

# Artikel 1

## Application of NCB Asset Confiscation in Handling Corruption Crimes in Indonesia

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## Application of NCB Asset Confiscation in Handling Corruption Crimes in Indonesia

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### ABSTRACT

**Keywords:** Non-Convection, Forfeiture, Confiscation, Corruption. Non-Not Asset

Applying NCB (non-convection based not on treasury), commonly called asset confiscation punishment without punishment, is an innovative solution for appropriating corruption when a person cannot cope with criminal, civil, and administrative penalties. The problem that exists already for change, of course, requires regulation in this regard. It is very important to look at these regulations and how a convection-based asset recovery policy is a government loss recovery policy related to state loss crimes such as corruption, money laundering, etc. Therefore, the subjects considered in this study are how NCB Asset Forfeiture is applied in dealing with criminal acts of corruption in Indonesia. This research method seeks normative law by examining secondary and qualitative data. It is from this that the first conclusion can be drawn: the urgency of implementing the NCB policy (Non-Convection based on not Forfeiture) in Indonesia, namely the existence of obesity problems from state losses with massive corruption crimes that have occurred and efforts to harmonize and legitimize the NCB Draft Asset confiscation bill to overcome state losses. Second, the legal response in applying the concept of NCB (Non-Convection Based Forfeiture), namely cooperation with other countries in exploiting evil assets.



### Introduction

Starting from the spread of the Pandora Papers document, which ensnared many names of public figures around the world, as well as ensnared several figures in Indonesia. Pandora Papers is data from the International Consortium of Investigative Journalists (ICIJ) based in Washington, DC (DPD & Timur, 2019). The document contains tax evasion activities on hidden wealth and money laundering by several rich and powerful people. This activity is carried out by forming a company or business network to buy property or hide assets; this act aims to hide taxes (Lutfi & Putri, 2020). The company's establishment provides anonymous or anonymous services, making it a tax haven or a good place to launder money (UANG, 2021).

Before the leak of the document in 2016, the same thing also happened with the Panama Papers, which consisted of 11 million documents detailing 214,000 foreign companies. The document is owned by Mossack Fonseca, a Panamanian company engaged in providing offshore company management and asset management services. This company has 500 employees in 40 countries and operates on behalf of 300,000 companies (Machdi, MNSPM, Wijayanto, Putra, & Pramana, n.d.).

If you look at the modus operandi carried out in the activities revealed in the Panama Papers and Pandora Papers, the more sophisticated the model of financial irregularities is getting. More sophisticated therefore, to reach the increasingly complex and sophisticated modus operandi, an unusual approach is also needed (Lutfi & Putri, 2020). For example, acts of corruption that are included in extraordinary crimes in their crimes have a systemic and widespread impact, not only causing losses to the state financially but also having an impact on all aspects of society. So, the formal and material approach is specific, as outlined in the Corruption Eradication Law (Tuahuns, 2021).

Referring to the provisions of the United Nations Convention Against Corruption (UNCAC), it is stated in Chapter V that it regulates the recovery of assets; in its provisions, it provides a description that wealth from the proceeds of corruption placed abroad is required to be returned to the country of origin or its rightful owner (Mubarak, 2023). According to reports, it is estimated that there is a loss of wealth of \$20 - \$40 billion each year; these assets are hidden by laundering mode in developing countries because they are the result of corruption (Juliani & Lubis, 2023). This wealth should be used for development through poverty alleviation, improving public services, and providing decent health, but only a few people enjoy it (Dizarahadi, 2023). However, according to reports, only about \$1.398 billion was frozen, and \$147.2 million was returned to countries that were members of the Organisation for Economic Co-operation and Development (OECD) in 2010 and 2012. On this basis, a very wide gap and inequality must be restored. Cooperation is needed to improve recovery and cooperation between jurisdictions.

In addition to corruption, several crimes require money laundering efforts in their operations; in this case, it can be detailed in three aspects: first, the trade in illegal drugs, counterfeit money, and illegal weapons man; second, unrecorded oil trade; Third, corruption from political figures (Hasan, 2020). Baker said in his book, that the number of transactions related to these three aspects is estimated to reach \$1 - \$1.6 trillion per year sourced from developing countries and transition countries. Efforts to recover assets from the impact of criminal acts from criminal proceeds are not only to impose penalties on the perpetrators and confiscate the proceeds of the criminal acts but also to return them to state assets transparently.

