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The Non-Conviction Based Asset Forfeiture Concept and the Return of Corruption Assets in Indonesia

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Abstract

Convicting a corruptor does not by itself return the stolen money, and in Indonesia forfeiture normally follows a final judgment against a living, identified and available defendant. This normative study asks what the current law already allows in the way of forfeiture without conviction, why this has not been enough, and what safeguards a future Asset Forfeiture Act must contain. It uses statutory, conceptual and comparative approaches and analyses the United Nations Convention against Corruption (UNCAC), Law No 31 of 1999 as amended in 2001, Law No 1 of 2023 on the Criminal Code, Law No 20 of 2025 on Criminal Procedure, the Asset Forfeiture Bill and the doctrinal literature. The study finds that Indonesian law provides only partial routes: forfeiture within a criminal case, including after the defendant's death, and civil suits against persons or heirs, none of which is an action against the asset itself. UNCAC art 54(1)(c) only asks states to consider such an action, and comparative case law accepts it where the standard of proof, the right to be heard and protection of good-faith third parties are secured. The Bill, still under discussion in 2026, must therefore settle the forum, the proof of unlawful origin, third-party rights and asset management. A specific in rem procedure with these safeguards would complement, not replace, criminal prosecution.

Keywords

Corruption; Forfeiture; Recovery; Property; Presumption; UNCAC

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Introduction

Corruption in Indonesia is not only a problem of punishment but also of money. A sentence of imprisonment does not return what was taken, and a corruptor who keeps the proceeds, or leaves them to relatives, can enjoy them after release or reinvest them. For this reason the policy of "follow the suspect" has been supplemented in international practice by "follow the money", which treats assets, not only persons, as the object of law enforcement.[1] The difficulty in Indonesia is that forfeiture is attached to the criminal process: the court orders it only after the defendant has been proved guilty in a judgment with permanent legal force (*inkracht*). When the suspect has died, has fled, is mentally incapacitated or cannot be identified, or when assets are found only after the judgment, the state is left with a claim that it can pursue, if at all, only through slow civil proceedings.[2]

Non-conviction based asset forfeiture (NCB-AF), also called civil forfeiture or in rem forfeiture, is the response to this problem. It is a court action against the asset itself, separate from any criminal case, in which the state must show that the asset is tainted by crime and the owner may defend it.[3] The United Nations Convention against Corruption (UNCAC), which Indonesia ratified by Law No 7 of 2006, asks states to consider allowing confiscation without a criminal conviction where the offender cannot be prosecuted by reason of death, flight or absence, or in other appropriate cases.[4][5] Indonesia has no general law of this kind. The Asset Forfeiture Bill (*Rancangan Undang-Undang Perampasan Aset*) has been proposed for years and, according to press reports of July 2026, remains on the House of Representatives' priority list for 2026 without having been enacted.[6]

The legal setting also changed in 2026. Law No 1 of 2023 on the Criminal Code and Law No 20 of 2025 on Criminal Procedure have applied since 2 January 2026,[7][8] together with Law No 1 of 2026 on the Adjustment of Criminal Penalties.[9] The new

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[1] Theodore S Greenberg et al, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, DC: World Bank, 2009).

[2] Fathin Abdullah & Triono Eddy, "Perampasan Aset Hasil Tindak Pidana Korupsi Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) Berdasarkan Hukum Indonesia dan United Nations Convention Against Corruption (UNCAC) 2003 [Forfeiture of the Proceeds of Corruption without Conviction under Indonesian Law and UNCAC 2003]" (2021) 9:1 *Jurnal Ilmiah Advokasi* 19, DOI: <10.36987/jiad.v9i1.2011>.

[3] Greenberg et al, *supra* note 1.

[4] United Nations Convention against Corruption, 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005), art 54(1)(c).

[5] Law No 7 of 2006 on the Ratification of the United Nations Convention against Corruption, 2003 (Indonesia).

[6] "DPR Tegaskan RUU Perampasan Aset Tetap Dibahas sebagai Prioritas 2026 [The House Confirms the Asset Forfeiture Bill Is Still Being Discussed as a 2026 Priority]" (July 2026), online: *NU Online* <https://nu.or.id/nasional/dpr-tegaskan-ruu-perampasan-aset-tetap-dibahas-sebagai-prioritas-2026-kapan-disahkan-phzb1>.

[7] Law No 1 of 2023 on the Criminal Code (Indonesia).

[8] Law No 20 of 2025 on Criminal Procedure (Indonesia).

[9] Law No 1 of 2026 on the Adjustment of Criminal Penalties (Indonesia).

Criminal Code now contains the general corruption offences that were formerly arts 2(1) and 3 of the Corruption Law (arts 603 and 604), and the Code of Criminal Procedure replaces the 1981 Code on which the older literature relies.[10][11] An analysis of NCB-AF written before 2026 therefore needs to be updated, and this article does so.

