



# RECHTSIDEE

PUBLISHED BY  
UNIVERSITAS  
MUHAMMADIYAH  
SIDOARJO

ISSN 2443-3497  
(online)



SCAN ME

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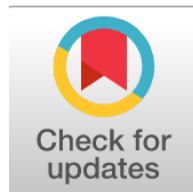
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# Optimizing the Enforcement of Asset Forfeiture as an Additional Penalty for Corruption Offenders to Recover State Losses: Optimalisasi Penerapan Pidana Tambahan Perampasan Aset terhadap Koruptor sebagai Upaya Pemulihan Kerugian Negara

**Syana Mifta Salsabila, 2210611196@mahasiswa.upnvj.ac.id (\*)**

*Law Department, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia*

**Bambang Waluyo, bambangwaluyo@upnvj.ac.id**

*Law Department, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia*

(\*) Corresponding author

## Abstract

Corruption continues to generate substantial state losses in Indonesia, while enforcement strategies still prioritize imprisonment over effective asset recovery, leaving illicit proceeds beyond the reach of the state. This study aims to evaluate the legal framework and enforcement barriers of asset forfeiture as an additional penalty for corruption and to assess the reform potential of non-conviction based asset forfeiture for accelerating recovery of state losses. Using a normative juridical design, the research applies statutory and conceptual approaches through systematic analysis of the Indonesian Criminal Code, anti-corruption legislation, anti-money laundering provisions, and the Draft Law on Asset Forfeiture of Criminal Acts. The study finds that although asset forfeiture is legally recognized, implementation remains weak due to integrity deficits in law enforcement, fragmented legal instruments, and limited operational effectiveness in tracing and confiscating proceeds of corruption. As a result, asset recovery outcomes are frequently suboptimal and deterrence effects are diluted. The key novelty is the policy argument that a comprehensive non-conviction based asset forfeiture regime, as advanced in the draft legislation, can enable confiscation of illicit assets even when criminal conviction is unattainable, thereby closing enforcement gaps that conventional conviction-based forfeiture cannot address. The findings imply that legal reform should institutionalize non-conviction based asset forfeiture alongside stronger due process safeguards, interagency coordination, and anti-money laundering alignment to improve corruption deterrence and measurably increase recovery of state losses.

## Highlights:

- Current forfeiture enforcement gaps sharply limit corruption asset recovery and state loss restitution.
- Non-conviction based forfeiture enables confiscation when prosecution fails through death, flight, or absconding.
- Comprehensive forfeiture legislation strengthens due process, interagency coordination, and corruption deterrence outcomes

**Keywords:** Non-Conviction Based Forfeiture, Asset Recovery, Corruption Deterrence, Financial Crime Governance, Anti-Money Laundering, Legal Reform





## Introduction

Corruption is not just an ordinary criminal act but a systemic disease that erodes the foundations of the state, destroys public trust, and hinders development. Corruption is a parasite that erodes the moral foundations of the nation, destroying the noble values of religion and ethics. The nation's honor has been stripped away by corruption, leading Indonesia into a state of backwardness, poverty, and debt. Corruption is not just an economic crime but also a crime against humanity that robs future generations [1]. Rampant and organized corruption is a social disaster that fundamentally violates many of the social and economic rights of the people due to the destruction of public resource allocation. [2] In addition, this action fosters a culture of instant gratification, where patience and hard work are marginalized and replaced by shortcuts that harm others. Egoism becomes rampant, eroding empathy and solidarity and placing personal and group interests above all else. [3]

Although the structure of government in Indonesia has undergone several changes in line with the times and institutional reforms, the reality is that criminal acts of corruption remain a serious problem that shows no signs of significant decline. Data from Indonesia Corruption Watch in 2023 shows an alarming spike in corruption cases. Compared to previous years, there has been a sharp increase in the number of cases, reaching 791, and the number of suspects has jumped to 1,695 people. [4]

The struggle against corruption has been going on for a long time, with various strategies, including imposing heavier sanctions on perpetrators. However, corrupt practices continue to color the reality around us. The traditional approach, which relies on restrictions on movement as the main sanction, is increasingly showing its limitations and often ends in failure. As a result, the paradigm in fighting crime has now shifted significantly, from the original focus on pursuing individuals behind illegal activities to a more strategic effort of hunting down and confiscating financial gains obtained illegally as the core of modern crime prevention. [5] This is stated in Article 18, paragraph (1), letter b of Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Tipikor Law), which explains "Payment of compensation in an amount equal to the property obtained from the corruption crime," and then in paragraph (2) it is stated that "if the convicted person does not pay the compensation as referred to in paragraph (1), letter b, within a maximum period of 1 (one) month after the court decision has obtained permanent legal force, then their property can be confiscated by the prosecutor and auctioned to cover the compensation." Thus, the application of additional penalties in the form of asset forfeiture for corruptors needs to be supported by all parties in order to maximize implementation in the field so as to be able to recover state funds that have been eroded by acts of corruption.