If referring to the legal mechanism applicable in Indonesia, the return of state assets resulting from this criminal act can be divided into three settlement flows: first, through the criminal law system, which must be based on a court decision that is intact or has permanent legal force, second, through the civil lawsuit, which must be able to prove formally related to the wealth so that it can obtain a court decision that has power

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permanent or permanent law and can subsequently be executed, third, the mechanism based on the Money Laundering Crime Law. In practice, each of these settlement flows faces problems; for example, through criminal law, there are many constraints on the problem of material proof, while through the civil lawsuit route, it is even more difficult because formal proof has the potential to be more difficult than material proof (Tantimin, 2023).

Asset recovery as a form of asset forfeiture after the ratification of UNCAC is a legal breakthrough to recover state losses from the proceeds of corruption. The regulation starts from the stages of tracing, confiscation, confiscation of proceeds, and international cooperation to return state assets resulting from acts of corruption. Departing from this paradigm, the idea of Non-conviction-based Asset forfeiture (NCB) in settling asset forfeiture without criminal prosecution emerged as a solution for recovering state losses.

Referring to the general explanation contained in Law 31/1999, changes were made by repealing the previous laws and regulations because they were considered incapable of reaching the increasingly sophisticated and complicated modus operandi, so it was necessary to make a law that could provide a material and formal legal basis for criminal acts. This research will explain how Non-Conviction Based (NCB) Asset Forfeiture carries out asset forfeiture without a litigation process.

In addition, the concept of confiscation of national central bank assets is also supported by a shift in the law enforcement paradigm, which originally emphasized or prioritized monetary factors or profit and loss. This is important because it involves criminal activities such as corruption and money laundering, as well as economic losses caused to the state, and therefore, the profits obtained from these criminal acts must be immediately returned to the state. On the other hand, there is often a condition that the perpetrators cannot be prejudiced in front of the court. The availability of a mechanism to compensate for corruption-related asset losses could address the shortcomings of punishment mechanisms, including the ability to sue despite charges, convictions, or the death penalty, to strengthen efforts to compensate the corrupt government for losses. On the other hand, the availability of a mechanism for civil corruption crimes of confiscation of assets due to corruption crimes based on Law Number 31 of 1999, which has been amended by the Corruption Crime Law Number 20 of 2001 (from now on referred to as the Law on the Eradication of Corruption Crimes) has not been maximized in validity because civil procedures follow a formal evidence system, which in practice can be more difficult than physical evidence. Therefore, implementing asset confiscation based on the Corruption Law has not been maximized to compensate the state for financial losses. However, in 2003, the provision of asset confiscation without prosecution was adopted in the United Nations Convention against Corruption, which is why the concept of a national central bank must be applied.

Even if the property is found later and is not included in the list of assets that can be confiscated or confiscated due to a severe criminal verdict, the mechanism for confiscating criminal acts can still be confiscated. The mechanism for confiscating national central bank assets. As a UNCAC party country, Indonesia must implement the

36 main guidelines (StAR on the return of stolen goods) UNCAC 2003. Of the 36 main policies, 24 are related to laws and regulations. Government property seized by criminals. Given the background of the emergence of the non-conviction-based forfeiture-based method above, namely by using the victim's Pandora papers, this makes a crime can be called a person (natuurlijk person) and a legal entity (rechts person). The controlling party can be the creator, family, heirs, or even a third party, such as a creditor or other party who has the right to the goods claimed to be confiscated. In addition, there is a need for public socialization regarding asset confiscation by the national central bank. This happens if another person who has a legal meaning is involved in the object to be confiscated; the person concerned can object.

In 1998, the People's Consultative Assembly abbreviated as MPR, formed a decree, especially Decree No. 1/MPR//2003, concerning clean and corruption-free state administrators, collusion, and nepotism. The decree applies until all its provisions are implemented. The corruption eradication law has now been passed, but there are still unresolved issues related to former President Suharto, meaning the order is said to still be in effect.

Related to the above, the focus of this research is that if we correlate that the NCB asset forfeiture regulates provisions on the confiscation of assets that are not proportional to their income and cannot legally prove the source of their income, then the assets can be confiscated. Confiscation of goods related to confiscating goods is a criminal act intended for a. The suspect or defendant dies, escapes, is permanently ill, or his whereabouts are unknown, the Defendant is acquitted of all charges, and the property cannot be used in a criminal case or, i.e. the property that is found guilty by a court with established criminal jurisdiction and then declared not to lose the property obtained from the offense. There are many problems associated with environmental governance, such as corruption, when a person runs away for committing a crime. If it is based on a general rule, a prior decision is required to confiscate the creator's property. However, what if the owner is not present or runs away even though it is clear that the money is from improper money based on PPATK's analysis, and it is known that the money is from the proceeds of crime? Therefore, non-judicial confiscation must be done without criminal prosecution, also regulated in Article 67 of the Anti-Corruption Law. This will allow the device to return money to the state or beneficiary without criminal charges. In addition, money laundering is a criminal act in the economic field; it is necessary to create an effective law that pays attention to the tendency to compensate the state for the greatest possible loss.

