



# The Urgency on Law of Asset Forfeiture and Recovery For Corruption Crime in Indonesia

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## ABSTRACT

**Abstract.** Corruption is a systematic and structured crime which relates to acts of bribery or manipulation and other acts that harm or can harm the state's finances or economy, harming the welfare and interests of the people. The act of corruption has violated the mandate in the preamble of the 1945 Constitution of the Republic of Indonesia. If the law enforcement of corruption is not in harmony with the losses that have been recovered in addition to the enormous costs incurred, the law enforcement of corruption eradication is considered a failure. Based on this, asset forfeiture efforts are important so that the amount of state losses can be recovered. Asset forfeiture in corruption through the draft legal product of asset forfeiture law in corruption crimes in order to fulfill legal needs as stipulated in the 1945 Constitution of the Republic of Indonesia Article 28 I paragraph (4) Protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. So, the existence of the draft law in corruption crimes to provide promotion and law enforcement to pursue assets of corruption crimes whose whereabouts are unclear.

**Keywords:** Corruption Crime, Asset forfeiture, Asset Recovery, Law enforcement

## INTRODUCTION

Financially motivated crimes, which were conventional in nature, have become more complex over time. The economic purpose behind crimes such as corruption, money laundering and drug trafficking make them more complex than ordinary economic crimes in terms of how they are carried out<sup>1</sup>. The evolution of the means used to commit crimes, such as how easy it is to escape with the proceeds of crime without having to travel abroad and in a short period of time using computers and internet networks, demonstrates the complexity of these crimes.

A state asset that is corrupted or taken in an unlawful manner is not only detrimental to the victim but also to the state and its contents. The deprivation of property obtained through criminal acts is not a new development in Indonesian law. In addition to being covered in the Criminal Code, regulations governing the confiscation of property obtained through criminal offenses are also covered in various other criminal law throughout the Act. Article 18(a) of Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption (Corruption Law), and Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes all state this. In reality, it is quite difficult for law enforcement officials to confiscate property that has been controlled by criminals but is the proceeds of crime.

The obstacles faced when trying to confiscate the proceeds of crime are many, including the unavailability of means to confiscate the proceeds of crime, the absence of adequate international cooperation, the ignorance of law enforcement officials regarding the mechanism for confiscating the proceeds of crime, and the length of time required before the proceeds of crime can be confiscated by the state, namely after obtaining a court decision that has permanent legal force. The trend in international law shows that measures to reduce the level of crime include

<sup>1</sup> Coal, S. A. (2018). The urgency of civil forfeiture to increase the return of state financial losses. Prima Law (IHP), 1(2), 353–363.



the seizure and confiscation of the proceeds of crime as well as the instruments of crime. Given the importance of confiscation of proceeds of crime in case resolution, asset confiscation is also regulated in a separate chapter of the United Nations Convention Against Corruption (UNCAC), Chapter V.

Through Law No. 7/2006 on the Ratification of the UN Convention Against Corruption, Indonesia ratified UNCAC. Indonesia is now a party to UNCAC as a result of this ratification. Indonesia needs to have the same legal authority to take the necessary steps to confiscate unlawfully obtained and transported assets, containing articles governing the confiscation of property obtained from criminal offenses. These conventions include the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the United Nations Convention on Transnational Organized Crime/UNTOC (2002), and a number of clauses of the United Nations Counter-Terrorism Convention.

Asset forfeiture initiatives in a country undoubtedly require political support from the legislature, executive, and courts of law. Such laws cover asset management, asset delivery, asset tracing, and the use and management of surrendered assets<sup>2</sup>. Legal documents relating to international cooperative relations should also be prepared. A law that explicitly regulates the confiscation of assets from crimes in the Indonesian legal system can help implement this political will. The enactment of the Draft Law on Confiscation of Proceeds of Crime into the National Legislation Program from 2009 to 2014 shows that proposals to enact laws regulating the confiscation of proceeds of crime are underway. The Asset Forfeiture Bill was proposed in 2012 and although included in the National Legislative Program, was not discussed during the five-year period.

The creation of a separate law governing the confiscation of assets obtained through criminal activity is currently being discussed as an indication that parliament supports asset confiscation efforts. Several ideas for an Asset Forfeiture Bill are among the many bills that will be reviewed as part of the National Legislation Program for 2014 to 2019<sup>3</sup>. Several international conventions, including the UNCAC, which utilizes a non-punitive asset forfeiture mechanism, are referenced in this regard. The bill's new paradigm for the process of confiscating assets obtained through criminal acts. Of course, this is different from the rules for asset forfeiture and confiscation of assets resulting from criminal acts that are already in place in Indonesia. Because Indonesia's legal system now permits asset confiscation only when the law enforcement process has obtained a court decision with permanent legal force.

