

# Non-Conviction Based Asset Forfeiture as an Instrument for Recovering State Losses in Corruption Crimes in Indonesia

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## Abstract

NCBAF as emerged as a strategic legal instrument for recovering state losses arising from corruption, particularly in jurisdictions where conviction-based mechanisms prove ineffective. In Indonesia, the recovery of assets obtained through corruption remains heavily dependent on final and binding criminal judgments, a requirement that often delays asset confiscation and creates opportunities for offenders to conceal, transfer, or dissipate illicit assets. This study examines the weaknesses of the existing asset forfeiture framework within the Indonesian legal system and analyzes the urgency of adopting NCBAF as an alternative mechanism for recovering state losses in corruption cases. Employing normative legal research, this study adopts statutory and conceptual approaches through an analysis of national legislation and relevant international standards, particularly the United Nations Convention against Corruption (UNCAC). The findings demonstrate that the current conviction-based asset forfeiture regime is inadequate to address situations in which perpetrators have fled, died, or



transferred assets to third parties. NCBAF, which operates through an *in rem* approach and focuses on the illicit origin of assets rather than the criminal liability of individuals, offers significant potential to accelerate asset recovery and close existing legal loopholes. The study concludes that comprehensive and clearly formulated regulations governing NCBAF are urgently required to strengthen Indonesia's anti-corruption framework, enhance the effectiveness of state loss recovery, and ensure legal certainty while upholding due process of law.

### **KEYWORDS**

Non-Conviction Based Asset Forfeiture, Corruption Crimes, Asset Forfeiture, State Loss Recovery, Indonesian Criminal Law

## **Introduction**

Corruption is the abuse of power or position for personal or group gain, resulting in financial loss to the state. Corruption in Indonesia remains a serious problem, causing huge financial losses to the state and having a systemic impact on the stability of the national economy. Corruption is a universal problem that is not only felt by developing countries but also by developed countries. In Indonesia itself, corruption has infected various sectors, both at the central and regional levels.<sup>1</sup> Corruption is an extraordinary crime because it has complex, organized characteristics and often involves the abuse of authority by public officials who are supposed to carry out their duties of serving and managing the interests of the state. Unlike conventional crimes, corruption is often carried out systematically, covertly, and across sectors, making it difficult to detect and causing multidimensional losses.

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<sup>1</sup> Suci Frisnoiry et al., "Analisis Komprehensif Insiden Korupsi Di Indonesia: Dampak Pada Sektor Pendidikan Dan Solusi Penanganannya," *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 4 (2024): 1904–20, <https://doi.org/10.47467/elmujtama.v4i4.2334>.

Indonesia's Corruption Perceptions Index (CPI) in 2024 scored 37 out of 100, reflecting that Indonesia still faces a relatively high level of corruption. The CPI is an index that measures the level of corruption in a country's public sector on a scale of 0-100, with 0 meaning that a country is highly corrupt and 100 meaning that a country is completely free of corruption. Throughout 2023, Indonesia Corruption Watch (ICW) showed that the financial losses to the state due to corrupt practices reached Rp56 trillion. Meanwhile, in 2024, the Attorney General's Office recorded that the total state losses due to corruption reached Rp310.61 trillion. Provisional data for 2025 up to June shows a major corruption case involving the Wilmar Group's CPO, which caused losses of Rp11.8 trillion, indicating an alarming trend of increasing state losses.

High levels of corruption generate substantial losses to state finances and produce far-reaching economic and social consequences for Indonesian society. Economically, corruption hinders national growth and development by diverting state resources from productive sectors to the interests of certain individuals or groups. Corruption increases transaction costs, reduces budget efficiency, and creates an unhealthy business climate due to bribery and collusion. In the long term, this condition can reduce national competitiveness, lower investor confidence, and increase the risk of social inequality and structural poverty. Corruption creates serious economic inefficiencies, weakens government structures, and widens social gaps that hinder sustainable national development and undermine public trust in state institutions as a whole.<sup>2</sup>

Corruption from a social perspective has a direct impact on the decline in the quality of public services, especially in strategic sectors such as education, health, infrastructure, and social protection. Budgets that should be used to improve the welfare of the community are instead misused,

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<sup>2</sup> Dian Aulia, Risa Amalia, and Tarisyia Arliani Munandar, "Dinamika Korupsi Dan Dampaknya Pada Pembangunan Nasional," *Aliansi : Jurnal Hukum, Pendidikan Dan Sosial Humaniora*, no. 3 (2024): 142–54, <https://journal.appihi.or.id/index.php/Aliansi/article/view/183/199>.

resulting in the basic rights of citizens not being optimally fulfilled. Corruption widens social inequality and creates a sense of injustice within society, which ultimately has the potential to undermine public trust in state institutions and law enforcement agencies. From a legal and political perspective, corruption can weaken the integrity of state institutions and undermine the principle of the rule of law (*rechtsstaat*).<sup>3</sup> Law enforcement that is ineffective or influenced by certain interests undermines the legitimacy and preventive power of efforts to eradicate corruption. Corruption cannot be viewed merely as a common violation of the law, but rather as a serious threat to national stability, social justice, and the sustainability of national development.

A major corruption case in Indonesia involving PT Timah, which caused state losses of up to Rp300 trillion, has disrupted natural resource management due to illegal mining activities and led to a loss of public trust in government institutions and companies.<sup>4</sup> Another case, such as corruption at PT Asuransi Jiwasraya, which caused losses of Rp13.7 trillion, has led to a crisis of public confidence in state-owned insurance companies and financial institutions and has created obstacles. Socially, corruption exacerbates injustice and inequality by reducing the quality of public services such as education and health, thereby hindering public access to basic needs.<sup>5</sup>

The eradication of corruption in the perspective of modern criminal law is not only oriented towards punishing perpetrators (retributive justice), but also emphasizes the recovery of state losses and public interests

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<sup>3</sup> Dewi Asri Puanandini, Vita Suci Maharani, and Putri Anasela, "Korupsi Sebagai Kejahatan Luar Biasa : Analisis Dampak Dan Upaya Penegakan Hukum," *Jurnal Sosial Politik, Pemerintahan Dan Hukum* 4, no. 1 (2025), <https://doi.org/10.59818/jps.v3i3.1173>.