Indonesian scholarship has already argued the case for NCB-AF. Abdullah and Eddy compare Indonesian law with UNCAC and present forfeiture without conviction as the solution where a person cannot be prosecuted,[12] Priyatno shows how NCB-AF could help recover corruption proceeds,[13] and Saputra identifies the challenges of applying it under the Bill, in particular the protection of rights to assets.[14] More recent studies examine the tension of NCB-AF with the presumption of innocence and the principle of legality,[15] the challenges within the Bill,[16] the urgency of regulating it[17] and the political controversy about enacting the Bill.[18] What these studies leave open is a precise map of what current statutes do and do not already provide, so that the Bill can be tested against a clear gap, and an assessment of the new Criminal Code and Code of Criminal Procedure. This article offers that map and links each gap to a safeguard.

The article asks three questions: (1) what provisions of Indonesian law currently allow assets from corruption to be forfeited without a conviction, and where do they stop; (2) why is conviction-based forfeiture insufficient, and what obstacles stand in the way of NCB-AF; and (3) what safeguards should a future Asset Forfeiture Act contain so that it is consistent with the 1945 Constitution and the presumption of innocence? Its purpose is to answer these questions on the law in force in October 2026.

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[10] "Memahami Jenis Korupsi Pasca Penyesuaian KUHP Terbaru [Understanding the Types of Corruption after the Latest Adjustment of the Criminal Code]" (9 April 2026), online: *KPK Anti-Corruption Learning Center* <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20260409-memahami-jenis-korupsi-pasca-penyesuaian-kuhp-terbaru>.

[11] Law No 8 of 1981 on Criminal Procedure (Indonesia) (repealed).

[12] Abdullah & Eddy, *supra* note 2.

[13] Dwidja Priyatno, "Non Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia" (2018) 9:1 *Journal of Advanced Research in Law and Economics* 219, DOI: <10.14505/jarle.v9.1(31).27>.

[14] Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia [Challenges in Applying Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia]" (2017) 3:1 *Integritas* 115, DOI: <10.32697/Integritas.V3i1.158>.

[15] Muhammad Nurul Huda, "Non-Conviction-Based Asset Forfeiture: Presumption of Innocence and Principle of Legality Perspective" (2025) 7:1 *Walisongo Law Review* 98.

[16] Hutmi Amivia Ilma, "Tantangan Mekanisme Non-Conviction Based Asset Forfeiture dalam RUU Perampasan Aset Tindak Pidana Korupsi di Indonesia [Challenges of the Non-Conviction Based Asset Forfeiture Mechanism in the Bill on Forfeiture of Assets from Corruption in Indonesia]" (2025) 3:1 *Journal of Law and Syariah* 48, DOI: <10.54298/tarunalaw.v3i01.276>.

[17] Masagus Rizki Aldino & Eka Susanti, "Urgensi Pengaturan Perampasan Aset Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) dalam Tindak Pidana Korupsi di Indonesia [The Urgency of Regulating Non-Conviction Based Asset Forfeiture in Corruption Offences in Indonesia]" (2025) 11:1 *Jurnal Hukum Sehasen* 97.

[18] M Ainun Najib, "Polemik Pengesahan Rancangan Undang-Undang Perampasan Aset di Indonesia [The Controversy over Enacting the Asset Forfeiture Bill in Indonesia]" (2023) 3:2 *Jurnal Hukum dan Perubahan Sosial*.

Research Method

This is normative (doctrinal) legal research using statutory, conceptual and comparative approaches. It involved no fieldwork or interviews. The primary legal materials are the 1945 Constitution, UNCAC and Law No 7 of 2006, the Corruption Law, Law No 1 of 2023, Law No 20 of 2025 and Law No 1 of 2026, the Money Laundering Law, Supreme Court Regulation No 1 of 2013, Constitutional Court Decision No 25/PUU-XIV/2016 and, for comparison, a decision of the European Court of Human Rights and the United States Civil Asset Forfeiture Reform Act 2000. The secondary materials are the World Bank good practices guide and the Indonesian journal literature cited above. Materials were selected because they concern forfeiture without conviction or the recovery of corruption assets. The status of the Bill rests on press reports of the House's statements and not on the draft text, which is not analysed clause by clause.

The analysis is qualitative. The provisions of the Corruption Law are classified by whether they operate within a criminal case or in a separate civil proceeding, against a person or against the asset; the gap thus identified is then compared with the standards of UNCAC and the comparative case law, and the obstacles discussed in the literature are assessed against the constitutional protection of property and the presumption of innocence.

Results and Discussion

The Concept of NCB-AF and the International Standard

Asset forfeiture systems are of two kinds. In criminal forfeiture the court, on convicting the defendant, orders the forfeiture of proceeds or instruments as part of the sentence; it is a proceeding in personam, directed against the person. In civil or non-conviction based forfeiture the action is in rem, directed against the property, on the doctrine of taint: property that derives from or has been used in crime is tainted and may be taken whoever holds it.[19] The defendant in such an action is the asset, and the owner or any third party with an interest appears to defend it. The state need not prove that a named person is guilty; it must prove, usually on the balance of probabilities, that the asset is the proceeds or an instrument of crime. This is why the action can proceed when the offender has died, fled or is unknown, or when a criminal case has failed for lack of evidence against a person.

[19] Greenberg et al, *supra* note 1.

