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Reconstructing Indonesia's Asset Recovery Policy through Non-Conviction Based Asset Forfeiture to Achieve Substantive Justice

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ABSTRACT

This study aims to analyze the problematic asset recovery policy within the Indonesian legal system and to reconstruct the implementation of Non-Conviction-Based Asset Forfeiture (NCBAF) as an asset recovery instrument grounded in substantive justice. The study uses a normative juridical method with a statutory and analytical approach. The results indicate that Indonesia's asset recovery mechanism still relies on conviction-based asset forfeiture, which requires a final and binding criminal decision. Therefore, it is ineffective in situations where the perpetrator dies, absconds, or cannot be prosecuted, even though the assets resulting from the crime can still be identified. The implementation of NCBAF has an adequate conceptual and legal basis as long as it is implemented based on the principles of the rule of law, due process of law, proportionality, judicial oversight, and protection of the rights of third parties acting in good faith. Policy reconstruction is carried out through the establishment of comprehensive regulations regarding the scope of assets, confiscation procedures without a criminal conviction, evidentiary mechanisms, protection of constitutional rights, and harmonization with the national legal system to achieve effective asset recovery, provide legal certainty, and reflect substantive justice.

Keywords: *Non-Conviction-Based Asset Forfeiture; asset recovery; asset confiscation.*

INTRODUCTION

Corruption, money laundering, tax crimes, narcotics crimes, illegal mining, illegal fishing, and cybercrime are forms of extraordinary crimes that have the main characteristic of being oriented towards obtaining economic profit (profit-oriented crimes) (Atmasasmita, 2017). These characteristics indicate that the perpetrator's primary motive is not simply to commit an unlawful act but rather to obtain, control, conceal, or enjoy assets derived from the proceeds of crime. Therefore, the success of law enforcement is no longer solely measured by the number of perpetrators convicted but also by the extent to which the state can recover unlawfully obtained assets so that they do not remain in the hands of the perpetrators or other parties who profit from the crime (Iswari, 2020). The Indonesian Constitution, through Article 1, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirms that Indonesia is a state based on law, while Article 28D, paragraph (1) guarantees fair legal certainty as the basis for law enforcement. This constitutional declaration is reinforced by the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which requires that state assets be used as much as possible for the prosperity of the people, so that every asset originating from a criminal act must essentially be returned to the state or the rightful party (Remy, 2004). The modern law enforcement paradigm has shifted from a follow-the-suspect approach to a follow-the-money and follow-the-assets approach, since criminally obtained assets are the core drivers of various forms of economic crime. As long as these assets remain accessible to the perpetrator, the objectives of criminal punishment to provide a deterrent effect, recover state losses, and establish justice have not been fully achieved (Sanusi, 2026).

Developments in international law indicate that asset recovery has become a primary objective of combating transnational crime and corruption. The United Nations, through the 2003 United Nations

Convention against Corruption (UNCAC), which Indonesia ratified through Law Number 7 of 2006 concerning the Ratification of the 2003 United Nations Convention against Corruption, firmly places asset recovery as a fundamental principle, as stated in Article 51 of the UNCAC. This provision is implemented through regulations regarding the tracking, freezing, confiscation, and return of assets, as stipulated in Chapter V of the UNCAC. This approach emphasizes that criminalizing perpetrators must not be separated from efforts to eliminate the economic benefits obtained from the crime (Cholfia Aldamia, 2022). Asset recovery has a strategic function to restore state financial losses, provide restitution to victims, prevent perpetrators from enjoying the proceeds of crime, and strengthen the deterrent effect against criminal acts oriented towards financial gain. Although Indonesia has adopted several legal instruments, such as Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering, and various provisions regarding confiscation in the Criminal Procedure Code, the orientation of the national legal system still places more emphasis on punishing perpetrators than on optimizing the recovery of assets resulting from crime (Ubaidila et al., 2024). Consequently, the success of law enforcement is often measured solely by criminal convictions, while the recovery of assets, the primary objective of the crime, has not received proportional attention.