The purpose of this study is to analyze the urgency of the NCB (No Conviction Based Not Foretecture) policy in Indonesia to combat crimes such as corruption, illegal drugs, and money laundering. This study focuses on tackling corruption through asset expropriation. It examines the legal consequences and real effects of asset expropriation through the effectiveness and implications of promulgating these policies.

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## Method

This study uses legal research with normative legal methods. Standard law research provides an overview of the law interpreted as authoritative standards, including prescriptive research that examines legal objectives, Combining this approach with a legislative approach (written rules) in preparing this study. The legal material of this research uses laws and regulations, books, and articles on the implementation of the Not Forfeiture penal policy in handling corruption crimes in Indonesia, as the purpose of this article. Solve problems through related regulations. Legal materials are collected with the help of literature studies. Thus, the conceptual legal standard research results are applied to the research problem through deductive analysis.

## Results and Discussion

### **In Indonesia, there is an urgent to implement non-convection based on forfeiture or asset confiscation.**

The regulation of asset confiscation is essentially an extraordinary effort in eradication. If we look at one of the efforts that can prevent corruption-related depression in Indonesia, it is an effort to recover funds from corruption crimes. Regarding the crime of corruption, Baharuddin Lopa quoted the opinion of David m Chalmers to deny that the term corruption appears in various fields, namely related to the issue of bribery, related to manipulation in the economic sector, and related to the area of bribery. Public interest. In this case, the confiscation of property is not carried out through criminal, civil, or administrative confiscation but is carried out outside the legal process without criminal sanctions.

Indonesia is categorized as a country that upholds the value of the rule of law and views the law as the most powerful force in solving existing problems. However, the problems that are solved can be described in three aspects, namely Justice as the pillar that is put first in regulation, Usefulness as a practical pillar that is put in regulation, and Certainty as the last pillar that is put in regulation because it is certain, final and general binding so that it is very important to be able to formulate a draft law on asset forfeiture without criminalization in regulation by policymakers. Sudarto and Hari Purwadi denied that the confiscation of NCB assets, which contains provisions for asset confiscation procedures, is more effective than the current one that regulates the confiscation of assets in physical form, which must be enforced immediately for the reason of the need for an asset forfeiture law that was formed because there is currently no regulation in the form of a law. Indonesia ratified the UNCAC through Law Number 7 of 2006 concerning the ratification of the UNCAC, but the confiscation of assets by the national central bank is not regulated in real terms. As a result of the ratification, the Indonesian government must adjust existing laws and regulations with the provisions of the Convention so that Indonesia will seek to confiscate assets resulting from criminal acts, especially the proceeds of corruption. UNCAC has regulated in detail the mechanism for confiscating assets resulting from criminal acts using the National Central Bank Asset Forfeiture

Method so that it can be a reference for state parties in international cooperation in the field of crime and finance, as well as the use of technology in the efforts of state parties to confiscate assets resulting from corruption crimes. UNCAC stipulates that all States Parties are obliged to review the confiscation of the proceeds of crimes without criminal process (NCB Asset Forfeiture). UNCAC does not see differences in legal systems between member states; the seizure of national central bank assets is considered a system that can overcome differences between legal systems accepted by UNCAC member states. The UNCAC proposes that national central bank assets be used as a tool for all jurisdictions to eradicate corruption.

There are several significant implications if NCB asset forfeiture can be applied to a method or mechanism, starting with search, stop, and confiscation. Its regulatory implications to the 1945 NRI Constitution, especially in article 28 H, state that "everyone has the right to personal property rights and that property rights cannot be arbitrarily taken away". This constitutional basis suggests that individual property rights are constitutionally protected and irrevocable, which requires legal arrangements if the state intends to revoke individual property rights. Confiscation can only be carried out if the property included in the property is obtained from a criminal act and used to commit a criminal act. Suppose we look closely at the Constitutional Court as the Guardian of the Constitution or the Protector of the Constitution of Citizens in its Decision No. 003/PUU-IV/2006, "The economic losses of the state that may or may not occur, through a state finance expert, state finance, and an expert in the analysis of the relationship between one's actions and losses, as well as the determination of the value of state financial losses in a preliminary study by authorized officials after formal ratification in the law. Moreover, regulations are provided, the calculation methods are independent, factual, and precise, and the problems are presented correctly.