<sup>4</sup> Melynda Dwi Puspita Puspita, "10 Kasus Korupsi Dengan Kerugian Negara Terbesar Di Indonesia, Terbaru Minyak Mentah," *Tempo.Co*, 2024, <https://www.tempo.co/ekonomi/10-kasus-korupsi-dengan-kerugian-negara-terbesar-di-indonesia-terbaru-minyak-mentah--1212298>.

<sup>5</sup> Susi Amalia, "Analisis Dampak Korupsi Pada Masyarakat ( Studi Kasus Korupsi Pembangunan Shelter Tsunami Di Kecamatan Labuan Kabupaten Pandeglang )," *Indonesian Journal of Social and Political Sciences* 3, no. 1 (2022).

(restorative justice).<sup>6</sup> This approach places the return of assets derived from criminal acts as the main objective of law enforcement, given the impact of corruption, which directly harms state finances and hinders the fulfillment of the socio-economic rights of the community. Therefore, the effectiveness of the asset forfeiture system is an important indicator in assessing the success of a country's anti-corruption policies.

Efforts to recover state financial losses resulting from corruption in Indonesia are currently being carried out through asset forfeiture, monetary penalties, company closures, and the revocation of certain rights to accelerate the recovery of state assets. The asset forfeiture mechanism is one of the main instruments for recovering these losses by confiscating, blocking, or auctioning off assets obtained through corruption and returning them to the state. Several major corruption cases in Indonesia have involved the asset forfeiture mechanism. For example, according to the BBC, the E-KTP Corruption Case (2011-2017) caused state losses of up to Rp2.3 trillion. In this case, the Corruption Eradication *Commission (Komisi Pemberantasan Korupsi, KPK)* acting through the State Asset Recovery Agency, confiscated land asset belonging to Andi Narogong and Irman, among others. The COVID-19 Social Assistance Corruption Case (2020-2021) caused state losses of Rp32 billion. In this case, asset confiscation included cash, luxury watches, and property, with approximately Rp20 billion recovered through seizure and voluntary returns. Furthermore, the Asabri fictitious investment corruption case (2020) caused state losses of Rp22.7 trillion. Asset forfeiture included yachts, luxury cars, and land owned by Heru Hidayat, with the value of seized assets reaching Rp3.5 trillion.

The recovery of state financial losses due to corruption in Indonesia faces significant obstacles in its implementation. The main obstacles include

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<sup>6</sup> Vayen Lanawaang, Diana Darmayant Putong, and Janeman Jehezkiel Lanawaang, "Batasan Pemidanaan Pelaku Tindak Pidana Korupsi Dalam Mengembalikan Kerugian Negara," *Jurnal Hukum Tora* 11, no. 1 (2025): 131-41, <https://doi.org/10.55809/tora.v11i1.442>.

slow legal processes, complex bureaucracy, and a lack of adequate regulations to accelerate the seizure of assets derived from corruption without having to wait for a final judgment. Another problem is that assets derived from corruption are often transferred to third parties, making them difficult to trace and resulting in a low number of assets being returned to the state. The large amount of losses that cannot be recovered is a legal issue that needs to be prioritized.

As a country that has ratified the United Nations Convention against Corruption (UNCAC), Indonesia still does not have specific regulations governing a more optimal asset forfeiture scheme that does not require waiting for a final judgment. The implementation of asset recovery principles as mandated by the convention still faces normative and institutional limitations. The Indonesian legal system currently still relies heavily on conviction-based asset forfeiture, which requires a final and binding judgment before assets can be permanently confiscated. This condition creates a legal loophole that is often exploited by perpetrators of corruption to transfer, hide, or launder assets derived from crime. This makes it difficult to achieve the goal of recovering state losses. The existing regulations are considered suboptimal and have actually led to an increase in the number of cases.

There is a need for specific regulations regarding the renewal of asset forfeiture mechanisms in line with UNCAC. The Asset Forfeiture Bill (Rancangan Undang-Undang Perampasan Aset) adopts the concept of Non-Conviction Based Asset Forfeiture (NCBAF), introduces a concept that allows for more optimal recovery of state assets without having to wait for a final judgment.<sup>7</sup> Internationally, the mechanism of asset forfeiture without a final judgment (NCBAF) has been recognized as a legitimate and effective legal instrument, especially in certain conditions such as when the perpetrator has fled, died, is unknown, or when criminal proceedings

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<sup>7</sup> Lisa Dwi Fitiyanti and Agus Suwandono, "Perampasan Aset Sebagai Sanksi Tambahan : Analisis Pengembalian Kerugian Negara Dalam Penanganan Tindak Pidana Korupsi Di Indonesia," *Jurnal Kajian Ilmu Hukum Dan Politik* 3, no. 3 (2025): 13–27.

cannot be continued due to certain legal obstacles. UNCAC explicitly encourages member states to adopt flexible and effective asset forfeiture mechanisms to prevent perpetrators from enjoying the proceeds of crime and to ensure that assets derived from corruption are returned to the victim state.