This problem is further exacerbated by the fact that the mechanism for asset forfeiture in the Indonesian legal system still relies on conviction-based asset forfeiture. Provisions regarding confiscation as part of the evidentiary process are regulated in Articles 38 to 46 of the Criminal Procedure Code, while the confiscation of assets as an additional penalty is regulated in Article 10 (b) and Article 39 of the Criminal Code. Consequently, assets resulting from crime can generally only be confiscated after a defendant has been identified, evidence has been presented that establishes the defendant's guilt, and a court decision has become legally binding (Prasetyo et al., 2025). This system creates various obstacles when the perpetrator dies before the trial is completed, flees abroad, is on the wanted list, remains unidentified, suffers from permanent health problems that prevent him from being tried, the case has expired, or the criminal evidence does not meet the evidentiary standard for sentencing, even though the existence of the proceeds of crime can be proven. In these circumstances, the state loses the opportunity to recover assets that are the proceeds of crime. This demonstrates that complete reliance on the conviction-based asset forfeiture mechanism is not yet able to effectively address the needs of modern law enforcement oriented towards asset recovery (Marfuatul, 2015).

One instrument that has been developed in international practice to address these weaknesses is the Non-Conviction Based Asset Forfeiture (NCBAF), an asset confiscation mechanism that does not require a criminal conviction. Unlike conventional systems that focus on the person (in personam), the NCBAF uses an in rem proceeding approach, a legal process that makes assets the primary object of examination, thus assessing the asset's relationship to the crime, not the individual's criminal culpability. This mechanism was developed through the concept of civil forfeiture or asset forfeiture, with civil standards of proof that differ from those in criminal cases. The application of NCBAF has been recognized in various countries, including the United States through the Civil Asset Forfeiture Reform Act, the United Kingdom through the Proceeds of Crime Act 2002, Australia through the Proceeds of Crime Act 2002, Canada through the Civil Forfeiture Act regime in various provinces, Switzerland through provisions concerning the return of assets from transnational crime, and South Africa through the Prevention of Organized Crime Act 1998 (Sakinah & Sumardiana, 2025). The experiences of various countries demonstrate that the NCBAF mechanism can increase the effectiveness of asset recovery, particularly when criminal proceedings cannot proceed because of various legal and factual obstacles. This success demonstrates that asset recovery can coexist with the protection of individual rights as long as it is implemented based on the rule of law.

The implementation of Non-Conviction-Based Asset Forfeiture is inseparable from various constitutional and human rights debates, as it may be viewed as contradictory to the presumption of innocence, the right to ownership, and the principle of due process of law. Constitutional guarantees regarding the protection of human rights are regulated by Articles 28G (1), 28H (4), and 28I (4) of the 1945 Constitution of the Republic of Indonesia. While restrictions on the exercise of human rights may only be implemented under Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, provided that they are stipulated by law and aim to ensure respect for the rights of others, morality, security, and public order. Therefore, the implementation of the NCBAF should not be interpreted as granting the state unlimited authority to confiscate a person's assets (Wicaksono et al., 2025). This mechanism must be implemented based on the principles of legality, necessity, proportionality, judicial control, judicial review, and fair hearing, so that every confiscation action remains under the supervision of an independent judicial institution. The protection of bona fide third parties must also be an integral part of this mechanism to prevent legally acquired assets from being arbitrarily confiscated. Thus, a balance between effective asset recovery and the protection of citizens' constitutional rights can be achieved within the framework of a democratic state based on the rule of law (Abdullah et al., 2021).

The Indonesian legal system currently lacks comprehensive provisions for Non-Conviction-Based Asset Forfeiture. Provisions regarding asset confiscation and seizure are scattered throughout the Criminal Procedure Code (KUHP), the Criminal Code (KUHP), Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, Law Number 35 of 2009 concerning Narcotics, and various other sectoral provisions that essentially rely on the conviction-based asset forfeiture mechanism. The Draft Law on Criminal Asset Forfeiture, which is expected to be the legal basis for the implementation of the NCBAF, has also yet to be ratified, thus creating a regulatory vacuum regarding the mechanism for comprehensive asset forfeiture without a criminal verdict (Lukito, 2020). These conditions have resulted in asset recovery policies in Indonesia remaining sectoral, partial, and repressive, and unable to accommodate developments in international practice, as mandated by the UNCAC. Based on these conditions, the primary need for the national legal system is not simply to expand the state's authority to confiscate assets, but rather to reconstruct asset recovery policies through a Non-Conviction Based Asset Forfeiture mechanism that provides a balance between effective crime eradication, property rights protection, legal certainty, judicial oversight, protection of good faith third parties, and fulfillment of the principle of substantive justice. This reconstruction is expected to build an asset recovery system that is more adaptive to modern crime while aligning with constitutional values, the principles of the rule of law, and Indonesia's commitment to eradicating transnational crime.

