



The Politics of Asset Confiscation Law in Indonesia

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Abstract. In practice, the system and mechanism for confiscating assets resulting from criminal acts in Indonesia, which are spread across several regulations, are still not optimal; therefore, an Asset Confiscation Bill was formed. This study examines the politics of criminal law in carrying out asset confiscation in Indonesia, the mechanisms that will be used in carrying out asset confiscation in Indonesia, and crucial matters that need to be considered in regulating asset confiscation through a normative approach. The results show that the politics of criminal law in confiscating assets in Indonesia is due to the need for a system that allows the effective and efficient confiscation of proceeds and instruments of criminal acts while paying attention to the values of justice without violating individual rights. The mechanism that will be used in confiscating assets in Indonesia under the Asset Confiscation Bill is non-criminal-based asset forfeiture. Crucial things that need to be considered include the careful execution of confiscating assets, specifying certain criminal acts to be regulated by the Asset Confiscation Bill, the utilization of the proceeds of asset confiscation from crimes not only for the state but also for parties who suffered harm as a result of related crimes, the necessity to regulate compensation for good-faith third parties, the possibility of retroactive enforcement of laws, and the consideration of non-cash assets or cryptocurrencies.

Keywords: Politics of law, Money laundering, Asset confiscation, Corruption, Indonesia

Abstrak. Dalam praktiknya, sistem dan mekanisme penyitaan harta kekayaan hasil tindak pidana di Indonesia yang tersebar di beberapa peraturan masih belum optimal; Oleh karena itu, dibentuk RUU Perampasan Harta Kekayaan Tindak Pidana. Kajian ini mengkaji tentang politik hukum pidana dalam melakukan penyitaan harta kekayaan pidana di Indonesia, mekanisme yang akan digunakan dalam pelaksanaan perampasan harta kekayaan pidana di Indonesia, dan hal-hal krusial yang perlu diperhatikan dalam pengaturan perampasan harta kekayaan pidana melalui pendekatan normatif. Hasil penelitian menunjukkan bahwa politik hukum pidana dalam penyitaan harta kekayaan hasil tindak pidana di Indonesia disebabkan oleh perlunya suatu sistem yang memungkinkan penyitaan hasil dan alat-alat tindak pidana berlangsung secara efektif dan efisien serta memperhatikan nilai-nilai keadilan tanpa melanggar hak individu. Mekanisme yang akan digunakan dalam penyitaan aset pidana di Indonesia berdasarkan RUU Perampasan Aset adalah perampasan aset berbasis non-kriminal. Hal krusial yang perlu diperhatikan antara lain penyitaan harta kekayaan hasil tindak pidana yang harus dilakukan secara hati-hati; RUU Perampasan Harta Kekayaan harus mengatur tindak pidana tertentu; hasil perampasan harta kekayaan dari tindak pidana tidak hanya digunakan untuk negara tetapi juga untuk pihak-pihak yang dirugikan akibat tindak pidana yang bersangkutan; perlu diatur ganti kerugian bagi pihak ketiga yang beritikad baik; kemungkinan penegakan hukum yang berlaku surut; dan kemungkinan aset non tunai atau mata uang kripto.

Kata kunci: Politik hukum, Pencucian uang, Perampasan aset, Korupsi, Indonesia

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1. Introduction

Debates on the Asset Confiscation Bill have resumed because the coordinating minister for Political, Legal, and Security Affairs, Mahfud MD, openly asked Commission III of the Parliament to approve the Draft Law on Confiscation of Proceeds of Criminal Acts (hereinafter the Asset Confiscation Bill).¹ Mahfud MD claims the Asset Confiscation Bill, which would later enable tracking of a much larger crime of money laundering. President Joko Widodo has also reiterated the importance of enforcing laws in prosecuting corruption cases.² The question arises regarding the significance of the draft Asset Confiscation Bill concerning criminal law enforcement and corruption eradication in Indonesia.³ One of the primary issues in eradicating financial crime, not only in Indonesia but also globally, is the effort to confiscate the proceeds of crime. Twenty years ago, the United Nations (UN) established the process of confiscating property obtained criminally as one of the standards in the 2003 United Nations Convention Against Corruption (UNCAC).⁴ The international agreement also contains a clause stating that asset confiscation has criminal consequences. International conventions that address this matter include the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the United Nations Convention on Transnational Organized Crime (UNTOC) (2002), and several articles in the United Nations Counter-Terrorism Convention.

Asset confiscation in Indonesia is an integral part of the legal system, which also encompasses the seizure of goods resulting from criminal activities with specific consequences.⁵ Various provisions govern criminal confiscation and potential penalties that result from the execution of goods confiscation. One of these provisions can be found in the Criminal Code, which deals with related penalties and additional punishments. Moreover, Law No. 35 of 2009 concerning Narcotics and Law No. 8 of 2010, focusing on the prevention and eradication of

¹ Tempo, "Mahfud Md Urges DPR to Prioritize Asset Forfeiture Bill," Dec 14, 2022, <https://en.tempo.co/read/1539163/mahfud-md-urges-dpr-to-prioritize-asset-forfeiture-bill>, accessed Feb 12, 2023.

² Tri Meilani A and Nabil Ihsan, "President seeks quick ratification of Asset Confiscation Bill: Mahfud," *Antaranews*, Sept 16, 2022, <https://en.antaranews.com/news/250181/president-seeks-quick-ratification-of-asset-confiscation-bill-mahfud>, accessed Jan 25, 2023

³ Elwi Danil and Iwan Kurniawan, "Optimizing confiscation of assets in accelerating the eradication of corruption," *Hasanuddin Law Review* 3, no. 1 (2017): 67.

⁴ Philippa Webb, "The United Nations convention against corruption: Global achievement or missed opportunity?," *Journal of International Economic Law* 8, no. 1 (2005): 191.

⁵ Anastasia Suhartati Lukito, "Revealing the unexplained wealth in Indonesian corporation: A revolutionary pattern in non-conviction-based asset forfeiture," *Journal of Financial Crime* 27, no. 1 (2020): 29.

criminal money laundering and asset confiscation, are also regulated independently from the Criminal Code.⁶ However, in practical application, the systems and mechanisms of asset confiscation in Indonesia, governed by multiple regulations, still suffer from suboptimal implementation. The main issue lies in the regulations' inability to establish an enforcement model that is fair to the entire society.⁷

Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption imposes limitations on the amount of compensation that can be imposed, capping it either at the same amount as the money obtained from the corrupt act or the proven amount in court. This restriction creates additional problems, making it challenging to secure the maximum refund. The complexity and time-consuming nature of gathering evidence for corruption cases further hinder efforts to return embezzled funds, leading to obstacles in enforcing the corruption laws, particularly regarding Asset Confiscation.⁸ Despite being a party to the United Nations Convention Against Corruption (UNCAC), Indonesia lacks a comprehensive regulatory framework for implementing asset confiscation without punishment, known as Non-Conviction Based (NCB) asset forfeiture.⁹ Several existing regulations in Indonesia impede the execution of NCB asset forfeiture. Although the Asset Confiscation Bill has not been passed yet, there is also an absence of procedural laws related to the NCB asset forfeiture mechanism in both the Criminal Procedure Code and the Civil Procedure Code. Moreover, asset confiscation is subject to limitations specified in Law No. 39 of 1999 concerning human rights and Article 18 paragraph (1) letter a of Law No. 31 of 1999 concerning the eradication of corruption crimes. Indonesia does have a Non-Conviction Based (NCB) asset forfeiture mechanism established in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001 and Law No. 46 of 2009 concerning the Corruption Court. Nevertheless, the lack of comprehensive regulations and

⁶ M. Said Karim, "The Concept of Non-Conviction Based Asset Forfeiture as a Legal Policy in Assets Criminal Action of Corruption," *Legal Brief* 11, no. 5 (2022): 2613.