Several related studies have been conducted previously. These studies examined the need to reform asset forfeiture mechanisms as a follow-up to Indonesia's ratification of the UNCAC (Juliani & Lubis, 2023); examined the urgency of passing the Asset Forfeiture Bill with a Non-Conviction Based Asset Forfeiture mechanism (Sinta et al, 2025); examined the obligation of prosecutors to prove state losses (Abdullah, 2021); examined the limitations and obstacles to the confiscation of corruption assets in Indonesia (Fityanti & Suwandono, 2025); Similar research was also conducted by Hasanul Mulkan and Serlika Aprita, who examined the obstacles to the implementation of asset recovery in corruption cases (Mulkan & Aprita, 2023). None of these five studies discussed the urgency of Non-Conviction Based Asset Forfeiture in concrete conditions such as when the perpetrator has fled, died, or transferred assets to a third party, which will be discussed in this study.

Based on this background, this study aims to identify the weaknesses of the legal regulations on asset forfeiture in corruption cases in Indonesia and the urgency of regulating the NCBAF as an instrument for recovering state losses in corruption cases. The legal issues analyzed in this study are the legal regulations on asset forfeiture in corruption cases in Indonesia and the urgency of NCBAF regulations as an instrument for recovering state losses in corruption cases. Thus, this study is expected to make a significant contribution to the development of more effective legal policies in combating corruption through the recovery of state assets, to serve as strategic consideration for policymakers in formulating regulations that are more responsive and adaptive to the challenges of enforcing corruption laws in Indonesia, and to support the achievement of national targets in

improving the corruption perception index and strengthening good governance.

## Methods

This study uses normative legal research conducted through review and analysis of legislation, legal doctrine, and literature related to asset forfeiture regulations in the Indonesian legal system. Normative legal research was chosen because the focus of the study is directed at analyzing legal norms and legal concepts that regulate the mechanism of asset forfeiture without a final judgment as an instrument for recovering state financial losses resulting from criminal acts of corruption. The approaches used include a statute approach to examine the substance and background of the formation of asset forfeiture regulations, as well as a conceptual approach to examine the principles and legal concepts relevant to the application of NCBAF.

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include laws and regulations related to the eradication of corruption, Law Number 1 of 2023 concerning the Criminal Code, and Law Number 20 of 2025 concerning the Criminal Procedure Code. The secondary legal materials consist of scientific journals discussing asset forfeiture and the application of the NCBAF. All legal materials were analyzed qualitatively using descriptive-analytical methods to draw normative conclusions in accordance with the issues under study.

## Result and Discussion

### 1. Legal Provisions on Asset Forfeiture for Corruption Crimes in Indonesia

Asset forfeiture is intended to eliminate the profits gained from criminal acts (crime does not pay) so that perpetrators cannot enjoy the fruits of their crimes. This approach places assets as the main object of law enforcement rather than solely the perpetrators. The orientation of law enforcement has shifted from individual punishment to the restoration of public interests.<sup>8</sup> In international practice, asset forfeiture is seen as an integral part of asset recovery policy, which aims to recover state losses and prevent similar crimes in the future. This instrument is widely used in handling complex and organized crimes such as corruption, money laundering, and other economic crimes. Confiscating criminal assets means that the state not only enforces justice but also returns resources that should be used for the benefit of the wider community.

Asset forfeiture in the Indonesian legal system is the confiscation of goods used or obtained from criminal acts of corruption, as stipulated in Article 18 of Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001. The purpose of asset forfeiture is to break the chain of profits obtained from crime and to optimize the recovery of state losses due to corruption. The objectives of asset forfeiture in the Indonesian legal system include efforts to strengthen the eradication of corruption by granting authority to law enforcement agencies such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Police to investigate, seize, and confiscate assets suspected of being the proceeds of crime. Asset forfeiture also serves as an instrument of

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<sup>8</sup> Sayib Fauzi Adiansyah et al., "Efektivitas Undang-Undang Perampasan Aset Pada Pelaku Tindak Pidana Pencucian Uang Berdasarkan Hukum Pidana," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*, 6 (2024): 1432-47, <https://doi.org/10.47476/assyari.v6i2.6508>.

national economic recovery by transparently and accountably restoring losses resulting from criminal acts of corruption.<sup>9</sup>

Asset forfeiture as an instrument for combating corruption to directly seize illegally obtained assets. This is an effort to combat corruption so that it does not only stop at imposing criminal sanctions but also includes aspects of recovering state losses and managing the seized assets. This approach is based on the principle that crime should not provide economic benefits to the perpetrators (crime does not pay). By confiscating illegally obtained assets, the state not only provides a deterrent effect but also removes the economic motivation that is the main driver of corruption. This makes asset forfeiture a crucial strategy in reducing systemic and recurring corruption, as well as a key weapon in strengthening clean governance and increasing public confidence in the Indonesian legal system.

Asset forfeiture in Indonesia is primarily regulated in several laws, including the Corruption Eradication Law. Article 18(a) of the Corruption Eradication Law regulates the forfeiture of movable and immovable property derived from criminal acts of corruption, including proceeds and substitutes. In addition, Article 79 paragraph 4 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes also regulates the mechanism for the seizure and confiscation of assets resulting from crimes related to money laundering. It explicitly allows confiscation without having to wait for a final judgment against the defendant who has died and there is strong evidence that the defendant committed a money laundering crime, known as the NCBAF approach. The Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana, KUHP*) through Article 66 point (b) also regulates additional penalties in the form of confiscation of certain items used or obtained from criminal acts. In procedural terms, Articles 119-135 of the Indonesian Criminal Procedure

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<sup>9</sup> Agus Pranoto, Abadi B Darmo, and Iman Hidayat, "Kajian Yuridis Mengenai Perampasan Aset Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Menurut Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum X* (2018): 91–121.