The application of NCB asset forfeiture is almost the same as implementing Illicit enrichment, which identifies these assets and returns them to their rightful owners using a legitimate repatriation method. Another option for restitution is through an agreement between the country from which the funds were obtained illegally and the country from which the money is kept for development projects or other humanitarian reasons. Article 20 of the UNCAC states that a crime is a crime if proven to have been committed intentionally. If a civil servant is aware of a significant asset increase and cannot explain this with his or her legitimate income, this can be called "illegal enrichment". Meanwhile, countries like Switzerland define illegally acquired property as money or other goods derived from crime. The NCB asset forfeiture policy is very much in line with what Lawrence M. Friedman said about the division of the legal system into three parts, namely legal structure (institutional), legal substance (rules), and legal culture (culture). Dealing with crimes in Indonesia, such as corruption, money laundering, etc.

#### 1. Structural Legal (Institutional)

The existence of cooperation with institutions in tackling crime by using the NCB asset forfeiture concept certainly does not cost a lot. The subsequent profits are even

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4 greater than the cost of obtaining them because PPATK is the process of confiscating assets, not based on the assessment itself. It is enough to be analyzed, and the results will be investigated and presented in the pre-survey. If the perpetrator is not found, the item is handed over to the district court to determine whether it belongs to the state or the court. No more evidence of crime exists, so it is more effective and cheaper than general settlements. The concept also guarantees that the profits originally owned by the perpetrators of crimes are fully returned to the rightful, provided that the goods are proven to be the proceeds of a criminal act. Therefore, by using the mechanism of asset confiscation without criminalization, the recovery of government losses to eradicate corruption can be achieved more quickly, efficiently, and effectively.

## 2. Legal Substance

21 The ratification of the UNCAC rules specifically reviews under Article 54(1) point (c) that "all States Parties shall consider the seizure of property as a result of an impunity" Therefore, the UNCAC does not focus on a single existing legal tradition and does not indicate that fundamental differences may preclude its application. At this moment, the UNCAC proposes that the confiscation of non-criminal assets can be considered by the jurisdiction of the State party to eliminate corruption as a tool that transcends the distinction between legal systems. However, the Supreme Court issued Supreme Court Decision No. 1 of 2013 concerning the procedure for requesting the abolition of money laundering or other criminal acts. The term used in this regulation is not asset seizure but asset processing, but the word perma makes it clear that it is asset processing. Refers to the concept of confiscation of national central bank assets. For example, provision 1 of this law, according to which the request for the management of investigators' assets is carried out if the suspect of a criminal act within the meaning of the Money Laundering Law cannot be found. And deletion. In addition, these three orders also explain the requirements that must be met when submitting an asset management request, which includes the minutes of the search for the suspect. Carry out the confiscation of national central bank assets through this Regulation. In addition to the Supreme Court Decision Number 1 of 2013, the Procedural Law on the Disposal of National Central Bank Assets can also be the Supreme Court Circular Letter Number 3 of 2013, referring to the guidelines for handling procedural cases to process property requests related to money laundering and other criminal activities. As a result, the law is a comprehensive study of whether Indonesia's national central bank's wealth guarantee has been implemented.

## 3. Legal Kulture (Cultural Aspects)

The community is ready for the implementation of NCB asset forfeiture in dealing with corruption crimes and money laundering crimes.

34 In line with existing developments, a conception of the State of Law began not to be interpreted as a Thinner Concept but as a Thicker Concept; that is, in addition to prioritizing law in a formal aspect, the State of Law in the Thicker Concept also prioritizes substantive social welfare, If we carefully analyze that the meaning of Social Welfare here is to transform the legitimacy as one of its orientations, especially in punishing a

person in the crime of corruption without There is a punishment that is merciful so that an application is needed that does not harm someone who commits corruption.