⁷ Widiya Yusmar, Somawijaya Somawijaya, and Nella Sumika Putri, "Urgensi Pengesahan Rancangan Undang-Undang Perampasan Aset Tindak Pidana Sebagai Upaya Pemberantasan Tindak Pidana Pencucian Uang Dengan Predicate Crime Tindak Pidana Narkotika," *Jurnal Ilmiah Galuh Justisi* 9, no. 2 (2021): 219.

⁸ Badan Pembinaan Hukum Nasional (BPHN), *Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana* (Jakarta: Pusat Perencanaan Pembangunan Hukum Nasional, Badan Pembinaan Hukum Nasional, Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia, 2012), 11.

⁹ Dwidja Priyatno, "Non-Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia," *Journal of Advanced Research in Law and Economics (JARLE)* 9, no. 31 (2018): 219.

procedural laws poses challenges in effectively implementing NCB asset forfeiture to combat corruption and recover misappropriated assets.¹⁰

Regarding the Asset Confiscation Bill, it has its advantages and disadvantages. Although it has been included in the extensive list of the 2019–2024 Parliament National Legislation Program, there has been limited community involvement in understanding its actual contents.¹¹ Consequently, many people are not well-informed about the regulations that will be implemented through this bill. Despite its importance as a legislative process, the draft Asset Confiscation Bill was only resubmitted to the Parliament in April 2023.¹² Moreover, only the 2015 refinement draft is available to the general public, as the parliament website does not provide direct access to the asset confiscation bill; it merely offers a brief description of its contents. This situation has caused confusion among the public. On one hand, Coordinating Minister for Politics, Law and Security, Mahfud openly urged the Parliament's Commission to authorize the Draft Law. On the other hand, the government indicated that it would submit the Draft Law to the Parliament. However, when the public attempted to review the bill, they found that the presented data was irrelevant. This raises a crucial question: to what extent does the government truly desire to formulate criminal law politics in implementing asset confiscation in Indonesia? This is of utmost importance because, ultimately, it is the society that will be affected by the law, especially when it concerns asset confiscation, which is closely linked to human rights in controlling objects that are also protected by law.¹³

Accordingly, the problem involved in this study is the understanding of the impact of criminal law politics on the execution of asset confiscation in Indonesia. It also seeks to explore the mechanism employed for confiscating Assets in the country and the essential factors that must be taken into account while regulating this process. The research aims to shed light on the intricate relationship between politics, legal mechanisms, and crucial considerations in asset confiscation in Indonesia. The aim of this research article is to investigate the politics of criminal law in the context of asset confiscation in Indonesia. The study seeks to explore and examine the political dimensions surrounding asset confiscation in Indonesia. The study also aims to identify crucial regulatory matters for effective asset

¹⁰ Yunus Husein, "Tindak Pidana Pencucian Uang," *Indonesian Journal of International Law* 1, no. 2 (2004): 342.

¹¹ DPR RI, "DPR Serius Tunggu Draf Naskah RUU Perampasan Aset dari Pemerintah." Apr 2, 2023, <https://www.dpr.go.id/berita/detail/id/43930/t/DPR%20Serius%20Tunggu%20Draf%20Naskah%20RUU%20Perampasan%20Aset%20dari%20Pemerintah>, accessed Apr 28, 2023.

¹² Dian Dewi Purnamasari, "RUU Perampasan Aset Beri Kewenangan Besar pada Kejaksaan," *Kompas*, May 7, 2023, <https://www.kompas.id/baca/polhuk/2023/05/06/ruu-perampasan-aset-beri-kewenangan-besar-pada-kejaksaan>, accessed May 10, 2023.

¹³ Simon Butt, *Corruption and law in Indonesia* (London: Routledge, 2017), 3.

confiscation. The study aims to identify key issues and challenges that need to be addressed while regulating the process of asset confiscation. This includes considerations related to the fairness of the law, protection of individual rights, and efficient enforcement. The research was built upon existing scholarly literature and relevant legal documents related to asset confiscation in Indonesia. It will review previous studies, legal cases, and government reports. Additionally, the article will incorporate international conventions and best practices concerning asset confiscation from other countries. The state-of-the-art will include an analysis of the current state of Asset confiscation laws in Indonesia and any ongoing debates or reforms in this area. By synthesizing and critically evaluating existing knowledge, the research aims to contribute to a comprehensive understanding of the politics, mechanisms, and regulatory considerations involved in Asset confiscation in Indonesia.

2. Research Methods

The primary objective of this research article was to delve into the political dimensions of criminal law in the context of asset confiscation in Indonesia. The study aimed to investigate the mechanisms that would be utilized for executing asset confiscation in the country while also identifying crucial considerations essential for effectively regulating this process. The juridical normative method involved analyzing legal principles and norms related to asset confiscation in Indonesia. The research primarily relied on library materials classified as secondary data, consisting of existing information that was readily available, prearranged, and not limited by time or location. The researcher studied legislation concerning the politics of criminal law in conducting asset confiscation in Indonesia, using statutory, conceptual, and comparative approaches to examine various laws and regulations.

By employing this method, the research sought to shed light on how political factors impact the implementation of asset confiscation in the country. It also aimed to uncover the specific mechanisms employed for confiscating assets and identify key considerations necessary for effectively regulating this process. The juridical normative approach facilitated a comprehensive analysis of the legal aspects and political implications surrounding asset confiscation in Indonesia, thus contributing to a better understanding of this complex subject matter.

3. Results and Discussion

3.1. The Politics of Criminal Law in Asset Confiscation in Indonesia

Asset confiscation, also known as asset forfeiture, refers to the legal process of seizing and taking possession of assets or property that the government suspects to be closely linked to criminal activities.¹⁴ The objective of asset confiscation is to deprive criminals of the proceeds derived from their illicit actions and disrupt the financial infrastructure that fuels criminal operations. By confiscating assets that are tied to criminal acts, authorities aim to weaken criminal networks and deter individuals from engaging in unlawful activities.¹⁵ Asset confiscation is deemed necessary due to the crucial role money and assets play in sustaining criminal enterprises. The financial gains obtained from illegal activities serve as the lifeblood that fuels criminal operations, enabling the continuation of illicit conduct.¹⁶ By targeting and seizing these assets, law enforcement aims to cut off the funding sources of criminal organizations and curtail their ability to further engage in illegal activities. Asset confiscation operates on the concept of breaking the chain of criminal transactions. When assets obtained through criminal acts are seized, it disrupts the flow of illicit funds and weakens the overall chain of criminal activities. This helps in dismantling criminal networks, preventing the reinvestment of profits into future unlawful ventures, and discouraging individuals from participating in criminal endeavors.¹⁷ Moreover, asset confiscation serves as a punitive measure by ensuring that criminals do not benefit from their illegal gains.¹⁸ It sends a strong deterrent message to potential offenders, as they understand that engaging in criminal behavior may lead to the loss of their ill-gotten assets, making crime less appealing as a lucrative option¹⁹.

There are several models of possible asset confiscation adjusted to the conditions at the time of handling the case. These confiscation models consist of

¹⁴ John L. Worrall, "Addicted to the drug war: The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement," *Journal of Criminal Justice* 29, no. 3 (2001): 171.

