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EFFORTS TO RECOVER ASSETS FROM CORRUPTION CRIMES THRU OPTIMIZATION OF LEGISLATION IN INDONESIA AND A REVIEW OF THE DRAFT LAW ON ASSET FORFEITURE

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Abstract

Corruption, as an organized and transnational crime, demands a more effective asset recovery mechanism than the conventional criminal approach currently applied in Indonesia. The limitations of criminal law instruments in tracing, confiscating, and repatriating assets that have been transferred, concealed, or placed outside national jurisdiction form the central background for the urgency of the Asset Forfeiture Bill. This study aims to analyze the concept of asset forfeiture for corruption cases through the non-conviction based forfeiture mechanism and assess the alignment of the Asset Forfeiture Bill with international standards, particularly the UNCAC. The research employs a normative legal method through an examination of legislation, academic literature, international documents, and comparative best practices. The findings indicate that the Bill introduces a new enforcement paradigm through in rem procedures, an integrated asset-tracing system, civil judicial control, and transparent asset management. The discussion reveals that although the Bill has significant potential to enhance state asset recovery, its implementation requires strengthened evidentiary standards, protection of property rights, and improved inter-agency coordination. The study concludes that the Asset Forfeiture Bill represents a strategic instrument for improving the effectiveness of anti-corruption efforts, yet its success depends on procedural safeguards, transparency in asset administration, and the institutional capacity of law enforcement bodies.

Keywords : Asset Forfeiture, Corruption, Non-Conviction Based Forfeiture, UNCAC, Asset Recovery.

Abstrak

Korupsi sebagai kejahatan terorganisasi dan transnasional menuntut mekanisme pemulihan aset yang lebih efektif dibanding pendekatan pemidanaan konvensional yang selama ini diterapkan di Indonesia. Keterbatasan instrumen hukum pidana dalam mengejar aset yang dialihkan, disembunyikan, atau berada di luar yurisdiksi menjadi latar belakang utama urgensi pembentukan RUU Perampasan Aset. Penelitian ini bertujuan untuk menganalisis konsep perampasan aset hasil tindak pidana korupsi melalui mekanisme non-conviction based forfeiture serta menilai keselarasan RUU Perampasan Aset dengan standar internasional, khususnya UNCAC. Metode penelitian yang digunakan adalah studi normatif melalui analisis peraturan perundang-undangan, literatur akademik, dokumen internasional, dan

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komparasi terhadap praktik best practice global. Hasil penelitian menunjukkan bahwa RUU Perampasan Aset menawarkan paradigma penegakan hukum baru melalui mekanisme in rem, sistem penelusuran aset terintegrasi, kontrol peradilan perdata, dan tata kelola aset yang transparan. Pembahasan mengungkap bahwa meskipun RUU ini berpotensi memperkuat pemulihan kerugian negara, implementasinya membutuhkan penguatan standar pembuktian, perlindungan hak atas properti, serta koordinasi lintas lembaga. Kesimpulan penelitian menegaskan bahwa RUU Perampasan Aset merupakan instrumen strategis untuk meningkatkan efektivitas pemberantasan korupsi, namun keberhasilannya sangat bergantung pada jaminan prosedural, transparansi pengelolaan aset, dan kapasitas kelembagaan penegak hukum.

Kata Kunci : Perampasan Aset, Korupsi, Non-Conviction Based Forfeiture, UNCAC, Pemulihan Aset.

1. INTRODUCTION

Corruption is a legal and social phenomenon that has a destructive impact on state administration and public welfare. Various Indonesian legal experts emphasize that corruption is not merely an administrative violation but a deliberate act that fundamentally damages the constitutional order of a lawful state. Hamzah explains that corruption is an unlawful act committed to enrich oneself, others, or a corporation, including the abuse of authority in public office. Harahap describes corruption as an extraordinary crime capable of weakening the foundations of democracy and the rule of law. Artidjo Alkostar even stresses that corruption is a crime against humanity with multilayered effects that undermine the fundamental rights of the people. These perspectives show that corruption is a multidimensional threat requiring effective legal instruments, including regulations concerning the confiscation of assets derived from criminal acts.

