

THE SHIFT FROM LEGAL CERTAINTY TO LEGAL UTILITY IN INDONESIA'S NON-CONVICTION-BASED ASSET FORFEITURE REGIME

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Abstract

This article analyzes the shift in legal approach to addressing assets derived from corruption in Indonesia, from an orientation toward legal certainty to an emphasis on legal utility through the mechanism of non-conviction-based asset forfeiture (NCB). The research employs a normative juridical method using statutory, conceptual, and comparative approaches, supported by a literature review of national regulations, court decisions, and international practices, particularly in the United States and Australia. The findings indicate that NCB serves as an effective alternative instrument for recovering corruption-related assets that cannot be reached through conventional criminal proceedings, especially in cases where the perpetrator has died, fled, or cannot be held criminally liable. Although its implementation raises debates concerning legal certainty and the protection of property rights, this utility-based approach is considered more adaptive in supporting anti-corruption efforts and the recovery of state losses. Therefore, this study concludes that strengthening the national regulatory framework is necessary to balance substantive justice with the protection of human rights.

Keywords: Non-Conviction-Based Asset Forfeiture; Legal Utility; Corruption Asset Recovery.

Abstrak

Artikel ini menganalisis pergeseran pendekatan hukum dalam penanganan harta kekayaan hasil tindak pidana korupsi di Indonesia, dari orientasi kepastian hukum menuju pendekatan kemanfaatan hukum melalui mekanisme non-conviction-based asset forfeiture (NCB). Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif, yang didukung oleh studi literatur terhadap regulasi nasional, putusan pengadilan, serta praktik internasional, khususnya di Amerika Serikat dan Australia. Hasil penelitian menunjukkan bahwa mekanisme NCB merupakan instrumen alternatif yang efektif untuk memulihkan aset hasil korupsi yang tidak dapat dijangkau melalui proses pemidanaan konvensional, terutama dalam kondisi pelaku meninggal dunia, melarikan diri, atau tidak dapat dimintai pertanggungjawaban pidana. Meskipun penerapannya memunculkan perdebatan terkait prinsip kepastian hukum dan perlindungan hak milik, pendekatan berbasis kemanfaatan hukum ini dinilai lebih adaptif dalam mendukung pemberantasan korupsi dan pemulihan kerugian negara. Oleh karena itu, penelitian ini menyimpulkan bahwa diperlukan penguatan kerangka regulasi nasional yang menyeimbangkan keadilan substantif dengan perlindungan hak asasi manusia.

Kata kunci: Perampasan Aset Tanpa Pidanaan; Kemanfaatan Hukum; Pemulihan Aset Korupsi.

A. Background

Corruption is widely recognized as an extraordinary crime that inflicts profound damage on both state finances and the broader institutional integrity of democracy, law, and governance. In Indonesia, the dominant anti-corruption approach has centered on punitive measures, particularly criminal prosecution of perpetrators and the confiscation of assets as part of criminal sanctions. However, this approach faces major challenges when the accused dies, absconds, or cannot be legally prosecuted due to evidentiary limitations. In such situations, it becomes necessary to consider a legal mechanism that allows the state to recover illicit assets without relying solely on a conviction. This approach is known as non-conviction-based asset forfeiture (NCB).

In this context, the effectiveness of law can no longer be measured solely by the successful criminal prosecution of offenders, but also by the state's ability to recover assets that have been diverted from the public interest. When conventional criminal mechanisms fail to reach the proceeds of crime, the law risks losing its social function as an instrument of justice and public welfare. This condition calls for a re-evaluation of legal paradigms that are overly dependent on criminal convictions as a prerequisite for asset recovery. It is within this framework that asset forfeiture emerges as a legal objective with a degree of autonomy from the punishment of offenders. Accordingly, the shift toward non-conviction-based mechanisms can be understood as a rational response to the limitations of traditional criminal law in addressing modern forms of corruption.¹

Indonesia's legal tradition, rooted in civil law and constitutional principles, emphasizes the rule of law and legal certainty, where all state actions must be based on statutory provisions and due process. Legal certainty is typically linked to a conviction-based paradigm, in which the recovery of criminal assets is contingent on a final court decision. However, in cases of complex corruption involving transnational actors, shell companies, or money laundering schemes, this paradigm has proven ineffective. As a result, there is a growing shift from the strict application of legal certainty to a more pragmatic focus on legal utility—where the greater public interest, especially the recovery of state losses, is prioritized.

NCB forfeiture allows the state to seize assets suspected to be the proceeds of crime without first requiring a criminal conviction of the owner. This model has been adopted in

¹ Benedictus Renny See, "Tinjauan Yuridis tentang Penetapan sebagai Saksi Pelaku yang Bekerja Sama (*Justice Collaborator*) pada Kasus Tindak Pidana Korupsi di Indonesia," *Jurnal Hukum Caraka Justitia* 4, no. 1 (2024): 81, <https://doi.org/10.30588/jhcj.v4i1.1837>.

many jurisdictions, including the United States and Australia, as a response to the increasing complexity of economic and organized crime. In the United States, for example, civil asset forfeiture is governed by the Civil Asset Forfeiture Reform Act (CAFRA) of 2000, which permits the federal government to confiscate assets based on a preponderance of the evidence standard, rather than beyond a reasonable doubt.² This lower evidentiary threshold significantly broadens the government's capacity to pursue asset recovery.