Code (*Kitab Undang-Undang Hukum Acara Pidana, KUHP*) regulate the procedures for seizure and return of seized items. However, the Criminal Procedure Code does not yet regulate asset confiscation, especially without a final judgment. To date, this regulation is still not in line with asset recovery in accordance with Chapter V of the 2003 UNCAC standards.<sup>10</sup>

Asset forfeiture in Indonesia is further supported by implementing regulations, particularly Supreme Court Regulation No. 1 of 2013 (*Peraturan Mahkamah Agung Nomor 1 Tahun 2013*) concerning Procedures for Settlement of Applications for the Handling of Assets in Money Laundering and Other Criminal Offences. The confiscation of assets in corruption crimes in Indonesia has been procedurally regulated in PERMA No. 1 of 2013, specifically through Article 10 paragraph (1), which grants judges the authority to designate assets as state property. The confiscation mechanism is carried out through a request from the investigator, public announcement, judicial review, and a final decision *in rem*, even if the perpetrator of the crime is not found. However, this mechanism is still limited and does not fully reflect the NCBAF regime as referred to in Article 54 paragraph (1) point (c) of the UNCAC. Despite these limitations, PERMA No. 1 of 2013 is an implementative instrument of the NCBAF concept in Indonesia. This Perma expands the scope of corruption eradication by focusing on the recovery of criminal assets, not merely on the punishment of perpetrators. This principle is also in line with the UNCAC international standards that encourage member states to adopt the NCBAF mechanism to accelerate the return of cross-border corruption assets.

Coordination between law enforcement agencies is important to optimize the management of confiscated assets. To date, confiscated state assets have been managed by several ministries/agencies such as the Directorate General of State Assets of the Ministry of Finance, the Asset

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<sup>10</sup> Wahyu Sinta et al., "Pemulihan Aset Tindak Pidana Korupsi Melalui Non-Conviction Based Asset Forfeiture," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 2 (2025).

Recovery Center of the Attorney General's Office, and the State Seized Property Storage Facility of the Ministry of Law and Human Rights. Supervision of asset confiscation is carried out through internal mechanisms within law enforcement agencies, as well as external supervision by state supervisory agencies such as the Judicial Commission and the House of Representatives.<sup>11</sup>

The seizure of assets in the handling of corruption crimes in Indonesia involves the central role of law enforcement agencies such as the Attorney General's Office, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi, KPK*), and the Indonesian National Police, as well as the courts, each of which has specific authority to ensure that the process of investigation, seizure, management, and return of assets resulting from corruption is carried out effectively. The Attorney General's Office is authorized to seize, manage, and prosecute these assets after a final judgment as stipulated in Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia (*Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia*). Meanwhile the KPK plays a role in the investigation, seizure, and confiscation of corruption assets during the investigation, prosecution, trial process based on the provisions of Law No. 19 of 2019 concerning the Corruption Eradication Commission (*Undang-Undang Nomor 19 Tahun 2019 tentang Komisi Pemberantasan Korupsi*). Investigators have the authority to seize assets suspected of being the proceeds of corruption with the permission of the court as stipulated in Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (*Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*). These three institutions work together synergistically in all stages of the asset confiscation process to ensure that the proceeds of

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<sup>11</sup> Andhie Fajar Arianto, "Peran Lembaga Penegak Hukum Dalam Proses Perampasan Aset," *Jurnal USM LawReview* 7, no. 3 (2024): 1601–15, <https://journals.usm.ac.id/index.php/julr/article/view/10516/4668>.

crime can be immediately secured, prevented from being transferred, and returned to the state treasury in order to optimally recover public losses.<sup>12</sup>

The asset forfeiture process begins with an investigation by the KPK, the Attorney General's Office, and the police to gather evidence linking the assets to criminal acts. The assets are then confiscated by investigators or public prosecutors as an initial effort to secure assets suspected of being the proceeds of crime in order to prevent them from being transferred to other parties. After that, the case file is submitted by the public prosecutor who brings the case to the Corruption Court. The court's decision will determine whether the assets are the proceeds of crime and can be confiscated, after which the Attorney General's Office will execute the decision, including selling the confiscated assets and depositing the proceeds into the state treasury.

Conviction-Based Asset Forfeiture refers to the seizure and confiscation of assets after a court ruling finds a person guilty of a criminal offense. The confiscated assets belong to the perpetrator of the crime as the proceeds or instruments of the crime. This process is *in personam*, requiring a conviction before the assets can be confiscated.<sup>13</sup> Confiscation using this mechanism tends to be less than optimal because it takes a long time, allowing perpetrators to transfer assets obtained from their crimes. Meanwhile, Non-Conviction-Based Asset Forfeiture (NCBAF) is a mechanism for directly confiscating assets without having to prove guilt or convict the owner of the assets first. This type is usually applied when it is difficult to apprehend the perpetrator but the assets are strongly suspected of being obtained from criminal acts. Confiscation is carried out *in rem*, meaning that legal action is directed at the assets rather than the person.

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<sup>12</sup> Zilmi Haridhi, "RUU Perampasan Aset: Revolusi Penegakan Hukum Melalui Pemulihan Aset Yang Disalahgunakan," *antikorupsi.org*, 2023, <https://antikorupsi.org/id/ruu-perampasan-aset-revolusi-penegakan-hukum-melalui-pemulihan-aset-yang-disalahgunakan>.

<sup>13</sup> Halif, "Model Perampasan Aset Terhadap Harta Kekayaan Hasil Tindak Pidana Pencucian Uang," *Jurnal Rechtens* 5, no. 8 (2016): 1–14.

This system is expected to accelerate asset recovery and reduce corruption practices.<sup>14</sup> Criminal conviction-based confiscation requires a court process that first determines the perpetrator's guilt, making it more formal and based on the principle of legality. Meanwhile, confiscation without a criminal conviction focuses on evidence linking the assets to criminal acts independently of the perpetrator's punishment, making it faster and more effective in handling criminal assets.