METHOD

This research is a normative juridical legal study oriented towards the study of legal norms as a basis for analyzing asset recovery policies through the Non-Conviction Based Asset Forfeiture (NCBAF) mechanism in the Indonesian legal system. Normative juridical research was chosen because it focuses on examining legal principles, synchronizing laws and regulations, doctrines, and legal concepts related to the confiscation of assets resulting from criminal acts from a substantive justice perspective (Johnny, 2008). The approaches used include the statute and analytical approaches. The statutory approach is carried out through a systematic review of various relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, the Criminal Code, the Criminal Procedure Code, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering, Law Number 35 of 2009 concerning Narcotics, Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption (UNCAC), as well as various other laws and regulations related to the confiscation and seizure of assets resulting from criminal acts. Meanwhile, an analytical approach is used to examine the meaning, scope, and construction of legal norms regarding asset recovery and identify inconsistencies and regulatory gaps (legal gaps) (Prof. Dr. Mahmud Marzuki, 2016). and analyze the suitability of the concept of non-conviction-based asset forfeiture with the principles of the rule of law, human rights protection, and substantive justice. The analysis is conducted prescriptively by linking positive legal provisions, expert doctrines, and legal principles developed in international practice to formulate recommendations for the reconstruction of asset recovery policies that are more effective and equitable and provide legal certainty within the Indonesian legal system.

RESULT AND DISCUSSION

Problems of Asset Recovery Policy in the Indonesian Legal System

Asset recovery is a fundamental instrument in the modern criminal justice system, aiming to eliminate the economic benefits derived from criminal acts while simultaneously reimbursing the losses incurred to both the state and the victims. This concept stems from the changing nature of crime, which is increasingly profit-oriented. Therefore, the success of law enforcement is no longer measured solely by the punishment of the perpetrator but also by the state's ability to confiscate and return assets derived from criminal activity. This concept is in line with the principle of the rule of law as stated in Article 1 paragraph (3) of the 1945

Constitution of the Republic of Indonesia, which requires that every law enforcement action be carried out based on the law and oriented towards achieving justice and legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This perspective also has a close relationship with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the land, water, and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people, so that every asset obtained through a criminal act is essentially a form of reduction in public rights that must be restored. Therefore, asset recovery is not merely understood as part of the implementation of additional punishment and an instrument to restore legal balance, return state losses, protect the interests of society, and ensure that the perpetrator does not obtain economic benefits from the unlawful acts committed. This approach places assets resulting from criminal acts as the main object that must be re-controlled by the state to realize justice that is not only formal but also substantive (Arianto, 2024).

The development of international criminal law shows a shift in the paradigm of law enforcement from the follow-the-suspect approach to following the money and assets. This shift is based on the fact that various forms of modern crime, such as corruption, money laundering, narcotics trafficking, human trafficking, smuggling, tax crimes, illegal mining, illegal fishing, and cybercrime, have the primary objective of obtaining economic benefits, which are then hidden through various asset laundering mechanisms. The United Nations, through the United Nations Convention against Corruption (UNCAC) of 2003, which has been ratified through Law Number 7 of 2006, places asset recovery as a fundamental principle as stated in Article 51 of UNCAC. This provision is then emphasized through Article 31 of UNCAC concerning the freezing, seizure, and confiscation of the proceeds of crime and Chapter V, which specifically regulates the mechanism for the return of cross-border assets (Jerman, 2017). These regulations demonstrate that the focus of crime eradication has shifted from simply punishing perpetrators to eliminating all economic benefits derived from criminal activities. The "follow the money" paradigm allows law enforcement officials to trace the flow of criminal funds, while the "follow the assets" paradigm focuses on locating, freezing, seizing, and returning assets related to criminal activity. Both approaches were developed in response to the rise in transnational crime that exploits the global financial system, making it impossible for law enforcement to rely solely on punishing perpetrators without recovering the assets they have enjoyed (Wahyu Sinta Dewi Pramudita et al., 2025).

