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Non-Conviction Based Asset Forfeiture in Indonesia's Draft Asset Forfeiture Bill: Legal Construction, Comparative Practice and Human-Rights Challenges

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Abstract

Indonesian law allows forfeiture of the proceeds and instruments of crime only after a criminal conviction, which fails when the offender dies or flees. The Draft Bill on Forfeiture of Criminal Assets, sent to Parliament by the President in May 2023 and again under discussion in 2026, adopts non-conviction based (NCB) forfeiture, a civil action against the asset itself. This normative legal study uses statutory, conceptual and comparative approaches to examine the legal construction of NCB forfeiture in the Bill, the practice of four comparator jurisdictions and the challenges of applying it in Indonesia. It finds that the Bill creates a civil procedure in which a state attorney applies to the district court, the civil standard of proof governs and third parties may object. The four systems differ on whether the action is civil or criminal and on how they allocate the burden of proof. The central difficulty is the shift of the burden onto the owner, which must be reconciled with the right to property and the presumption of innocence through a proportionality test. The study recommends that the Bill list the offences covered, require the state to show a reasoned link between asset and offence before the burden shifts, protect good-faith third parties and regulate asset management. The study rests on documents and does not assess practice.

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Keywords

Forfeiture; Assets; Non-conviction; Property; Proportionality; Indonesia

Introduction

Gary Becker's economic theory of crime holds that an offence is worth committing as long as its expected benefit exceeds its expected cost.[1] For offences with an economic motive, assets are the benefit that sustains the crime, so taking the proceeds is regarded as an effective way to deter it. Assets are described as the 'life blood' and the weakest link in the chain of crime, and a follow-the-money approach helps to detect them early and to freeze accounts and seize assets.[2][3] A commentator quoted in the press goes further and says that corruptors fear poverty more than death.[4] This is an opinion and the study treats it only as the premise on which the Bill rests: that economic offenders respond to the loss of their assets. The study does not test the premise, and empirical work on deterrence by asset recovery would be needed to do so. The premise explains why forfeiture is regarded as essential to the effectiveness of anti-money-laundering regimes.[5]

The question is whether this conception has been put into practice. The Indonesian criminal justice system is still built around uncovering the offence, finding the offender and punishing the offender, and seizure and forfeiture of proceeds and instruments are not yet central. Indonesia has ratified conventions that require tracing and forfeiting proceeds, including the United Nations Convention against Corruption (UNCAC),[6] but the Corruption Law has gaps.[7][8] The option of serving a prison term instead of paying restitution, up to the maximum of the principal sentence, lets offenders choose a longer sentence over giving up the money, and Article 18 limits forfeiture to the convicted person, although assets are often hidden with relatives or trusted associates.[9][10] Corruption cases are reported to take two to three years on average to resolve, which gives offenders ample time to dispose of assets.[11] From 2 January 2026 the new Criminal Code (Law No 1 of 2023) and the new Code of Criminal Procedure (Law No 20 of 2025) have been in force.[12][13] Both

[1] Gary S Becker, "Crime and Punishment: An Economic Approach" (1968) 76:2 *Journal of Political Economy* 169 at 174–177.

[2] Badan Pembinaan Hukum Nasional, *Laporan Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perampasan Aset Tindak Pidana* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2015) at 229.

[3] Yunus Husein, *Negeri Sang Pencuci Uang* (Jakarta: Pustaka Juanda Tigalima, 2008) at 66.

[4] "Pengamat: Koruptor Lebih Takut Miskin daripada Mati", *Kompas.com* (30 July 2019), online: <https://nasional.kompas.com/read/2019/07/30/15344231/pengamat-koruptor-lebih-takut-miskin-daripada-mati>.

[5] Hanafi Amrani, *Hukum Pidana Pencucian Uang* (Yogyakarta: UII Press, 2015) at 248.

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

[7] Law No 31 of 1999 on the Eradication of Criminal Acts of Corruption (Indonesia).

[8] Law No 20 of 2001 on the Amendment of Law No 31 of 1999 on the Eradication of Criminal Acts of Corruption (Indonesia).

[9] Law No 31 of 1999, *supra* note 7, art 18.

[10] Adnan Topan Husodo, "Catatan Kritis atas Usaha Pengembalian Aset Hasil Tindak Pidana Korupsi" (2010) *Jurnal Legislasi Indonesia* at 584.

[11] A A Oka Mahendra, "Kerjasama Bantuan Timbal Balik dalam Pengendalian Hasil Korupsi" (Paper delivered at the Seminar "Sinergi Pemberantasan Korupsi: Peranan PPATK dan Tantangan Asset Recovery", Jakarta, 4 April 2006) [unpublished].

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

[13] Law No 20 of 2025 on the Code of Criminal Procedure (Indonesia).

keep forfeiture tied to a criminal judgment and neither creates a general action against the asset, so the gap that the Bill addresses remains.