The NCBAF mechanism is a means of asset forfeiture without a criminal conviction of the perpetrator. This mechanism places assets as the main object of law enforcement. In Indonesia, this concept is being reviewed and proposed in the Asset Forfeiture Bill. The Asset Forfeiture Bill is part of national legal reform efforts to align with the international principles of UNCAC. This mechanism allows for a reverse burden of proof on asset owners to prove the legality of their assets from the investigation stage, so that the state does not rely solely on criminal convictions against individuals. With this approach, the state does not rely entirely on the success of criminal prosecutions against individuals, which in practice often face obstacles such as the escape of perpetrators, the death of suspects or defendants, and the complexity of proving criminal acts. The main focus of the NCBAF is on the relationship between assets and alleged proceeds of crime, rather than on the personal guilt of the perpetrator. This allows the state to act more quickly in securing and recovering assets suspected of being derived from criminal acts of corruption. The threat of asset forfeiture without having to wait for a final judgment is expected to narrow the scope for perpetrators of corruption to hide or transfer the proceeds of crime.

The NCBAF is a major step toward strengthening asset forfeiture mechanisms in Indonesia, particularly in dealing with the complexity of corruption and other economic crimes. The Asset Forfeiture Bill is designed to serve as a comprehensive and integrated legal basis for asset forfeiture,

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<sup>14</sup> Irwan Hafid, "Perampasan Aset Tanpa Pidana Dalam Perspektif Economic Analysis Of Law," *Lex Renaissance* 6, no. 1 (2021): 465–80.

providing a clear definition of asset forfeiture and specifying the types of crimes and assets that can be confiscated. This bill also regulates in detail the procedures for blocking, seizing, and confiscating assets to ensure legal certainty and prevent abuse of authority by law enforcement officials.<sup>15</sup> Clear procedural regulations are important to ensure that the implementation of asset forfeiture remains within the corridor of the rule of law and public accountability. This bill also promotes a reverse burden of proof mechanism whereby asset owners must prove that their assets are not the proceeds of crime. This approach reflects a paradigm shift in asset-oriented law enforcement, so that the state is not entirely burdened with the complex obligation of proving the origin of wealth that has been disguised or transferred. Thus, the verification process can be more effective and efficient. Asset recovery can be carried out without having to wait for a final judgment, thereby accelerating the recovery of state losses and closing the space for perpetrators of corruption and other crimes to enjoy the proceeds of their crimes.<sup>16</sup>

Asset forfeiture is a crucial instrument in combating corruption that can accelerate the recovery of state financial losses. With better regulation and strengthened capacity of law enforcement agencies, asset forfeiture is not only a threat to perpetrators of corruption but also a strategic tool in breaking the chain of crime. Protection of human rights and legal certainty must be maintained so that its implementation is effective and fair, thereby increasing public trust in the legal system.<sup>17</sup> Policy development must focus on finalizing regulations that integrate asset forfeiture under a clear legal

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<sup>15</sup> Farida Wulandari, Soerya Respationo, and Erniyanti Erniyanti, "Juridical Analysis Of The Mechanism Of Non-Conviction Based Asset Forfeiture In The Settlement Of Corruption Crimes," *International Journal of Social Science and Humanity* 1, no. 3 (2024): 28–40.

<sup>16</sup> Zulkarnain Pantoli, "Rancangan Undang-Undang Perampasan Aset (Strategi Baru Melawan Korupsi Dengan Pendekatan In REM)," *Journal of Human And Education* 4, no. 6 (2024): 1124–32.

<sup>17</sup> Muhammad Reza, "Urgensi Pengesahan Rancangan Undang-Undang Perampasan Aset Dalam Rangka Mengembalikan Kerugian Negara," *Jurnal Kertha Semaya*, 13, no. 3 (2025): 372–86.

umbrella by adopting NCBAF mechanisms, such as the Asset Forfeiture Bill currently under discussion.

## **2. The Urgency of Non-Conviction Based Asset Forfeiture Regulations as an Instrument for Recovering State Losses in Corruption Cases**

The recovery of state losses is an essential part of handling corruption cases, given that corruption directly harms state finances and hinders the fulfillment of public interests. Legally, every official or party proven to have committed a criminal act of corruption and caused state losses is obliged to compensate for those losses as a form of legal accountability. This obligation reflects the purpose of punishment in corruption cases, which is not only oriented towards punishing the perpetrators, but also towards recovering state losses as the main victim of the crime. In law enforcement practice, the recovery of state losses often faces various obstacles. This situation demonstrates the need for effective legal instruments to ensure the successful recovery of state assets as the main objective of eradicating corruption.<sup>18</sup>

NCBAF is a concept of asset confiscation that does not require a criminal conviction against the owner of the assets. This concept was introduced in the UNCAC and is expected to be an effective solution in overcoming obstacles to asset recovery when perpetrators are difficult to prosecute or assets are beyond the reach of the law. Basically, asset confiscation is carried out against the assets themselves (*in rem*), focusing on the origin of the assets from criminal acts, not on the fault of the owner. This concept provides an important alternative in combating corruption and

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<sup>18</sup> Rahmat Tul Qodri, Bagio Kadaryanto, and Yelia Nathassa Winstar, "Inkonsistensi Hukum Pengaturan Pengembalian Uang Hasil Korupsi Dari Perspektif Kepastian Hukum," *Collegium Studiosum Journal* 8, no. 1 (2025): 66–82.

recovering state losses in Indonesia, which still relies on conventional mechanisms.

The main characteristic of NCBAF is its focus on the origin of assets suspected of being the proceeds of crime or used as a means of committing a crime without the need to prove the criminal guilt of the asset owner. This approach places assets at the center of the law enforcement process, enabling the state to act more proactively in securing and seizing assets that could potentially harm the public interest. This distinguishes NCBAF from conviction-based asset forfeiture, which can only be carried out after the defendant has been found guilty through a criminal trial. NCBAF serves as a complementary mechanism that allows the asset forfeiture process to continue even if criminal proceedings cannot be pursued or have not yet reached a final verdict.

