

Asset Forfeiture of Corruption Proceeds Using the Non-Conviction Based Asset Forfeiture Method: A Review of Human Rights

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Abstract

One of the state's efforts to eradicate corruption is to draw up a Bill on Asset Write-off, in which there is regulation regarding the concept of Non-Criminal-Based Asset Write-off, which this concept can be called "Writing Without Punishment". The purpose of this writing is to find out how the concept of Non-Conviction Based Asset Forfeiture "Forfeiture Without Criminalization" can overcome corruption cases. Then to know how the human rights of the perpetrators whose assets are seized all by the state, doesn't every human being have the right to defend what they are entitled to. The method used by the author is the normative juridical method. These things are the general description of In this study, it was concluded that "Non-Conviction Based Assets" Forfeiture (NCB)" in the case of confiscation of assets resulting from criminal acts of corruption intends to maximize efforts to restore / recover assets (asset recovery) for state treasury losses are for the benefit of justice with the whole community, and the mechanism does not violate Human rights are based on the barrier between the rights to property as defined regulated in "Article 28G of the 1945 Constitution of the Republic of Indonesia.

Keywords: *Non-Conviction Based Asset Forfeiture; Corruption; Criminal Code.*

Abstrak

Salah satu upaya negara memberantas korupsi adalah dengan lahirnya Rancangan Undang-undang Penghapusan Aset, yang didalamnya terdapat pengaturan mengenai konsep Penghapusan Aset Berbasis Non-Pidana yang konsep ini dapat disebut dengan "Penghapusan Tanpa Hukuman". Tujuan dari penulisan ini adalah untuk mengetahui bagaimana konsep Penghapusan Aset Berbasis Non-Pidana "Penghapusan Tanpa Kriminalisasi" dapat mengatasi kasus korupsi. Kemudian untuk mengetahui bagaimana hak asasi manusia dari pelaku yang asetnya disita seluruhnya oleh negara, bukankah setiap manusia berhak membela apa yang menjadi haknya. Metode yang digunakan oleh penulis adalah metode yuridis normatif. Hal-hal tersebut merupakan deskripsi umum dalam penelitian ini, dinyatakan bahwa "Penghapusan Aset Berbasis Non-Pidana" dalam kasus penghapusan aset yang dihasilkan dari tindakan kejahatan korupsi bermaksud memaksimalkan upaya untuk memulihkan / mengembalikan aset (pemulihan aset) untuk kerugian kas negara demi kepentingan keadilan bersama masyarakat, dan mekanisme tersebut tidak melanggar hak asasi manusia yang didasarkan pada penghalang antara hak atas properti yang diatur dalam "Pasal 28G Undang-Undang Dasar Negara Republik Indonesia Tahun 1945".

Keywords: Perampasan Aset Berbasis Hukuman; Korupsi; Kode Kriminal.



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A. INTRODUCTION

The general definition of public corruption is the abuse of public office for private gain. Abuse, of course, usually involves the application of legal standards. Corruption defined in this way would capture, for example, the sale of government property by government officials, kickbacks in public procurement, bribery and embezzlement of government funds.¹ One of the reasons for corruption is the lack of social control from the community.² Corruption is a reflection of a country's legal, economic, cultural and political institutions. Corruption can be a response to either beneficial or harmful rules. For example, corruption arises as a response to good rules when individuals pay bribes to avoid punishment for harmful behavior or when monitoring of rules is incomplete as in the case of theft, conversely corruption can also arise due to bad policies or inefficient institutions implemented to collect bribes from people trying to avoid them.³

A number of parallel arrangements have been proposed for thinking about corruption, although each of these parallels can be illuminating in certain ways, none of them capture the phenomenon perfectly.⁴ As one parallel, corruption is often thought of like a tax or fee. Bribes, like taxes, create a wedge between the true marginal and the privately appropriated product of capital. However, along with the obvious point that bribes do not bring money into government coffers, bribes differ from taxes in other ways. Bribes involve higher transaction costs than taxes, due to the uncertainty and secrecy that always accompany bribe payments.⁵

"*Non-Conviction Based Asset Forfeiture*" is a concept of efforts from the state for asset recovery efforts.⁶ Asset recovery efforts are a form of law enforcement by the state as a victim of corruption crimes committed by perpetrators of corruption to eliminate and revoke the rights of perpetrators of corruption to assets that have been taken by corruption. With the process of a series of mechanisms, namely criminal and civil for assets resulting from acts of corruption from within the country and abroad to be tracked and frozen and confiscated then to be returned

¹ Jakob Svensson, "Eight Questions about Corruption," *Journal of Economic Perspectives* 19, no. 3 (August 1, 2005): 19–42, <https://doi.org/10.1257/089533005774357860>.