Asset recovery is a comprehensive process that begins with the collection of intelligence and evidence, followed by asset tracing through seizure, restriction, or confiscation; it then continues to the trial stage and the execution of court rulings or decisions, ultimately resulting in the successful return of the assets to the state treasury. [7] However, it should be noted that in pursuing the illegal assets of criminals, the use of criminal law also has limitations. This includes cases where the perpetrator cannot be prosecuted for certain reasons, such as the case being time-barred or the perpetrator having died, making it impossible to pursue the perpetrator's illegal assets, as stipulated in Article 77 of the Criminal Code regarding the lapse of prosecution authority.

At the international level, there is the United Nations Convention Against Corruption (UNCAC), which is the first legally binding global anti-corruption agreement. Broadly speaking, this regulatory framework outlines five main pillars, namely preventive measures, criminalization and strengthening of a robust legal system, strengthening global cooperation, practical assistance and exchange of information, and asset recovery. Highlighting asset recovery, which is closely related to asset seizure mechanisms, the UNCAC itself has accommodated the Non-Conviction Based Asset Forfeiture (NCB) mechanism as stated in Article 54 paragraph (1) letter c of the UNCAC, which states that "Each State Party shall, in accordance with its domestic law, consider taking such measures as may be necessary to enable the confiscation of such property without a criminal conviction in cases where the perpetrator cannot be prosecuted because he or she is deceased, has fled, or is not present, or in other relevant cases."

Indonesia has provisions for confiscating the assets of perpetrators who have died or cannot be found, as outlined in Article 33 of the Anti-Corruption Law, in order to implement the mandate of Article 54 paragraph (1) letter c of the UNCAC. This article stipulates that "in the event that the suspect dies during the investigation, and there is clear evidence of financial loss to the state, the investigator shall immediately submit the investigation files to the State Attorney or to the agency that has suffered the loss to file a civil lawsuit against the suspect's heirs." However, the author's research indicates that no one has ever used this article, making it an inactive provision. Sufficient empirical evidence supports that this article has not been implemented, as reflected in the case of Lukas Enembe, who was suspected of bribery, gratification, and money laundering in 2023. Before he could be sentenced, he passed away, forcing the Corruption Eradication Commission (KPK) to return the convicted person's seized and blocked assets. [8] The KPK then stated that the state was entitled to claim compensation through civil proceedings, but so far there has been no information regarding civil claims on Lukas Enembe's assets. [9]

Based on the complexity of enforcing the confiscation of assets of corruptors, which requires the urgent ratification of the Draft Law on Confiscation of Criminal Assets (RUU PATP), this issue is interesting to examine critically and analytically. In a study entitled "Optimizing the Application of Additional Criminal Asset Forfeiture against Corruptors as an Effort to Recover State Losses," the author will explore the issues that arise through two problem formulations. First, regarding the legal regulations related to asset forfeiture in criminal corruption cases in Indonesia. Second, it concerns the obstacles and opportunities in optimizing asset forfeiture as stipulated in the Criminal Asset Forfeiture Bill.



## Method

This study uses a qualitative lens and normative juridical methods. The normative juridical method was carried out through the analysis and research of library materials or secondary data as the main sources of information. This approach was chosen to untangle the complex issues that arise from the difficulty of applying additional penalties in the form of asset forfeiture for corruptors and to examine in greater depth the contents of the Draft Law on Criminal Asset Forfeiture (RUU PATP). This study is expected to formulate theoretical and practical conclusions and solutions that arise from academic studies and are beneficial to the community and the government. The research approaches applied were conceptual and regulatory. In determining the complexities of the issues, this study draws on theories, concepts, principles, and regulations relevant to the core discussion. References were obtained through literature study. Data analysis techniques were carried out by combining description and analysis and emphasizing in-depth interpretation of various legal sources. [11]