The application of NCB asset forfeiture in the material conception is seen as a representation of the UNCAC rules; in terms of terminology, the application of the mechanism for the return of evidence to the mechanism of asset forfeiture of NCB assets is not a controversial issue, it does not even violate human rights in the operation of asset forfeiture of NCB, it has nothing to do with the principle that "the accuser must prove himself an accusation" and there is nothing related to the principle of presumption of innocence. Because these two principles are related to proving the defendant's guilt in court, reversing the burden of proof is one of the ways. Showing whether the possession of the goods/goods is legal and explaining how the perpetrator committed the crime because the perpetrator cannot prove that he or she legally owns the goods, there is a strong suspicion that the goods are the result of the court. (in this case, the judge) must classify property that cannot be proven as "legally tainted property". After being declared tainted property by the court, the prosecutor then applies to the tainted object to be declared state property or formally owned. The confiscation of NCB assets can be an effort to prevent criminal acts both in the bureaucracy and the bureaucracy in general because the mechanism is no longer based on the idea of "follow the man" but "follow the money", so it is hoped that "corruption in Indonesia corruption does pay" can be refuted because the crime committed no longer gives the perpetrator advantage (crime does not pay). Furthermore, if reviewed in terms of material laws in the applicable laws and contains provisions on asset confiscation, including:

- 1) In the Criminal Code, the explanation is that the additional crime, according to Article 10 (2) (b), is the confiscation of confiscated goods.
- 2) In the book of Law No. 8 of 1981 concerning the Indonesian criminal procedure law. The concept of confiscating property from the proceeds of crime is contained in several articles in the Criminal Procedure Code, namely in article 39 of the Criminal Procedure Code, which stipulates the criteria for goods that can be confiscated, namely: is the result of the perpetrator's actions involving objects/objects that are partly/wholly derived from the crime, goods used in the crime, goods that obstruct the investigation, goods or goods used in the commission of the crime directly related to criminal acts. A criminal act has occurred; Article 40 of the Criminal Code concerns the confiscation of contraband goods that violate maritime surveillance regulations; Article 44 of the Criminal Code concerns the storage of state loot; Article 45 of the Criminal Code concerns actions related to impossible or expensive storage, article 46 of the Criminal Code concerning matters that must be returned as long as they are not subject to legal decisions that benefit the state, and Article 273 paragraph (3) of the Criminal Code, namely. Confiscated state property. Which must be auctioned at the State Auction Office within 3 months.
- 3) Law Number 31 of 1999 regulates the elimination of corruption crimes, later amended by Law Number 20 of 2001 concerning corruption crimes.

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NCB Asset Forfeiture There are two options in the formulation that should be contained in the rules of the law, namely either whether criminal prosecution and NCB Asset Forfeiture are carried out at the same time or whether the implementation of NCB Asset Forfeiture will be allowed if it is impossible to carry out criminal prosecution in this case if it is described, some examples of conditions that support the implementation of NCB Asset Forfeiture include:

1. If the perpetrator dies (Article 77 of the Criminal Code).
2. In the event of expiration with guidelines (Article 78 of the Criminal Code), with the following description:
  - a) If the criminal act has a maximum penalty of imprisonment for a minimum of 3 years, the prosecutorial authority is abolished after six years.
  - b) If the criminal act has a maximum penalty of imprisonment for a maximum of more than three years, the prosecutorial authority is abolished after twelve years.
  - c) If the criminal threatens life imprisonment or the death penalty, the prosecution authority is abolished after eighteen years when the suspect/defendant is seriously ill, escapes, or has unknown whereabouts.
3. If the defendant is acquitted of all charges, there is a strong suspicion that the assets owned are the result of a criminal act of corruption.
4. If the court, with the force of law, has decided the guilt of the perpetrator of the criminal act, it is known later that the property was obtained by a criminal act that was not confiscated.

The focus of this research is on NCB Asset Trust. The basic concept of the policy is that the search and seizure of the assets of suspected corruption crimes must be possible, even if the perpetrator is declared free through a court decision because his actions are not proven before the perpetrator dies before the judge in court adjudicates a decision with permanent legal force and the perpetrator escapes before the trial is over. Suppose we refer to the academic manuscript of the asset forfeiture plan. In that case, we can find early indicators of abnormal asset ownership, namely, if the income or source of additional wealth and the origin of the acquisition of the asset are unknown. The public prosecutor is enough to formally prove that the property in question results from a crime (due to the imbalance between the wealth owned and the source of wealth). Then, the asset owner proves the untruth of the public prosecutor's allegations (the principle of reverse proof).

Indonesia must reflect on the Swiss country, In Switzerland with the mechanism of confiscation of assets resulting from criminal acts with (NCB Asset Forfeiture) in articles 69 to 73 th of the criminal code of Switzerland regulates the policy for the confiscation of assets in the event of a violation of corruption; this also refers to article 70 paragraph 1 of the criminal code of Switzerland states that the judge orders the confiscation of property of criminal acts or property intended to invite the perpetrator or give gifts with the provision that the confiscated property is not subordinated to a third party, namely the party that violates its rights.

