy legal processes or difficulties in direct proof against corrupt perpetrators.

NCBAF introduces a more proactive approach by targeting assets identified as proceeds of crime, even before a court verdict. This approach speeds up the recovery of state losses and reduces the risk of asset flight during lengthy legal processes. Additionally, NCBAF has the potential to enhance law enforcement effectiveness by providing broader authority to seize and manage assets from corruption without needing a proven criminal act against specific individuals.

However, implementing NCBAF must be accompanied by strict legal protection mechanisms to ensure that the seizure process does not violate individual rights or become misused. Clear regulations and transparency in the seizure process are vital for maintaining the integrity of the legal system and ensuring that authorities use NCBAF reasonably and efficiently. Therefore, adopting the NCBAF concept to update the asset seizure system is essential for strengthening efforts against corruption and ensuring that authorities can recover state losses more effectively.

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CONCLUSIONS

The Non-Conviction Asset Forfeiture (NCBAF) mechanism offers a faster and more effective approach to recovering state losses from corruption without waiting for a criminal court verdict. This mechanism allows for the seizure of assets suspected to be derived from corrupt activities, providing the government with a more flexible tool to combat corruption and prevent asset flight. While Indonesia has begun adopting the principles of NCBAF, a more comprehensive legal framework and transparent procedures are needed to protect human rights and prevent the abuse of authority.

The urgency of updating corruption seizure through the NCBAF concept is crucial, considering the challenges of recovering state losses with traditional, slow, and less effective methods. This update will accelerate the asset recovery process, reduce the risk of asset loss, and address legal obstacles that often delay the return of state funds. By drawing on international practices and more comprehensive regulations, NCBAF can become vital in combating corruption in Indonesia, especially in addressing modern challenges such as cross-border asset concealment.

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