The provisions regarding asset recovery in the Indonesian legal system are currently scattered across various sectoral laws and regulations and have not yet been formed into a unified system. The Criminal Procedure Code regulates confiscation as an investigator's action in Articles 38 to 46, while the definition of confiscation is regulated in Article 1 number 16 of the Criminal Procedure Code as a series of investigators' actions to take over or store movable or immovable objects as evidence in investigations, prosecutions, and trials. The Criminal Code regulates additional penalties in the form of confiscation of certain goods in Article 10 letter b and Article 39 of the Criminal Code. Law Number 31 of 1999, as amended by Law Number 20 of 2001, concerning the Eradication of Corruption, regulates the confiscation of assets resulting from corruption through Article 18, which allows judges to impose additional penalties in the form of confiscation of movable and immovable goods or payment of compensation. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes also provides the authority to block, confiscate, and seize assets originating from criminal acts, as regulated in Article 67, Article 68, Article 69, Article 77, and Article 81. Meanwhile, Law Number 35 of 2009 concerning Narcotics regulates the confiscation of assets related to narcotics crimes, specifically in Articles 136 to 142 (Cholfia Aldamia, 2022). Although these provisions provide the legal basis for asset seizure and forfeiture, they are scattered across various laws, thus lacking a comprehensive, integrated, and fully asset recovery-oriented legal regime.

The main characteristics of the Indonesian legal system indicate that the asset forfeiture mechanism is still dominated by a conviction-based asset forfeiture approach, which requires a final and binding criminal verdict against the perpetrator. This system places proof of the perpetrator's guilt as the primary prerequisite before the state can seize assets derived from the crime. Consequently, investigative seizure is temporary and serves as evidence, whereas forfeiture transfers ownership to the state only upon a final and binding court judgment. This model does provide protection for property rights and the presumption of innocence, but at the same time creates a highly dependent dependence on the success of the criminal process. In practice, assets derived from crime are often transferred to other parties, moved abroad, disguised through various financial transactions, or diverted into difficult-to-trace investments before the criminal process is completed. This situation makes it difficult for the state to recover losses incurred from criminal acts, even if indications of the origin of the assets derived from the crime have been discovered during the investigation stage. As a result, the effectiveness of asset recovery depends heavily on the length of the criminal litigation process, which in many cases lasts for years (Miladmahesi, 2020).

Another problem that demonstrates the weaknesses of the conviction-based asset forfeiture system arises when the criminal process cannot proceed for various legal or factual reasons. The perpetrator of a crime may die before the case is decided, flee abroad, become wanted, be unknown, suffer from permanent health problems that prevent them from being held accountable in court, or the case may expire, making prosecution impossible. This situation can also occur when the available evidence does not meet the criminal standard of proof for a guilty verdict, even though the existence of assets derived from the crime can be objectively proven. Such situations result in assets suspected of originating from the crime remaining in the possession of the perpetrator or other parties, preventing the optimal realization of the goal of recovering state losses. These obstacles become more complex when assets are transferred through cross-border financial networks or to third parties, requiring lengthy international cooperation for their return. Reliance on final and binding criminal decisions ultimately renders the asset recovery system ineffective in addressing transnational, organized crime, and crimes that exploit advances in information technology to conceal the proceeds of crime (Karinda et al., 2022).

This situation demonstrates that the main problem with asset recovery policy in Indonesia lies not only in its implementation but also in the construction of legal norms, which are still sector-based, partial, and oriented toward punishing the perpetrator (offender-oriented) rather than asset recovery. The absence of specific regulations regarding the mechanism for asset confiscation without a criminal conviction means that the national legal system is unable to provide solutions to various situations where criminal proceedings cannot be resolved, even though assets resulting from criminal acts can still be identified and their connection to the crime can be proven. The fragmentation of regulations between the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), the Corruption Eradication Law, the Law on the Prevention and Eradication of Money Laundering, the Narcotics Law, and various other sectoral provisions also creates disharmony in law enforcement practices, resulting in the lack of a uniform mechanism for tracking, freezing, confiscating, managing, and confiscating assets resulting from criminal activity. This situation demonstrates a legal gap with implications for the suboptimal implementation of the asset recovery principles required by the United Nations Convention against Corruption.