¹⁵ Zaiton Hamin, Normah Omar, and Muhammad Muaz Abdul Hakim, "When property is the criminal: confiscating proceeds of money laundering and terrorist financing in Malaysia," *Procedia Economics and Finance* 31 no.9 (2015): 789.

¹⁶ Lukito, "Revealing the unexplained wealth", 30.

¹⁷ Jennifer Hendry and Colin King, "How far is too far? Theorising non-conviction-based asset forfeiture," *International Journal of Law in Context* 11, no. 4 (2015): 398. See also, Edgardo Buscaglia, "The paradox of expected punishment: legal and economic factors determining success and failure in the fight against organized crime," *Review of Law & Economics* 4, no. 1 (2008): 290.

¹⁸ Liz Campbell, "Theorising asset forfeiture in Ireland," *The Journal of Criminal Law* 71, no. 5 (2007): 441.

¹⁹ Yunus Husein, *Bunga rampai anti pencucian uang* (Bandung: Books Terrace & Library, 2007), 8.

(a) criminal forfeiture, (b) civil forfeiture, and (c) administrative forfeiture.²⁰ Criminal forfeiture is a part of the punishment for criminal acts. It deprives the property of the person who committed the crime through proof in the legal system, and it can only be done if that person has been proven to have violated the law.²¹ Civil forfeiture is a type of asset confiscation applied in cases that are non-criminal in nature. Unlike criminal forfeiture, civil forfeiture does not require the party involved to be proven guilty of a crime. Instead, if there is suspicion that the money or assets are linked to criminal activities, the state can initiate a legal action to seize them through civil proceedings.²² Meanwhile, administrative forfeiture refers to the process where a state administrative officer or an authorized entity seizes suspected assets without resorting to criminal or civil lawsuits (non-judicial) based on regulations and legislative provisions²³.

Peter Alldridge stated that the confiscation of the proceeds of crime is actually rooted in a very fundamental principle of justice, where a crime should not provide benefits for the perpetrator (the crime should not pay).²⁴ That is, a person may not take advantage of the illegal activities that he does. In Article 1, point 8 of the Draft Law on Asset Confiscation, *in rem* confiscation is the act of the state taking over assets through a court decision in a civil case based on stronger evidence that the assets are suspected of originating from a criminal act or being used for criminal activities. The enactment of laws by institutions themselves should also encompass principles that establish supremacy and fairness in the legal system. The law serves as the embodiment of meaningful values, aimed at safeguarding and promoting these values, and is highly esteemed by the people.²⁵ Politics and law play crucial roles in shaping, controlling, and updating the legal framework to achieve national objectives. Politics in law represents the state's policies implemented through

²⁰ Catherine E. McCaw, "Asset Forfeiture as a Form of Punishment: A Case for Integrating Asset Forfeiture into Criminal Sentencing," *American Journal of Criminal Law* 38, no. 2 (2011): 181.

²¹ Dewan Perwakilan Rakyat Republik Indonesia (DPR RI) and Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), *Memorie van Toelichting: Pembahasan Rancangan Undang-Undang tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (Buku 1)* (Jakarta: PPATK, 2011), 6.

²² DPR RI and PPATK, *Memorie van Toelichting*, 32.

²³ Reda Manthovani and R. Narendra Jatna, *Rezim anti pencucian uang dan perolehan hasil kejahatan di Indonesia* (Jakarta: UAI Press, 2018), 38.

²⁴ Peter Alldridge, *Money laundering law: Forfeiture, confiscation, civil recovery, criminal laundering and taxation of the proceeds of crime* (Oxford, Portland, Oregon: Hart Publishing, 2003). See also, Rachel Barnes, "Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering & Taxation of the Proceeds of Crime, Peter Alldridge, [Oxford, Portland, Oregon: Hart Publishing, 2003. xli, 273 and (Index) 8 pp. Hardback £ 40.00. ISBN 1-84113-264-0.]" *The Cambridge Law Journal* 62, no. 3 (2003): 786-788; Robin Booth, *Money laundering law and regulation: a practical guide*, (New York: Oxford University Press, 2011), 5.

²⁵ Satjipto Rahardjo, *Sosiologi hukum: Perkembangan, metode, dan pilihan masalah* (Yogyakarta: Genta Publishing, 2002), 22.

authorized agencies to establish desired regulations, which reflect the values and aspirations of society.²⁶

The politics of law functions as a policy-driven framework that organizes internal state policies in the realm of laws, both existing, ongoing, and prospective, derived from prevailing societal values, with the aim of attaining desired state objectives.²⁷ From a philosophical standpoint, weaknesses in the laws and regulations, such as overlapping provisions and ambiguous interpretations, can create loopholes, leading to potential losses for the state. Some have emphasized that assets derived from criminal activities represent the most vulnerable aspect of criminal operations.²⁸ Therefore, the necessity of asset confiscation arises from the understanding that money or assets serve as the lifeblood of crime, and by targeting these resources, the overall chain of criminal activities is weakened. As a governing body, the state is responsible for synergizing law enforcement efforts in line with principles of justice to achieve national goals and the welfare of the community.²⁹ Juridically, the urgency of enacting the asset confiscation bill stems from the obligation to align existing statutory provisions with the United Nations Convention on Transnational Organized Crime (UNTOC) in 2000 and the United Nations Convention Against Corruption (UNCAC) in 2003, following their ratification by Indonesia. Presently, the practice of asset confiscation in Indonesia can only be implemented if the perpetrators of crimes have been legally and convincingly proven guilty in court.³⁰ However, this mechanism often faces challenges due to various obstacles that hinder the examination of criminal offenders during court proceedings. Returning assets through a purely civil court process involves weaknesses in the evidentiary system, which relies on formal evidence, leading to lengthier and costlier proceedings.³¹ On the other hand, the return of assets through the pure criminal justice process has its weaknesses as well,

²⁶ Manan Abdul, *Dinamika politik hukum di Indonesia* (Jakarta: Kencana, 2018), 12.

²⁷ Hafid Zakariya, "Hernawan Santosa, Furry Dhismayana Masa Ganta, and Ratna Fitri Anjani. "Pengaruh Hukum dan Politik terhadap Perkembangan Investasi Asing di Indonesia," *Jurnal Serambi Hukum* 10, no. 2 (2016): 69.

²⁸ Marco Arnone and Leonardo Borlini, "International anti-money laundering programs: Empirical assessment and issues in criminal regulation," *Journal of Money Laundering Control* 13, no. 3 (2010): 226. See also, Michael Levi, "Money for crime and money from crime: Financing crime and laundering crime proceeds," *European Journal on Criminal Policy and Research* 21 (2015): 275.

²⁹ Badan Pembinaan Hukum Nasional (BPHN). *Laporan Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana*. Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2015.

³⁰ Ana Fauzia and Fathul Hamdani, "Legal Development Through the Implementation of Non-Conviction Based Concepts in Money Laundering Asset Recovery Practices in Indonesia," In *2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)* (Atlantis Press, 2021), 506.