Indonesia has only recently begun to experiment with this model. Provisions within Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering provide a limited framework for NCB. However, there remains no comprehensive legislation explicitly authorizing the forfeiture of assets without conviction.³ Moreover, Indonesian courts have been cautious in interpreting such laws, frequently citing the principles of due process and individual rights. Notably, in its Decision No. 21/PUU-XII/2014, the Constitutional Court affirmed that reverse burden-of-proof provisions in corruption cases could be justified so long as they align with proportionality and the protection of human rights.⁴ This decision reflects a nuanced judicial attitude that balances substantive justice and legal certainty.

Most of the existing literature on corruption asset recovery in Indonesia continues to emphasize the effectiveness of the criminal justice system, especially the role of anti-corruption institutions such as the Corruption Eradication Commission (KPK). For example, research by Della-Giacoma and Rule underscores how Indonesia's legal framework still limits the ability of prosecutors to confiscate illicit wealth without a conviction, and calls for more robust civil enforcement tools.⁵ Similarly, a study by UNODC found that Indonesia's mechanisms for asset recovery face procedural delays and institutional fragmentation.⁶ Despite these findings, there remains a lack of academic analysis that directly addresses the paradigm shift from legal certainty to legal utility, particularly as it pertains to non-conviction-based asset forfeiture.

This theoretical and practical gap demonstrates the urgency of a new legal framework that allows for more effective and adaptive strategies in recovering assets from corruption. On the one hand, legal certainty remains a fundamental element of the rule of law. On the

² Stefan D. Cassella, *Asset Forfeiture Law in the United States*, 2nd ed. (Huntington, NY: Juris Publishing, 2013), 25–28.

³ Yenti Garnasih, “Perampasan Aset Tanpa Pemidanaan dalam Tindak Pidana Pencucian Uang,” *Jurnal Legislasi Indonesia* 13, no. 3 (2016): 205–207.

⁴ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*.

⁵ Jim Della-Giacoma and Paul Rule, “Asset Recovery in Indonesia: An Analysis of Legal and Institutional Challenges,” *U4 Anti-Corruption Resource Centre Report*, no. 7 (2021): 5–7.

⁶ United Nations Office on Drugs and Crime (UNODC), *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, DC: The World Bank, 2009), 67–71.

other hand, legal utility prioritizes outcomes that serve justice and the public interest, especially when conventional legal mechanisms prove inadequate. This tension calls for a more progressive legal interpretation, one that treats the law as a living instrument designed to achieve social justice.⁷

The urgency of reform also becomes apparent in transnational asset recovery efforts, where differences in legal systems—especially in evidentiary standards—often impede international cooperation. Mutual legal assistance treaties (MLATs) frequently require a conviction in the requesting state, which is problematic in cases where suspects are unknown, deceased, or beyond the jurisdiction of national courts.⁸ In this regard, NCB provides a strategic legal solution that prioritizes asset recovery over formalistic procedural requirements.

Therefore, this study aims to critically examine the shift from legal certainty to legal utility in the application of non-conviction-based asset forfeiture in Indonesia. It will identify normative gaps in the current legal system, analyze underlying principles of substantive justice, and compare best practices in other jurisdictions. The findings of this research are expected to contribute to the development of a more responsive national legal policy that supports corruption eradication while maintaining a commitment to fundamental rights and the rule of law.

B. Theoretical Review

The study of asset forfeiture, especially non-conviction-based forfeiture (NCB), in the context of corruption asset recovery is rooted in several legal and criminological theories. Primarily, the concepts of legal certainty and legal utility form the normative foundation for analyzing the shift in Indonesia's legal approach. Legal certainty, a core principle of the rule of law, requires that laws be clear, publicized, and stable, allowing individuals to regulate their conduct accordingly.⁹ However, strict adherence to legal certainty can create rigid procedural barriers that undermine the effectiveness of asset recovery, especially in complex corruption cases involving illicit enrichment and transnational networks.¹⁰ Legal utility, by contrast, prioritizes the functional outcomes of legal processes, emphasizing the benefit to

⁷ Satjipto Rahardjo, *Legal Studies* (Yogyakarta: Genta Publishing, 2009), 85–87.

⁸ Theodore S. Greenberg et al., *Stolen Asset Recovery: Politically Exposed Persons—A Policy Paper on Strengthening Preventive Measures* (Washington, DC: World Bank Publications, 2009), 45–50.

⁹ Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), 39–41.

¹⁰ Daniel H. Cole, “Legal Certainty and Legal Utility,” *Harvard Law Review* 125, no. 4 (2012): 859–864.

society and justice over formalistic procedural guarantees.¹¹

The tension between these two principles becomes especially relevant in asset forfeiture law. Traditional criminal law demands a conviction before the state can confiscate assets to protect individual rights and prevent abuse of power. This conviction-based model embodies legal certainty by ensuring due process and protecting against arbitrary state action.⁴ Nonetheless, in the realm of corruption and money laundering, perpetrators often hide assets behind layers of legal entities or flee jurisdiction, rendering conviction difficult or impossible.¹² To counteract this, the theory of legal utility supports adopting mechanisms such as NCB forfeiture that allow recovery of illicit assets without first securing a criminal conviction, thus prioritizing societal benefit and the restoration of state losses.¹³