## Results and Discussion

### Legal Regulations Related to Asset Seizure in Corruption Cases in Indonesia

The eradication of corruption has been a major focus of the Indonesian government since the reform era, marked by simultaneous efforts from the executive, legislative, and judicial branches. Efforts to eradicate corruption must be carried out seriously, continuously, and in an integrated manner to achieve optimal results. As crimes have become more complex, efforts to combat them have also evolved. [2] The traditional approach, which focuses on arresting and imprisoning perpetrators to create a deterrent effect, is now increasingly ineffective, especially in the context of financially oriented organized crime. Therefore, crime prevention strategies have begun to shift substantially from pursuing criminals (*in personam*) to recovering and confiscating illegal profits obtained from criminal activities (*in rem*), one of which is by confiscating the assets of convicted criminals.

The provisions for confiscating the assets of perpetrators of criminal acts are regulated in the Criminal Code (KUHP) in Article 10 of the Criminal Code concerning "Additional penalties for the confiscation of certain items, one of which is property belonging to the convicted person that was obtained from a crime or deliberately used to commit a crime as referred to in Article 39 of the Criminal Code concerning the confiscation of the convicted person's property." Article 18 of Law No. 31 of 1999 concerning Eradication of Corruption Crimes (Anti-Corruption Law) also regulates criminal sanctions that include monetary compensation for perpetrators of corruption. Among the various additional penalties available, the seizure or confiscation of assets by the state (*verbeurdverklaring*) is a sanction that is often applied. Based on Article 10 letter b and clarified in Article 39 paragraph (1) of the Criminal Code, the confiscation of assets aims to take over the convicted person's property that was directly obtained from the proceeds of crime or that was deliberately used to commit a crime. Meanwhile, Article 39, paragraph (2), of the Criminal Code also allows for the confiscation of assets based on laws and regulations, even in cases of unintentional crimes or violations.

For perpetrators of corruption, the provisions of Article 7, paragraph (2) of the Money Laundering Law (TPPU Law) can be applied simultaneously. The application of this article aims to increase the threats and criminal sanctions imposed so that the penalties received by corruptors become heavier and more severe. The criminal penalty imposed in Article 7 paragraph (2) letter e of the AML Law states that "In addition to the fines referred to in paragraph (1), corporations may also be subject to additional penalties in the form of confiscation of corporate assets for the state." The government often implements the confiscation of assets in corruption cases as an effort to "impoverish corruptors," indicating a new and serious step in taking decisive action. The essence of this spirit is to realize the optimal recovery of state financial losses, including through the confiscation of all property belonging to corruptors that is derived from criminal acts.

In handling corruption crimes, if the convicted person is unable to pay compensation equivalent to the state's losses, the last option that is applied is an additional imprisonment term equal to the length of the original sentence that has become final and binding (*inkracht*). The act of impoverishing corruptors is not the goal of the law itself but rather a logical consequence expected from legal efforts, namely through the confiscation of assets or property obtained through corruption. This action is essential in order to achieve optimal recovery of state losses. [6]

Conventional asset confiscation, which can only be executed when there is a criminal verdict, has evolved to no longer require a criminal verdict if there is a dismissal of prosecution, known as the Non-Conviction Based Asset Forfeiture (NCB) mechanism. Several laws and regulations in Indonesia regulate the non-conviction-based mechanism, yet its provisions still exhibit various substantive shortcomings. In Indonesia, NCB regulations remain limited and dispersed across various laws and regulations. Provisions with principles similar to NCB can only be found in the Anti-Corruption Law and the Anti-Money Laundering Law. [13] As a result, regulations regarding NCB in Indonesia are still relatively weak.

The concept of Non-Conviction Based Asset Forfeiture (NCB) revolutionizes efforts to seize assets derived from criminal acts, particularly corruption, by applying the principle of reverse burden of proof. The reverse burden of proof is a legal mechanism that allows the defendant or owner of the assets to prove that they were obtained legally and not from criminal activities. In this scheme, the asset owner must prove their wealth's legitimacy, reversing the usual criminal law burden of proof.