³¹ Rinaldy Amrullah et al., "The corruption in Indonesia: the importance of asset recovery in restoring state finances," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 10.

as it does not directly involve the public prosecutor and instead focuses on assets obtained from the proceeds of crime.³² As a result of this, the concept of NCB asset forfeiture emerged. Non-Conviction-Based (NCB) asset forfeiture, also known as asset confiscation without conviction, aims to compensate for state losses.³³ However, in Indonesia, there are several regulations hindering the implementation of NCB asset forfeiture. These include the pending status of the Asset Confiscation Bill, the absence of procedural laws related to the NCB asset forfeiture mechanism in the Criminal Procedure Code and the Civil Procedure Code, as well as restrictions on asset confiscation outlined in Law No. 39 of 1999 concerning Human Rights and Article 18 paragraph (1) letter a of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Nevertheless, the NCB asset forfeiture mechanism is based on Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001, and Law No. 46 of 2009 concerning the Corruption Court.³⁴

In a modern legal state that can impose penalties for violations, the law reigns supreme as the ruler.³⁵ Law enforcement possesses the authority to apply penalties for violations of the law, often viewed as the embodiment of legitimate power.³⁶ Law is a highly intricate entity that encompasses various aspects, dimensions, and stages within the context of a diverse and pluralistic society. The purpose of enacting laws is to provide positive protection for the fundamental rights of human beings, reflecting the essence of the rule of law.³⁷ Consequently, Indonesia requires a legal instrument that facilitates the Asset Confiscation resulting from criminal activities.³⁸ This instrument can be realized through a quasi-criminal mechanism that primarily focuses on seizing assets involved in crimes rather than targeting specific individuals. From a sociological perspective, the current legal system in Indonesia reveals that merely uncovering criminal acts, identifying the wrongdoers, and placing them in prison (following suspects) do not effectively deter crime or significantly reduce crime rates. For a more impactful approach, efforts to confiscate and seize the proceeds and instruments involved in criminal activities

³² BPHN (2012), *Laporan Akhir Naskah Akademik*, 12.

³³ Guilherme France, *Non-conviction-based confiscation as an alternative tool to asset recovery: Lessons and concerns from the developing world* (Berlin: Transparency International, 2022), 76.

³⁴ Prosper Maguchu., Borders and boundaries: Importing asset recovery “duty free” in transitional justice processes, *Indonesian Journal of International Law*, 17 no. 2 (2020), 181.

³⁵ Brian Z. Tamanaha, “The history and elements of the rule of law,” *Singapore Journal of Legal Studies* 23 no.3 (2012): 233.

³⁶ Petrus Soerjowinoto, *Ilmu Hukum: Suatu Pengantar* (Surabaya: Garuda Mas Sejahtera, 2018), 48.

³⁷ Maria Kaida-Gbandi, “The Importance of Core Principles of Substantive Criminal Law for a European Criminal Policy Respecting Fundamental Rights and the Rule of Law,” *European Criminal Law Review* 1, no. 10 (2011): 7-34.

³⁸ Danil and Kurniawan, “Optimizing confiscation of assets”, 67.

are crucial. Confiscating and seizing such assets not only transfers wealth from criminals to the community but also fosters a shared objective of establishing justice and prosperity for all members of society. This has led the Indonesian government to prioritize policies focused on accelerating the eradication of corruption. Among these policies, the creation of legal instruments capable of confiscating all assets resulting from crimes, along with the means facilitating criminal activities, especially those driven by economic motives, has gained significant attention.³⁹

Overall, the politics of law represents the policies adopted by the state through its authorized agencies to establish necessary regulations and ensure the orderly functioning of the government. These policies aim to achieve the country's goals gradually and in an organized manner. The politics of law is closely tied to the national legal framework, ensuring justice and truth while upholding the supremacy of law. Reconstructing Indonesia's criminal law system to address asset confiscation, proceeds confiscation, and crime instrument confiscation requires comprehensive and integrated regulations. These laws should be effective in implementation, providing legal certainty and protecting the rights of the public. By adopting the politics of law in confiscating assets in Indonesia, it is envisioned that future legislation will uphold the supremacy of law, based on justice and truth, while safeguarding the legal rights of the public.

3.2. History of Asset Confiscation Bill in Indonesia

The asset confiscation bill is not solely driven by the political will of the current government regime. In fact, it has been in development for quite some time. As early as 2008, the Directorate General of the Ministry of Law and Human Rights publicly released a draft of the Bill on Asset Confiscation comprising 66 articles. Notably, there was no specific explanation provided by President Susilo Bambang Yudhoyono and the Minister of Law and Human Rights, Andi Mattalatta, regarding these articles. Subsequently, the draft underwent further refinement during the consignment meeting held on August 9-11, 2010, at the Salak Hotel, Bogor, resulting in 84 articles presented to the Minister of Law and Human Rights, Patrialis Akbar. The process of developing the Asset Confiscation Bill continued, and it underwent inter-ministerial discussions and harmonization in November 2010. Eventually, the draft law was formally submitted to the President through the Letter of the Minister of Law and Human Rights, No. M.HH.PP.02.03-46, dated December 12, 2011.⁴⁰

³⁹ BPHN (2012), *Laporan Akhir Naskah Akademik*, 12.

⁴⁰ Akbar Ridwan, "Pakar hukum: RUU Perampasan Aset untungkan negara." *Alinea*, Feb 22, 2021, <https://www.alinea.id/nasional/pakar-hukum-ruu-perampasan-aset-untungkan-negara-b2cyh91ke>, accessed Mar 17, 2023.

In 2012, as per the Decree of the Minister of Law and Human Rights of the Republic of Indonesia, under No. PHN-134-HN.01.03 of 2012, a team was formed to prepare academic papers on asset confiscation. The team, chaired by Ramelan and Secretary Fabian Adiasta Nusabakti Broto, proposed that the Asset Confiscation Bill should be prioritized for the year 2012. The rationale behind this recommendation was to enhance the effectiveness and efficiency of efforts to prevent and eradicate criminal activities in Indonesia. Confiscating the proceeds and instruments of crime not only curbs the economic motives of criminals but also allows for the accumulation of significant funds that can be utilized to combat and eliminate crime. Overall, this is anticipated to result in a reduction in the crime rate across Indonesia. For the successful implementation of the Bill on Asset Confiscation, extensive socialization efforts are crucial, targeting all stakeholders, including the general public, to ensure its acceptance and effective execution.

In 2015, a final alignment process took place following the Decree of the Minister of Law and Human Rights under PHN-H No. N.01-03-113 Year 2015. Upon receiving the letter of application alignment with reference PP.03.01-230 from the Directorate General of Regulation Laws, the Ministry of Justice and Human Rights invited Man as the initiator to undertake the alignment. The Alignment Team was tasked with aligning the systematic structure of the academic manuscript to meet the preferences of the senior official. During this period, a draft of the Bill on Asset Confiscation of Criminal Acts containing 78 articles was produced. The Academic Paper and Bill on Asset Forfeiture were accepted at the DPR, proposed by the Government-Ministry of Law and Human Rights, and discussed in Commission III of the Parliament. The Asset Forfeiture Bill has been included in the long list (long-list) of the 2019-2024 National Legislation Program. On May 1, 2023, the Bill on Asset Forfeiture was registered as a Priority National Legislation Program with the number 33. According to information available on the Parliament's website, the Bill on Asset Forfeiture has undergone Level I Debates and Level I Debates I in the Parliament.⁴¹

The main purpose of this bill was to address the need for an effective and efficient system of asset confiscation and forfeiture, while ensuring that justice is upheld and individual rights are not violated. Currently, the existing legislation lacks comprehensive and detailed regulations concerning the asset confiscation associated with criminal activities, and there are significant deficiencies when compared to the non-conviction-based asset forfeiture (NCB) approach recommended by international organizations like the United Nations. The Indonesian government has already ratified the Convention on International Eradication of Funding for Terrorism and the Convention Against Corruption, which include provisions related to identifying, detecting, freezing, and

⁴¹ Ridwan, "Pakar hukum."

confiscating assets resulting from criminal activities.⁴² Therefore, it is crucial for the Indonesian government to align its existing legislation with the provisions outlined in these conventions.