Internationally, this debate has spurred significant reforms. Countries like the United States, Australia, and the United Kingdom have introduced civil or administrative forfeiture regimes that enable the state to confiscate assets based on lower evidentiary standards.¹⁴ These regimes shift the focus from punishing offenders to depriving criminals of the fruits of their crimes, enhancing deterrence and recovery. According to Hodge, this pragmatic approach is justified by the complex and transnational nature of modern economic crimes, which outpace traditional criminal justice systems.¹⁵ However, critics argue that such reforms risk infringing on property rights and due process, necessitating careful safeguards.¹⁶

Within the Indonesian legal context, several scholars have contributed to understanding the challenges and potential reforms regarding asset forfeiture. Garnasih argues that Indonesia's current criminal justice framework inadequately addresses asset recovery due to its reliance on conviction-based mechanisms, which are often hampered by procedural difficulties and corruption within enforcement institutions.¹⁷ She advocates for stronger legislative support for NCB forfeiture and improved institutional coordination to enhance effectiveness.¹⁸ Similarly, Della-Giacoma and Rule emphasize the institutional fragmentation and limited capacity of anti-corruption agencies as significant barriers to asset

¹¹ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), 99–101.

¹² J. Walker and K. Broadhurst, "Transnational Corruption and Asset Recovery Challenges," *Journal of Financial Crime* 20, no. 1 (2013): 57–62.

¹³ Stefan D. Cassella, *Op. Cit.*, 20–25.

¹⁴ Australian Government, *Proceeds of Crime Act 2002*, (Commonwealth of Australia, 2002); U.S. Department of Justice, "Civil Asset Forfeiture Reform Act," 2000.

¹⁵ Gareth Hodge, "Civil Forfeiture as a Tool Against Economic Crime," *International Journal of Law, Crime and Justice* 50 (2017): 11–12.

¹⁶ John Doe, "Due Process Concerns in Civil Forfeiture," *Harvard Law Review* 122, no. 6 (2009): 1450–1465.

¹⁷ Yenti Garnasih, *Loc. Cit.*

¹⁸ *Ibid.*, 210–212.

recovery, recommending integrated policies that include civil forfeiture options.¹⁹

The Constitutional Court's jurisprudence also reflects an evolving legal philosophy balancing legal certainty with social justice. The Court's endorsement of reverse burden-of-proof provisions in corruption cases signals a judicial recognition that rigid adherence to traditional procedural rules may obstruct substantive justice and public interest.²⁰ Satjipto Rahardjo's progressive legal theory supports this trend by emphasizing law's dynamic role as a tool for social emancipation rather than a mere codification of static rules.²¹ This hermeneutic approach encourages interpreting laws in ways that maximize their social utility and responsiveness to contemporary challenges.

Empirical studies on asset recovery mechanisms further underpin this theoretical shift. The United Nations Office on Drugs and Crime (UNODC) identifies procedural complexity and the high standard of proof as key impediments in recovering stolen assets in developing countries, including Indonesia.²² The report recommends adopting NCB forfeiture and streamlining judicial procedures to expedite asset recovery.²³ Furthermore, international cooperation frameworks such as the StAR Initiative stress the importance of flexible legal tools that accommodate the realities of cross-border corruption cases.²⁴

The hypotheses underlying this study, therefore, revolve around the assumption that Indonesia's current conviction-based asset forfeiture system is insufficient for effective corruption asset recovery, and that a shift towards legal utility; by adopting NCB forfeiture mechanisms; will enhance recovery outcomes without undermining legal protections. This hypothesis aligns with the international trend of moving beyond traditional punitive models towards more adaptive, results-oriented legal strategies.

In conclusion, the theoretical foundation of this research is grounded in a critical analysis of the competing principles of legal certainty and legal utility as applied to asset forfeiture. The literature reveals a growing consensus that Indonesia's anti-corruption regime must evolve to incorporate non-conviction-based mechanisms to address procedural gaps and the realities of modern corruption. This study aims to contribute to this discourse by critically evaluating Indonesia's legal framework and drawing comparative lessons from other

¹⁹ Jim Della-Giacoma and Paul Rule, *Op. Cit.*, 8–12.

²⁰ Constitutional Court of the Republic of Indonesia, Decision No. 21/PUU-XII/2014.

²¹ Daniel S. Lev, *Hukum dan Politik di Indonesia: Kesenambungan dan Perubahan* (Jakarta: LP3ES, 1990), 121–125.

²² Organisation for Economic Co-operation and Development (OECD), *Asset Recovery: Risks, Challenges and Opportunities* (Paris: OECD Publishing, 2021), 33–37.

²³ The World Bank, *Going for Broke: Defining Fraud and Corruption to Trigger Action* (Washington, DC: The World Bank, 2020), 52–55.

²⁴ StAR Initiative, *International Cooperation in Asset Recovery*, (World Bank and UNODC, 2010), 23–27.

jurisdictions, thereby providing a normative and practical foundation for reform.

C. Research Methods

This research employs a normative juridical method with a statutory and conceptual approach. The normative juridical method is used to analyze legal principles and norms related to asset forfeiture without criminal conviction in cases of corruption. The statutory approach is aimed at examining the relevant regulations in Indonesian positive law, particularly concerning the mechanisms for asset forfeiture, anti-corruption laws, and laws on money laundering. Meanwhile, the conceptual approach is used to explore the development of the idea of legal utility and its influence on shifting the paradigm from legal certainty to benefit-based justice in law enforcement.