Analysis of the Application of Non-Conviction-Based Asset Forfeiture as an Asset Recovery Instrument

Non-Conviction-Based Asset Forfeiture (NCBAF) is an asset confiscation mechanism that does not require a criminal conviction against the perpetrator before transferring asset ownership to the state. This concept developed in response to the increasing complexity of transnational crime, which allows perpetrators to conceal, divert, or retain the proceeds of crime even if the criminal proceedings against them cannot be resolved. The NCBAF perspective places assets suspected of originating from a crime as the primary object of examination, shifting the focus of the legal process away from proving individual guilt and toward proving the legal relationship between the assets and the crime (proceeds of crime). This concept gained legitimacy in international law through the 2003 United Nations Convention against Corruption (UNCAC), which Indonesia ratified through Law Number 7 of 2006. Article 31 of the UNCAC regulates the freezing, confiscation, and confiscation of the proceeds of crime, while Article 54, paragraph (1), letter c of the UNCAC encourages each participating country to consider steps that allow the confiscation of assets without a criminal verdict in certain circumstances in accordance with their respective national laws. These provisions indicate that the NCBAF is a legal instrument recognized in the international anti-corruption regime to ensure the effectiveness of asset recovery, especially when conventional criminal mechanisms are unable to return assets resulting from crime (Wicaksono et al., 2025). Therefore, the NCBAF is not intended as a replacement for the criminal justice system but rather as a complementary mechanism to ensure that the proceeds of crime do not remain in the possession of the perpetrator or other parties who profit from the unlawfully.

The fundamental difference between conviction-based and non-conviction-based asset forfeiture lies in the legal basis for asset confiscation. Conviction-based asset forfeiture is a mechanism that requires a final and binding criminal court decision against the perpetrator to impose additional penalties, such as asset confiscation. This system is adopted in Indonesian positive law through Article 10 letter b and Article 39 of the Criminal Code, Article 18 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the

Eradication of Criminal Acts of Corruption, as well as various provisions regarding asset confiscation in Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. In contrast, the NCBAF does not depend on the offender's conviction because it focuses on assets suspected of being proceeds of crime. The legal consequence of this difference is that conviction-based forfeiture can only be implemented if the criminal process succeeds in proving the defendant's guilt, while NCBAF can still be applied when the perpetrator dies, runs away, is unknown, has certain immunity, or cannot be tried for other legal reasons, as long as the relationship between the assets and the crime can be proven before the court (Fauzia & Hamdani, 2022). These characteristics make the NCBAF more oriented toward eliminating the economic benefits of the proceeds of crime than toward punishing the perpetrator, allowing the primary goal of asset recovery to be achieved even if the criminal process cannot be resolved.

The implementation of Non-Conviction-Based Asset Forfeiture is based on the concept of in rem proceedings, a legal process directed at objects or assets as the subject of the dispute rather than individuals as the subject of blame. This concept differs from conventional criminal proceedings, which utilize an in-personam approach, where the primary focus of the examination is proving the defendant's guilt. In an in rem proceeding mechanism, the court assesses whether an asset is sufficiently connected to the crime to warrant seizure for the benefit of the state, without first having to prove an individual's criminal guilt. The consequence of this approach is a change in the standard of proof and burden of proof used in the trial process. Unlike criminal cases, which require proof beyond a reasonable doubt, the NCBAF mechanism generally utilizes civil standards of proof, such as the balance of probabilities or preponderance of evidence, depending on each country's legal system. The application of these standards is not intended to diminish legal protection for individuals, but rather reflects that the object of examination is the legal status of assets, not the imposition of criminal penalties. Nevertheless, the process must guarantee each party the right to present a defense, submit evidence and witnesses, and receive a fair hearing before the court, in accordance with the principles of a fair hearing and due process of law (Fauzia & Hamdani, 2021).