Based on this, the government has set its sights on reducing crime and fulfilling the objectives of the law. This involves the confiscation and seizure of assets resulting from criminal activities, not just transferring wealth from criminals to society but also empowering the public to work together towards the common goal of establishing justice and prosperity for all members of society. The content covered in the Draft Law on Asset Confiscation includes various aspects of asset confiscation acquired or suspected to originate from criminal activities. It also deals with assets that are not in proportion to the declared income, procedures for asset search, provisions for blocking and seizing confiscated assets, the process of applying for asset confiscation, and procedures for summoning individuals. Moreover, the bill covers the authority to pass judgments, court examination proceedings, handling of evidence and court judgments, asset management, procedures for managing confiscated assets, amendments to loss and/or compensation, protection for third parties involved, international cooperation, and funding arrangements.

3.3. Mechanisms of Asset Confiscation in Indonesia

The evolution of the criminal law system in Indonesia now goes beyond merely identifying and punishing criminals. It also focuses on maximizing the recovery of assets, especially those that have harmed state finances. International law developments emphasize prevention and crime eradication, expanding the scope of prosecution to include confiscating and seizing the proceeds of crime, which has not been a significant part of crime prevention in Indonesia. Establishing regulations for asset confiscation will be a crucial step in strengthening the national legal system. This measure aims to prevent and prosecute assets linked to criminal activities, serving as a tool for the state to reduce various crimes, including unconventional ones with sophisticated techniques that often transcend borders. By implementing asset confiscation, the objective is to curb crime rates and fulfill the need for justice, which involves confiscating and recovering the proceeds and instruments used in criminal acts.

Mechanisms to be used in carrying out asset confiscation in the asset confiscation bill involve non-criminal-based asset forfeiture. NCB asset forfeiture is the confiscation and expropriation of an asset through an *in rem* lawsuit or lawsuit against assets. The concept of civil forfeiture is based on the ‘taint doctrine,’ where a crime is deemed to “*taint*” (tarnish) an asset that is used or is the result of the

⁴² R. E. Bell, “The confiscation, forfeiture and disruption of terrorist finances,” *Journal of Money Laundering Control* 7, no. 2 (2004): 105.

crime.⁴³ NCB, as an instrument to confiscate and take assets originating from, related to, or the result of crime, is commonly practiced. The roots of the NCB principle were first discovered in medieval England when the British Empire confiscated items that were considered instruments of death, or what is often referred to as *Deodand*.⁴⁴ NCB is a lawsuit against assets (*in rem*), while criminal forfeiture is a lawsuit against a person (*in personam*). This raises differences in evidence in court. In criminal forfeiture, the public prosecutor must prove the fulfillment of the elements of a crime, such as personal culpability and mens rea, of a defendant before confiscating assets from the defendant. Because it is a crime, criminal forfeiture also requires the prosecutor to prove it beyond a reasonable doubt. Conversely, because of its civil nature, NCB does not require the prosecution to prove the elements and guilt of the person who committed the crime (personal culpability).⁴⁵

According to Article 20 of the Asset Confiscation Bill, the process of applying for asset confiscation is carried out in writing by the state attorney to the head of the local district court. The state attorney, with special authority, acts on behalf of the state without the need for a separate power of attorney. The district court responsible for examining and adjudicating cases of asset confiscation is the one that covers the location of the assets involved in the crime. If the assets fall under the jurisdiction of multiple district courts, the state attorney can choose one of them. In cases where a district court cannot handle the application, the Supreme Court, upon recommendation from the Head of the District Attorney, can appoint another district court. If the assets subject to confiscation are located abroad, the application must be submitted to the Central Jakarta District Court. The process of confiscating assets is not merely the state seizing its citizens' assets; rather, it involves a judicial procedure where the State Attorney, acting as an advocate, presents evidence to prove that the assets were obtained through criminal acts. According to Article 20 of the Draft Law on Asset Confiscation, the State Attorney's Prosecutor files a lawsuit containing various details, such as the name and type of asset, its weight, size, and/or amount, the place, day, and date of confiscation, the identity of the owner or controller of the blocked and/or confiscated assets, the legal basis and reasons for the application for asset confiscation, and other supporting documents. The aim is to examine and decide on the application for asset confiscation through proper judicial channels.

⁴³ David Scott Romantz, "Civil Forfeiture and the Constitution-A Legislative Abrogation of Rights and the Judicial Response: The Guilt of the Res," *Suffolk University Law Review* 28 no.9 (1994): 387.

⁴⁴ Todd Barnet, "Legal Fiction and Forfeiture: An Historical Analysis of the Civil Asset Forfeiture Reform Act," *Duquesne Law Review* 40, no. 1 (2001): 77.

⁴⁵ Romantz, "Civil Forfeiture and the Constitution," 388.

According to the application for asset forfeiture, the owner or controller of the blocked or confiscated assets will be summoned. As stated in Article 25 of the Draft Law on Asset Confiscation, the District Court orders the Registrar to announce the application for asset forfeiture on the announcement board. Additionally, a copy of the application is provided to parties known to have an interest in the assets, which may include the defendant or respondent in a civil case. If there are parties who object to the asset forfeiture application, as per Article 26 of the Draft Law on Asset Confiscation, the Registrar of the District Court issues a summons to the objecting party and notifies the State Attorney General to attend the court hearing. The bill does not specify a time limit for filing objections, whether oral or written. However, Article 27 stipulates that the time between the summons and the trial must be at least three working days, except in urgent cases specified in the summons. This means the minimum grace period for summons is four days before the trial date, allowing ample time for parties to file their objections if necessary.

On the designated day in accordance with Article 31, the judge initiates the hearing for the asset forfeiture case by announcing the assets subject to confiscation and declaring the hearing open to the public. During this initial hearing, the state attorney presented a request for asset confiscation along with supporting arguments for why the assets should be seized. The State Attorney's Prosecutor also presents evidence pertaining to the origin and location of the assets linked to the criminal act, further substantiating the grounds for asset forfeiture. If necessary, the State Attorney's Prosecutor can physically present the assets to be confiscated or, as per the judge's instructions, inspect the location of the assets in question. It is evident that the process, as stipulated in Article 31, involves the immediate presentation of the application for asset confiscation accompanied by relevant written evidence. In cases where a third party contests the confiscation, the judge grants the third party an opportunity to present evidence in support of their objection. After considering the evidence presented by the third party, the State Attorney General may call additional witnesses or experts to challenge the evidence put forth during the trial. Subsequently, the judge evaluates all arguments presented by the state attorney and/or the third party before reaching a decision on whether to approve or reject the application for asset confiscation.

The application for asset confiscation does not follow the comprehensive civil proceedings system; instead, it only deals with objections to the application. During the trial, exceptions, replicas, duplicates, and trimming are directly combined with the presentation of documentary evidence. This typically occurs simultaneously or is combined in the proof session after the questions and answers. Article 31 of the Asset Confiscation Bill allows the State Attorney General to call additional witnesses or experts to challenge evidence presented by a third party during the trial. The process of proving witnesses follows cross-examination, as stated in

Article 33. The State Attorney first questions witnesses or experts, followed by the third party, who can also ask questions. The judge plays a more passive role, similar to a civil trial, where they prioritize the parties asking questions. However, the judge retains the authority to ask questions to clarify the inquiries posed by the State Attorney or the third party to witnesses or experts. The presiding judge and other judges may also question witnesses to gather all necessary information to ascertain the truth.