Existing legislation therefore does not regulate asset forfeiture comprehensively. Forfeiture today is tied to criminal or civil proceedings that first require proof of the offence, applies mainly to corruption and money laundering, and is directed at individuals (in personam) as part of the penalty.[14] A statute on forfeiture of criminal assets is needed so that proceeds and instruments can be seized and forfeited effectively, with respect for justice and individual rights. On 4 May 2023 the President sent Letter No R-22/Pres/05/2023 to Parliament with the Draft Bill and its Academic Paper and appointed government representatives to discuss it.[15][16][17] The Bill then stalled for more than two years. According to press reports of October 2026, the Bill is on the 2026 priority list of the National Legislation Programme, a plenary session of Parliament has adopted it as a Parliament initiative, the discussion of the government's inventory of issues is scheduled for November 2026, and the chair of Commission III has set 15 December 2026 as the latest date for enactment.[18][19] The Bill is therefore still a draft, and the article numbers in this study refer to the text sent in May 2023; they may change in the current discussion.

Earlier Indonesian studies of NCB forfeiture fall into two groups. Some are critical notes on asset recovery and on the weaknesses of the Corruption Law, such as Husodo's,[20] and Pohan's work on the return of the proceeds of crime.[21] Others examine the Bill itself. Saputra analyses the concept of NCB forfeiture, as set out in UNCAC, against the content of the draft and the challenges the government faces,[22] and Agustine treats the Bill as an opportunity and a challenge for combating corruption.[23] These works were written about earlier drafts of the Bill. To the extent of the sources reviewed here, they do not set the Bill against the burden of proof in

[14] Badan Pembinaan Hukum Nasional, *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perampasan Aset Terkait dengan Tindak Pidana* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2022) at 1–2.

[15] BPHN (2015), *supra* note 2 at 171.

[16] "Supres Diterima, DPR: RUU Perampasan Aset Segera Dibahas", *Kliklegal*, online: <https://kliklegal.com/supres-diterima-dpr-ruu-perampasan-aset-segera-dibahas/>.

[17] "Babak Baru RUU Perampasan Aset Tindak Pidana", *Hukumonline*, online: <https://www.hukumonline.com/berita/a/babak-baru-ruu-perampasan-aset-tindak-pidana-lt645a176f65129/>.

[18] "DPR Tegaskan RUU Perampasan Aset Tetap Dibahas sebagai Prioritas 2026, Kapan Disahkan?", *NU Online*, online: <https://nu.or.id/nasional/dpr-tegaskan-ruu-perampasan-aset-tetap-dibahas-sebagai-prioritas-2026-kapan-disahkan-phzb1>.

[19] "DPR Bahas DIM RUU Perampasan Aset November 2026", *Metro TV News* (6 October 2026), online: <https://www.metrotvnews.com/read/KRXCz69l-dpr-bahas-dim-ruu-perampasan-aset-november-2026>.

[20] Husodo, *supra* note 10.

[21] Agustinus Pohan, *Pengembalian Aset Kejahatan* (Yogyakarta: Pusat Kajian Anti Korupsi Fakultas Hukum UGM, 2008) at 1.

[22] Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia" (2017) 3:1 *Integritas* 115.

[23] Oly Viana Agustine, "RUU Perampasan Aset sebagai Peluang dan Tantangan dalam Pemberantasan Korupsi di Indonesia" (2019) 1:2 *Jurnal Hukum Pidana dan Pembangunan Hukum*.

Indonesian civil procedure, do not compare it with a civil-law system, and do not apply a proportionality test to its provisions.

This study differs in three respects. It analyses the version of the Bill sent to Parliament in 2023 and reports its position in 2026. It includes a civil-law system (Switzerland) among the comparators, which addresses the common view that NCB forfeiture belongs to common-law countries. It evaluates the Bill's central provisions against the right to property and the presumption of innocence, using the limitation clause of the Constitution and comparative case law. The study asks: (1) what is the legal construction of NCB forfeiture in the Draft Bill and how does it fit Indonesian procedural law; (2) what do the practices of the United States, Switzerland, Australia and the United Kingdom show about the design of NCB forfeiture; and (3) what challenges does its application raise in Indonesia and what amendments follow? Its purpose is to assess the Bill's soundness and to propose specific amendments.

Research Method

This is normative (doctrinal) legal research. No interviews or fieldwork were conducted. Library materials are the data: primary legal materials, which are binding sources, and secondary materials, which are ready-made studies compiled by earlier researchers.[24] The study uses a statute approach, a conceptual approach and a comparative approach. The primary legal materials are the Draft Bill on Forfeiture of Criminal Assets (text sent to Parliament in May 2023),[25] the Corruption Law (Law No 31 of 1999 as amended by Law No 20 of 2001), the Money Laundering Law (Law No 8 of 2010), Supreme Court Regulation No 1 of 2013, the Civil Code and the HIR on evidence, the 1945 Constitution, UNCAC and the United Nations Convention against Transnational Organized Crime (UNTOC).[26][27][28] Secondary materials are the Academic Papers on the Bill, journal articles, a World Bank guide on NCB forfeiture and press reports of the Bill's progress. Article numbers of the Bill follow the 2023 text as cited in these materials and could not be checked against

[24] Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2001) at 37.