The practice of implementing NCBAF has developed in various countries, each with its own characteristics according to its respective legal system. The United States implemented a civil forfeiture mechanism through the Civil Asset Forfeiture Reform Act of 2000, which authorizes the government to seize assets proven to be related to criminal acts through civil proceedings. The United Kingdom established a similar mechanism through the Proceeds of Crime Act 2002, specifically regarding civil recovery, which allows the court to order the confiscation of assets without a criminal conviction if it can be proven that the assets originated from unlawful activities. Australia also adopted this approach through the Proceeds of Crime Act 2002, and Canada implemented it through various Civil Forfeiture Acts applicable in several provinces. Switzerland developed a mechanism for the recovery of assets obtained from corruption through regulations on asset recovery that emphasize international cooperation and proof of the origin of wealth, while South Africa regulated asset confiscation through the Prevention of Organized Crime Act of 1998 using a civil forfeiture mechanism supervised by the courts. These differences in regulations demonstrate that the NCBAF is not a concept that conflicts with the principles of the rule of law but rather has developed into an internationally recognized legal instrument to increase the effectiveness of combating crimes oriented toward economic gain. The experiences of these countries also demonstrate that the successful implementation of the NCBAF depends heavily on a clear legal basis, evidentiary mechanisms, judicial oversight, and protection of the rights of individuals affected by asset confiscation (Muhammad Nurul Huda et al., 2025).

The perspective of Indonesian constitutional law shows that the implementation of the NCBAF must be analyzed based on the principles of the rule of law and the guarantee of human rights, as stipulated in the 1945 Constitution of the Republic of Indonesia. Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law, while Article 28D, paragraph (1) guarantees the right of every person to recognition, guarantee, protection, and fair legal certainty. The protection of property rights is regulated in Article 28H, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to own private property and that these rights may not be taken arbitrarily by anyone. On the other hand, Article 28 J, paragraph (2) provides a constitutional basis that the implementation of human rights can be limited by law as long as it aims to guarantee respect for the rights of others, morals, religious values, security, and public order in a democratic society. Based on this constitutional construction, the NCBAF is not, in principle, inconsistent with the rule of law as long as it is implemented based on the principle of legality, conducted through an independent judicial mechanism, clearly regulated by law, and provides equal opportunity to all parties to defend their rights. The implementation of the NCBAF must also adhere to the principle of proportionality so that asset confiscation is only carried out against assets that are genuinely connected to the crime, preventing it from becoming an instrument for the abuse of authority by law enforcement officials.

Analysis of human rights issues indicates that the primary objections to Non-Conviction-Based Asset Forfeiture generally relate to alleged violations of the presumption of innocence, the right to ownership, and the principle of due process of law. These concerns can be fundamentally minimized if NCBAF regulations are designed to ensure judicial control, namely, the obligation to obtain a court order or decision before assets are permanently confiscated. This mechanism must provide asset owners with the right to know the legal basis for confiscation, gain access to all evidence used by the state, file objections, present witnesses, initiate legal action and prove that their assets were legally acquired. Protection for bona fide third parties must also be strictly regulated to prevent the seizure of assets belonging to parties who are not involved in the crime. This guarantee embodies the principles of a fair trial, equality before the law, and the protection of property rights, which are essential for a democratic state governed by law. Based on this conceptual analysis, Non-Conviction Based Asset Forfeiture has both a theoretical and legal basis for implementation in the Indonesian legal system, provided that it is established through clear regulations, effective judicial oversight, respect for citizens' constitutional rights, and a fair and proportionate evidentiary mechanism. Therefore, the NCBAF can be an effective asset recovery instrument without neglecting the fundamental principles of the rule of law and the protection of human rights.

Reconstruction of Asset Recovery Policy through Non-Conviction-Based Asset Forfeiture Based on Substantive Justice