² Satria Unggul Wicaksana Prakasa et al., "Social Aid of Covid-19 Corruption: Strategy and Mitigation Policy of Muhammadiyah East Java," *Legality: Jurnal Ilmiah Hukum* 29, no. 1 (February 2, 2021): 27–45, <https://doi.org/10.22219/ljih.v29i1.15127>.

³ Ola Rongan Wilhelmus, "KORUPSI: TEORI, FAKTOR PENYEBAB, DAMPAK, DAN PENANGANANNYA," *JPAK: Jurnal Pendidikan Agama Katolik* 17, no. 9 (November 5, 2018): 26–42, <https://doi.org/10.34150/jpak.v17i9.44>.

⁴ Lakso Anindito, "Lingkup Tindak Pidana Korupsi Dan Pembuktian Kesalahan Dalam Sistem Pertanggungjawaban Pidana Korporasi Di Indonesia, Inggris, Dan Prancis," *INTEGRITAS* 3, no. 1 (March 6, 2017): 1–29, <https://doi.org/10.32697/integritas.v3i1.138>.

⁵ Supeni Anggraeni Mapuasari and Hadi Mahmudah, "Korupsi Berjamaah: Konsensus Sosial Atas Gratifikasi Dan Suap," *Integritas: Jurnal Antikorupsi* 4, no. 2 SE-Articles (December 10, 2018): 159–76, <https://doi.org/10.32697/integritas.v4i2.279>.

⁶ Dwidja PRIYATNO, "Non Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia," *Journal of Advanced Research in Law and Economics; Vol 9 No 1 (2018): JARLE Volume IX Issue 1(31) Spring 2018*, 2018, [https://doi.org/10.14505/jarle.v9.1\(31\).27](https://doi.org/10.14505/jarle.v9.1(31).27).

to the state as a victim of the consequences of criminal acts of corruption. This is intended so that the perpetrators of corruption do not misuse corruption assets to enrich themselves or embezzle for further criminal acts, which is then a solution effort so that the perpetrators are deterred and do not repeat their mistakes again.

The "*United Nations Convention against Corruption (UNCAC)*" imposes an obligation on states to ensure their ability to confiscate and recover assets that have been corrupted by their citizens from other countries in terms of money laundering, in addition to this, the regulations in this paragraph also open a possible bridge to each state in terms of establishing the process of confiscating assets in rem.

Consists of 2 fundamentals related to asset returns, namely:

1. Determine what assets must be accounted for for confiscation; and
2. Determine the basis for confiscation of property.

Then move on to other matters related to the view of restitution in corruption crimes contained in Article 18 of Law No. 31 of 1999 jo. Law No. 20 of 2001, where the confiscation of property should be addressed to the convicted person. However, the convicts usually use the mode of relatives, relatives or confidants in hiding the wealth from the corruption. For example, the case of APBD corruption involving Hendy Boedoro, the former regent of Kendal, who was sentenced to imprisonment by the Corruption Court at the Supreme Court cassation level for 7 years with a fine of 13.121 billion in restitution, which was decided in 2008 in June but until 2010, Hendy Boedoro had not paid the restitution as decided by the Supreme Court.⁷ Then ironically Widya Kandi Susanti officially participated in the regional election and won, even though as we know to run for regent requires a lot of money as told by former Semarang regent candidate, Mahfud Ali, who said that he had poured at least Rp. 5 billion to participate in the regional election.

From this we can know that there is another problem that causes the difficulty of maximizing efforts to return money from the proceeds of corruption crimes to the state is because the Anti-Corruption Law has limited the amount of compensation sentenced to be equal to the money that has been obtained from the proceeds of corruption crimes / as much as can be proven in court.

Then another example is in the country of Peru, which at that time was in the hands of Alberto Fujimori for 10 years, and during his tenure he managed to embezzle USD 2 billion in state money. Then the new government needs to succeed in obtaining embezzled assets of USD 180 million. The Peruvian government has difficulty doing Asset Tracking to find out the history of asset transfers that have been carried out by the perpetrator to other countries if it has been done. From there, other countries should learn from the experience of other countries trying to recover the assets of their former president's corruption crimes, it takes a long time and serious effort, both on a domestic and international scale.