The effort to establish regulations concerning asset forfeiture has been ongoing since 2008 when PPATK initiated a regulatory needs assessment. The drafting process continued until 2010 when the draft bill was finalized at the inter-ministerial level. In 2012, the Asset Forfeiture Bill was formally submitted to the House of Representatives (DPR), accompanied by the preparation of its academic manuscript by the National Law Development Agency. Discussions continued dynamically during the 2014–2019 period when the bill repeatedly entered the National Legislation Program (Prolegnas). However, during 2020–2022, the bill was temporarily removed from the priority list before the Government resubmitted the Presidential Mandate (Surpres) to the DPR in May 2023. As of 2025, the Asset Forfeiture Bill has again been included in the Prolegnas Priority List, although its deliberations remain postponed. This condition indicates the need for consistent political will and strong institutional commitment to finalize this strategic regulation.

The urgency of the Asset Forfeiture Bill becomes more apparent in cases where corruption causes significant state losses that cannot be recovered optimally. One notable example is the APBD Kendal case involving Hendy Boedoro, where the convicted offender failed to fulfill the restitution order despite a final and binding verdict. An ironic situation arises when family members of perpetrators are still able to utilize resources—potentially originating from criminal proceeds—for political interests. A similar phenomenon occurs in other

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countries such as China, which faces many cases involving corrupt officials fleeing abroad with illicit assets. These situations illustrate the weaknesses in asset tracing, freezing, and forfeiture mechanisms within the national legal system and international cooperation frameworks. Therefore, the need for comprehensive asset forfeiture regulations is increasingly urgent.

Structural obstacles in recovering criminal assets are also evident in major cases such as Edy Tansil, BLBI, and Bank Global, where illicit assets were transferred overseas, making the recovery process extremely difficult. Limitations in legal instruments related to international cooperation prevent effective cross-border tracing. The academic manuscript of the Asset Forfeiture Bill highlights that regulatory weaknesses are the main factor hindering asset recovery optimization. Thus, strengthening adaptive legal mechanisms that respond to evolving forms of modern crime is necessary and cannot be delayed. Law enforcement dealing with cross-jurisdictional assets requires legal tools capable of addressing money laundering schemes and asset mobility across nations.

The validity of the bill's urgency can also be seen in large-scale corruption cases such as the e-KTP project involving Setya Novanto. In this case, the court imposed imprisonment, fines, and restitution, yet the amount recovered remains far below the total state loss. Moreover, transparency in managing state-seized assets has become a major public concern. Artasasmita argues that the government has not provided adequate disclosure regarding the allocation of seized funds, which should benefit the public through the national budget (APBN). Limited public access to information on the distribution mechanisms of forfeited assets further reinforces the need for regulations ensuring accountability. This condition shows that eradicating corruption requires more than merely punishing perpetrators — it must also ensure full recovery of state losses.

As an introduction to understanding the development of academic studies, several previous research works have made important contributions to discussions on asset forfeiture. Hafid (2021) found that non-conviction-based asset forfeiture can increase the effectiveness of state loss recovery through an economic analysis of law approach. Arianto (2024) showed that coordination among law enforcement agencies remains the main barrier in the asset seizure and forfeiture process. Agustine (2025) identified that the Asset Forfeiture Bill has significant potential to strengthen the corruption eradication agenda but still faces harmonization challenges with other regulations. These studies emphasize the importance of legal reform for asset forfeiture but have not yet comprehensively examined the post-forfeiture transparency aspect.

Based on the above explanations, a research gap is evident regarding the transparency and distribution mechanism of forfeited assets after they are taken over by the state. Most studies concentrate on the seizure process itself but fail to explore how these assets are managed to ensure they truly benefit the public. Therefore, this study aims to analyze the optimization of asset forfeiture regulations in the Asset Forfeiture Bill and formulate more accountable transparency and distribution mechanisms. This study is expected to provide theoretical benefits through strengthening legal scholarship on asset forfeiture, as well as practical benefits

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for policymakers in drafting regulations that respond to the need for comprehensive recovery of state losses. Thus, this research seeks to fill a critical gap in the discourse on constitutional law and corruption eradication in Indonesia.