If we look at the current NCB mechanism, the principle of reverse proof is explicitly regulated in the Anti-Money Laundering Law, namely in Articles 77 and 78, but a similar principle is not explicitly regulated in the Anti-Corruption Law. Therefore, in the context of corruption cases, the burden of proof remains entirely with the public prosecutor. Meanwhile, in handling

economic crimes, a system is needed that involves the victim or defendant proving the origin of the assets because they leave no trace, making it difficult for prosecutors to prove their validity. The application of this concept aims to address the challenges in proving the origin of assets, which is complex and often obscured, particularly in money laundering cases where transaction structures are often designed to make tracking difficult. [15] This shows that in practice, law enforcement regarding corruption still prioritizes conventional proof systems, which can be an obstacle to optimal asset forfeiture.

In fact, the legal framework governing criminal acts of corruption and asset forfeiture is adequate, but in reality, corruption practices continue to be rampant, and law enforcement against criminal assets still faces significant implementation obstacles. [16] We need to understand that the main cause of widespread corruption is the degradation of integrity and ethics among those who exercise state power. This moral weakness not only encourages individual acts of corruption but also triggers structured and collective corruption. The rampant corruption in Indonesia, despite the nation's identity being based on the religious principles of Pancasila, indicates a serious crisis of ethics and integrity. This crisis has a destructive impact on various aspects of society, the nation, and the state. [2]

The eradication of corruption faces significant structural and technical obstacles. Structurally, political intervention is a major obstacle that undermines the independence of law enforcement agencies. The appointment of officials based on political interests often triggers conflicts of interest when handling cases involving the state elite. In addition, weak coordination between law enforcement agencies (the Corruption Eradication Commission, the police, and the attorney general's office) causes legal processes to be slow and inefficient. This problem is exacerbated by a culture of corruption that is deeply rooted in the bureaucracy, creating an ecosystem that is difficult to overcome. On the technical side, challenges include the limited number of independent and competent human resources to handle large-scale corruption cases. Therefore, an essential strategic step to optimize corruption prevention is to strengthen the integrity and ethics of law enforcement officials.

## **Constraints and Opportunities in Optimizing Asset Seizure as Stipulated in the Draft Law on Criminal Asset Seizure**

One type of crime that is oriented towards financial gain is corruption. As a crime motivated by material interests or economic gain, the focus of punishment should not only be directed at the perpetrator but also at the illegal profits obtained from the criminal activity. Thus, a sentencing strategy that emphasizes asset forfeiture and financial sanctions will be more effective in creating the maximum deterrent effect. This is in line with the economic analysis of law, which emphasizes that the main goal of corruptors is wealth, so that the most relevant form of punishment is a significant financial sanction, even to the point of impoverishment for corruptors.

In developing innovative punishment that also focuses on pursuing the assets of criminals, Indonesia can optimize the application of the Non-Conviction Based (NCB) Asset Forfeiture principle. Simply put, NCB, also known as *in rem* asset forfeiture, refers to the process of confiscating assets suspected of being derived from criminal acts without first requiring a criminal conviction of the individual. This process is justified through court decisions that are not exclusively within the realm of criminal or conventional civil courts. [19] This concept is actually strongly supported by the Draft Law on Criminal Asset Forfeiture because Article 2 of the PATP Bill explains that asset forfeiture in the PATP Bill is not based on the imposition of criminal penalties on perpetrators of criminal acts. This was also highlighted by legal expert Dr. Cand. Hardjuno Wiwoho, who encouraged the passing of the PATP Bill. He stated that the PATP Law could optimize the recovery of state losses caused by corruption and supported the immediate enactment of this bill.

The PATP Bill is seen as a very important regulation with high potential effectiveness in combating extraordinary crimes, especially corruption. The presence of this bill is supported by at least three main arguments. First, the PATP Bill will substantially complement and strengthen the existing legal instruments for combating corruption in Indonesia by filling procedural and normative gaps in asset recovery. Second, the implementation of the PATP Bill has the potential to provide a much stronger deterrence effect on perpetrators of corruption and organized crime, because the focus of the law is not only on criminal punishment but also on impoverishment targeting the proceeds of crime. Third, this bill is designed to introduce and facilitate a faster and more efficient asset recovery mechanism, particularly through the concept of NCB, so that state financial losses can be recovered optimally without being hampered by protracted criminal proceedings.