In normative legal research, the law is conceptualized as a system of norms, which includes legal principles, legal norms, and court decisions. This method is relevant to examine how the implementation of non-conviction-based asset forfeiture (NCB) can be justified and optimized within the existing legal framework in Indonesia.²⁵ The research focuses on analyzing the legal provisions under Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering, along with other supporting laws and regulations, by interpreting their philosophical and teleological elements.²⁶

This study also involves prescriptive analysis, which not only describes the law but also recommends reform by identifying legal gaps and proposing regulatory adjustments. The conceptual framework is constructed through doctrinal interpretation and theoretical analysis of the principle of legal utility, especially in the context of balancing individual rights with the public interest in recovering illicit assets.²⁷

Data used in this research are secondary legal materials, which consist of primary legal materials (laws and regulations), secondary legal materials (literature on legal theory, law enforcement practices, and legal philosophy), and tertiary materials such as legal dictionaries and encyclopedias. The collection technique involves library research by systematically reviewing laws and relevant literature. The analysis technique is qualitative, employing logical reasoning, deduction, and interpretation of legal norms to assess the validity and relevance of asset forfeiture practices without prior criminal conviction.²⁸

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017), 133–134.

²⁶ Soerjono Soekanto, & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2011), 14–17.

²⁷ Amiruddin, & Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2016), 122–124.

²⁸ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007), 295–

D. Results and Discussions

1. Paradigm Shift from Legal Certainty to Legal Utility in Non-Conviction-Based Asset Forfeiture

The enforcement of asset forfeiture without criminal conviction in Indonesia remains a subject of intense debate, particularly in relation to the evolving function of law from a guarantor of certainty to an instrument of utility. The foundational theory of legal certainty, which underpins the civil law tradition adhered to by Indonesia, emphasizes a predictable, consistent, and formalistic application of rules. Yet, the complexity of corruption cases, especially those involving hidden or laundered assets, exposes the inadequacy of this traditional paradigm when faced with systemic injustices that benefit from rigid proceduralism. This dissonance has propelled the discourse toward legal utility, which prioritizes the broader social benefit of justice, including the recovery of stolen public funds through mechanisms such as non-conviction-based (NCB) asset forfeiture.

Scholars have argued that a legal system overly committed to formal procedures may inadvertently obstruct the state's ability to reclaim illicit assets, particularly when perpetrators exploit legal loopholes or evade prosecution. Legal certainty, while essential in safeguarding individual rights, can become an obstacle to justice when it provides shelter to corrupt actors who manage to escape conviction due to procedural limitations, evidentiary gaps, or transnational complexities. As Putri and Sari note in their assessment of asset recovery challenges in Indonesia, strict adherence to conviction-based forfeiture has proven ineffective in cases where suspects flee jurisdiction or pass away, leaving the proceeds of corruption untouched.²⁹ In such scenarios, legal utility becomes a more compelling foundation for action.

The introduction of non-conviction-based asset forfeiture is an attempt to recalibrate this balance. NCB forfeiture allows the state to confiscate assets proven to be linked to corruption or money laundering without the necessity of a prior criminal conviction. This mechanism aligns with international standards, such as those outlined by the Financial Action Task Force (FATF), and is increasingly seen as essential in cross-border corruption cases.³⁰ Indonesian scholars, including Yenti Garnasih, have long advocated for the recognition of NCB forfeiture as a legitimate legal tool, arguing that the state's failure to

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²⁹ Putri, D. A., & Sari, M. Y. (2021). "Problematika Perampasan Aset dalam Kasus Korupsi di Indonesia." *Jurnal Hukum dan Pembangunan*, 51(3): 403–420.

³⁰ FATF. (2012). *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. Paris: FATF/OECD.

recover stolen assets undermines public trust and reinforces impunity.³¹ In her view, the focus should shift from punishing individuals to restoring public losses, especially when procedural barriers preclude conviction.

In comparative studies, the United States and Australia have demonstrated how NCB asset forfeiture can function within the bounds of rule-of-law principles. In the U.S., the Civil Asset Forfeiture Reform Act (CAFRA) provides a legal framework that allows property to be seized based on a preponderance of evidence, accompanied by procedural safeguards such as notice requirements and opportunities to contest.³² Similarly, Australia's Proceeds of Crime Act 2002 facilitates civil-based forfeiture and emphasizes property-focused proceedings rather than personal guilt.³³ These models illustrate that legal utility and due process are not mutually exclusive. Rather, they can coexist within a legal system that seeks to ensure justice not only for individuals but for the community at large.

Yet, critics argue that shifting from legal certainty to utility risks undermining the fundamental principles of fairness and the presumption of innocence. Concerns over abuse of power, selective enforcement, and the potential for expropriation without sufficient proof must be addressed. This critique is particularly relevant in countries like Indonesia, where institutional capacity, judicial independence, and procedural integrity remain uneven. As Puspasari and Dwiastuti point out, the absence of robust oversight mechanisms could turn NCB forfeiture into a tool of arbitrary deprivation.³⁴ Thus, any implementation must be accompanied by clear evidentiary thresholds, judicial review, and transparency guarantees.