2. RESEARCH METHOD

This research employs a normative legal research method which focuses on the study of legal norms, principles, and systems governing the forfeiture of assets derived from criminal acts in Indonesia. This method is selected because the issue examined relates to the analysis of statutory regulations, legal principles, and fundamental concepts underpinning the development of the Asset Forfeiture Bill (Nugraha, 2025). The normative approach allows the researcher to assess both vertical and horizontal synchronization between the 1945 Constitution, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), the Anti-Corruption Law, the Anti-Money Laundering Law, and the Draft Asset Forfeiture Bill. In addition, this research identifies juridical gaps in the current asset forfeiture regulations compared to the need for more effective and accountable legal reforms.

The approaches used in this study include three main methods: the statute approach, the conceptual approach, and the case approach. The statute approach is utilized to review various regulations related to asset forfeiture, including the Asset Forfeiture Bill as the main object of analysis. The conceptual approach is employed to examine concepts such as in personam forfeiture, in rem forfeiture, non-conviction-based forfeiture, as well as transparency and accountability principles in the management of state-confiscated assets. Meanwhile, the case approach is used to analyze several court decisions, such as the Hendy Boedoro case and the e-KTP case, which highlight weaknesses in current asset recovery mechanisms. These three approaches provide a comprehensive foundation for assessing the relevance and urgency of establishing the Asset Forfeiture Bill.

The legal materials used in this study consist of primary, secondary, and tertiary legal sources. Primary legal materials include statutory regulations, court rulings, and the official draft text of the Asset Forfeiture Bill. Secondary legal materials consist of scholarly books, legal journals, research reports, and publications from relevant state institutions such as PPATK and BPHN. Tertiary legal materials include law dictionaries, encyclopedias, and other supporting data that assist in clarifying terms and concepts used in the analysis. The legal materials were collected through a systematic literature review, while the data were analyzed qualitatively by interpreting legal norms and linking them with practical dynamics in law enforcement. Through this method, the research is expected to provide a comprehensive description of the effectiveness and urgency of asset forfeiture regulations within the Indonesian legal system.

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3. RESULT AND DISCUSSION

a. Asset Forfeiture Legislation and Review of the Draft Asset Forfeiture Bill

The Indonesian Constitution provides a strong normative foundation for the establishment of regulations on the forfeiture of criminal assets, including provisions in Article 23 of the 1945 Constitution. This article asserts that the management of state finances must be conducted transparently and responsibly for the greatest prosperity of the people. Its relevance to the Draft Asset Forfeiture Bill is evident, as all confiscated assets form part of the state's wealth and therefore must be managed in accordance with the principles of transparency, accountability, and public welfare orientation. Article 23A of the Constitution further legitimizes that any coercive state action concerning a citizen's property must be based on statutory law, thus asset forfeiture cannot be executed without a clear legal framework. Article 24 reinforces the independence of the judiciary as a prerequisite to ensure that asset forfeiture through court decisions proceeds fairly and without political interference. Together, these constitutional provisions indicate that asset forfeiture is not merely a technical legal matter, but a constitutional policy concerning state financial governance.

In addition to its constitutional basis, asset forfeiture regulation within Indonesia's positive criminal law has long been rooted historically in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) as *lex generalis*. The Criminal Code stipulates that asset forfeiture is an additional penalty that may be imposed on a convicted person, as provided in Articles 10 and 39. Under this construction, forfeiture can only be applied to certain assets owned by the convicted person and proven to be derived from or used in a criminal act. The Criminal Procedure Code complements this through its provisions on the seizure of items related to a criminal case under Article 39. In practice, these provisions are limited because forfeiture can only be imposed following a criminal conviction, making it ineffective in addressing the concealment, transfer, or disappearance of assets—particularly when offenders flee. This limitation serves as a primary justification for the urgency of a more modern, comprehensive Asset Forfeiture Bill.