Then in fact the legislation is still far from perfect in detail and comprehensively regarding the rules of asset forfeiture, the weakness of existing regulations in Indonesia regarding asset

⁷ Wijayanto Wijayanto, "From Instrument to Agent: The Metamorphosis of Media's Role in Curbing Corruption in Indonesian Politics (Case Study on the Incident of Corruption By Kendal Regent Hendy Boedoro, Kendal Regency, Central Java Province 2005-2006)," *Politika: Jurnal Ilmu Politik* 3, no. 1 (2012): 104–16, <https://doi.org/http://dx.doi.org/10.31845/jwk.v15i1.276>.

forfeiture makes it difficult for the state itself when dealing with asset forfeiture, especially in cases of Money Laundering and Corruption. Then seeing the idea of NCB recommended by the UN that the concept of NCB needs to be used if the criminal process related to asset confiscation is not successful by the state, several things that become obstacles in the criminal process coupled with asset confiscation, among others: "(i) the owner of the asset has passed away; (ii) the end of criminal proceedings because the defendant is acquitted; (iii) criminal prosecution occurs and is successful but asset expropriation is not successful; (iv) the defendant is not within the jurisdictional boundaries, the name of the asset owner is unknown; and (v) there is insufficient evidence to initiate a criminal lawsuit."

Discussing asset recovery efforts, in optimizing asset returns, law enforcement efforts are held into 2, namely In Rem and In Personam. In Personam is an effort / legal process in asset recovery efforts in a criminal mechanism, where in a criminal event an asset to be confiscated will only be used as material for investigation and examination which cannot be sought for confiscation in terms of asset recovery before Inkracht. However, the in personam view is still attached to assets with Individuals as Suspects and Defendants, which then the asset must be proven clearly that the right is part of proving guilt by the perpetrator, and when a person is proven to have committed a criminal offense, therefore the rights attached to an asset must be transferred to the state.

In personam asset forfeiture is a forfeiture that aims and relates to the punishment of a criminal offender.⁸ Asset forfeiture in personam is a legal remedy aimed at the perpetrator of the crime personally, therefore it is necessary to prove the guilt of the defendant before seizing the defendant's assets. If the court decision is legally binding, it remains a reference for seizing the assets of the perpetrator of the crime.

Then the stage of asset forfeiture with the in personam mechanism begins with asset tracing. The purpose of asset tracing is to identify assets, then find out the allocation of assets and what their relationship is with the criminal offense committed. Next is the stage of freezing assets which will be carried out by the authorities, namely the prosecutor's office, the police, or a state agency that is believed to have the authority to execute this. For example, the "Corruption Eradication Commission (KPK)." Furthermore, the third is the stage of handing over assets and returning assets to victims.

While in the civil law mechanism or also called "*Non-Conviction Based Asset Forfeiture, In Rem, or Civil Forfeiture*" is an effort to resolve asset forfeiture cases originating from criminal cases, here the government will be represented by the State Attorney and the position of the state is the victim of corruption crimes of corruptors, and the State Attorney will file an In Rem lawsuit after the case is officially decided by the judge. "*In Rem Forfeiture*" is an action against assets, for example the State vs. Rp.200,000,000, in other words "*In Rem*" focuses on its set, namely focusing on efforts to return its assets "*Asset Recovery*" and changing the stigma from *Follow The Suspect* to "*Follow The Money*" which means that the subject of the crime is the asset, not the individual. Then move on to In Rem confiscation which uses reverse proof, which only requires proof of the "*balance of probability*" standard or "*balance of possibilities*"

⁸ Arizon Mega Jaya, "Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi (Implementation of Asset Deprivation of Criminal Act of Corruption)," *Cepalo* 1, no. 1 (September 12, 2019): 21, <https://doi.org/10.25041/cepalo.v1no1.1752>.

or "*Balanced Probability*". This "*Balance Probability*" theory can allow the separation between asset ownership and criminal acts, which places the protection of the defendant to be considered innocent "*Presumption Of Innocence*" derivative as an explanation of the principle of "*Non-Self Incrimination*" which should be balanced with the defendant's obligations regarding the origin of his assets.

Based on this background, in order to make the research clearer as desired, the following problems will be discussed related to whether asset forfeiture from corruption crimes using the Non-Conviction Based Asset Forfeiture (NCB) method is contrary to the protection of human rights.