The need for the Asset Forfeiture Bill, according to Romli Atmasasmita, is based on the fact that law enforcement efforts, especially to eradicate corruption, have not produced meaningful results for the state treasury. Romli added that the current Indonesian legal framework has not been able to adequately regulate and accommodate actions related to the recovery of assets obtained through corruption and other types of financial and banking crimes in general. To completely eliminate money laundering in Indonesia, according to Mudzakir, a legal expert at the Islamic University of Indonesia, the Asset Forfeiture Bill must be passed. In addition, the Asset Forfeiture Bill can be used to cover losses caused by criminal acts. Mudzakir added that the Asset Forfeiture Bill must be written proportionally while still prioritizing justice.

Based on this, the problems discussed in this paper include:

1. What is Indonesia's current policy on confiscation of property acquired in corruption crime?
2. What Justifies the Establishment of the Indonesian Law of Forfeiture and Recovery of the stolen asset?

This essay intends to investigate:

1. The current practice of confiscating assets acquired through corruption crimes in Indonesia.
2. The need for a Bill on Asset Forfeiture and Recovery in the Indonesian criminal justice system.

## METHODOLOGY

In conducting this legal research, the author chose a normative approach by conducting a literature study of primary, secondary, and tertiary legal sources.

<sup>2</sup> Genta, I. N. Y. D., & Suyatna, I. N. (2020). Application of the Going Concern concept for limited liability companies that have been declared bankrupt. *Acta Comitatus*, 5(2), 252

<sup>3</sup> L. atifah, M. (2016). The urgency of establishing the Urgency of Assets Recovery Act in Indonesia. *The State of Law: Building Laws for Justice and Welfare*, 6(1), 17–30





## RESULTS

### The Need for Indonesia to Enact an Asset Forfeiture and C

Various circumstances, including Indonesia's status as a state party to the UNCAC, the evolution of the types of crimes resulting in economic loss, and the inadequacy of existing mechanical variables, point to the importance of an Asset Forfeiture Law<sup>4</sup>.

#### 1. Ratification of UNCAC

The UNCAC has been ratified by Indonesia through Law No. 7/2006 on the forfeiture of proceeds and instrumentalities of interstate crime and the ratification of the 2003 UN Convention Against Corruption. As a result of its ratification, the Indonesian government is required to modify its current legislative laws to comply with the provisions of the convention so that Indonesia makes every effort to confiscate assets derived from unlawful acts, particularly the proceeds of corruption.

The UNCAC includes specific guidelines on how to confiscate property as a result of a crime using non-punitive asset forfeiture techniques. So, it can be used as an example by states parties when conducting international cooperation in criminal and financial matters and when using technology between members to try to seize assets obtained through corruption offenses. All states parties are required, under UNCAC, to consider the confiscation of proceeds of crime without imposing penalty (NCB). NCB is seen as a system that UNCAC does not consider to be different from the legal system of the state party in this respect. Indonesia is required to comply with the rules of UNCAC in order to ratify it. When UNCAC is ratified, Indonesia must also amend its domestic laws to reflect it as an international convention to which Indonesia is a party. The Indonesian government has made efforts to implement UNCAC after ratifying it, one of which is with the Asset Forfeiture Bill.

The reason is because Indonesia has modified the provisions of UNCAC as an international treaty as a result of the Asset Forfeiture Bill, which follows the NCB's In Rem criminal forfeiture method. Although the provisions of the Draft Law on Asset Forfeiture allude to UNCAC recommendations on asset forfeiture, the information presented therein can be applied to any crime that has an economic motivation. This is due to the fact that stolen property is the weakest link in the chain of money-motivated theft, so efforts to lower crime rates should be successful if stolen property is confiscated. To uphold justice, at least in terms of the recovery of losses caused by crime, the attack actually requires an efficient asset confiscation mechanism. The need for uniformity in a more efficient procedure for confiscating assets obtained through unlawful acts can be regulated by the Asset Forfeiture Law. With the passing of the Asset Forfeiture Law, the House of Representatives can demonstrate to the public that it has the political will to successfully carry out asset forfeiture efforts in the Indonesian legal system.