UNCAC gives the concept an international footing without imposing it. Article 54(1)(c) requires each state party to "consider" the measures necessary to allow confiscation without a criminal conviction in cases where the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.[20] This is a duty of consideration and not a duty to enact; the common statement that Indonesia is "obliged" to adopt NCB-AF overstates the Convention. Other provisions complete the picture: art 2(g) defines confiscation as permanent deprivation by order of a court "or other competent authority", art 31(8) allows states to consider requiring an offender to show the lawful origin of alleged proceeds, and arts 53, 55 and 57 provide for direct recovery through civil action, for international cooperation in confiscation and for return of assets.[21] The Financial Action Task Force similarly asks countries to consider confiscation without conviction as part of the measures in Recommendation 4.[22] The "36 key concepts" sometimes attributed to UNCAC are not treaty obligations but part of the World Bank and UNODC good practices guide, which is a non-binding source of guidance.[23]

The mechanism has been tested against human rights. In Gogitidze v Georgia the European Court of Human Rights held that the civil forfeiture of property of a former public official and his relatives, whose wealth was out of proportion to their lawful income, did not violate the right to property. The Court found that the state had struck a fair balance between the means used and the public interest in combating corruption.[24] The United States, where civil forfeiture is best known, restricted abuses by the Civil Asset Forfeiture Reform Act 2000, which was enacted in response to criticism of the earlier regime.[25] Two lessons follow. First, the mechanism is not inherently incompatible with fundamental rights. Second, its acceptability depends on safeguards, which the authors' sources show are exactly the points disputed in Indonesia: the standard of proof, the right to be heard and the protection of third parties acting in good faith.

The Convention's model of recovery also shows where NCB-AF fits. UNCAC distinguishes indirect recovery through confiscation, which requires judicial or other competent proceedings, from direct recovery through civil action by the

[20] UNCAC, *supra* note 4, art 54(1)(c).
[21] *Ibid*, arts 2(g), 31(8), 53, 55 and 57.
[22] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF) (Recommendation 4, as updated).
[23] Greenberg et al, *supra* note 1.
[24] Gogitidze and Others v Georgia, no 36862/05 (12 May 2015) (ECtHR).
[25] Civil Asset Forfeiture Reform Act of 2000, Pub L No 106-185, 114 Stat 202 (United States).

injured state, and it organises recovery in stages: preventing and detecting the transfer of proceeds (art 52), direct recovery (art 53), mechanisms for recovery through international cooperation in confiscation (arts 54 and 55) and return and disposal (art 57).[26] Tracing identifies the assets and their location; freezing, defined in art 2(f) as a temporary prohibition on transferring, converting, disposing of or moving property, preserves them; confiscation, defined in art 2(g), removes them permanently; and return restores them to the state or to the victims. In practice the stages fail at different points: differences between legal systems and the political will of the state holding the assets frequently obstruct return.[27][28] For Indonesia the lesson is practical. Many foreign states require a court order as the basis for assisting with confiscation, and a judgment in an in rem action would supply that order even when no conviction can be obtained at home.

A civil-law country adopts the mechanism more carefully than a common-law country, because it requires a clear legal authority, in accordance with the principle of legality. The concept is historically rooted in common law, and the United States is generally regarded as its pioneer, but art 54 of UNCAC is addressed to states of both traditions and the World Bank guide, which was drafted by experts from both civil and common-law countries, treats the mechanism as a tool that can be adapted to either.[29][30] The practical consequence for Indonesia is that the mechanism cannot be created by judicial invention or by a Supreme Court regulation alone. An in rem action that affects the ownership of property should rest on a statute, which is why the enactment of the Bill matters.

Forfeiture without Conviction in Current Indonesian Law

Indonesian law does not contain a general action against assets, but it does contain several provisions that work without a final conviction. They must be distinguished carefully, because the literature often treats them all as forms of NCB-AF. Table 1 classifies them.

Table 1. Routes to forfeiture or recovery without a final conviction under current Indonesian law

Route	Provision	Type of proceeding	Limit in relation to NCB-AF
Defendant dies before judgment	Corruption Law art 38(5)–(6)	Criminal court, on the prosecutor's demand, with strong evidence of guilt	Needs a pending prosecution and proof of the offence; interested parties may object
Unexplained assets	Corruption Law art 38B(2)	Criminal case: assets the defendant cannot show to be	Presupposes a defendant in a criminal trial; not available if the defendant dies or flees

[26] UNCAC, *supra* note 4, arts 52–55 and 57.
[27] *Ibid*, art 2(f) and (g).
[28] Greenberg et al, *supra* note 1.
[29] *Ibid*.
[30] Abdullah & Eddy, *supra* note 2.

		lawful are presumed to derive from corruption	
Insufficient evidence but clear state loss; acquittal	Corruption Law art 32(1)–(2)	Civil suit by the State Attorney or the injured agency	Directed at persons for damages, not at the asset; needs proof of a state loss
Suspect or defendant dies	Corruption Law arts 33–34	Civil suit against the heirs	Depends on heirs; fails if there are none or they are not found; no action against the asset
Assets found after final judgment	Corruption Law art 38C	Civil suit against the convict or heirs	Applies only after a conviction
Proceeds of money laundering	Money Laundering Law; Supreme Court Regulation No 1 of 2013	Application to the court for the handling of assets; money laundering as an offence	Applies to assets of money laundering or other crimes whose owner is unknown or cannot be found; not a general action

Source: author's analysis of the provisions cited. Article numbers of the Corruption Law are given from the text of Law No 31 of 1999 as amended and should be checked against the consolidated text and the new Codes.