[25] Draft Bill on Forfeiture of Criminal Assets (Rancangan Undang-Undang tentang Perampasan Aset Tindak Pidana) (Indonesia), submitted under Presidential Letter No R-22/Pres/05/2023 of 4 May 2023.

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

[27] United Nations Convention against Transnational Organized Crime, 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003).

[28] 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).

a later official version. The materials were analysed qualitatively and the findings were set out descriptively and then evaluated.

The comparative approach covers four jurisdictions. The United States is the origin of modern NCB forfeiture and has the most developed extraterritorial rules. The United Kingdom represents the civil-recovery model of a common-law system. Australia has several regimes at federal and state level and shows how conviction-based and non-conviction regimes coexist. Switzerland is a civil-law system that reaches forfeiture without conviction by criminal-law means. The last choice corrects the assumption, found in part of the literature on the Bill, that best practice exists only in common-law countries: NCB forfeiture originated in common law, but Switzerland shows that a civil-law system can achieve a similar result with different procedure. Each system was compared on the same criteria: legal basis, nature of the action, standard of proof and burden, third-party rights, and asset management and international cooperation. The sources are the legislation of each jurisdiction, decisions of the courts where cited, and the World Bank guide, which describes the systems as at about 2009; later amendments are noted where known.

Results and Discussion

The Legal Construction of NCB Forfeiture in the Draft Bill

Maximising recovery of assets that harm state finances has become a purpose of the criminal justice system, which no longer aims only to uncover crime and punish the offender. The model of tracing illegal gains was formalised in UNCAC. Article 54(1)(c) asks states parties to consider the measures necessary to allow forfeiture of the proceeds of corruption without a criminal conviction where the offender cannot be prosecuted because of death, flight or absence, or in other appropriate cases, which is commonly called non-conviction based (NCB) forfeiture.[29] As a consequence of ratifying UNCAC and UNTOC, Indonesia must adjust its law.[30] At present forfeiture can be carried out only if a court has found the offender guilty beyond reasonable doubt, which is hard where the offender cannot stand trial. The mechanism chosen in the Draft Bill is NCB, a seizure and takeover of assets through an action against the asset (in rem). Civil forfeiture rests on the 'taint' doctrine, under which an offence taints the asset that was used in it or is its proceeds.[31][32]

[29] UNCAC, *supra* note 26, art 54(1)(c).

[30] Law No 5 of 2009 on the Ratification of the United Nations Convention against Transnational Organized Crime, 2000 (Indonesia).

[31] Saputra, *supra* note 22 at 118.

[32] David Scott Romantz, "Civil Forfeiture and the Constitution: A Legislative Abrogation of Right and the Judicial Response: The Guilt of the Res" (1994) 28 *Suffolk University Law Review* at 390.

NCB is an important tool for recovering proceeds and instruments of corruption, especially where the proceeds have been moved abroad, and in cases where the offender has died, fled or is immune from prosecution.[33] Its roots lie in medieval England, where the Crown seized objects that had caused a death (deodand).[34][35] An NCB action is against the asset (in rem), whereas criminal forfeiture is against the person (in personam), and this affects proof: criminal forfeiture requires the prosecutor to prove the elements of the offence, including personal culpability and mens rea, beyond reasonable doubt, whereas NCB, being civil, does not.[36]

Under Article 20 of the Draft Bill, a state attorney (Jaksa Pengacara Negara) may file a written application for forfeiture, with the case file, with the head of the district court where the asset is located, acting for the state under a special power and without a separate power of attorney.[37] If assets lie in several districts, the state attorney may choose one, and the Supreme Court, on the proposal of the head of the district prosecutor's office, designates the court; for assets abroad the application goes to the Central Jakarta District Court. The process adopts civil procedure and formal truth, and the Academic Paper assigns it to the general courts.[38] The application must state the name and type of asset, its weight, size or number, the place and date of seizure, the owner or holder, the legal basis and reasons, and a request for an expeditious decision.