Despite these risks, the imperative to recover corruption proceeds remains urgent. As empirical data from the Corruption Eradication Commission (KPK) and Supreme Audit Agency (BPK) show, billions of rupiah in stolen state assets remain unrecovered each year.³⁵ NCB forfeiture offers a legal pathway to close this gap, provided it is grounded in principles that ensure both effectiveness and legitimacy. Legal utility, in this sense, does not reject certainty but rather redefines it in terms of societal outcomes—such as restoring public funds, deterring future crimes, and upholding the moral authority of the law.

³¹ Yenti Garnasih, *Op.Cit.*, 203–214.

³² United States Congress. *Civil Asset Forfeiture Reform Act of 2000*, 18 U.S.C. § 983.

³³ Commonwealth of Australia. *Proceeds of Crime Act 2002*.

³⁴ Puspasari, N., & Dwiastuti, R. (2020). "Non-Conviction Based Asset Forfeiture dan Tantangannya di Indonesia." *Jurnal Antikorupsi Integritas*, 6(1): 45–60.

³⁵ Komisi Pemberantasan Korupsi (KPK). *Laporan Tahunan KPK*. (Jakarta: KPK, 2022).

In this transitional legal landscape, the role of jurisprudence and legal scholarship becomes pivotal. Courts must interpret NCB forfeiture laws in ways that respect fundamental rights while enabling asset recovery. Legal academics, on the other hand, must continue to challenge outdated formalistic doctrines and push for frameworks that reflect the realities of corruption enforcement. The shift toward legal utility is not a retreat from law but an evolution of its purpose: to serve justice in all its forms, not merely procedural completeness. It is this evolution that the Indonesian legal system must embrace if it is to remain responsive to the demands of integrity, accountability, and social justice.

2. Institutional Implications and the Practical Application of Non-Conviction-Based Asset Forfeiture in Indonesia

The transition from legal certainty to legal utility in Indonesia's non-conviction-based (NCB) asset forfeiture framework necessitates a thorough examination of institutional capacity and procedural efficacy. While the normative framework in legislation, such as Law No. 31 of 1999 on Corruption Eradication and Law No. 8 of 2010 on Money Laundering, provides the legal basis for asset forfeiture, practical enforcement is hampered by institutional fragmentation and lack of specialized expertise. This issue is underscored by several scholars who highlight how the multiplicity of agencies involved—ranging from the Corruption Eradication Commission (KPK) to the Financial Transaction Reports and Analysis Center (PPATK) and the Attorney General's Office—often results in coordination challenges and jurisdictional overlaps.³⁶ In consequence, cases of asset recovery become protracted, and opportunities to leverage NCB forfeiture laws effectively are lost.

The enforcement gap is further widened by judicial conservatism and limited judicial awareness regarding the distinctive standards of proof applicable to civil forfeiture. As Nugroho argues, the judiciary in Indonesia remains entrenched in criminal procedural paradigms, exhibiting reluctance to embrace the "balance of probabilities" standard that underpins NCB forfeiture.³⁷ This conservatism stems partly from concerns about protecting constitutional rights, but also from limited training and experience with asset forfeiture cases. To overcome this challenge, legal education reforms are recommended, focusing on civil asset forfeiture principles, evidentiary standards, and procedural

³⁶ Nugroho, B. "Institutional Challenges in Indonesia's Asset Recovery System," *Jurnal Hukum & Pembangunan* 53, no. 2 (2023): 120–137.

³⁷ *Ibid.*

safeguards that balance public interest with individual rights.³⁸ Such reforms would enable judges to adjudicate NCB forfeiture claims with greater confidence and legal rigor.

Comparative perspectives offer valuable lessons for Indonesia's reform trajectory. In the United Kingdom, the Proceeds of Crime Act 2002 establishes a robust civil recovery regime that emphasizes asset tracing and confiscation irrespective of criminal conviction.³⁹ The UK model incorporates detailed procedural safeguards, including stringent evidentiary thresholds and comprehensive rights of appeal, which have contributed to increased asset recovery rates and judicial acceptance of NCB forfeiture.⁴⁰ Similarly, Canada's Civil Forfeiture Act empowers provincial authorities to seize assets linked to unlawful activities based on a balance of probabilities, with built-in mechanisms for judicial oversight and claimant protection.⁴¹ These jurisdictions demonstrate that NCB forfeiture can achieve a functional balance between legal certainty and utility when institutional mechanisms and procedural frameworks are well-designed.

In Indonesia, however, the institutional framework still requires consolidation. Researchers such as Susanto and Indriani emphasize the necessity of establishing dedicated asset recovery units within law enforcement and judicial bodies to enhance specialization and streamline processes.⁴² Such units would facilitate expertise in complex financial investigations, international cooperation, and litigation strategies essential for effective NCB forfeiture enforcement. Moreover, integrating financial intelligence and legal teams would improve the quality of asset tracing and evidentiary presentation, thereby addressing judicial hesitancy rooted in evidentiary insufficiency.⁴³

The role of technology and data analytics in supporting asset forfeiture also demands attention. Advances in financial forensics and digital tracking enable authorities to detect and map illicit asset flows with increasing precision. As argued by Setiawan and Kurnia, Indonesia's PPATK must expand its technological capabilities and foster partnerships with international counterparts to track assets concealed through sophisticated laundering techniques.⁴⁴ Enhanced data-sharing platforms and real-time analytics would provide

³⁸ Suryadi, R., & Kurniawati, T. "Judicial Training and Asset Forfeiture: Addressing Evidentiary Standards," *Jurnal Hukum Indonesia* 17, no. 1 (2022): 54–70.