The classification shows that Indonesian law offers forfeiture in the criminal court and damages in the civil court, but no action against the asset itself. The criminal-court routes (arts 38(5)–(6) and 38B(2)) are exceptional rules inside a criminal case: they require a prosecution that can begin and, in the case of art 38(5), strong evidence that the deceased committed the offence. They are therefore not forfeiture without a criminal proceeding. The civil routes (arts 32, 33, 34 and 38C) are brought by the State Attorney (*Jaksa Pengacara Negara*) under the Prosecution Law[31] and aim at compensation for a state loss from persons or heirs.[32][33] They need proof that a loss to state finances actually occurred, which the Constitutional Court has required to be real and not potential,[34] and they do not reach assets held by third parties or whose owner is unknown. Where the suspect has died without heirs, or the heirs cannot be found, there is no one to sue.

The money laundering regime comes closest. The Money Laundering Law and Supreme Court Regulation No 1 of 2013 allow the court to deal with assets of money laundering or other crimes when the owner is unknown, and the law allows reasoning about the origin of assets.[35][36] Even here, the rules are partial, depend on the link with money laundering and on a Supreme Court regulation, and do not provide a general action available to the prosecutor for corruption proceeds. In substance, the gap is not that Indonesia lacks tools for confiscation, but that all of them are bound either to a criminal case or to a claim against a person.

[31] Law No 16 of 2004 on the Prosecution Service, as amended by Law No 11 of 2021 (Indonesia).
[32] Law No 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No 20 of 2001 (Indonesia).
[33] Abdullah & Eddy, *supra* note 2.
[34] Constitutional Court of Indonesia, Decision No 25/PUU-XIV/2016 (25 January 2017).
[35] Law No 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (Indonesia).
[36] Supreme Court Regulation No 1 of 2013 on the Procedure for Settling Applications for the Handling of Assets in Money Laundering or Other Crimes (Indonesia).

The 2026 reforms do not close the gap. Articles 603 and 604 of Law No 1 of 2023 now contain the offences of enriching oneself or others, and of abusing authority, to the detriment of state finances, which were arts 2(1) and 3 of the Corruption Law; the other provisions of the Corruption Law, including its forfeiture and civil-suit provisions, remain relevant for what they regulate. Whether the cross-references in the procedural provisions of the Corruption Law now point to the new Code is a matter for the transitional provisions of Law No 1 of 2026.[373839] The new Code of Criminal Procedure keeps the character of seizure as a measure within a criminal case, including the seizure of the assets of a suspect or defendant suspected to derive from a crime, and the return of seized objects to those entitled; the older articles on seizure and return (arts 39 and 46 of the 1981 Code, on which the manuscript relied) have been replaced.[4041] Seizure under the new Code therefore still depends on a criminal case, and the new Code cannot fill the gap.

A further analytical point concerns state financial loss. The Corruption Law defines state finances widely, covering all state assets in whatever form, including those under the ownership, management and responsibility of state officials and of state-owned or state-capitalised bodies. Its offences of enrichment and abuse of authority (formerly arts 2 and 3, now arts 603 and 604 of the Criminal Code) have been tied to a loss, and the Constitutional Court has held that the loss must be actual and not merely potential.[424344] The civil routes in arts 32 to 34 depend on that loss. An in rem action does not: it asks whether the asset derives from or has been used for an offence, so that the state has to show the connection between asset and crime, not the sum of the loss. This difference explains why NCB-AF can reach, for example, assets of a deceased official that are far greater than the loss that could be proved against him, and why it must therefore be accompanied by rules on the standard and form of proof of that connection.

The procedure proposed in the literature on the Bill has a recognisable shape. The assets suspected to be proceeds of crime are first blocked and seized by court order, which removes them from circulation; the court then declares them tainted; a public announcement of about 30 days gives third parties the opportunity to object; and a

[37] Law No 1 of 2023, *supra* note 7.
[38] Law No 1 of 2026, *supra* note 9.
[39] "Memahami Jenis Korupsi", *supra* note 10.
[40] Law No 20 of 2025, *supra* note 8.
[41] Law No 8 of 1981, *supra* note 11.
[42] Corruption Law, *supra* note 32.
[43] Decision No 25/PUU-XIV/2016, *supra* note 34.
[44] Law No 1 of 2023, *supra* note 7.

third party who objects must prove ownership and explain how the assets were acquired.[4546] The steps correspond to the model in the World Bank guide, which couples early preservation with notice and a hearing.[47] The order of the steps has an important consequence: preservation precedes the decision on the merits, so that the blocking order, being a serious interference with property, needs its own standard, time limits and a right of review. The fact that an order is issued ex parte, and to prevent dissipation, is justified only if the respondent can challenge it promptly.