Pursuant to Article 40, during a court hearing, the head judge may request expert testimony and ask for new supporting materials to clarify any arising issues. This implies that the principle of proof involves not only formal evidence but also material evidence, allowing judges to actively seek expert opinions and additional materials from the parties involved. Additionally, the judge has the authority to ask questions for further clarification from witnesses or experts, as stated in Article 33. The presiding judge and other judges can also question witnesses to gather all necessary information for ascertaining the truth. After both parties have presented testimonies and evidence, each party is given the opportunity to provide oral statements explaining the evidence presented in support of their stance on the case. This process is similar to a civil trial, where conclusions are made at the final stage after the presentation of evidence. However, the difference lies in the format of conclusions; in a civil mechanism, they are generally made in written form to support arguments, but in a hearing for asset confiscation applications, closing arguments are given as customary in a common-law country court.

The subsequent stage in the process is the issuance of a decision, as stated in Article 55. Court decisions are valid and legally binding only if they are pronounced in a public hearing. The decision encompasses various elements, as specified in Article 56, paragraphs (1) a to k. It also includes concise considerations based on the facts and evidence presented during the trial, serving as the basis for accepting or rejecting the application for asset confiscation. The decision is not final and binding, as Article 49 allows a period of 14 days to submit an appeal from the time the decision is read. Furthermore, Article 57 establishes a special procedure, mandating that decisions be executed within seven days of being conveyed to the State Attorney General, ensuring a prompt resolution for legal certainty. Regarding the execution of the verdict, the Asset Confiscation Bill does not explicitly designate who will carry it out. However, Article 60 assigns asset management institutions the responsibility to assist investigators or public prosecutors in executing court decisions that have become permanently binding. These institutions can subsequently sell the confiscated assets to the state based on the court's permanent decision or, before obtaining a permanent decision, upon request from investigators or public prosecutors. The sale of assets by the Asset Management Agency is conducted through an auction, and the proceeds are directly deposited into the state treasury as non-tax state revenue.

3.4. Key Considerations for Asset Confiscation in Indonesia

The Criminal Asset Confiscation Bill is a powerful tool that needs to be wielded carefully. It poses a significant risk if used arbitrarily. The study of the mechanism for implementing asset confiscation in Indonesia highlights four crucial considerations that the government, as the proponent of the bill, must take into account. First, the process of asset confiscation without conviction (NCB asset forfeiture), also known as “Civil Confiscation,” “Forfeiture in Rem,” or “Confiscation of Objects” in some jurisdictions, targets the assets themselves rather than individuals. It requires careful implementation, especially when dealing with cases of illicit enrichment, where assets can be confiscated without conviction if the perpetrator fails to prove the burden of reversed evidence. The power granted by this bill should not be used arbitrarily, as it will eventually become law. From a human rights perspective, the implementation of non-conviction-based asset forfeiture (NCB asset forfeiture) gives rise to conflicts, particularly concerning property rights, as it goes against the principles of the presumption of innocence and protection against self-incrimination. In Human Rights terminology, property rights are considered fundamental rights that should be safeguarded and respected. Any violation of these rights amounts to a violation of Human Rights. Property ownership is a basic right of individuals, and it is the duty of the state to protect it. This principle also emphasizes that a person cannot be convicted merely based on suspicion regarding their property ownership, nor should they be compelled to explain in court how they obtained their property legally.⁴⁶ Hence, the judge’s accuracy in determining whether to accept or reject the application for asset confiscation becomes crucial. Thus, the process of confiscating assets requires careful consideration due to the limitation of a one-time legal remedy through cassation against the District Court’s decision. Additionally, as per Article 57, the decision must be executed within a maximum period of 7 days after being communicated to the State Attorney’s Prosecutor. Therefore, the judge’s decision-making process must be cautious when deciding on asset confiscation, especially for third parties involved in the request for confiscation.

Secondly, the Asset Confiscation Bill should specify the types of crimes eligible for asset confiscation. This is crucial to prevent law enforcement from acting arbitrarily and accusing individuals of unrelated crimes to invoke asset confiscation. For instance, using the asset confiscation law in cases like rape, where there is no correlation, would be unreasonable. However, there is a potential for law enforcement to abuse the power of the Criminal Act’s Asset Confiscation Law by

⁴⁶ Alvon Kurnia Palma et al., *Implementasi dan pengaturan illicit enrichment (Peningkatan kekayaan secara tidak sah) di Indonesia* (Jakarta: Indonesia Corruption Watch, 2014), 31.

threatening individuals with it, leading to potential violations where individuals may choose to pay a sum of money to avoid prosecution. To prevent such abuses and ensure fairness, certain types of criminal acts that are directly linked to the generation of illegal profits, such as embezzlement and gambling, should be included as eligible for asset confiscation. By setting these limitations, law enforcement officials will be prevented from acting arbitrarily, ensuring a more just and balanced implementation of the asset confiscation law.

Thirdly, asset confiscation serves not only the state but also those who have suffered harm as a result of the related crime. According to Muhammad Yusuf, NCB asset forfeiture is a means to return assets to either the state or parties entitled to ownership of assets that are suspected to be connected to a crime without requiring prior criminal charges. The concept of returning assets to the state or entitled parties involves two subjects: the state and the rightful owners of the assets. Therefore, the Asset Confiscation Bill must consider both parties and cannot deny the rights of either. Crimes can cause harm to the state or individuals. In cases of corruption, asset confiscation aims to recover state losses. In narcotics crimes, it is intended to disrupt the illegal circulation of narcotics and use the resulting assets to support law enforcement efforts against narcotics crimes, both preventive and repressive. For example, the First Travel case involved Asset Confiscation by the state, and the Indra Kenz case saw the Tangerang District Court judge trying Indra Kesuma, with the state recovering assets from the Binomo case. However, there may be situations where no assets have been found on the defendant during the trial process, and Article 68 only allows the return of crime-related assets to a third party or other parties based on a court decision with permanent legal force. Therefore, the Asset Confiscation Bill should also address the restitution of losses to victims even when assets have not been found during previous decisions. The tracing, blocking, and confiscation mechanisms outlined in the bill can facilitate such implementations.

Fourthly, the Asset Confiscation Bill addresses the issue of compensation for two scenarios: firstly, when a person suffers harm as a result of asset blocking or confiscation, as stated in Article 71, and secondly, regarding third parties who have acted in good faith, as mentioned in Article 72, a third party with good intentions can raise an objection to the asset confiscation application to the Chairperson of the District Court. The distinction between a third party and a third party with good intentions in the Asset Confiscation Bill is somewhat flawed. Both categories are given the opportunity to submit objections to the asset confiscation application to the Head of the District Court. Moreover, both third parties and third parties with good intentions are required to prove their ownership rights to the assets in question. Essentially, there seems to be no significant difference between the two groups. The only possibility is that a third party might have some connection with the perpetrator of the crime, the convict, or others.

If the aim is to deter not only the perpetrators but also their families, the Asset Confiscation Bill could be perceived as repressive and vengeful against the perpetrator's family without offering a resolution. For instance, if the house to be confiscated is the sole residence of the perpetrator, the family might face homelessness after the judge's decision. To avoid such harsh outcomes, the Asset Confiscation Bill could incorporate provisions for humanitarian aid. Similarly, the situation for third parties with good intentions remains the same, with no special privileges despite being labeled as such. Good faith is verifiable through evidence. For example, if someone unknowingly occupies an asset like a house that was obtained through corruption, but the purchase was legal, done through a notary, and without any signs of being illicit, justice requires a solution to address this predicament. The law should consider introducing compensation mechanisms for such third parties acting in good faith. By doing so, the Asset Confiscation Bill would not only guarantee the supremacy of law based on justice and truth but also offer legal protection to the public.