The legal basis for NCBAF is grounded in UNCAC, which Indonesia ratified through Law No. 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption (*Undang-Undang Nomor 7 Tahun 2006 tentang Pengesahan United Nations Convention against Corruption*). Under Article 2 paragraph (1) point (b) of the 1969 Vienna Convention on the Law of Treaties, is a statement of consent by a state to be bound by an international agreement.<sup>19</sup> The legal consequence of ratification is the obligation for the state party to adopt and implement the provisions of the convention into the national legal system.<sup>20</sup> In the context of UNCAC, this obligation includes the regulation and application of NCBAF as an asset recovery instrument. Therefore, failure to implement NCBAF has the potential to conflict with Indonesia's international commitments after ratification.

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<sup>19</sup> Juladies H. S. Watupongoh, "Tinjauan Yuridis Atas Persetujuan Pada Perjanjian Internasional Melalui Ratifikasi," *Lex et Societatis* IV, no. 2 (2016): 125–31, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/11432>.

<sup>20</sup> Fera Wulandari Fajrin, Kandi Kirana Larasati, and Fitriani Jamaluddin, "Inkonsistensi Politik Hukum Dalam Ratifikasi Perjanjian Internasional Di Indonesia," *Risalah Hukum* 21 (2025): 62–77, <https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/1819>.

The implementation of asset forfeiture faces various obstacles, both legal, administrative, and technical. Legally, there are still difficulties because asset forfeiture is an additional criminal offense, which means that it must await a final judgment. This results in the state's losses not being fully recovered because the main focus is still on criminal punishment rather than on the assets that must be returned to the state. An example of a legal obstacle is the e-KTP case. In this case, the state suffered losses of Rp2.3 trillion, but the assets that could be confiscated were not proportional to the total state losses. This was because the assets had already been transferred to third parties, making them difficult to trace. Another example is the case of alleged corruption in a development project in Seruyan Regency, Central Kalimantan, where the perpetrator died. In this case, the investigation was stopped because Darwan Ali died before the case reached court. Another case is the corruption of Bank Bapindo, which caused the state to suffer losses of Rp1.3 trillion. The perpetrator, Eddy Tansil, fled abroad, making it impossible to carry out criminal enforcement and difficult to trace the assets resulting from the corruption.

On the administrative side, there are obstacles to inter-agency coordination. An example of this is the Jiwasraya case. In this case, assets were scattered across various regions and it took a long time for agencies to coordinate the tracing, seizure, and valuation of assets. In addition, unprofessional asset management due to budget and human resource constraints resulted in the loss of asset value, poorly maintained assets, and difficulties in auctioning them off. This was the case in several instances of corruption in regional infrastructure projects, where seized buildings were damaged before the verdict was handed down.

Technical obstacles include cases where criminal assets have been transferred to a bona fide third party who acquired the assets legally and was unaware of their illegal origin. As in the case of corruption in the Hambalang land procurement, the transfer of assets prevented the court from seizing the assets in the name of the third party. The obligation to

prove that the assets in question are the proceeds of crime is not always easy, especially if the third party, who is not involved in the crime, has a legal interest in the assets. The protection of the rights of the defendant and the third party is an important issue, so that the confiscation process does not harm innocent parties.

These cases indicate various weaknesses in asset forfeiture regulations, such as when perpetrators flee, die, or assets are transferred to third parties. This has resulted in a large number of assets derived from corruption that cannot be effectively secured due to slow and complicated legal processes, ineffective laws, and an unintegrated management system, meaning that confiscated assets often cannot be optimally utilized to recover state losses.

The urgency of establishing the NCBAF in the context of corruption in Indonesia is crucial, given that conventional conviction-based mechanisms face various limitations in the process of recovering state assets obtained from criminal acts of corruption. A criminal justice system that requires a final and binding judgment as the basis for asset forfeiture causes the law enforcement process in corruption cases to be lengthy and multi-layered. This process includes stages of investigation, prosecution, trial at the first level, appeal and cassation, until a final and binding decision is reached. The length of this judicial process opens up significant opportunities for perpetrators of corruption to transfer, disguise, or erase traces of assets obtained from criminal acts before a verdict is handed down by the court. The practice of transferring assets through third parties, using accounts in other people's names, and utilizing certain financial instruments are strategies that are often used to avoid asset forfeiture by the state. The length of the criminal judicial process also often causes the value of assets derived from corruption to depreciate or even disappear before they can be confiscated and returned to the state.<sup>21</sup>

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<sup>21</sup> Tantimin Tantimin, "Penyitaan Hasil Korupsi Melalui Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara," *Jurnal Pembangunan Hukum*

The government is currently developing more comprehensive regulations through the Asset Forfeiture Bill, which is intended to strengthen mechanisms for recovering assets derived from criminal acts. The Asset Forfeiture Bill is positioned as a strategic legal instrument to close the gap in asset recovery, which has so far depended on the successful prosecution of perpetrators.<sup>22</sup> The presence of this bill is also a form of implementation of Indonesia's obligation as a party to UNCAC in optimizing the return of assets derived from crime.

The Asset Forfeiture Bill adopts a mechanism for asset forfeiture without waiting for a final judgment (NCBAF) by placing assets as its main focus. Article 2 of this bill emphasizes that asset forfeiture does not depend on the imposition of criminal penalties on the perpetrator. Meanwhile, Article 7 provides the basis for the application of seizure in conditions where the perpetrator cannot be prosecuted or criminal proceedings are not possible. The confiscation process is carried out through the stages of tracing, blocking, and seizing assets as stipulated in Articles 8 to 15 with the aim of securing assets so that they are not transferred or hidden. The confiscation request is submitted by the State Attorney to the court in accordance with Article 24 to examine the connection between the assets and the criminal act. If proven, the court will order the assets to be confiscated for the state as stipulated in Article 43.