Why Conviction-Based Forfeiture Falls Short

The central weakness of conviction-based forfeiture is timing and dependence. Forfeiture can be ordered only at the end of a case that may last years, during which assets can be hidden, sold or moved abroad. The offender may abscond and cannot be extradited, or may die. Moreover, forfeiture of assets is an additional punishment that the judge may or may not impose, so a conviction does not guarantee recovery.[4849] The practical result is a gap between the state loss that law enforcement identifies and the assets returned to the treasury. Published figures show large annual fluctuations in recoveries and rest on different bases (percentages of a planning target, amounts auctioned, amounts transferred); for that reason they are not compared here, and a proper assessment requires consistent data from the Corruption Eradication Commission (KPK), the Attorney General's Office and the asset management authorities.

A second weakness concerns the replacement-money sanction (*uang pengganti*). The convict may serve a substitute prison term instead of paying, which makes non-payment attractive when the proceeds are large, and tracing and freezing are needed before the judgment if payment is to be secured.[50] An action against the asset, available before or independently of the verdict, addresses both weaknesses. It does not remove the need to prosecute: the criminal sanction serves retribution and deterrence, while forfeiture removes the profit. The two aims are complementary.

Institutional fragmentation compounds the problem. Powers over tracing, seizure, auction and management are spread over the Attorney General's Office, the KPK,

[45] Ilma, *supra* note 16.
[46] Aldino & Susanti, *supra* note 17.
[47] Greenberg et al, *supra* note 1.
[48] Najib, *supra* note 18.
[49] Priyatno, *supra* note 13.
[50] Abdullah & Eddy, *supra* note 2.

the Financial Transaction Reports and Analysis Centre (PPATK) and the Directorate General of State Assets, so that delay and disagreement between agencies are routine. The Bill proposes an asset management body under the Minister of Finance; this is the right problem to address, although the design and accountability of such a body will decide whether it improves the position.[51]

The cases in which the conviction-based model fails can be listed, because each calls for a different answer. The suspect has died before or during the case; the suspect has fled and cannot be extradited; the suspect or defendant has become mentally incapacitated and cannot stand trial; the offender is unknown or the assets are held by others; the assets are found only after the judgment; or the prosecution has failed on the proof of a particular person's guilt although the assets are clearly of illicit origin. Table 1 shows that the Corruption Law answers the first in part, through the court's power under art 38(5), and the last two only by civil suit against persons; it has no answer for an unknown offender, for assets held by third parties or for an incapacitated defendant.[5253] The list is the strongest argument for NCB-AF, because it shows that the gap is made up of identifiable situations that a statute can define, not of a vague dissatisfaction with prosecution.

The policy justification can be stated shortly. The principle that no one should profit from a crime requires that proceeds be removed even where the person cannot be punished; the victim, which in corruption is the state and through it the public, is entitled to restitution; and the removal of profit prevents reinvestment in further crime.[54] These aims are consistent with the constitutional character of Indonesia as a state based on law (art 1(3) of the 1945 Constitution), which requires that state action rest on law made democratically and that law be supreme and applied equally.[55] The same character is also the reason why the means must be lawful: an Act that fails to protect the owner's rights would not serve the rule of law, however useful it would be for recovery. The justification of NCB-AF in Indonesia therefore lies in a balance that the statute has to strike, and the balance cannot be taken for granted.

Obstacles to NCB-AF and the Asset Forfeiture Bill

The Bill's status illustrates the obstacles. It was put forward as a legislative priority in successive years; in July 2026 the House stated that it was still on the 2026 priority

[51] Ilma, *supra* note 16.
[52] Corruption Law, *supra* note 32.
[53] Abdullah & Eddy, *supra* note 2.
[54] Greenberg et al, *supra* note 1.
[55] Constitution of the Republic of Indonesia 1945, art 1(3).

list and that Commission III was discussing it, with a target of passing it in 2026.[56] Whether it has been passed since then should be checked against the House's records. The literature groups the obstacles into five.

The first obstacle is human rights and the constitutional protection of property. Article 28H(4) of the 1945 Constitution provides that private property may not be taken arbitrarily, and art 28D(1) guarantees legal certainty and fair treatment.[57] Opponents invoke these provisions, ne bis in idem and the presumption of innocence.[58] These provisions do not make forfeiture impossible. The Constitution also allows rights to be restricted by statute for reasons including the rights of others and just requirements of public order (art 28J(2)), and a statute that provides for forfeiture of tainted property after a fair hearing is not arbitrary taking. What is required is a statute with a clear legal basis, a judicial decision, notice, an opportunity to object and compensation where the taking proves wrongful.[5960]

The second obstacle is the presumption of innocence and the reversed burden of proof. The better view is that the presumption protects a person against being declared guilty of an offence without proof, and that an in rem action does not decide anyone's guilt: it decides whether property is lawfully held. Huda reaches the same conclusion from the perspectives of the presumption and legality.[61] Three points still have to be made. First, the distinction holds only if the judgment has no criminal consequence for the owner. Second, the burden should not be reversed entirely: the state should first establish a prima facie case of unlawful origin, such as a disproportion between lawful income and wealth, and only then should the owner be asked to explain, as UNCAC art 31(8) contemplates and as in Gogitidze.[6263] Third, a civil standard of proof must be stated by the Act and not left to the judge, because Indonesian civil procedure has no settled rule for in rem proceedings.