Two existing regimes show what the Bill adds. Under the Corruption Law, forfeiture in rem requires proof of state loss (Articles 32, 33, 34 and 38),[39] and the follow-the-money approach of anti-money-laundering law, although more advanced than conventional criminal law, still operates after conviction. Proof of the predicate offence is not required in money-laundering trials, but the charge must specify its type, and the reversed burden of proof in money-laundering cases only complements proof of guilt.[40] The Draft Bill is, by contrast, a state action in court rather than an exercise of arbitrary power, but it still engages the right to

[33] Theodore S Greenberg et al, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, DC: World Bank, 2009) at xv.
[34] Todd Barnet, "Legal Fiction and Forfeiture: A Historical Analysis of the Civil Asset Forfeiture Reform Act" (2001) 40 *Duquesne Law Review* at 89.
[35] *Ibid* at 92.
[36] Romantz, *supra* note 32 at 391.
[37] Draft Bill on Forfeiture of Criminal Assets, *supra* note 25, art 20.
[38] Saputra, *supra* note 22 at 127.
[39] Law No 31 of 1999, *supra* note 7, arts 32–34, 38.
[40] Saputra, *supra* note 22 at 124.

property in Article 28H(4) of the 1945 Constitution, under which no one may be arbitrarily deprived of private property.[41]

Procedurally, the Draft Bill provides for a summons to the owner or holder (Article 25, with public announcement of the application by the court clerk), a summons to any party who objects (Article 26), an open hearing in which the state attorney presents the application and evidence (Article 31), the third party's opportunity to present evidence, the state attorney's right to call further witnesses or experts to rebut it, and cross-examination (Article 33).[42] The judge appears passive as in a civil trial, but may ask clarifying questions and request experts or new supporting material, so that formal and material truth are both in play. The state attorney need prove on the civil standard (preponderance of evidence) only that an offence occurred and that the asset was produced, used or involved in it, and the owner must prove on the same standard that it was not, without proof of personal culpability and on the basis of probable cause. Decisions must be pronounced in open court (Article 55), are not final (cassation within 14 days, Article 49) and are executed within seven days of being communicated to the state attorney (Article 57). An asset management institution (Article 60) helps to execute final decisions and may sell forfeited assets and, at the request of the investigator or prosecutor, assets before the decision is final.[43][44][45]

The construction has a clear logic but contains a tension that decides how the Bill will work. Civil procedure rests on the principle that the party who alleges must prove (Article 163 HIR; Article 1865 of the Civil Code).[46][47] The Bill keeps this principle for the first step, since the state attorney must prove that an offence occurred and that the asset derives from or was used in it. In the second step, however, the owner must prove on the same standard that the asset is not tainted. The state therefore carries a burden of proof that is lighter than in a criminal trial, while the owner carries a burden that civil law does not usually impose on the defendant. This allocation is defensible only if the first step is demanding enough to prevent the owner from having to disprove a bare allegation. The Bill as described

[41] Constitution of the Republic of Indonesia 1945, art 28H(4).
[42] Draft Bill on Forfeiture of Criminal Assets, *supra* note 25, arts 25–26, 31, 33.
[43] *Ibid*, arts 49, 55, 57, 60.
[44] Stefan D Cassella, "Provision of the USA Patriot Act Relating to Asset Forfeiture in Transnational Cases" (2003) 10:4 *Journal of Financial Crime* 303.
[45] Barnet, *supra* note 34 at 94.
[46] Herzien Inlandsch Reglement (HIR) [Revised Indonesian Regulation], Staatsblad 1941 No 44 (Indonesia), art 163.
[47] Kitab Undang-Undang Hukum Perdata [Civil Code], Staatsblad 1847 No 23 (Indonesia), art 1865.

does not say how much the state must show, beyond 'probable cause', before the owner's duty arises.

The Bill also has to fit the existing law. Law No 8 of 2010 already allows two forms of forfeiture without a conviction: forfeiture of assets that nobody claims after they have been blocked (Article 67) and forfeiture of seized assets where the defendant dies before judgment, with a right of interested persons to object (Article 79(4)–(5)).[48] Supreme Court Regulation No 1 of 2013 sets the procedure for such applications.[49] These rules cover only money laundering and only specific situations, and they run through the criminal courts. The Bill generalises the idea into a stand-alone civil action. It does not make the older rules redundant, and it should state which rule applies when an asset falls under both, to avoid parallel proceedings over the same asset. The Code of Criminal Procedure of 2025, in turn, governs seizure during investigation, and the Bill should say how a seizure made in a criminal case passes to the civil application, particularly when the criminal case ends in acquittal or discharge.

The Bill's own definition of its grounds shows the same ambivalence. It is presented as an action against the asset, yet the elements the state must prove are those of an offence. In practice the court must decide whether an offence occurred without the accused having been convicted and, in some cases, without the accused being present. That decision binds the asset, but it does not bind the person. The Bill should say expressly that a civil finding of unlawful origin carries no criminal consequence for the person and cannot be used as a finding of guilt, which protects the presumption of innocence in later criminal proceedings.

Best Practice: United States, Switzerland, Australia and the United Kingdom

The concept of NCB forfeiture developed in common-law countries, and Seidman's 'law of non-transferability of law' warns that a law suited to one nation may not suit another.[50] Comparative study is therefore needed to identify what can be adopted and what must be adapted. The four systems below are compared on the criteria stated in the method, and Table 1 summarises the result.