Reconstruction of asset recovery policy through the Non-Conviction-Based Asset Forfeiture (NCBAF) mechanism must be built on the principles of the rule of law, substantive justice, human rights protection, proportionality, accountability, and legal certainty as an inseparable whole. This reconstruction is not intended to replace the conviction-based asset forfeiture mechanism already in place in the Indonesian criminal justice system but rather to complement it so that the goal of asset recovery can still be achieved when criminal proceedings cannot be implemented or resolved. This concept aligns with the mandate of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia concerning the rule of law, Article 28D paragraph (1) concerning the guarantee of fair legal certainty, Article 28H paragraph (4) concerning the protection of property rights, and Article 28 J paragraph (2), which permits restrictions on rights based on law as long as they are carried out to protect the public interest. Therefore, the new policy regarding the NCBAF must be established as a separate legal regime that explicitly regulates the scope of state authority, legal procedures, protection of individual rights and judicial oversight mechanisms. Concrete action that needs to be taken is the establishment of a Law on Asset Forfeiture that specifically regulates Non-Conviction-Based Asset Forfeiture as a mechanism for asset recovery outside the criminal process, eliminating reliance on provisions scattered across various sectoral regulations. This regulation must emphasize that the primary objective of the NCBAF is to recover assets derived from criminal activity, not to impose criminal sanctions on individuals.

Reconstruction of norms regarding the scope of assets subject to confiscation is necessary by expanding the scope of asset forfeiture to include not only goods directly used or obtained from criminal activity, but also economic gains, proceeds of asset development (proceeds), substitute assets, assets transferred to other parties without good faith, assets disguised through financial transactions, digital assets, cryptocurrencies, securities, bank accounts, intellectual property rights with economic value, and other economic benefits substantially derived from criminal activity. These regulations must be accompanied by clear criteria regarding the causal link between assets and criminal acts so that the seized objects are truly related to unlawful acts. A concrete action that can be taken is to include a norm stating that assets can be the object of the NCBAF if there is evidence showing a significant connection between the asset and the crime, even if the perpetrator has not or cannot be convicted. The norm must also explicitly regulate the exception for assets belonging to third parties who acquired the rights legally and in good faith, so that the expansion of the scope of objects of confiscation does not develop into arbitrary actions. Such reconstruction will strengthen the effectiveness of asset recovery without ignoring the principles of legal certainty and the protection of property rights.

The reconstruction of the non-criminal confiscation procedure needs to be designed through a transparent, phased mechanism under the supervision of a judicial institution. Investigators should not be given the authority to immediately seize assets permanently, but rather should only be authorized to conduct identification, asset tracing, temporary freezing orders, and initial confiscation based on court permission or order. The next stage is carried out through a non-conviction-based asset forfeiture application to the competent court, providing evidence linking the assets to the crime. The court then examines the application through an open hearing, providing an opportunity for all interested parties to present their defense. Concrete actions that need to be regulated include the establishment of a specific procedure consisting of the following stages: asset tracing, asset freezing, temporary confiscation, examination of the NCBAF application, court decision, asset management, and return to the state or victims. The entire process must be carried out within a specific timeframe to avoid legal uncertainty regarding the status of confiscated assets. Such arrangements strike a balance between the effectiveness of asset recovery and the protection of the asset owner's constitutional rights.

Reconstructing the evidentiary mechanism is also crucial in establishing a Non-Conviction-Based Asset Forfeiture regime. The evidentiary standard used need not be the same as that in criminal cases, which require proof beyond reasonable doubt. Instead, it should use a standard of proof that proportionally demonstrates a link between the asset and the crime based on the balance of probabilities or other evidentiary standards expressly stipulated by law. The state is first burdened with the obligation to prove that there is a strong indication that the asset originated from a crime. Once fulfilled, a limited reversal of the burden of proof can be shifted to the asset owner to explain the legal origins of their wealth. Concrete actions that need to be formulated include provisions regarding evidentiary support based on financial transaction analysis, reports from the Financial Transaction Reports and Analysis Center (PPATK), tax documents, asset ownership data, investigative audit results, electronic evidence as recognized in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, and international cooperation in tracing cross-border assets. This reconstruction will result in a more adaptive evidentiary mechanism to the characteristics of modern economic crimes without eliminating the right of asset owners to defend themselves form wrongful asset confiscation.