### NCB Asset Forfeiture Arrangements from Other Countries

As explained earlier, Asset Forfeiture without Penalty or NCB Asset Forfeiture is a progressive step largely agreed upon by UNCAC. Therefore, according to a book published by the World Bank in 2009, the concept of national central bank assets shows differences and similarities when applied to the civil law system, for example, in Indonesia, and common law. For example, in the UK. Regarding the differences, the NCB needs to question the evidence in its decision to reserve assets. A negative Wetelijk theory system or proof based on negative law is used in a civil law system such as Indonesia. A judge can only declare a crime if there is at least legally established evidence and the judge's judgment is based on the presence of evidence. Section 183 of the Criminal Code states: "A judge shall not impose a criminal sentence on a person unless, with at least two valid pieces of evidence, he has obtained confidence that a criminal act occurred and that the defendant is guilty of committing it".

From the context of Article 183 of the Criminal Procedure Code, it can be concluded that it has a negative proof system. This can be seen from the usual procedural practice of Indonesian courts, namely the efforts of each party to testify by presenting different evidence and the judge's belief in the error of proof. Meanwhile, in a common law system like the United Kingdom, the NCB Certificate of Wealth follows the Conviction In Raisone proof system or the judge's reliance on rationality. Hence, the proof prioritizes the weighing of probability. Or more evidence. At the same time, the similarity between the two systems is that they try to pursue assets and property (reme) without a trial and still require proof of infringement.

Reviewing the legal basis of the continuation of NCB assets of other countries that have succeeded in reducing the number of corruption crimes, e.g., the United Kingdom. In 2002, the British government enacted the Proceeds of Crime Act (POCA), which, among other things, regulates the seizure and seizure of the proceeds of crime and its paraphernalia. Since the law came into force in 2003, UK law enforcement has seized around £234 million, or R4.38734 trillion, in crime proceeds and paraphernalia. The proceeds of criminal acts, especially Article 240 paragraph (1) letter (b) junction Article 240 paragraph (2) concerning the Proceeds of Crime Act (POCA)

Article 240 paragraph (1) letter (b) "Intended to be obtained or used for an offense in a civil act before the District Court or (in Scotland) Sheriff and in certain circumstances by the admission of notice junction Article 240 paragraph (2) "The powers conferred by this section are not subject to criminal proceedings relating to the claimed property and may be exercised in respect of any property (including cash)." In contrast, the state of Australia formulated the NCB Asset Forfeiture as a new provision that gives the police a great deal of freedom to seize criminal assets. This is stated in article 19: "Trial – property that is suspected to come from the proceeds of criminal acts, etc.

1. The court having jurisdiction over the outcome must make an order—or
2. (Property shall not be disposed of or disposed of by any person except in the manner and circumstances specified in the order
3. If the results of a criminal investigation apply to the order

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26 In this regulation, there has been a case of asset confiscation in Australia. The case of Hendra Rahardja (1998), a suspect in the Bank Indonesia Liquidity Assistance Fund (BLBI), can be used as an example of how difficult it is for Indonesia to undergo the process of returning funds belonging to corruptors abroad. Hendra Rahardja was arrested by Australian security forces for money laundering, prompting the Indonesian government to send Hendra Rahardja's extradition letter to Indonesia. In the end, Hendra Rahardja could not be extradited because he died before the final verdict of the Australian Federal Court (Australian Federal Court). The two countries have been committed to mutual administrative assistance since 1995 as part of the Legal Assistance in Criminal Matters Agreement. However, this was difficult for Hendra Rahardja's estate in 1995 because Singapore, Indonesia, and Singapore still do not agree on mutual legal assistance in criminal matters. The effort to refund the proceeds of corruption crimes against Hendra Rahardja's assets ended after the Indonesian government received a cheque from the Australian government for 642,540.6 Australian dollars (six hundred and forty-two thousand five hundred and forty-six Australian dollars), a very large amount compared to Hendra Rahardja abroad for the total assets resulting from hidden corruption crimes. As a result, the Australian government handled the Hendra Rahardja case by applying the Asset Trust Law.