The NCBAF mechanism is a much-needed alternative because it allows for the seizure of assets without waiting for a final judgment. The focus of the evidence is on the existence of assets suspected of being the proceeds of crime, rather than on proving the guilt of the perpetrator. This is expected

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*Indonesia* 5, no. 7 (2023),  
<https://ejournal2.undip.ac.id/index.php/jphi/article/view/16083>.

<sup>22</sup> Hanifah Dwi Jayanti, "PPATK: RUU Perampasan Aset Penting Untuk Atasi Kelemahan Regulasi Penelusuran Aset Hasil Kejahatan," *hukumonline.com*, 2025, <https://www.hukumonline.com/berita/a/ppatk--ruu-perampasan-aset-penting-untuk-atasi-kelemahan-regulasi-penelusuran-aset-hasil-kejahatan-lt684ad4adae8a1/>.

to overcome legal deadlocks and accelerate the recovery of state losses.<sup>23</sup> The NCBAF mechanism is crucial to implement, given that the impact of delays in asset recovery due to conventional processes not only causes increasing material losses to the state but also undermines public confidence in the judicial system and anti-corruption efforts in general. The state's inability to quickly recover corrupted assets fuels the perception that corruption is difficult to eradicate and that perpetrators can escape punishment by hiding their assets. These implications are highly detrimental to the legitimacy of law enforcement agencies and the government in the eyes of the public.<sup>24</sup>

The role of NCBAF in accelerating the recovery of state losses is instrumental because this mechanism allows the state to immediately secure assets suspected of being the proceeds of corruption. Thus, NCBAF can close the loopholes that have been used by perpetrators of corruption to transfer assets, in addition to reducing the burden of proof that has been an obstacle in the conventional system. The *in rem* principle used affirms that assets obtained illegally do not become the property of the perpetrator, so that these assets can be immediately secured for the benefit of the state. The implementation of the NCBAF, accompanied by clear legal regulations, adequate institutions, and structured procedures, will strengthen efforts to recover state losses and enforce the law more effectively and efficiently.

Regulations are needed that comprehensively accommodate the principles of NCBAF without disregarding existing legal guarantees, particularly the protection of human rights and the principle of due process of law. This principle is to ensure that asset forfeiture mechanisms do not violate the principle of presumption of innocence. The NCBAF mechanism

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<sup>23</sup> Riskyanti Juniver Siburian and Denny Wijaya, "Korupsi Dan Birokrasi : Non-Conviction Based Asset Forfeiture Sebagai Upaya Penanggulangan Yang Lebih Berdayaguna," *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 1 (2022): 1–16, <https://doi.org/10.18196/jphk.v3i1.12233>.

<sup>24</sup> Firmansyah et al., "Confiscating Corruption Assets without Verdict: Mashlahah-Based Strategy to Restore State Finances.," *Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025): 662–80, <https://petita.ar-raniry.ac.id/index.php/petita/article/view/947>.

as outlined in the Asset Forfeiture Bill offers hope for ensuring legal protection of the rights of the state and society over illegally obtained assets.<sup>25</sup> However, to date, the bill has not been passed, creating a legal vacuum that hinders asset recovery and opens the door for perpetrators of corruption to avoid their obligation to return state losses.

The implementation of the NCBAF mechanism can be observed in several jurisdictions, including the United States. The United States is one of the pioneering countries in the development and implementation of NCBAF, known as civil asset forfeiture, which is a mechanism for seizing assets through civil lawsuits against property (*in rem*) without requiring a criminal conviction against the owner. The principal legal basis for this mechanism is found in the Civil Asset Forfeiture Reform Act 2000 (CAFRA). The confiscation procedure is regulated in 18 United States Code (U.S.C.) § 983 with a *preponderance of the evidence* standard of proof.<sup>26</sup> This " " standard indicates that confiscation does not depend on the criminal conviction of the perpetrator, as confirmed in § 983(c). The protection of the rights of asset owners is guaranteed through the *innocent owner defense* and the right to legal assistance as stipulated in § 983(d) and § 983(b). The application of the NCBAF is possible even if the perpetrator has not been charged, has fled, or the criminal proceedings are ineffective, while still upholding the principle of due process through the asset owner's right to file claims and objections in federal court.

In the United States, NCBAF is procedurally implemented by the Department of Justice (DOJ) through preliminary investigations and seizures by federal law enforcement agencies including the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI),

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<sup>25</sup> Muhammad Nurul Huda et al., "Non-Conviction-Based Asset Forfeiture: Presumption of Innocence and Principle of Legality Perspective.," *Walisongo Law Review (Walrev)* 7, no. 1 (2025): 98–111, <https://doi.org/10.21580/walrev.2024.6.2.28205>.

<sup>26</sup> Ahmad Sofian, Bambang Pratama, and Hanifah Azizah, "Mechanism For Asset Forfeiture In The Money Laundering Criminal Law And Asset Forfeiture Bill (Law Comparison With The United States)," *Journal of Law and Sustainable Development.*, 2023, 1–33, <https://ojs.journalsdg.org/jlss/article/view/1712/1013>.

and Internal Revenue Service (IRS). Supported by a special funding mechanism called the Asset Forfeiture Fund, this is followed by the filing of a civil lawsuit in court to prove the connection between the assets and the crime based on the *preponderance of the evidence* standard of proof. If the connection is proven, the court orders the forfeiture of the assets to the state, while the management and utilization of the assets are carried out centrally through the Asset Forfeiture Program under the Department of Justice, with institutional support from the United States Marshals Service and special funding mechanisms through the Asset Forfeiture Fund. This model demonstrates that effective asset recovery can be achieved without sacrificing property rights protection, as long as it is regulated through clear procedures, adequate oversight, and a balance between the interests of the state and individual rights.<sup>27</sup>