United States. Criminal and NCB forfeiture have long been used in the United States, first domestically by civil action to seize the proceeds of crime in the country

[48] Law No 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (Indonesia), arts 67, 79(4)–(5).
[49] Supreme Court Regulation No 1 of 2013, *supra* note 28.
[50] Bambang Santoso, "Relevansi Pemikiran Teori Robert B Seidman tentang "The Law of Non Transferability of the Law" dengan Upaya Pembangunan Hukum Nasional Indonesia" (2007) 70 *Yustisia* at 3.

and then, where assets are abroad, extraterritorially. In The Palmyra (1827) the court rejected the argument that seizing a ship without a finding that the owner was guilty was unlawful, which became the basis of NCB in the United States, even though it was often regarded as oppressive.[51] The tradition developed in admiralty law, where colonial courts preferred in rem actions against the ship to in personam actions against the owner and treated the ship as if it were guilty; the Supreme Court later adopted the fiction of personification and rejected an innocent owner's due-process claim in J W Goldsmith Jr-Grant Co v United States.[5253] The growth of organised crime in the 1970s led the federal government to use NCB against assets linked to drug trafficking and illegal gambling.[54] The Civil Asset Forfeiture Reform Act of 2000 responded to the criticism of oppressive use: it requires the government to prove by a preponderance of the evidence that the property is subject to forfeiture, and gives the claimant an innocent-owner defence,[5556] and it also added a fugitive disentitlement rule.[5758] The United States also recognises administrative forfeiture, a non-judicial process for uncontested cases, which has advantages in cost and court workload but risks in jurisdictions with high corruption and early-stage regimes, where court approval is preferable. The USA PATRIOT Act of 2001 permits civil actions to seize assets of foreign public corruption, violent crime, bank fraud and other serious offences committed abroad when the proceeds are in the United States, allows enforcement of foreign pre-forfeiture restraining orders and provides for repatriation orders and for freezing funds in the correspondent accounts of foreign banks.[5960] The recovery figures reported in the literature the study uses date from 2006 and 2007 and are not relied on.

Switzerland. Confiscation under Articles 70 to 72 of the Swiss Criminal Code follows the same rules whether or not there is a conviction: the court orders forfeiture of assets that are the proceeds of crime or were intended to induce or reward the offender, so forfeiture can happen without conviction.[61] Switzerland applies the criminal standard of 'intimate conviction' in all cases and not the civil

[51] The Palmyra, 25 US (12 Wheat) 1 (1827).
[52] J W Goldsmith Jr-Grant Co v United States, 254 US 505 (1921).
[53] Barnet, *supra* note 34 at 88.
[54] Stefan D Cassella, *Asset Forfeiture Law in the United States* (Huntington, NY: Juris Publishing, 2006) at 9, 15.
[55] Civil Asset Forfeiture Reform Act of 2000, Pub L No 106-185, 114 Stat 202 (United States).
[56] 18 USC § 983 (United States).
[57] 28 USC § 2466 (United States).
[58] Scott A Hauert, "An Examination of the Nature, Scope and Extent of Statutory Civil Forfeiture" (1994) 20 *University of Dayton Law Review* at 171.
[59] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub L No 107-56, 115 Stat 272 (United States).
[60] Cassella (2003), *supra* note 44.
[61] Swiss Criminal Code of 21 December 1937, SR 311.0 (Switzerland), arts 70–72.

balance of probabilities, and the prosecutor must prove that an offence occurred and that the property derives from it, with a broad definition of 'assets' and a requirement of a traceable link. Jurisdiction of the Swiss criminal authorities is required, except for narcotics proceeds. Confiscation is in rem, regardless of who owns the asset, and a third party who acquired it unknowingly and paid adequate value is protected (Article 70(2)).[62] It is not a civil procedure and the prosecutor does not act as a private person. In a case on mutual legal assistance to the United States, the Federal Supreme Court is reported to have held that US NCB forfeiture is sufficiently similar to a 'criminal matter' under Swiss law, because both are in rem measures that do not examine the offender's guilt, and that the presumption of innocence does not apply to the measure when it is separate from the criminal case, but that the requesting state must have jurisdiction to prosecute.