The third obstacle is the position of third parties. An in rem action affects people who are not accused: spouses, relatives, companies and purchasers in good faith. The Bill proposes publication of the seizure for about 30 days so that anyone with an interest may object; this should be set by the Act and be given real notice, not

[56] "DPR Tegaskan RUU Perampasan Aset", *supra* note 6.
[57] 1945 Constitution, *supra* note 55, arts 28D(1) and 28H(4).
[58] Saputra, *supra* note 14.
[59] 1945 Constitution, *supra* note 55, art 28J(2).
[60] Gogitidze, *supra* note 24.
[61] Huda, *supra* note 15.
[62] UNCAC, *supra* note 4, art 31(8).
[63] Gogitidze, *supra* note 24.

only a press announcement. Third parties must have standing, a clear defence (lawful acquisition for value without knowledge) and the right to appeal.[6465]

The fourth obstacle is the forum. The Bill combines elements of criminal and civil law, and its provisions on the competence of the courts and the qualifications of judges are said to be general. Because corruption cases are tried in the corruption court, assigning in rem corruption cases to that court would use its expertise, but its jurisdiction is defined by statute and would have to be extended. The relation of the new action to the criminal case (whether it is stayed, may run in parallel or is res judicata) must also be regulated, to avoid double proceedings and conflicting findings.[6667]

The fifth group concerns institutions, politics and cost. A provision of the Bill that protects investigators and prosecutors who block assets in good faith from civil or criminal liability has been criticised as a form of immunity that may encourage abuse; a better formula protects good faith but preserves liability for bad faith and for negligence and gives owners a remedy and compensation. Political resistance has been said to come from officials who have most to lose, but this assertion is made in the literature without documentation,[68] and the authors do not rely on it. Finally, the World Bank guide cautions that forfeiture is not always cost-effective for assets of low or falling value, or encumbered or costly to keep, and recommends selectivity.[69] For corruption assets of high value the point is of limited weight, but the Act should include a threshold and rules on early disposal and management, so that the system is not overloaded.

The relation between the in rem action and the criminal case needs separate treatment. If the two run in parallel, evidence obtained in one may be used in the other; an acquittal in the criminal case should not by itself decide the in rem action, since the two ask different questions and use different standards of proof, a point that art 32(2) of the Corruption Law already accepts for civil suits; but a finding in the in rem action should not be treated as a finding of guilt. A rule is also needed against double recovery, so that what has been forfeited in rem is credited against any replacement-money order in the criminal case. Finally, the objection of ne bis in idem is met if the in rem judgment has no punitive character: forfeiture of tainted

[64] Ilma, *supra* note 16.
[65] Greenberg et al, *supra* note 1.
[66] Ilma, *supra* note 16.
[67] Saputra, *supra* note 14.
[68] Najib, *supra* note 18.
[69] Greenberg et al, *supra* note 1.

property is remedial because it removes what the holder was never entitled to hold.[707172]

Two conditions of effectiveness remain. The first is the will of the prosecution service, since in practice the application for forfeiture is brought by the Attorney General's Office, and an Act without a prosecutor willing to use it would remain unused; the Act should therefore set out the criteria and the time limits for applications, and the reasons for not applying. The second is the readiness of judges to examine such applications according to the law and not according to the opinion that NCB-AF is in itself a human rights violation, which again calls for a clear statute and for training in the special features of in rem proceedings.[7374]

The sources on the Bill also describe the in rem action by a legal fiction: the asset is treated as if it were a subject that took part in the crime and can be pursued in court, although, unlike a natural person, it cannot defend itself.[75] The fiction is a technique and not a justification, but it has a lesson for design. Because the asset cannot speak, the Act must identify who represents its interests, which means the owner and every person with an interest, and must make sure that those persons are notified, are heard and can present evidence. If the fiction is allowed to replace the right to be heard, the proceeding becomes a taking without process.

The requirements of fair process that Indonesian scholars derive from the rule of law, equality before the law and the presumption of innocence can be turned into a checklist for the Act.[76] Table 3 relates each requirement to the obstacle it answers and to the safeguard proposed.

Table 3. Fair-process requirements, the obstacle they answer and the safeguard proposed

Requirement	Obstacle answered	Safeguard in the Act
Access to an independent court before property is lost	Taking without a decision; confiscation by a single authority	Judicial order for blocking and for forfeiture; separation of investigators, prosecutors and judges
Protection of property	Art 28H(4) of the Constitution; arbitrary seizure	Statutory basis (art 28J(2)); limitation to proceeds and instruments of crime; prima facie case of unlawful origin
Proportionality	Excessive or costly seizure; low-value assets	Value threshold; selectivity; early disposal and management rules
Presumption of innocence	Fear that an in rem judgment declares guilt	No finding on criminal liability in the in rem judgment; civil standard stated by the Act
Right to be heard and to appeal	Third parties and owners unaware of the proceeding	Notice, standing, defence of good faith and acquisition for value, appeal

[70] Corruption Law, *supra* note 32.
[71] Greenberg et al, *supra* note 1.
[72] Gogitidze, *supra* note 24.
[73] Abdullah & Eddy, *supra* note 2.
[74] Ilma, *supra* note 16.
[75] *Ibid*.
[76] Huda, *supra* note 15.

Compensation for wrongful seizure	Liability for mistaken or bad-faith action	Compensation scheme; liability of officials for bad faith or negligence

Source: author's synthesis of the obstacles discussed and the safeguards proposed.