Asset forfeiture provisions further evolved through the Anti-Corruption Law and the Anti–Money Laundering Law (AML Law). The Anti-Corruption Law, particularly Articles 18 and 101(3), provides a legal basis for asset forfeiture as part of corruption law enforcement, whether through criminal proceedings or civil lawsuits. However, the law remains heavily offender-oriented (*follow the suspect*), which often weakens asset recovery. Studies by Wijayatama et al. show that convicted individuals frequently choose to serve substitute imprisonment rather than surrender illicit assets, leaving the state unable to recover stolen wealth. This condition underscores the weakness of a criminal-based approach and highlights the need for an asset forfeiture regime independent of criminal conviction.

The AML Law introduces a more progressive mechanism through asset tracing, transaction suspension, freezing, and forfeiture even in the absence of a criminal conviction. Under this law, tracing may be carried out by PPATK, the police, the prosecutor's office, or the Corruption Eradication Commission (KPK), followed by court-authorized seizure. The

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AML Law also incorporates the *reversal of burden of proof* principle as stated in Article 77, requiring defendants to demonstrate the lawful origin of their assets. Moreover, provisions on transaction suspension (Articles 65–66) enable quicker state action to secure assets suspected to be linked to financial crimes. Although this allows for more effective asset recovery, findings by Arianto show that it often conflicts with mechanisms under the Anti-Corruption Law.

The complexity of cross-regulation emphasizes the need for legal harmonization through the Asset Forfeiture Bill, which establishes both *in personam* and *in rem* forfeiture mechanisms. *In personam* forfeiture relies on criminal accountability and is therefore more rigid in nature. Conversely, *in rem* or non-conviction-based forfeiture (NCB) treats the asset itself as the subject of proceedings, allowing litigation against the property irrespective of the offender's presence. This approach aligns with the principle that proceeds of crime should not be enjoyed by anyone, even when the offender cannot be tried. Given the transnational nature of crimes such as corruption, money laundering, and narcotics trafficking, *in rem* forfeiture has proven highly effective in various jurisdictions and thus should be fully adopted within Indonesia's legal system.

The Draft Asset Forfeiture Bill offers detailed and comprehensive regulation surpassing previous legal instruments. It governs the entire process, including asset definition, tracing, transaction suspension, blocking, seizure, storage, and judicial adjudication of forfeiture. Key provisions include:

- ✓ Articles 5–7: defining categories of assets subject to forfeiture, including unexplained wealth.
- ✓ Articles 11–16: granting broad authority to PPATK and investigators to halt transactions and impose temporary blocking.
- ✓ Articles 24–47: detailing procedural rules for specialized asset forfeiture court proceedings.
- ✓ Articles 50–62: regulating asset management by the Attorney General, including storage, valuation, disposal, and utilization for state benefit.

This structure demonstrates that the Bill is designed as *lex specialis* with an independent procedural system separate from criminal prosecution.

A crucial part of the Bill lies in its provisions on Asset Management (Articles 50–62), which require state-confiscated assets to be managed professionally, transparently, and accountably under the Attorney General's Office. It incorporates the fundamental principles of openness, efficiency, and accountability. Article 60 further mandates the development of an integrated electronic asset information system accessible for public oversight. This is important given ongoing societal criticism regarding opacity in the use of confiscated state assets. Thus, the Bill not only aims at state loss recovery but also ensures that forfeited assets deliver tangible benefits to the public.

Regulation concerning oversight of asset management is also aligned with Article 23E of the Constitution, which mandates the Audit Board of Indonesia (BPK) to supervise state finances. As forfeited assets constitute state wealth, BPK is constitutionally authorized to audit

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their administration. Therefore, the asset management chapter in the Bill should be viewed as a continuation of the constitutional mandate to ensure that forfeited assets are protected from abuse and subject to independent audit mechanisms. Public accountability remains a vital element in preventing misappropriation during asset disposal or utilization.