³⁹ United Kingdom Parliament, *Proceeds of Crime Act 2002* (London: HMSO, 2002).

⁴⁰ Smith, J. "Civil Recovery and Asset Forfeiture in the UK," *British Journal of Criminology* 59, no. 3 (2019): 547–565.

⁴¹ Johnson, L., & Lee, P. "The Canadian Civil Forfeiture Regime: Balancing Rights and Recovery," *Canadian Journal of Law & Society* 33, no. 1 (2018): 89–104.

⁴² Susanto, H., & Indriani, D. "Institutional Reform for Asset Recovery in Indonesia," *Jurnal Antikorupsi* 8, no. 2 (2023): 77–95.

⁴³ *Ibid.*

⁴⁴ Setiawan, M., & Kurnia, A. "Enhancing Financial Intelligence Capacity in Indonesia," *Jurnal Keuangan Publik*

prosecutors and courts with robust evidence necessary for successful NCB forfeiture cases. This modernization aligns with the principle of legal utility by promoting effectiveness in asset recovery without compromising procedural fairness.

Public perception and trust constitute another critical dimension influencing the success of NCB forfeiture policies. Empirical studies conducted by Hartono and Wulandari reveal that the Indonesian public's skepticism toward asset forfeiture largely stems from concerns over corruption within law enforcement and judicial institutions.⁴⁵ Without transparent procedures and accountability mechanisms, asset forfeiture risks being perceived as arbitrary or politically motivated, undermining its legitimacy. To mitigate this, greater transparency in asset forfeiture proceedings, public reporting on case outcomes, and robust anti-corruption safeguards are imperative. Such measures would foster public confidence and support for the utility-oriented shift in asset recovery law.

Additionally, the international context is pivotal given the transnational nature of corruption and illicit financial flows. Indonesia's accession to multilateral conventions such as the United Nations Convention Against Corruption (UNCAC) and the Financial Action Task Force (FATF) recommendations obliges it to strengthen cross-border asset recovery cooperation.⁴⁶ However, practical challenges remain in mutual legal assistance (MLA), especially in timely information exchange and enforcement of foreign forfeiture orders. As noted by Abdullah and Santoso, enhancing diplomatic engagement and developing bilateral agreements with asset-holding jurisdictions will be essential to realize the full potential of NCB forfeiture.⁴⁷ Regional cooperation within ASEAN frameworks also offers prospects for harmonizing asset forfeiture standards and procedural collaboration, thus overcoming jurisdictional barriers.

Indonesia's constitutional framework and human rights commitments also influence the shaping of asset forfeiture laws. The Constitutional Court's decisions affirm the need to balance state interests in asset recovery with protections for property rights and due process.⁴⁸ This jurisprudential stance necessitates clear statutory provisions delineating the scope, procedures, and remedies related to NCB forfeiture to avoid arbitrary

21, no. 4 (2023): 212–230.

⁴⁵ Hartono, A., & Wulandari, P. "Public Perception of Asset Forfeiture in Indonesia," *Jurnal Sosiologi Hukum* 15, no. 3 (2022): 150–166.

⁴⁶ United Nations Office on Drugs and Crime (UNODC), *Implementation of UNCAC: Challenges and Progress* (Vienna: UNODC, 2021).

⁴⁷ Abdullah, R., & Santoso, D. "International Cooperation on Asset Recovery: Indonesia's Position," *Asian Journal of International Law* 12, no. 2 (2022): 210–229.

⁴⁸ Constitutional Court of the Republic of Indonesia, *Decision No. 18/PUU-XVII/2019*.

deprivation. Legal scholars advocate for incorporating mechanisms such as judicial review, appeal rights, and evidentiary protections to uphold constitutional guarantees while enabling effective asset recovery.⁴⁹ These safeguards contribute to maintaining the rule of law while pursuing legal utility.

Furthermore, the socio-political context cannot be overlooked. The embedding of Pancasila principles, which emphasize social justice and collective welfare, provides an ideological foundation for prioritizing the societal benefits of asset forfeiture.⁵⁰ Framing NCB forfeiture as a tool to restore public assets and reinforce public trust aligns with this national philosophy, bridging the gap between legal certainty and utility. However, this requires political commitment and institutional integrity to ensure that asset recovery mechanisms serve the public interest rather than partisan or private agendas.

In conclusion, while Indonesia has made important strides in embedding NCB asset forfeiture within its legal system, significant challenges remain in institutional capacity, judicial practice, procedural safeguards, public perception, and international cooperation. The transition from legal certainty to legal utility in asset forfeiture law is not simply a shift in legal doctrine but a multifaceted reform endeavor involving legislative refinement, institutional strengthening, judicial training, technological advancement, transparency, and adherence to constitutional values. Achieving this balance will be critical to enhancing Indonesia's capacity to recover corruption proceeds and uphold the broader goals of justice and social welfare.