Comparison with Earlier Research

Table 2 places this article beside the studies that frame the Indonesian debate.

Table 2. Earlier research and the contribution of this article

Study	**Main focus**	**This article's addition**
Abdullah & Eddy (2021)	NCB-AF under Indonesian law and UNCAC as the answer where prosecution is impossible	Separates criminal-court routes from civil suits and shows that none is an action against the asset; updates to the 2026 Codes
Priyatno (2018); Saputra (2017)	Value of NCB-AF for recovering proceeds; challenges in the Bill, notably rights to assets	Ties each obstacle to a safeguard and to the current constitutional and ECtHR reasoning
Huda (2025); Ilma (2025)	Presumption of innocence and legality; challenges of the Bill	Adds a point-by-point proposal on burden, standard of proof, third parties and forum
Aldino & Susanti (2025); Najib (2023)	Urgency of regulation; controversy over enacting the Bill	States the 2026 status of the Bill and corrects the UNCAC 'obligation' argument

Source: compiled from the studies cited.

The article agrees with earlier research that conviction-based forfeiture is too slow and too dependent on the offender, and that NCB-AF would compensate for these weaknesses.[77][78] It differs in three respects. It does not treat the existing civil provisions of the Corruption Law as a form of NCB-AF, since they are claims against persons; it does not present UNCAC as obliging Indonesia to enact NCB-AF; and it treats the human rights objections as questions of design, answered by safeguards, and not as a reason to delay or to reject the Bill.

Proposed Safeguards for a Future Act

The analysis supports six requirements for an Asset Forfeiture Act. (1) A judicial action in rem, independent of the criminal case, available in cases of death, flight, absence, unknown offender or failed prosecution, and for assets found later. (2) A requirement that the state establish a prima facie case of unlawful origin, after which the owner must explain the lawful origin, on a stated civil standard of proof. (3) Notice, standing and defences for third parties acting in good faith, with an appeal. (4) Provision for the forum, the relation with parallel criminal proceedings and the role of the corruption court. (5) Compensation for wrongful seizure, liability for bad-faith or negligent acts of officials and a threshold of value. (6) A transparent asset management body with accountable rules for custody, auction and use of assets, consistent with the seizure provisions of Law No 20 of 2025.

What Can Be Done under Current Law

[77] Abdullah & Eddy, *supra* note 2.
[78] Priyatno, *supra* note 13.

Until the Act is passed, the recovery gap can be narrowed with the instruments that exist. Four steps follow from the analysis. First, investigators should treat tracing and freezing as the first task of a corruption investigation and not as a late step, since the risk lies in the interval before judgment; the Money Laundering Law provides the financial intelligence and the power to suspend suspicious transactions through PPATK, and charging money laundering together with the predicate offence gives access to its confiscation provisions.[7980] Second, where the evidence of an offence is insufficient but a loss to the state is clear, or where the suspect or defendant has died, the file should be passed promptly to the State Attorney for a civil suit under arts 32 to 34, and the heirs should be identified at once, because the claim is against them.[81] Third, assets found after the judgment should be pursued under art 38C, which the practice of prosecutors seems to use little. Fourth, for assets abroad, UNCAC provides channels for mutual legal assistance and for recognition of foreign confiscation orders, and Indonesia should build the case files so that a foreign court can act on them.[82] None of these steps replaces an Act on NCB-AF, but each reduces the loss that happens in the meantime.

Management of seized assets is the second practical problem. Seized objects that are not sold or that lose value in storage burden the state without benefit, and the procedures for auction, for transfer to agencies or to local governments and for the use of assets are laid down in separate ministerial regulations that must be read together with the new Code of Criminal Procedure. A single accountable body, as the Bill proposes, would address the lack of coordination. It would also be a condition of public confidence, because a forfeiture system that cannot show what happens to forfeited assets invites the suspicion on which political resistance to the Bill feeds.[8384]

Conclusion

Indonesian law gives the state forfeiture within the criminal case and damages in civil suits, but no action against the asset itself. That is why assets are lost when the offender dies, flees or cannot be prosecuted, when heirs cannot be found or when assets surface later. The existing provisions of the Corruption Law, the Money Laundering Law and Supreme Court Regulation No 1 of 2013 are partial, and the

[79] Money Laundering Law, *supra* note 35.
[80] Greenberg et al, *supra* note 1.
[81] Corruption Law, *supra* note 32.
[82] UNCAC, *supra* note 4, arts 54–55.
[83] Ilma, *supra* note 16.
[84] Law No 20 of 2025, *supra* note 8.

2026 Criminal Code and Code of Criminal Procedure do not change that. UNCAC art 54(1)(c) asks states only to consider NCB-AF, but it supports Indonesia in adopting it, and comparative case law shows that it is compatible with the right to property and the presumption of innocence where safeguards are provided. The obstacles identified in the literature are mostly questions of design, not barriers in principle.