1 14 Based on the description of the articles from the countries that regulate the NCB Asset Forfeiture, according to David Scott, Romantz negates in his book entitled "Civil and Constitutional Confiscation, Abolition of Rights and Judicial Responses" that internationally, there are two types of asset confiscation, namely personal injury and objectification. Crime in personam (criminal exploitation) is an act aimed at a person personally (individual). This action is part of criminal sanctions so that it can be carried out based on the criminal court's decision. The mechanism is also separate from the criminal court and requires proof of a declaration of contaminated assets due to a crime. This strain is based on the "Stain Doctrine", which requires that the crime desecrates the property used or acquired by the crime.

So, it is appropriate for Indonesia to use the NCB asset forfeiture method because if we review the crime with the modus operandi of economic crimes, Article 65-67 of the TPPU Law supported by PERMA No.1.1 of 2013 and SEMA No.3 of 2013, using the mechanism of returning assets outside the court to recover government losses in fighting white-collar crime in the industry can be more quickly, effectively, and efficiently achieved.

**The legal implications of applying the NCB (Non-Conviction Based Forfeiture) concept are cooperation with other countries in dealing with disadvantaged assets.**

1 UNCAC has regulated in detail the mechanism for confiscation of criminal assets using the method of confiscating national central bank assets so that it becomes a reference for participating countries in international cooperation.

The use of technology by other parties to confiscate assets resulting from criminal and financial activities as well as corruption crimes. According to the UNCAC, all countries must review the seizure of the proceeds of crimes without criminal process

(NCB Asset Forfeiture). UNCAC believes that there is no difference in law between participating countries and that asset forfeiture by national central banks is a system that can overcome differences in legal systems accepted by UNCAC member states. The UNCAC proposes that NCBs' wealth be a tool for all jurisdictions to eradicate corruption.

The draft law (*Ius Constituendum*) states that the confiscation of property in Indonesia itself follows the civil law system (*Continental Europe*), which has not yet been passed into law (*Ius Constitutum*). This provision estimates that international cooperation in the detection, prevention, confiscation, and management of property resulting from criminal acts is carried out based on bilateral, regional, or multilateral agreements or good relations based on reciprocity. By legal regulations. Suppose the request for freezing or confiscation of goods located abroad is denied. In that case, the investigator or public prosecutor may freeze or confiscate other goods instead of goods located in Indonesia whose value is equal to those pawned or confiscated. Ministers in charge of state affairs in the field of law and human rights may enter into agreements with foreign countries for reimbursement and receive part of the confiscation proceeds:

1. abroad at the request of the government as a result of actions taken under a seizure order
2. in Indonesia as a result of confiscation actions carried out in Indonesia at the request of a foreign country.

#### Regulation of the Asset Forfeiture NCB Bill in Indonesia

The Draft Law on Asset Forfeiture, formed in academic texts, contains provisions for the collapse of value that are more effective than the current one; the policy must take effect immediately. One of the reasons for the need for the Asset Forfeiture Bill is that there is currently no regulation in the form of a law. Indonesia ratified the UNCAC through Law No. 7 of 2006 concerning the ratification of the UNCAC, but the deadline for national central bank funds is not strictly regulated. Of course, due to the ratification, the Indonesian government must adjust existing laws and regulations with the provisions of the Convention so that Indonesia can confiscate assets derived from criminal acts, especially the proceeds of corruption, as best as possible. This is in line with the words of Malto S. Datuan, Bismar Nasution, Mahmud Mulyad, and Mahmud Siregar that later in the asset forfeiture bill, there should be more asset confiscation by the national central bank, which can be a very useful tool. . in the deprivation of people's wealth, corruption in Indonesia and for expropriation. Which at least have some advantages of using NCB asset break-ins to assist law enforcement in recovering funds from corruptors, namely:

1. Confiscation can be requested in court faster than criminal confiscation
2. Securing NCB assets uses civil evidence, relatively lighter than criminal evidence, to facilitate asset recovery in Indonesia.
3. Confiscating national central bank assets is a legal process against (real) assets. The perpetrators themselves are not important in this context, so coercion through corruption, enforced disappearance, death, or even corruption release in the case of loss of NCB assets is not a problem

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4. Asset forfeiture by national central banks is particularly useful in cases where prosecutions cannot be prevented or settled.