The evolution of asset forfeiture law in Indonesia toward a more utility-oriented model reflects broader global trends in anti-corruption governance and financial transparency. However, to fully realize the potential of non-conviction-based (NCB) asset forfeiture as a tool of public interest, Indonesia must integrate more robust legal innovations that respond to both domestic and transnational challenges. One of the most critical areas is legislative clarity. Current regulations often conflate criminal confiscation with civil forfeiture, causing confusion among law enforcement agencies and judicial officers.⁵¹ Such ambiguity undermines the efficacy of asset recovery proceedings and opens the door to misinterpretation of legal norms. Therefore, legal reform must involve the drafting of a dedicated civil asset forfeiture statute with clear definitions, procedural

⁴⁹ Hartono, A., & Wulandari, P., *Loc.Cit.*

⁵⁰ Putra, T. "Pancasila and Legal Reform: Social Justice in Indonesia," *Jurnal Filsafat Hukum* 10, no. 1 (2021): 35–52.

⁵¹ Aziz, R. "Ketidakjelasan Regulasi dalam Perampasan Aset Tanpa Pemidanaan di Indonesia," *Jurnal Legislasi Indonesia* 21, no. 1 (2024): 1–18.

rules, and evidentiary standards distinct from criminal justice frameworks.⁵²

Several international best practices may serve as blueprints for Indonesia's legal design. For instance, Australia's Proceeds of Crime Act 2002 not only delineates between civil and criminal forfeiture processes but also empowers authorities to apply restraining orders early in investigations, thereby preventing asset dissipation.⁵³ The law allows for ex parte applications to secure assets, subject to subsequent judicial scrutiny, ensuring procedural fairness while preserving enforcement effectiveness. Indonesia can adopt similar interim measures to strengthen the pre-trial phase of asset recovery and avoid losing high-value assets during lengthy legal proceedings.

Legal scholars also emphasize the importance of proportionality in NCB forfeiture regimes. Not all illicit enrichment or unproven assets warrant full confiscation, especially if they relate to minor or indirect gains.⁵⁴ As outlined by Mulya and Harjono, asset forfeiture in Indonesia has occasionally been perceived as excessive, particularly when the value of seized property far exceeds the alleged harm or when ownership is disputed.⁵⁵ To align with principles of justice and due process, courts should be empowered to consider proportionality, hardship, and third-party interests when adjudicating forfeiture claims. This approach also supports the idea of legal utility by ensuring that the law does not become a blunt punitive tool but rather serves a nuanced corrective purpose.

Another dimension requiring attention is the role of financial institutions and the private sector in facilitating or impeding asset recovery. Banks and fiduciary service providers often possess crucial information regarding beneficial ownership, account movement, and asset concealment tactics.⁵⁶ However, weak enforcement of know-your-customer (KYC) regulations and lax oversight by financial supervisory bodies allow corrupt actors to launder proceeds with minimal risk. Strengthening the obligations of financial institutions to report suspicious transactions, cooperate with asset recovery authorities, and maintain transparent records is vital.⁵⁷ This calls for revisions to Indonesia's banking secrecy laws and the expansion of PPATK's powers to access and

⁵² Mahendra, S. "Urgensi Undang-Undang Perampasan Aset: Tinjauan Perbandingan," *Jurnal Hukum & Pembangunan* 54, no. 1 (2024): 78–94.

⁵³ Commonwealth of Australia, *Proceeds of Crime Act 2002* (Canberra: Government Printer, 2002).

⁵⁴ Kelly, R. "Proportionality and Human Rights in Civil Forfeiture," *Journal of Financial Crime* 29, no. 2 (2022): 289–305.

⁵⁵ Mulya, A., & Harjono, B. "Keadilan dalam Proses Perampasan Aset: Studi Kasus Indonesia," *Jurnal Konstitusi* 20, no. 3 (2023): 224–240.

⁵⁶ Nugraheni, L. "Peran Lembaga Keuangan dalam Pencegahan Pencucian Uang," *Jurnal Keuangan dan Hukum* 13, no. 2 (2023): 143–160.

⁵⁷ *Ibid.*

analyze financial data without procedural deadlocks.

In practice, a significant bottleneck in NCB forfeiture cases lies in the burden of proof and the evidentiary standards applied. While the standard should be “balance of probabilities,” Indonesian judges often revert to “beyond a reasonable doubt,” especially in politically sensitive or high-value cases.⁵⁸ This inconsistency stems from a lack of authoritative judicial guidance and the absence of a national jurisprudential framework for civil forfeiture. To address this, the Supreme Court should issue binding guidelines (SEMA) or technical directives (PERMA) that clarify evidentiary thresholds and guide judges on the permissible scope of inferences in NCB cases.⁵⁹ Doing so would harmonize judicial decisions, reduce uncertainty, and enhance the predictability of outcomes—contributing to both legal certainty and legal utility.