However, the concept of NCB in the PATP Bill still receives some critical comments, including that asset seizure is processed through a petition. In applying NCB to economic crimes, even though there is no criminal punishment for the perpetrator, there are still parties who are harmed by the seizure of their assets and have the right to defend themselves in court. It is known that this mechanism of asset seizure through civil proceedings is carried out through a petition to the court, not through a lawsuit. This is confirmed in Article 67, paragraph (2) of the TPPU Law, which states that "In cases where the alleged perpetrator of a criminal offense is not found within 30 days, the investigator may submit a petition to the district court to decide whether the property is a state asset or is to be returned to the rightful owner." It should be noted that a lawsuit contains a civil claim (*burgerlijke vordering*) that includes a dispute, while a petition does not contain a dispute. Conceptually, a petition generally does not involve a party that directly opposes or disputes it. This process involves a confrontation of arguments and evidence, which is the essence of a lawsuit. Meanwhile, the NCB mechanism should fundamentally be a lawsuit (*action in rem*), not a petition. This process involves a dispute over the legality of assets between the state and the owner, requires formal proof in court, and results in a binding and enforceable decision to seize assets, unlike a petition, which is unilateral and declarative in nature. [23] Thus, the decision rendered by the court will have specific characteristics that differ from ordinary criminal decisions, which are essentially asset forfeiture orders.

In civil procedure law, lawsuits are processed through "actual" (contentious jurisdiction) courts, which produce court decisions. In contrast, petitions are handled through "non-actual" (voluntary jurisdiction) courts, which produce decisions by judicial determination. This difference arises because in "actual" proceedings, the role of the judge is more administrative in nature, such as in the determination of petitions for guardianship or division of property. Therefore, the principles of evidence law applicable in BW Book IV and HIR are not applied to this voluntary jurisdiction.

Overseas, asset forfeiture is carried out as a lawsuit in which the state "goes after" the assets themselves, not the person, which is a key characteristic of in rem actions. For example, in British Columbia, the Civil Forfeiture Office routinely files Notices of Civil Claim against assets suspected of being the proceeds of crime, such as PacNet Services Ltd., where a civil forfeiture claim was filed against CAD 10 million based on an agreement (Consent Forfeiture Order), without any admission of unlawful activity by the company or individuals involved. It can be concluded that the mechanism regulated in the form of a petition does make it easier for law enforcement officials to seize property resulting from criminal acts, but on the other hand, this is considered unfair. [25] In this case, the state seems to assume that it has no opponent, when in fact there are interested parties who also have an influence on the matter at hand, namely the confiscated assets. Therefore, in this case, asset confiscation should be regulated through a lawsuit in order to provide opportunities and justice for third parties to speak up in court if they object to the confiscation of these assets.

The opportunities mentioned above provide an optimistic outlook for strengthening the asset confiscation system in Indonesia. The existence of strong legal instruments for recovering state losses is a bright spot in the effort to eradicate corruption comprehensively. However, it should be acknowledged that the Criminal Asset Seizure Bill (RUU PATP) currently under discussion is not without potential implementation obstacles and normative shortcomings. However, the shortcomings and obstacles identified during the legislative process should not be a reason for postponement. Instead, they should be used as constructive input and critical notes for policymakers. Thus, any weaknesses found can be analyzed in depth to ensure that the resulting regulations can be improved, refined, and function more effectively and comprehensively.

## Conclusion

The application of additional penalties in the form of asset forfeiture plays a crucial role in efforts to optimize the recovery of state financial losses resulting from corruption. Although the existing legal framework (Criminal Code, Anti-Corruption Law, Money Laundering Law) provides the basis for asset forfeiture, its implementation is still hampered by structural and technical problems, including weak inter-agency coordination, potential political intervention, and limited human resources with integrity. In response to this, the concept of Non-Conviction Based Asset Forfeiture (NCB) has emerged as a progressive solution, in line with the mandate of the UNCAC, which provides a mechanism for asset forfeiture without the need for a criminal conviction. The Draft Law on Criminal Asset Forfeiture (RUU PATP) is a strategic step to strengthen the effectiveness of corruption eradication, provide a deterrent effect, and accelerate asset recovery. To overcome existing implementation and normative weaknesses, it is necessary to strengthen synergy between law enforcement agencies, improve the quality and independence of human resources, and refine the RUU PATP, especially regarding due process procedures that ensure the fulfillment of the rights of third parties with good intentions as a step towards creating a clean and just government.

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