Thailand is also one of the countries in Southeast Asia that explicitly adopted the NCBAF mechanism through the Anti-Money Laundering Act B.E. 2542 (1999), as subsequently strengthened by Amendment Act No. 4 B.E. 2556 (2013). Sections 48–50 of the Act confer authority upon the Anti-Money Laundering Office (AMLO) the authority to freeze, seize, and confiscate assets through civil proceedings (*in rem*) without waiting for a final judgment. The management of confiscated assets is further regulated under Sections 51–53. Moreover, Amendment B.E. 2556 (2013) expands the scope of predicate crimes by amending Section 3 paragraph (5). The amendment includes corruption as a predicate crime for money laundering, thereby strengthening the basis for the application of the NCBAF within the framework of asset recovery regulations.

This legal framework gives the state the authority to seize assets suspected of being derived from money laundering and other predicate offenses, including corruption and financial crimes, without requiring a

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<sup>27</sup> H A Lawali Hasibuan, “Non Conviction Base ( NCB ) Asset Forfeiture Regarding the Recovery of Assets from the Proceeds of Corruption Crimes” 3 (2025): 17–26, <https://doi.org/10.59525/rechtsvinding.v3i1.661>.

criminal conviction of the perpetrator. The model adopted is *in rem* and is implemented through a civil administrative approach, allowing for faster and more effective asset recovery while separating the confiscation process from the criminal justice system.<sup>28</sup>

The implementation of NCBAF in Thailand is centrally managed by the Anti-Money Laundering Office (AMLO), which has the authority to identify, track, freeze, and seize assets, as well as file confiscation requests with civil courts. This process is accompanied by due process guarantees through the right of objection for asset owners and judicial oversight of confiscation actions through the courts. The strength of Thailand's system lies in its integrated, technology-based asset management through the Asset Management and Control Tracking System (AMCATS), which ensures transparency and accountability in the management of confiscated assets. Thailand's experience shows that the implementation of NCBAF can be effective and does not conflict with human rights principles when supported by strong institutional design, clear legal procedures, and political commitment to the integrity of the financial system.<sup>29</sup>

A comparison of the implementation of NCBAF in the United States and Thailand shows that the effectiveness of asset forfeiture is not solely determined by the existence of specific regulations on NCBAF, but these regulations serve as initial guidelines for implementation. Therefore, in order for asset forfeiture to be effective, the first and most fundamental step that must be taken is to immediately enact specific regulations that comprehensively regulate NCBAF. The formation of the Asset Forfeiture Bill

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<sup>28</sup> Siti Nurhalimah, "Non-Conviction Based Asset Forfeiture Sebagai Solusi Kredit Bermasalah Akibat Tindak Pidana Perbankan : Studi Perbandingan Indonesia , Amerika Serikat, Dan Thailand," *Bayani : Jurnal Studi Islam*, 2025, 57–74.

<sup>29</sup> Tasya Anisa and Febby Mutiara Nelson, "Asset Forfeiture through Non-Conviction Based Asset Forfeiture and Management of Criminal Proceeds Assets: A Comparative Study with the United States and Thailand.," *Pena Justisia* 23, no. 2 (2024), <https://jurnal.unikal.ac.id/index.php/hk/article/view/4183/pdf> 28.

in Indonesia needs to be immediately passed in order to synchronize with the UNCAC international standards.<sup>30</sup>

The urgency of establishing NCBAF in Indonesia is growing, given the limitations of criminal-based confiscation mechanisms in reaching assets derived from corruption, especially in cases where the perpetrator has died, fled, or transferred assets to third parties. The NCBAF offers a legal construct oriented towards the recovery of state assets by allowing confiscation to be carried out without waiting for a final judgment, thereby reducing the risk of asset loss and increasing the effectiveness of state loss recovery. In addition to functioning as a law enforcement instrument, the NCBAF also has a preventive dimension as it narrows the space for perpetrators of corruption to hide the proceeds of crime. Thus, the ratification and implementation of the NCBAF is a strategic instrument in strengthening the anti-corruption legal system and reinforcing the state's authority in protecting state finances and the public interest.

## Conclusion

The legal framework for asset forfeiture in corruption cases in Indonesia has basically been accommodated through various laws and regulations, particularly the Anti-Corruption Law. However, the asset forfeiture mechanism is still treated as an additional penalty, the implementation of which depends on a final and binding judgment. This dependence has implications for the slow process of asset forfeiture and opens up opportunities for perpetrators of corruption to escape or transfer the proceeds of crime to third parties, thereby hindering the recovery of state financial losses.

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<sup>30</sup> Fathin Abdullah, Triono Eddy, and Marlina, "Perampasan Aset Hasil Tindak Pidana Korupsi Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) Berdasarkan Hukum Indonesia Dan United Nations Convention Against Corruption (UNCAC) 2003," *Jurnal Ilmiah "Advokasi"* 09, no. 01 (2021).

The establishment of the NCBAF is a legal necessity as an alternative instrument for recovering state losses. The NCBAF allows for the seizure and confiscation of assets without the need for a criminal conviction, thereby making it more effective in preventing the loss of assets due to their transfer or concealment by perpetrators of corruption. This necessity is further reinforced by Indonesia's commitment as a party to the UNCAC, which places asset recovery as a fundamental principle. Thus, the drafting and enactment of the Asset Confiscation Bill, which regulates the NCBAF in a clear and decisive manner and guarantees the principle of due process of law, is a strategic step to strengthen the eradication of corruption, accelerate the recovery of state financial losses, and increase public confidence in the law enforcement system in Indonesia.

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