Australia. The Customs Act 1901 allowed in rem forfeiture, first for smuggled goods carried by ships and later for drugs.[63] The Proceeds of Crime Act 1987 responded to organised crime and money laundering,[64] but the New South Wales Criminal Assets Recovery Act 1990, which is non-conviction based, proved much more effective: of A$4.5 billion said to have been laundered in Australia over five years from 1992, the federal conviction-based law recovered about A$7.5 million.[6566] The Australian Law Reform Commission recommended non-conviction regimes in 1999.[67] The main weakness of conviction-based regimes is the need for a close link between asset and the charged offence, while NCB regimes allow forfeiture without a prior criminal action, independent of it, and on the civil standard. Western Australia's Criminal Property Confiscation Act is regarded as the most far-reaching model.[68]

United Kingdom. Organised crime costs the United Kingdom an estimated £20 billion a year, and about £3 billion of criminal profit is said to be moved out of the country each year.[69] The United Kingdom has ratified UNCAC, has both conviction-based and NCB regimes and allows mutual legal assistance to foreign states. The Proceeds of Crime Act 2002 introduced civil recovery, under which the High Court may, on the balance of probabilities, order recovery of property obtained through

[62] *Ibid*, art 70(2).
[63] Customs Act 1901 (Cth) (Australia).
[64] Proceeds of Crime Act 1987 (Cth) (Australia).
[65] Criminal Assets Recovery Act 1990 (NSW) (Australia).
[66] Ben Clarke, "Confiscation of Proceeds of Crime: Australian Response" (Paper delivered at the 2nd World Conference on Investigation of Crime, Durban, 3–7 December 2001) [unpublished] at 2.
[67] Australian Law Reform Commission, *Confiscation that Counts: A Review of the Proceeds of Crime Act 1987* (Report No 87) (Sydney: ALRC, 1999).
[68] Criminal Property Confiscation Act 2000 (WA) (Australia).
[69] Greenberg et al, *supra* note 33 at 134.

unlawful conduct.[70] The Supreme Court held in Gale v Serious Organised Crime Agency that such proceedings are civil, that the civil standard of proof applies and that this does not breach the right to a fair trial under the European Convention on Human Rights.[71] Civil recovery has traditionally been used when a prosecution is not possible or has not been successful. The Criminal Finances Act 2017 added unexplained wealth orders, which require a person who holds assets disproportionate to known income to explain how they were obtained.[72] The descriptions of the other systems date from 2001 to 2009, and later amendments, including those to the United Kingdom regime since 2017, should be checked against current legislation.

Table 1. Features of NCB forfeiture in four jurisdictions and in the Indonesian Draft Bill

Jurisdiction	Legal basis and nature of the action	Standard of proof and burden	Third-party protection	International reach
United States	Civil in rem action as well as criminal forfeiture; administrative forfeiture for uncontested cases	Preponderance of evidence; government must prove forfeitability; claimant proves innocent-owner defence	Innocent-owner defence	PATRIOT Act: foreign offences, foreign restraining orders, correspondent accounts
Switzerland	Criminal-law confiscation in rem (Swiss Criminal Code, arts 70–72); not a civil procedure	'Intimate conviction' (criminal standard); prosecutor proves offence and link	Protected if unaware and gave adequate value (art 70(2))	Mutual legal assistance; requesting state must have jurisdiction
Australia	Federal and state in rem regimes; NSW 1990 Act is non-conviction based; Western Australia the broadest	Civil standard	Provided by the state and federal statutes	Federal regime and mutual assistance
United Kingdom	Civil recovery in the High Court (Proceeds of Crime Act 2002); unexplained wealth orders since 2017	Balance of probabilities; enforcement authority proves unlawful conduct	Provided in the Act	Mutual legal assistance to foreign states
Indonesia (Draft Bill)	Civil application by a state attorney to the district court (art 20)	Civil standard; state proves offence and link, owner proves lawful origin	Summons and right to object (arts 25–26, 33)	Central Jakarta District Court for assets abroad

Source: compiled from the legislation, decisions and secondary sources cited in this section; the Indonesian row follows the 2023 text of the Draft Bill.

The table shows what the Draft Bill takes from each system and what it leaves out. Like the United States and the United Kingdom, it uses a civil in rem action and the civil standard. Unlike the United Kingdom and the United States after 2000, it puts a burden on the owner without stating the threshold that the state must meet first, whereas the Swiss system keeps the criminal standard and demands a traceable

[70] Proceeds of Crime Act 2002 (UK), c 29, s 241.
[71] Gale v Serious Organised Crime Agency, [2011] UKSC 49.
[72] Criminal Finances Act 2017 (UK), c 22.

link, and the United States now places the burden of proving forfeitability on the government. The Swiss example shows that a civil-law system can reach forfeiture without conviction, but it does so within criminal procedure and with a high standard of proof. Indonesia has chosen the civil route, which is easier to prove and therefore needs stronger safeguards.

Three lessons follow. First, the burden on the owner should arise only after the state has shown a reasoned link between the asset and the offence, as in the United States and in the Swiss requirement of a traceable link. Second, third-party protection is a feature of each system and should be explicit in the Bill, including a good-faith acquirer who paid value, as in Article 70(2) of the Swiss Criminal Code. Third, the systems that function well rely on a body that manages seized assets and on mutual legal assistance, so that the Bill's asset management institution and its provision for foreign assets are central parts of it, not additions.