Fifthly, the issue of retroactive enforcement arises in the Asset Confiscation Draft Law of 2010. According to Article 84, this law would come into effect upon promulgation and apply retroactively to assets linked to criminal acts committed since 1998. At that time, there was a proposal to draft the Confiscation Bill to apply, refuse, or withdraw the asset confiscation. However, it is uncertain whether the Confiscation Bill Assets can be applied retroactively, meaning old cases related to it will be processed under the new law.⁴⁷ Moeljatno's view is that no act can be punished except based on the criminal rules existing at the time the act was committed.⁴⁸ Oemar Seno Adji also emphasizes the importance of the principle of "legality" in criminal law, which prohibits retroactive or retrospective application of criminal law and the use of analogy in legal practices.⁴⁹ In this regard, understanding the distinction between laws governing behavior and those regulating procedural practices is crucial in interpreting the Asset Confiscation Bill. The main objective of this bill seems to streamline procedural practices, leading to debates about its future enforceability due to significant differences between laws governing behavior (e.g., the Criminal Code) and procedural regulations. An illustrative example is Fredy Budiman's case, where the asset tracing process could restart the procedure, potentially making the Asset Confiscation Bill relevant to his case. However, questions arise about fairness and the underlying purpose of enacting this bill. It is vital to understand the government's legal policy and the true spirit behind the law. This examination offers an opportunity to progress and ensure proper regulation of procedural practices, effectively tracing and

⁴⁷ Arie Afriansyah et al., "State Practice of Asian Countries in International Law: Indonesia," in *Asian Yearbook of International Law*, ed. Seokwoo Lee and Hee Eun Lee. Leiden: Brill, 2022), 214.

⁴⁸ Moeljatno, KUIP: *Kitab Undang-Undang Hukum Pidana* (Jakarta: Bumi Aksara, 2007), 13.

⁴⁹ Oemar Seno Adji, *Peradilan bebas negara hukum* (Jakarta: Erlangga, 1980), 89.

confiscating criminals' assets. It highlights the importance of just and equitable laws that serve broader societal goals. In conclusion, constructive dialogue among stakeholders is essential to ensure the effectiveness and alignment of the law with the objectives of justice and social welfare. By fostering such discussions, potential challenges can be addressed, and the legislation can be refined to create a stronger legal framework for the future.

The last consideration is the Possibility of Non-Cash/Cryptocurrency Assets. The Asset Confiscation Act is crucial in law enforcement, especially as technology advances and money laundering methods evolve. Cryptocurrencies have become a means for money laundering, with significant amounts involved. In 2021, it reached US\$8.6 billion, a 30% increase from the previous year, according to Chainalysis, a blockchain analysis company. The total amount of money laundered since 2017 is estimated to be over US\$33 billion, with some moving to centralized exchanges. In Indonesia, there have been cases of suspected corruption at PT Asabri (Persero) involving money laundering through Bitcoin. Suspects involved in money laundering with Bitcoin include commissioners and directors. These criminals are buying suspected Bitcoins that originate from corruption at Asabri. The concealment of crime through cryptocurrency transactions has been identified in Indonesia since 2015, posing a new threat to money laundering in the country. The use of cryptocurrencies in criminal activities raises legal issues concerning their confiscation, execution, auction, and what happens when the defendant or convict is anonymous. This poses challenges to law enforcement and asset recovery. The Asset Confiscation Bill is a step forward in the enforcement process, but it does not currently address the confiscation of cryptocurrencies as a means of crime. Consequently, it is essential to consider and regulate Asset Confiscation in the form of cryptocurrencies in Indonesia to ensure effective law enforcement.

4. Conclusion

The politics of criminal law in confiscating assets in Indonesia aims to become a law in the future (*ius constituendum*) that ensures the upright supremacy of the law based on justice and truth and provides guarantees of legal protection to the public. The urgency of the Asset Confiscation Bill stems from the need for an effective and efficient system of confiscating assets, paying attention to justice while respecting individual rights. The government's objective is to reduce crime and uphold the law by confiscating and recovering assets obtained through criminal activities, not only returning wealth to society but also promoting justice and welfare for all members of society.

The mechanism to be used in confiscating assets in Indonesia under the asset confiscation bill is non-criminal-based asset forfeiture, known as NCB asset

forfeiture. It involves confiscating and expropriating an asset through an *in rem* lawsuit or lawsuit against assets. There are several important considerations to be taken into account when implementing asset confiscation in Indonesia: a) Asset confiscation of proceeds of criminal acts must be approached with caution; b) The asset forfeiture bill must establish specific criteria for Asset confiscation; c) The results of asset forfeiture should benefit not only the state but also the injured parties affected by the criminal activity; d) There needs to be a provision for compensating third parties who act in good faith; e) The possibility of retroactive enforcement of the law should be considered, and; f) The bill must address the potential seizure of non-cash assets or cryptocurrencies.

Finally, the authors recommend that there should be a transparent discussion regarding the asset forfeiture bill, as its consequences intersect with society. Since the asset forfeiture bill is crucial, it should not be rushed. Society must engage in maximum socialization and discussion of the confiscation bill related to criminal activities.

References

- Abdul, Manan. *Dinamika politik hukum di Indonesia*. Jakarta: Kencana, 2018.
- Adji, Oemar Seno. *Peradilan bebas negara hukum*. Jakarta: Erlangga, 1980.
- Afriansyah, Arie, Akbar Kurnia Putra, Gregorius Sri Nurhartanto, I. Made Budi Arsika, M. Reza Syariffudin Zaki, Siti Halimah Indrani Anwar, and Sri Wartini. "State Practice of Asian Countries in International Law: Indonesia." In *Asian Yearbook of International Law*, edited by Seokwoo Lee and Hee Eun Lee, 213-234. Leiden: Brill, 2022.
- Alldrige, Peter. *Money laundering law: Forfeiture, confiscation, civil recovery, criminal laundering and taxation of the proceeds of crime*. Oxford, Portland, Oregon: Hart Publishing, 2003.
- Amrullah, Rinaldy, Ruben Achmad, Heni Siswanto, and Maya Shafira. "The corruption in Indonesia: the importance of asset recovery in restoring state finances." *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1-10.
- Arnone, Marco, and Leonardo Borlini. "International anti-money laundering programs: Empirical assessment and issues in criminal regulation." *Journal of Money Laundering Control* 13, no. 3 (2010): 226-271.
- Badan Pembinaan Hukum Nasional (BPHN). *Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana*. Jakarta: Pusat Perencanaan Pembangunan Hukum Nasional, Badan Pembinaan Hukum Nasional, Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia, 2012.
- Badan Pembinaan Hukum Nasional (BPHN). *Laporan Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana*. Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2015.
- Barnes, Rachel. "Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering & Taxation of the Proceeds of Crime. By Peter Alldrige. [Oxford, Portland, Oregon: Hart Publishing. 2003. xli, 273 and (Index) 8 pp. Hardback£ 40.00. ISBN 1-84113-264-0.]" *The Cambridge Law Journal* 62, no. 3 (2003): 786-788.
- Barnet, Todd. "Legal Fiction and Forfeiture: An Historical Analysis of the Civil Asset Forfeiture Reform Act." *Duquesne Law Review* 40, no. 1 (2001): 77.
- Bell, R. E. "The confiscation, forfeiture and disruption of terrorist finances." *Journal of Money Laundering Control* 7, no. 2 (2004): 105-125.
- Booth, Robin. *Money laundering law and regulation: a practical guide*. New York: Oxford University Press, 2011.
- Buscaglia, Edgardo. "The paradox of expected punishment: legal and economic factors determining success and failure in the fight against organized crime." *Review of Law & Economics* 4, no. 1 (2008): 290-317.
- Butt, Simon. *Corruption and law in Indonesia*. London: Routledge, 2017.
- Campbell, Liz. "Theorising asset forfeiture in Ireland." *The Journal of Criminal Law* 71, no. 5 (2007): 441-460.
- Danil, Elwi, and Iwan Kurniawan. "Optimizing confiscation of assets in accelerating the eradication of corruption." *Hasanuddin Law Review* 3, no. 1 (2017): 67-76.
- Dewan Perwakilan Rakyat Republik Indonesia (DPR RI) and Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK). *Memorie van Toelichting: Pembahasan Rancangan Undang-Undang tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (Buku 1)*. Jakarta: PPATK, 2011.
- DPR RI. "DPR Serious Tunggu Draf Naskah RUU Perampasan Aset dari Pemerintah." April 2, 2023.