#### 2. Creation of Various Types of Economic Motive Crimes

Over the past ten years, Indonesia has seen an increase in the complexity of economically motivated crimes. The ease with which criminals are now able to commit crimes due to advances in information technology has led to a change in the *modus operandi* used. The difficulty of law enforcement against these crimes is clearly compounded by the emergence of several new *modus operandi* in criminal activities. In addition, as a result of advances in Information and communication technology, it is now easier for criminals to hide the proceeds of their crimes, making it possible to move assets derived from criminal activities across international borders. This growth requires the creation of legislative laws that can address the problem of diversifying types of economic crime. So that law enforcement officials can crack down on economic crimes committed in traditional and sophisticated ways in accordance with current laws.

This trend coincides with the growth and diversification of criminal activities for which assets can be forfeited. The crimes include embezzlement, fraud, terrorism, arms and drugs smuggling, forestry and fisheries, and human trafficking. They also include other crimes that have an economic component. These illegal activities of course have their own laws and rules, but to date, none of the provisions of these criminal offenses limit the confiscation of assets related to the settlement of criminal cases.

<sup>4</sup> Verawati, D. E., & Yudianto, O. (2022). The Urgency of Forfeiture of Assets Without Punishment in Corruption as an Effort to Return State Losses. *Civilia: Journal of Legal Studies and Civic Education*, 1(2), 29–44



### 3. Weak mechanism

As stated in KUHAP and the Anti-Corruption Law, the method of finding the perpetrator and locking him up (following the suspect) used in Indonesian law enforcement for illegal crimes does not have a deterrent effect. As these mechanisms only focus on the detention of the perpetrator rather than asset forfeiture or asset confiscation, which is only done as a new offense, it has not been successful enough to reduce the crime rate<sup>5</sup>. When doing so, taking the proceeds and tools of illegal activity away from the perpetrator will not only transfer many assets from the perpetrator to the victim, but will also deter future criminal activity.

In addition, the emergence of money-motivated criminal subgroups necessitates the creation of an adequate system that can be applied according to the circumstances at hand to effectively confiscate assets in Indonesia. This then became the impetus for the Indonesian government to promulgate legislation aimed at efficiently confiscating assets acquired through economic crimes. The development of legal tools capable of confiscating all assets arising from crime has emerged as one of the prioritized goals of the Indonesian government. This rule is a component of Mulder's suggested criminal law policy, which calls for taking steps to stop crime from occurring. The activities to be undertaken in this document are interpreted as steps taken by the Indonesian government to make asset forfeiture a success in the country's legal system, namely by drafting.

## CONCLUSION

From the above justifications, it can be seen that the Indonesian legal system's basis for the confiscation of assets obtained from illegal activities is essentially its implementation. Only for successful asset confiscation efforts to be implemented in the future, the current criminal and civil systems need to be updated to implement effective asset confiscation activities within the Indonesian justice system. Three things-ratification of UNCAC, changes in crime types, and an ineffective asset forfeiture system-explain how important it is for Indonesia to have a law on asset forfeiture. Indonesia's status as a ratifying country of UNCAC requires that as a result of ratification, the Indonesian government amend the applicable laws to conform to the obligations of the convention. In addition, another aspect that reflects Indonesia's need for the establishment of an Asset Forfeiture and Recovery Law is the development of economic motive crimes. Technological advances make it easier for perpetrators to carry out criminal acts and hide the proceeds of these criminal acts with easier methods. Asset recovery plays an important role in imposing punishment first on the perpetrator of a criminal offense, which can then be followed by asset forfeiture, this is called conviction-based asset forfeiture. This is called conviction-based asset forfeiture.

This must then be addressed with legal provisions that are in accordance with current and future circumstances so that asset forfeiture efforts can achieve maximum results. The last factor of the urgency of establishing an asset forfeiture law is the inadequate mechanism. An adequate mechanism in asset forfeiture efforts is expected to use the mechanism contained in UNCAC so that asset forfeiture and Asset Recovery in Indonesia will run effectively. In addition, the emergence of different criminal behaviors with financial justification confirms the need for Indonesia to create an Asset Forfeiture Law. Due to technological advances, it is now easier for criminals to commit crimes and hide the aftermath of such crimes. In order for asset forfeiture measures to have the greatest impact, this must be addressed by establishing legal provisions that take into account current and future circumstances. Inadequate procedures are the final reason why it is urgent to create an asset confiscation law. In order for asset confiscation in Indonesia to work properly, it is hoped that an adequate method to do so is to use the UNCAC system.

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<sup>5</sup> Saputro, H. J., & Chandra, T. Y. (2021). The urgency of recovering state financial losses through blocking and asset seizure as a corruption law enforcement strategy. *Mizan: Journal of Islamic Law*, 5(2), 273–290





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