Three findings stand out. First, the common claim that current law already contains NCB-AF is inaccurate: the provisions invoked in its support are either exceptions within a criminal case or claims for damages against persons, and in neither does the asset itself become the object of proceedings. Second, the claim that UNCAC obliges Indonesia to adopt NCB-AF should be put more precisely, as an invitation to consider it which Indonesia has every reason to accept. Third, the human rights objections identify real design questions, namely proof, third parties, forum and the relation with the criminal case, and each can be answered in the Act; they do not show that the mechanism is unconstitutional.

The recommendation is that the legislature complete and enact the Asset Forfeiture Act with the six requirements set out above, and that the Attorney General's Office, the KPK and the courts prepare their procedure and capacity in advance. Until it is enacted, prosecutors should make full use of arts 32 to 34 and 38C of the Corruption Law and of the asset handling procedure in Supreme Court Regulation No 1 of 2013.

The study has limits. It is doctrinal and does not analyse the text of the Bill clause by clause, the practice of Indonesian courts, or consistent statistics on recoveries; its statements on the Bill's status rest on press reports; and the comparative discussion is confined to one European decision and one United States statute. Future research should analyse the draft Bill and court practice, and measure recoveries before and after the Act.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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References

Constitution of the Republic of Indonesia 1945.

United Nations Convention against Corruption, 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005).

Law No 8 of 1981 on Criminal Procedure (Indonesia) (repealed).

Law No 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No 20 of 2001 (Indonesia).

Law No 16 of 2004 on the Prosecution Service, as amended by Law No 11 of 2021 (Indonesia).

Law No 7 of 2006 on the Ratification of the United Nations Convention against Corruption, 2003 (Indonesia).

Law No 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (Indonesia).

Law No 1 of 2023 on the Criminal Code (Indonesia).

Law No 20 of 2025 on Criminal Procedure (Indonesia).

Law No 1 of 2026 on the Adjustment of Criminal Penalties (Indonesia).

Supreme Court Regulation No 1 of 2013 on the Procedure for Settling Applications for the Handling of Assets in Money Laundering or Other Crimes (Indonesia).

Civil Asset Forfeiture Reform Act of 2000, Pub L No 106-185, 114 Stat 202 (United States).

Constitutional Court of Indonesia, Decision No 25/PUU-XIV/2016 (25 January 2017).

Gogitidze and Others v Georgia, no 36862/05 (12 May 2015) (ECtHR).

Abdullah, Fathin & Triono Eddy. "Perampasan Aset Hasil Tindak Pidana Korupsi Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) Berdasarkan Hukum Indonesia dan United Nations Convention Against Corruption (UNCAC) 2003 [Forfeiture of the Proceeds of Corruption without Conviction under Indonesian Law and UNCAC 2003]" (2021) 9:1 *Jurnal Ilmiah Advokasi* 19, DOI: <10.36987/jiad.v9i1.2011>.

Aldino, Masagus Rizki & Eka Susanti. "Urgensi Pengaturan Perampasan Aset Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) dalam Tindak Pidana Korupsi di Indonesia [The Urgency of Regulating Non-Conviction Based Asset Forfeiture in Corruption Offences in Indonesia]" (2025) 11:1 *Jurnal Hukum Sehasen* 97.

"DPR Tegaskan RUU Perampasan Aset Tetap Dibahas sebagai Prioritas 2026 [The House Confirms the Asset Forfeiture Bill Is Still Being Discussed as a 2026 Priority]" (July 2026), online: *NU Online* <https://nu.or.id/nasional/dpr-tegaskan-ruu-perampasan-aset-tetap-dibahas-sebagai-prioritas-2026-kapan-disahkan-phzb1>.

Financial Action Task Force. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*. Paris: FATF.

Greenberg, Theodore S et al. *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture*. Washington, DC: World Bank, 2009.

Huda, Muhammad Nurul. "Non-Conviction-Based Asset Forfeiture: Presumption of Innocence and Principle of Legality Perspective" (2025) 7:1 *Walisongo Law Review* 98.

Ilma, Hutmi Amivia. "Tantangan Mekanisme Non-Conviction Based Asset Forfeiture dalam RUU Perampasan Aset Tindak Pidana Korupsi di Indonesia [Challenges of the Non-Conviction Based Asset Forfeiture Mechanism in the Bill on Forfeiture of Assets from Corruption in Indonesia]" (2025) 3:1 *Journal of Law and Syariah* 48, DOI: <10.54298/tarunalaw.v3i01.276>.

"Memahami Jenis Korupsi Pasca Penyesuaian KUHP Terbaru [Understanding the Types of Corruption after the Latest Adjustment of the Criminal Code]" (9 April 2026), online: *KPK Anti-Corruption Learning Center* <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20260409-memahami-jenis-korupsi-pasca-penyesuaian-kuhp-terbaru>.

Najib, M Ainun. "Polemik Pengesahan Rancangan Undang-Undang Perampasan Aset di Indonesia [The Controversy over Enacting the Asset Forfeiture Bill in Indonesia]" (2023) 3:2 *Jurnal Hukum dan Perubahan Sosial*.

Priyatno, Dwidja. "Non Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia" (2018) 9:1 *Journal of Advanced Research in Law and Economics* 219, DOI: <10.14505/jarle.v9.1(31).27>.

Saputra, Refki. "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia [Challenges in Applying Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia]" (2017) 3:1 *Integritas* 115, DOI: <10.32697/Integritas.V3i1.158>.