- <https://www.dpr.go.id/berita/detail/id/43930/t/DPR%20Serius%20Tunggu%20Draf%20Naskah%20RUU%20Perampasan%20Aset%20dari%20Pemerintah>. Accessed April 28, 2023.
- Fauzia, Ana, and Fathul Hamdani. "Legal Development Through the Implementation of Non-Conviction Based Concepts in Money Laundering Asset Recovery Practices in Indonesia." In *2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)*, 506-513. Atlantis Press, 2021.
- France, Guilherme. *Non-conviction-based confiscation as an alternative tool to asset recovery: Lessons and concerns from the developing world*. Berlin: Transparency International, 2022.
- Hamin, Zaiton, Normah Omar, and Muhammad Muaz Abdul Hakim. "When property is the criminal: confiscating proceeds of money laundering and terrorist financing in Malaysia." *Procedia Economics and Finance* 31, no. 9 (2015): 789-796.
- Hendry, Jennifer, and Colin King. "How far is too far? Theorising non-conviction-based asset forfeiture." *International Journal of Law in Context* 11, no. 4 (2015): 398-411.
- Husein, Yunus. "Tindak Pidana Pencucian Uang." *Indonesian Journal of International Law* 1, no. 2 (2004): 342-363.
- Husein, Yunus. *Bunga rampai anti pencucian uang*. Bandung: Books Terrace & Library, 2007.
- Kaida-Gbandi, Maria. "The Importance of Core Principles of Substantive Criminal Law for a European Criminal Policy Respecting Fundamental Rights and the Rule of Law." *European Criminal Law Review* 1, no. 10 (2011): 7-34.
- Karim, M. Said. "The Concept of Non-Conviction Based Asset Forfeiture as a Legal Policy in Assets Criminal Action of Corruption." *Legal Brief* 11, no. 5 (2022): 2613-2622.
- Levi, Michael. "Money for crime and money from crime: Financing crime and laundering crime proceeds." *European Journal on Criminal Policy and Research* 21 (2015): 275-297.
- Lukito, Anastasia Suhartati. "Revealing the unexplained wealth in Indonesian corporation: A revolutionary pattern in non-conviction-based asset forfeiture." *Journal of Financial Crime* 27, no. 1 (2020): 29-42.
- Maguchu, Prosper. Borders and boundaries: Importing asset recovery "duty free" in transitional justice processes. *Indonesian Journal of International Law*, 17 no. 2 (2020): 181-210.
- Manthovani, Reda, and R. Narendra Jatna. *Rezim anti pencucian uang dan perolehan basil kejahatan di Indonesia*. Jakarta: UAI Press, 2018.
- McCaw, Catherine E. "Asset Forfeiture as a Form of Punishment: A Case for Integrating Asset Forfeiture into Criminal Sentencing." *American Journal of Criminal Law* 38, no. 2 (2011): 181-220.
- Meilani A, Tri, and Nabil Ihsan. "President seeks quick ratification of Asset Confiscation Bill: Mahfud." *Antaranews*, Sept 16, 2022. <https://en.antaranews.com/news/250181/president-seeks-quick-ratification-of-asset-confiscation-bill-mahfud>. Accessed January 25, 2023.
- Moeljatno, Moeljatno. *KUHP: Kitab Undang-Undang Hukum Pidana*. Jakarta: Bumi Aksara, 2007.
- Palma, Alvon Kurnia, Lais Abid, Sely Martini, Hifdzil Alim, and Febri Diansyah. *Implementasi dan pengaturan illicit enrichment (Peningkatan kekayaan secara tidak sah) di Indonesia*. Jakarta: Indonesia Corruption Watch, 2014.
- Priyatno, Dwidja. "Non Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia." *Journal of Advanced Research in Law and Economics (JARLE)* 9, no. 31 (2018): 219-233.
- Purnamasari, Dian Dewi. "RUU Perampasan Aset Beri Kewenangan Besar pada Kejaksaan." *Kompas*, May 7, 2023. <https://www.kompas.id/baca/polhuk/2023/05/06/ruu-perampasan-aset-beri-kewenangan-besar-pada-kejaksaan>, accessed May 10, 2023.
- Rahardjo, Satjipto. *Sosiologi hukum: Perkembangan, metode, dan pilihan masalah*. Yogyakarta: Genta Publishing, 2002.

- Ridwan, Akbar. "Pakar hukum: RUU Perampasan Aset untungkan negara." *Alinea*, February 22, 2021. <https://www.alinea.id/nasional/pakar-hukum-ruu-perampasan-aset-untungkan-negara-b2cyh91ke>. Accessed Mar 17, 2023
- Romantz, David Scott. "Civil Forfeiture and the Constitution-A Legislative Abrogation of Rights and the Judicial Response: The Guilt of the Res." *Suffolk University Law Review* 28 no. 9 (1994): 387-399.
- Soerjowinoto, Petrus. *Ilmu Hukum: Suatu Pengantar*. Surabaya: Garuda Mas Sejahtera, 2018.
- Tamanaha, Brian Z. "The history and elements of the rule of law." *Singapore Journal of Legal Studies* 23 no. 3 (2012): 232-247.
- Tempo. "Mahfud Md Urges DPR to Prioritize Asset Forfeiture Bill." *Tempo.co*, December 14, 2022. <https://en.tempo.co/read/1539163/mahfud-md-urges-dpr-to-prioritize-asset-forfeiture-bill>. Accessed February 12, 2023.
- Webb, Philippa. "The United Nations convention against corruption: Global achievement or missed opportunity?." *Journal of International Economic Law* 8, no. 1 (2005): 191-229.
- Worrall, John L. "Addicted to the drug war: The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement." *Journal of Criminal Justice* 29, no. 3 (2001): 171-187.
- Yusmar, Widiya, Somawijaya Somawijaya, and Nella Sumika Putri. "Urgensi Pengesahan Rancangan Undang-Undang Perampasan Aset Tindak Pidana Sebagai Upaya Pemberantasan Tindak Pidana Pencucian Uang Dengan Predicate Crime Tindak Pidana Narkotika." *Jurnal Ilmiah Galuh Justisi* 9, no. 2 (2021): 219-240.
- Zakariya, Hafid, Hernawan Santosa, Furry Dhismayana Masa Ganta, and Ratna Fitri Anjani. "Pengaruh Hukum dan Politik terhadap Perkembangan Investasi Asing di Indonesia." *Jurnal Serambi Hukum* 10, no. 2 (2016): 69-90.