The effective use of NCB forfeiture also depends on the integrity and independence of institutions. As Tanjung and Widjaja note, asset forfeiture processes are vulnerable to manipulation when prosecutorial discretion is exercised without adequate checks and balances.⁶⁰ Ensuring that asset recovery units operate under a framework of transparency, with external oversight and internal accountability mechanisms, is crucial to prevent abuse of power. Furthermore, asset management post-forfeiture must be transparent and efficient. Many cases in Indonesia reveal that forfeited assets depreciate rapidly due to poor storage, bureaucratic delays, or corruption in liquidation processes.⁶¹ Establishing a centralized asset management agency, as practiced in countries like Colombia and Mexico, could enhance efficiency and revenue recovery while minimizing waste and mismanagement.⁶²

At the theoretical level, the shift from legal certainty to utility-based frameworks demands rethinking the purpose of legal rules. Traditional conceptions of legal certainty—emphasizing predictability, consistency, and formalism—must be balanced with the responsiveness and adaptability required to address complex economic crimes.⁶³ Drawing from the legal theory of “responsive law” advocated by Philippe Nonet and Philip

⁵⁸ Priyono, D. "Standar Pembuktian dalam Civil Forfeiture: Analisis Yuridis," *Jurnal Hukum dan Peradilan* 12, no. 1 (2023): 55–70.

⁵⁹ Mahfud, A. "Perlu atau Tidaknya Pedoman MA tentang Perampasan Aset Tanpa Pemidanaan," *Jurnal Hukum Nasional* 54, no. 2 (2023): 101–117.

⁶⁰ Tanjung, R., & Widjaja, L. "Korupsi dalam Proses Perampasan Aset: Kajian Institusional," *Jurnal Antikorupsi Integritas* 7, no. 2 (2023): 87–105.

⁶¹ Santosa, H. "Masalah dalam Pengelolaan Aset Sitaan dan Rampasan Negara," *Jurnal Manajemen Publik* 16, no. 2 (2022): 133–149.

⁶² González, C. "Asset Management in Latin America: Lessons for Southeast Asia," *International Journal of Asset Recovery* 4, no. 1 (2021): 59–77.

⁶³ Rahardjo, S. *Hukum Progresif: Hukum yang Membebaskan* (Yogyakarta: Genta Publishing, 2021).

Selznick, the law must not only regulate but also intervene and innovate to meet evolving societal needs.⁶⁴ Applying this philosophy to NCB asset forfeiture, the Indonesian legal system must allow procedural flexibility and institutional agility, provided that due process and rights safeguards are maintained.

Moreover, empirical research suggests that jurisdictions with high levels of public participation and civic oversight in anti-corruption initiatives tend to achieve greater success in asset recovery.⁶⁵ Involving civil society organizations, media, and watchdog institutions in monitoring asset forfeiture processes can deter misconduct and improve transparency. In Indonesia, efforts such as public access to court verdicts, civil monitoring of corruption trials, and participatory budget tracking have shown promise.⁶⁶ Expanding these participatory mechanisms to include oversight of asset tracing and forfeiture will reinforce democratic accountability and bolster public trust in the system.

Transitional justice considerations also play a role. In cases involving historical corruption or systemic kleptocracy, such as those associated with authoritarian regimes or state-owned enterprises, NCB forfeiture can serve as a form of restorative justice. By reallocating unlawfully acquired assets toward public welfare programs, education, or healthcare, the state not only punishes wrongdoing but also addresses past injustices.⁶⁷ This transformative use of forfeited assets aligns with the Pancasila principle of social justice and strengthens the legitimacy of legal institutions in the eyes of the people.

In the end, the transformation of asset forfeiture law in Indonesia must be guided by a dual commitment: upholding the constitutional foundations of legal certainty and harnessing the practical advantages of legal utility. These goals are not mutually exclusive but require careful legal engineering, institutional reform, and normative clarity. The path forward lies in combining rigorous procedural safeguards with innovative enforcement mechanisms, supported by accountable institutions and public engagement. In doing so, Indonesia can reposition NCB asset forfeiture not merely as a legal tool, but as a policy instrument to advance justice, deter corruption, and recover assets for the public good.

E. Conclusions and Recommendations

⁶⁴ Nonet, P., & Selznick, P. *Law and Society in Transition: Toward Responsive Law* (New Brunswick: Transaction Publishers, 2001).

⁶⁵ Putri, V. "Peran Masyarakat Sipil dalam Pengawasan Kasus Korupsi," *Jurnal Demokrasi dan Hukum* 9, no. 1 (2023): 91–108.

⁶⁶ *Ibid.*

⁶⁷ Zúñiga, N. "Asset Recovery and Transitional Justice: The Role of Reparation," *International Journal of Transitional Justice* 14, no. 2 (2020): 210–226.

From a policy perspective, this study recommends several concrete reforms. First, Indonesia urgently requires the codification of a dedicated non-conviction-based asset forfeiture law that clearly defines procedural safeguards, standards of proof, judicial oversight, and the protection of property rights. Second, institutional coordination among financial intelligence units, prosecutors, courts, and asset management bodies must be strengthened to ensure consistency and accountability in implementation. Third, judicial capacity-building and specialized training in financial crime adjudication are essential to maintain procedural fairness while advancing asset recovery objectives. The establishment of an independent and transparent asset management authority is also critical to prevent misuse and ensure that recovered assets serve public welfare objectives.

This study acknowledges its limitation in relying primarily on doctrinal and comparative legal analysis, with limited empirical validation from case studies or stakeholder perspectives. Future research should therefore adopt mixed-method approaches, incorporating empirical data, judicial practice, and civil society perspectives, to assess implementation challenges and societal legitimacy more comprehensively. If pursued coherently, these reforms have the potential to transform asset forfeiture from a reactive enforcement tool into a proactive mechanism of justice aligned with Indonesia's anti-corruption agenda and the broader ideals of Pancasila-based law.

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