Overall, the review of the Constitution, KUHP, KUHAP, the Anti-Corruption Law, the AML Law, and the Draft Asset Forfeiture Bill demonstrates that Indonesia still lacks a single comprehensive legal framework to ensure effective recovery of criminal proceeds. Current regulations remain fragmented, procedurally inconsistent, and unable to keep pace with modern crime dynamics. The Draft Asset Forfeiture Bill offers a structural solution through non-conviction-based forfeiture, transparent asset management, and standardized judicial procedures. However, the success of its implementation will depend on regulatory harmonization, institutional enforcement capacity, and strong public oversight to ensure that forfeited assets are truly returned for the public benefit.

b. Future Policy on Asset Forfeiture for Corruption Crimes in Indonesia

Asset forfeiture as an instrument for combating corruption has increasingly gained strong normative support at the international level, particularly through the *United Nations Convention against Corruption* (UNCAC). UNCAC encourages State Parties to develop effective asset recovery mechanisms, including considering non-conviction based forfeiture (NCB) in certain circumstances—such as when offenders flee, pass away, or cannot be criminally prosecuted. Indonesia, as a State Party that has implemented UNCAC through Law No. 7 of 2006, has the obligation to adjust its domestic regulations to facilitate international cooperation and comply with convention standards. In this context, the legislative effort to introduce the Draft Law on Asset Forfeiture represents not merely a technical harmonization measure, but a fulfillment of international commitments to enhance cross-jurisdictional asset recovery. Therefore, policy analysis must take into account international compliance while preserving state sovereignty and citizen rights protection.

The Draft Law on Asset Forfeiture is seen as a transformative step that shifts the paradigm of criminal law enforcement: the focus is not only on imposing penalties on offenders but also on recovering assets contaminated by criminal activities. This paradigm shift includes three essential aspects:

- ✓ Assets can become the object of adjudication (not only individuals);
- ✓ Judicial mechanisms may utilize civil/in rem proceedings; and
- ✓ An asset forfeiture ruling does not automatically imply criminal sanctions on individuals.

This transformation offers practical advantages in recovering state losses, particularly those involving asset diversion and offshore concealment. However, such a shift requires strong adherence to fundamental legal principles to ensure the protection of property rights and fair trial guarantees. Historical experiences and scholarly studies (Refki Saputra; Public Research; Kausar D. Kusuma) emphasize that this transformation must be accompanied by procedural safeguards and robust oversight mechanisms so that forfeiture does not become an arbitrary state tool.

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The concept of *in rem* or *Non-Conviction Based (NCB) forfeiture* originated from the Anglo-Saxon legal tradition, which treats property as capable of "violating the law," thereby justifying state seizure independent of a criminal conviction. Its application in the Draft Law contains several notable characteristics: first, the claim is directed toward the asset rather than solely the individual; second, the evidentiary standard in civil proceedings may be different or more flexible than in criminal trials; third, this mechanism allows urgent actions (blocking or suspension of transactions) to prevent asset dissipation during legal proceedings. Despite these advantages, literature highlights the need for clear standards of proof and appeal procedures to uphold due process—a common critique of NCB regimes globally (Greenberg; Public Research).

Operationally, the Draft Law proposes a comprehensive policy framework for asset recovery with several critical elements that are regulated or require further strengthening:

- ✓ Asset Tracing and Transaction Analysis: authority for PPATK/investigators to trace financial flows and request documentation;
- ✓ Transaction Suspension and Blocking: fast-track procedures (e.g., 5–15 days) to prevent asset movement;
- ✓ Seizure and In Rem Forfeiture Petition: submission by State Attorneys to a specialized civil court;
- ✓ Standardized Judicial Process: provisions on summons, public notice, evidence, objections, appeals;
- ✓ Asset Management by the Attorney General's Office: obligations for storage, valuation, disposal, and periodic reporting;
- ✓ Integrated Information System: electronic database for transparency regarding value, status, location, and auction results;
- ✓ International Cooperation and Benefit Sharing: MoUs/bilateral agreements for cross-border tracing and equitable distribution of recovered assets.