Challenges of Applying NCB Forfeiture in Indonesia

Economic crime such as corruption is increasingly complex, educated and transnational, and the mechanisms of the Corruption Law and other legislation have not been able to support recovery of its proceeds. UNCAC Chapter V makes asset recovery a fundamental principle and obliges states parties to cooperate (Article 51), and Article 54(1)(c) encourages NCB forfeiture; UNCAC does not favour one legal tradition, since fundamental differences between traditions would hinder implementation.[73][74] The Bill adds a recovery track beside the punitive one and does not replace punishment of the offender, so that forfeiture and prosecution can proceed together. The manuscript's description of a change of paradigm from retribution through rehabilitation to recovery is not supported by the sources and is not relied on here. The challenges are of two kinds. The first is political: the limited attention and seriousness of Parliament and the President, shown by a Bill that has been pending for years. The second is legal, and the fear that forfeiture may be used arbitrarily, in conflict with the presumption of innocence, is its centre. Property of citizens must be respected, so the owner has to be able to explain at trial that the asset was lawfully obtained, and may object in court as Article 79(5) of Law No 8 of 2010 already provides, while Articles 28G(1) and 28H(4) of the Constitution protect property.[75][76][77]

[73] UNCAC, *supra* note 26, arts 51, 54(1)(c).
[74] Pohan, *supra* note 21 at 1.
[75] Agustine, *supra* note 23 at 6.
[76] Law No 8 of 2010, *supra* note 48, art 79(5).
[77] Constitution 1945, *supra* note 41, arts 28G(1), 28H(4).

In human-rights terms the state has three obligations: to respect (not to interfere with the exercise of rights), to protect (to act against violations by third parties) and to fulfil (to take legislative, administrative, legal and other measures to realise rights).[78] Law must not be used as an instrument of power (rule by law) to justify acts that harm the people, since the state must itself uphold the law it makes.[79] The Bill limits forfeiture to certain situations: the defendant has died, fled, is permanently ill or cannot be found. Two provisions, however, are open to question. Article 7(1) allows forfeiture where the defendant has been discharged from all legal charges (putusan lepas). If the act is accepted as correct, the reason the asset remains forfeitable is unclear, and the Bill should confine this to cases where the discharge rests on a ground unrelated to the origin of the asset. Article 6 covers assets linked to offences punishable by four years' imprisonment or more, which would include offences such as domestic violence or child sexual abuse that generate no state loss or even material gain, so the offences from which forfeiture may be sought must be specified.[80]

The question is whether limits on the right to property can be justified. Article 28J(2) of the Constitution allows limits that are set by statute, serve to secure the rights of others and meet just demands of morality, religious values, security and public order in a democratic society. This is in effect a proportionality test with four parts: the limit must have a legal basis, a legitimate aim, be suitable and necessary to reach it, and strike a fair balance with the individual's interest.[81] The aim of removing the proceeds of crime is legitimate and the Bill has a legal basis if it is enacted. The two points of weakness are necessity and balance. Necessity is weakened by the width of Article 6 and by the discharge ground of Article 7(1). Balance depends on the burden of proof, on third-party protection and on the procedure.

Comparative case law gives guidance. In Gogitidze v Georgia the European Court of Human Rights held that forfeiture of the property of a public official and his relatives, in civil proceedings in which the owners had to show that the property was lawfully acquired, did not violate the right to property; the Court weighed the means used against the public interest in fighting corruption and noted that the owners had not shown legal income sufficient to buy the property.[82] In Gale the

[78] Maidah Purwanti, "Kewajiban dan Tanggung Jawab Negara dalam Pemenuhan Hak Asasi Manusia" (2020), online: *BPHN* <https://lsc.bphn.go.id/artikel?id=365>.
[79] John Pieris & Wiwik Sri Widiarty, *Negara Hukum dan Perlindungan Konsumen terhadap Produk Pangan Kadaluarsa* (Jakarta: Pelangi Cendekia, 2007) at 29.
[80] Draft Bill on Forfeiture of Criminal Assets, *supra* note 25, arts 6, 7(1).
[81] Constitution 1945, *supra* note 41, art 28J(2).
[82] Gogitidze and Others v Georgia, No 36862/05 (12 May 2015) (ECtHR).

United Kingdom Supreme Court held that civil recovery on the civil standard is compatible with the right to a fair trial.[83] Both decisions support civil forfeiture in principle. Each also rests on a reasoned case that the state had presented before the owner was asked to explain, and on a real opportunity for the owner to be heard. They are persuasive authority only, since they interpret a different treaty, and the Constitutional Court of Indonesia has not, to the knowledge of the study, ruled on the question.

Table 2 sets out each challenge, what the Bill provides, what the comparative systems show and what the study recommends.