The reconstruction of the protection of the rights of good-faith third parties must be an integral part of NCBAF regulations to prevent the confiscation of legally acquired assets. These regulations should provide third parties with the right to file objections (third-party claims), prove the origin of asset ownership, gain access to all evidence used by the state, and file legal action against asset confiscation decisions. This protection implements the principles of due process of law, equality before the law, and protection of property rights, as guaranteed in Article 28D (1) and Article 28H (4) of the 1945 Constitution of the Republic of Indonesia. Strengthening the judicial oversight mechanism must also be implemented by requiring that all actions to freeze, confiscate, extend confiscation, manage, or confiscate assets, obtain court approval or a court decision. Concrete actions that need to be implemented include the establishment of a special panel of judges competent in asset recovery cases, the obligation to conduct open hearings, the provision of an appeals and cassation mechanism for NCBAF decisions, and the establishment of a monitoring system for the management of confiscated assets to prevent depreciation of economic value during the judicial process. Thus, the effectiveness of asset recovery remains in line with the protection of citizens' constitutional rights.

The reconstruction of the Non-Conviction Based Asset Forfeiture policy must ultimately be followed by a comprehensive harmonization of the Criminal Procedure Code, the Criminal Code, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering, Law Number 35 of 2009 concerning Narcotics, and the Draft Law on Confiscation of Criminal Assets. This harmonization must eliminate overlapping authority between agencies and unify procedures for tracking, freezing, confiscating, managing, and returning assets while integrating cooperation between the police, prosecutors, the Corruption Eradication Commission, the Financial Transaction Reports and Analysis Center (PPATK), the courts, the Ministry of Finance, and other relevant institutions. The ideal regulatory model that results is an asset recovery system consisting of the stages of asset identification → asset tracing → asset freezing → Non-Conviction-Based Asset Forfeiture application to the court → fair hearing-based examination → asset confiscation decision → asset management by authorized institutions → return to the state or victims → monitoring and evaluation of the decision's implementation. This model places the court as the primary controller (judicial oversight) of every confiscation action, guarantees protection for good-faith third parties, implements proportionate evidentiary mechanisms, and ensures that the primary goal of asset recovery is effectively achieved. This reconstruction represents a significant scientific advancement in the formulation of national legal policy, as it enhances the effectiveness of combating economically motivated crimes while ensuring a balance between state interests, the protection of citizens' constitutional rights, and the pursuit of substantive justice.

CONCLUSION

The findings indicate that in the Indonesian legal framework, policies for asset recovery primarily rely on a conviction-based asset forfeiture approach, which necessitates a conclusive and enforceable criminal ruling before the state can confiscate assets derived from criminal activities. This model is unable to address the complexities of modern, profit-oriented crime, particularly when the perpetrator dies, flees, is wanted, is unknown, or cannot be prosecuted even if the asset's connection to the crime can be proven. This indicates normative and implementation weaknesses that hinder the effectiveness of asset recovery and do not fully accommodate the asset recovery principles mandated by the 2003 United Nations Convention against Corruption (UNCAC). Analysis of the concept of Non-Conviction-Based Asset Forfeiture indicates that this mechanism has sufficient legal and conceptual foundations for implementation in the Indonesian legal system, provided it is implemented based on the principles of the rule of law, legal certainty, proportionality, due process of law, judicial oversight, and protection of property rights and third parties acting in good faith. Therefore, the reconstruction of asset recovery policies through Non-Conviction-Based Asset Forfeiture is an urgent need to realize a more effective, adaptive, and substantively just asset recovery system without neglecting the guarantees of citizens' constitutional rights.

This policy reconstruction needs to be realized through the establishment of regulations that comprehensively regulate the Non-Conviction-Based Asset Forfeiture mechanism as a stand-alone legal regime harmonized with the Criminal Code, the Criminal Procedure Code, the Corruption Eradication Law, the Law on the Prevention and Eradication of Money Laundering, the Narcotics Law, and national policy on asset forfeiture. These regulations must explicitly outline the scope of assets that can be confiscated, procedures for tracking, freezing, confiscating, and confiscating assets without a criminal conviction, proportional standards and mechanisms for proof, protection for third parties acting in good faith, and effective oversight by the judiciary as a form of judicial oversight. This harmonization is expected to strengthen the effectiveness of law enforcement, accelerate the return of assets resulting from criminal acts to the state and victims, increase legal certainty, and optimize the implementation of Indonesia's commitment to eradicating corruption and transnational economic crimes. Thus, the asset recovery policy is no longer solely oriented towards punishing the perpetrator but also towards returning economic benefits to the community as a manifestation of substantive justice and the goals of the rule of law.

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