Another interesting thing about implementing this NCB is that the qualifications of Witnesses and Victims become important because they are based on a very basic argument, namely that organized crime, such as corruption, can only be fully revealed when information is obtained from an experienced "insider". a witness) Moreover, became a victim of corruption. In addition, the reporting witness is also a key player in the arrest process and provides irrefutable evidence of corruption. Therefore, the position of the witness reporter is very important in investigating corruption cases. The problem, however, is the lack of guarantees to protect witnesses. The courage to testify without a guarantee of protection eventually led to the bitter story of the imprisoned anti-corruption heroes. They are vulnerable to backlash by the corrupt mafia with counter-demands of defamation, physical and psychological terror, executive sanctions, and other heinous tactics, especially because corruptors carry out pure and systematic counterattacks against witnesses. Concern for these symptoms is also one of the concerns of Article 32 of the UN Convention, which clearly emphasizes the need for such protection. The article reads: "Each State Party shall, by its domestic legal system and resources, take the necessary steps to present witnesses and experts testifying to the violations established under the Convention and, if necessary, against them; family and others close to them."

On a strategic level, ensuring witness protection protects people who dare to testify against various failures and gives them the freedom to continue participating in investigations to gather evidence for protection and to catch. For example, It was once done in America with an operation called "Broken Faith". In this key, well-crafted case, a cooperating witness teamed up with the FBI to arrest 12 corrupt Washington DC cops. The US capital is to blame. These policemen took bribes to protect them and even got involved in drug trafficking. The termination process has been planned carefully and systematically since May 1992. The witness not only recorded the entire conversation and pretended to negotiate with the police – for example, a meeting at a hotel – but even pretended to bribe 12 corrupt police officers with various gifts. One is bribing police officers with mobile phones to reveal that their locations can be easily tracked.

## Conclusion

From the above discussion, it can be concluded that confiscating these assets is essentially an extraordinary effort in eradication. If we look at one of the efforts that can prevent corruption-related depression in Indonesia, it is an effort to recover funds from corruption crimes. If referring to the legal mechanism that applies in Indonesia, the return of state assets resulting from this criminal act can be divided into three settlement flows: first, through the criminal law system, which must be based on a court decision that is intact or has permanent legal force, *second*, through the civil lawsuit route, which must be able to prove formally related to the wealth so that it can obtain a court decision that has permanent or permanent legal force and can subsequently be executed, *third*, a

mechanism based on the Money Laundering Crime Law. In practice, each of these settlement flows faces problems; for example, through criminal law, there are many constraints on the problem of material proof, while through the civil lawsuit route, it is even more difficult because formal proof has the potential to be more difficult than material proof.

That way, the various implications can reduce the corruption rate in Indonesia because we all know that Corruption is an extraordinary crime that must be eradicated in this country. Related to the above, the focus of this research correlates that the NCB asset forfeiture regulates provisions on the confiscation of assets that are not proportional to their income and cannot legally prove the source of their income; with these considerations, Indonesia can cooperate with other countries and can learn from other countries that have implemented the NCB Method of asset confiscation and have succeeded in reducing the rate of corruption in Indonesia.

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**Application of NCB Asset Confiscation in Handling  
Corruption Crimes in Indonesia**

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**ABSTRACT**

**Keywords:** Non- Convection, Forfeiture, Confiscation, Corruption.

Applying NCB (non-convection based not on treasury), commonly called asset confiscation punishment without Asset punishment, is an innovative solution for appropriating corruption when a person cannot cope with criminal, civil, and administrative penalties. The problem that exists already for change, of course, requires regulation in this regard. It is very important to look at these regulations and how a convection-based asset recovery policy is a government loss recovery policy related to state loss crimes such as corruption, money laundering, etc. Therefore, the subjects considered in this study are how NCB Asset Forfeiture is applied in dealing with criminal acts of corruption in Indonesia. This research method seeks normative law by examining secondary and qualitative data. It is from this that the first conclusion can be drawn: the urgency of implementing the NCB policy (Non-Convection based on not Forfeiture) in Indonesia, namely the existence of obesity problems from state losses with massive corruption crimes that have occurred and efforts to harmonize and legitimize the NCB Draft Asset confiscation bill to overcome state losses. Second, the legal response in applying the concept of NCB (Non-Convection Based Forfeiture), namely cooperation with other countries in exploiting civil assets.

**Introduction**

Starting from the spread of the Pandora Papers document, which ensnared many names of public figures around the world, as well as ensnared several figures in Indonesia. Pandora Papers is data from the International Consortium of Investigative Journalists (ICIJ) based in Washington, DC (DPD & Timur, 2019). The document contains tax evasion activities on hidden wealth and money laundering by several rich and powerful people. This activity is carried out by forming a company or business network to buy property or hide assets; this act aims to hide taxes (Luffi & Pant, 2020). The company's establishment provides anonymous or anonymous services, making it a tax haven or a good place to launder money (UANG, 2021).

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