If implemented synergistically, this system could accelerate asset recovery and reduce the risk of offenders transferring assets beyond law enforcement reach.

Nevertheless, these opportunities bring significant legal and practical challenges that must be anticipated to avoid human rights violations or institutional dysfunction. The main challenges include:

- ✓ Protection of property rights and evidentiary standards to prevent forfeiture from becoming punishment without due process;
- ✓ Procedural safeguards including clear access for third parties with legitimate claims;
- ✓ Coordination among enforcement agencies (KPK, PPATK, Police, Attorney General's Office) to prevent overlapping mandates;
- ✓ Institutional capacity of prosecutors and civil courts to handle in rem cases;
- ✓ International cooperation in asset tracing and repatriation; and
- ✓ Oversight and transparency mechanisms (e.g., BPK involvement, public reporting, information systems).

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To balance effectiveness and rights protection, the Draft Law must include corrective remedies and independent oversight procedures, including explicit compensation rights for parties unlawfully affected, while prioritizing external audits and periodic public accountability reports.

4. CONCLUSION

The analysis of asset forfeiture policies for corruption offenses demonstrates that Indonesia requires a more effective, comprehensive, and adaptive legal instrument capable of responding to the dynamics of modern crime, particularly organized crime and transnational corruption. The Draft Law on Asset Forfeiture emerges as a response to the limitations of conventional approaches that rely solely on criminal proceedings and remain insufficient in pursuing assets that have been transferred or concealed. The mechanism of non-conviction based (in rem) forfeiture introduces a new paradigm focused on assets as the object of enforcement, in line with international standards such as UNCAC. By integrating mechanisms for asset tracing, blocking, seizure, and transparent and accountable management, the draft law has the potential to strengthen state loss recovery and enhance the effectiveness of corruption eradication efforts. However, its successful implementation depends on adherence to due process principles, institutional control, and legislative synchronization across law enforcement bodies.

If enacted and implemented with strong governance standards, the Draft Law on Asset Forfeiture could produce several strategic implications for law enforcement and state financial governance. First, the state would gain a more adaptive instrument for recovering criminal proceeds, including in situations where offenders cannot be prosecuted, escape, or exploit gaps within the criminal justice system. Second, law enforcement institutions such as PPATK, the National Police, Attorney General's Office, KPK, and the judiciary would be required to strengthen coordination based on integrity to prevent overlapping mandates. Third, the obligation for professional, transparent, and auditable asset management would expand oversight opportunities for the Audit Board (BPK) and the public, thus increasing state accountability. Fourth, the implementation of NCB forfeiture would promote harmonization of national regulations with international standards, reinforcing cross-border cooperation in tracing and repatriating corruption proceeds located outside Indonesia's jurisdiction. Therefore, the draft law carries substantial implications not only for the effectiveness of law enforcement but also for the integrity of the national financial system as a whole.

To ensure that the Draft Law on Asset Forfeiture operates effectively while maintaining principles of justice, several recommendations must be taken into account. First, the government should more explicitly define standards of proof, objection mechanisms, and compensation rights to protect bona fide third parties and prevent abuse of authority. Second, institutional capacity must be strengthened through specialized training in asset recovery, financial analysis, and cross-border tracing techniques, alongside enhanced collaboration with international bodies. Third, an integrated asset management information system must be

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established with transparency, public accessibility, and regular audits by the Audit Board to ensure accountability. Fourth, inter-agency cooperation must be formalized through clear implementing regulations to prevent bureaucratic conflicts in asset tracing, blocking, seizure, and disposal procedures. Fifth, both the government and the Parliament must ensure that the legislative process remains inclusive, involving academics, legal practitioners, and civil society so that the resulting regulation effectively supports corruption eradication while upholding citizens' rights.

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