Table 2. Challenges of applying NCB forfeiture in Indonesia and recommended amendments

Issue	What the Draft Bill provides	Comparative position	Recommendation
Burden of proof	State proves offence and link on the civil standard; owner proves lawful origin	US: government proves forfeitability; Switzerland: criminal standard; Gogitidze: burden on owner after a reasoned case	State must first show a reasoned link, such as assets out of proportion to lawful income; only then does the owner's duty arise
Scope of offences	Offences punishable by four years or more (art 6)	Systems limit NCB to serious or organised crime and to assets linked to it	List the offences, or set a higher threshold and a minimum value
Discharged defendants	Forfeiture possible after putusan lepas (art 7(1))	Forfeiture rests on the origin of the asset, not on the verdict	Allow it only where the discharge leaves the unlawful origin of the asset open; state that a civil finding is not a finding of guilt
Third parties	Summons and right to object (arts 25–26, 33)	US innocent-owner defence; Swiss protection of acquirers who gave value	Protect good-faith acquirers who gave value and give a clear time limit and remedy
Asset management	Institution may sell assets, including before the decision is final (art 60)	Seized assets in these systems are managed by a dedicated body	Limit sale before final decision to perishable or depreciating assets; require accounting and compensation if the claim fails
Assets abroad and other laws	Central Jakarta District Court for assets abroad (art 20)	Mutual legal assistance; requesting state needs jurisdiction (Switzerland)	Provide for mutual legal assistance and state how the Bill relates to Law No 8 of 2010 and the Code of Criminal Procedure

Source: author's analysis of the Draft Bill (2023 text) and the comparative materials cited above.

Two matters are not addressed by the sources used and the Bill should settle them expressly: whether the Bill applies to assets acquired before it takes effect, and the relation between the civil action and a later or parallel criminal case against the owner. Switzerland, which the study has analysed, shows that a civil-law system can combine forfeiture without conviction with strong guarantees. The approaches of other civil-law systems, such as Germany, Italy and France, have not been studied here, and they are a subject for further research.

Comparison with Earlier Research

[83] Gale, *supra* note 71.

The findings confirm Saputra's and Agustine's view that the Bill is a necessary but demanding step and that it must be reconciled with human rights.[8485] They go further in three ways. By comparing the Bill with the rules of civil procedure on evidence, the study shows that the allocation of the burden of proof is the legal centre of the matter and not only one challenge among others. By including Switzerland, it shows that the supposed limit of NCB forfeiture to common-law countries does not hold. By applying the limitation clause of the Constitution and comparative decisions, it turns the human-rights concern of the earlier work into specific amendments. The study agrees with Husodo and Pohan that criminal proceedings alone cannot recover assets effectively,[8687] and it adds that the answer depends on the safeguards written into the civil action.

Conclusion

The legal construction of NCB forfeiture in the Draft Bill is a new civil mechanism that allows assets from crime to be recovered without a criminal conviction, through a state-attorney application to the district court on the civil standard of proof, with a hearing at which owners and third parties may object. It allows the state to seize assets suspected to be proceeds of crime and other assets believed to be, or to have been, used as instruments of crime. Its weakness is the allocation of the burden of proof, which asks the owner to disprove the taint without a stated threshold for the state's case. The United States, Switzerland, Australia and the United Kingdom show that NCB forfeiture can be civil or criminal in form, and that the systems which work pair it with a reasoned case by the state, protection of third parties and managed assets. The challenge in Indonesia is to apply NCB in harmony with the right to property and the presumption of innocence.[88]

The study recommends that the legislators: (1) require the state to show a reasoned link between the asset and the offence, such as assets out of proportion to lawful income, before the owner's burden arises; (2) list the offences covered and revise Articles 6 and 7(1), so that forfeiture after a discharge is limited to cases in which the origin of the asset remains open; (3) protect good-faith third parties who gave value, with a clear time limit and remedy; (4) restrict the sale of assets before a final decision and require accounting and compensation by the asset management

[84] Saputra, *supra* note 22.
[85] Agustine, *supra* note 23.
[86] Husodo, *supra* note 10.
[87] Pohan, *supra* note 21 at 1.
[88] Constitution 1945, *supra* note 41, art 28J(2).

institution; (5) state how the Bill relates to Law No 8 of 2010, Supreme Court Regulation No 1 of 2013 and the new Code of Criminal Procedure; and (6) provide for mutual legal assistance for assets abroad.

The study has limits. It is normative and rests on secondary sources, on the 2023 text of a Bill that is still under discussion, and on descriptions of foreign systems that date partly from 2001 to 2009. It does not analyse how NCB laws work in practice and does not examine civil-law systems other than Switzerland. Studies of the Bill as finally adopted, of the practice of the courts and of the experience of Germany, Italy and France would complete the picture.

Ethics and Data Availability

This is doctrinal legal research. It did not involve human participants or personal data, so ethical approval was not required. The legal materials used are public and are listed in the References.

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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