B. METHOD

The author conducts normative research by analyzing several concepts of approach regarding "*Non-Conviction Based Asset Forfeiture*" asset forfeiture without criminal charges related to the content material in the Asset Forfeiture Bill. In the research, the author will explain some basic norms on asset forfeiture policies, starting from the *United Nations Convention Against Corruption (UNCAC)* to other laws and regulations that correlate with existing asset forfeiture procedures. Then, the analysis will be continued by using legal theories related to the problems in the discussion.

C. RESULTS AND DISCUSSIONS

Using the Non-Conviction based "asset forfeiture" model adopted in Ireland, and using the test adopted by the US Supreme Court as to what distinguishes civil from criminal,⁹ it is ultimately contended that the courts have failed to provide a check on legislatures circumventing the enhanced procedural protections of criminal proceedings and imposing penalties in a civil forum. Some enhanced procedural protections are afforded to a person faced with punitive civil sanctions, offering an alternative to the rigid confines of the conventional criminal dichotomy.

"Non Conviction Based (NCB) Asset Forfeiture" is an important tool for the recovery of proceeds of corruption and also for combating corruption, especially in crimes where proceeds have been diverted abroad. However, to ensure that this measure becomes a strategic policy, it is necessary to make international agreements with other countries regarding corruption cases. In addition, harmonization of the "Indonesian Anti-Corruption Law on the Eradication of Corruption" needs to be carried out in order to support "Non Conviction Based (NCB) Asset Forfeiture." The NCB "asset forfeiture" system should include the 36 Key Concepts introduced in the Stolen Asset Recovery Initiative (StAR). The Stolen Asset Recovery Initiative (StAR) assists nations in developing the necessary legal frameworks and organizations to reclaim corrupt funds.¹⁰

⁹ Colin King, "Using Civil Processes in Pursuit of Criminal Law Objectives: A Case Study of Non-Conviction-Based Asset Forfeiture," *The International Journal of Evidence & Proof* 16, no. 4 (October 1, 2012): 337–63, <https://doi.org/10.1350/ijep.2012.16.4.411>.

¹⁰ Abdullahi Y. Shehu, "Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria," *International Law Research* 3, no. 1 (October 30, 2014), <https://doi.org/10.5539/ilr.v3n1p186>.

Under UNCAC, countries are required to adopt more proactive approaches to asset recovery.¹¹ Despite these measures, countries increasing international asset recovery efforts continue to face many problematic, often insurmountable, obstacles. Although UNCAC entered into force in 2005, efforts to trace, seize, confiscate and return stolen assets have often been thwarted.¹² In some cases, following these efforts, friction and misunderstandings have arisen between the states or governments involved, perhaps out of frustration at the uneven rate of progress in asset recovery.

Developing countries such as Indonesia face serious obstacles due to the lack of non-punitive "asset forfeiture" (NCB) laws, as well as limited legal, investigative and judicial capacity and inadequate financial resources. Jurisdictions where stolen assets are hidden are often developed countries may not be able to respond to requests for legal assistance because the necessary laws, including NCB asset forfeiture laws, do not exist. In situations where death, fugitive status, or official immunity preclude criminal investigation or prosecution, the asset recovery process can be even more difficult. Once stolen funds, whether public or private, have been transferred abroad, they are extremely difficult to recover,

NCB "Asset Forfeiture" is an important tool for recovering proceeds and a tool of corruption.¹³ It is a legal mechanism that provides for the restraint, confiscation, and "forfeiture" of stolen assets without the need for criminal penalties; it can be critical to successful asset recovery when the offender is dead, has subsequently fled, is attempting to fortify themselves in order to gain immunity from investigation or prosecution, or is simply too powerful to prosecute.¹⁴ A growing number of jurisdictions have established NCB "asset forfeiture" regimes and such regimes have been recommended at regional and multilateral levels by a number of organizations. The "United Nations Convention Against Corruption" (UNCAC) urges states to consider allowing NCB "asset forfeiture" of stolen assets when the perpetrator cannot be prosecuted.¹⁵

Let's take a look at a case that happened in Indonesia on August 3, 2000, where the President of Indonesia Soeharto was officially a suspect in an alleged case of misuse of funds from the Social Foundation he started. Soeharto was named as a defendant at the same time as the file was submitted to the DKI Jakarta High Prosecutor's Office. At that time, it consisted of investigators on behalf of Agus Susanto, Umu Lage Lozara, Suriansyah, and Patuan Siahaan who appeared at Soekarno's house on Jl. Cendana 8, Central Jakarta. Previously, the Attorney General's Office had sent a letter of notification of the handover to Soeharto through his legal

¹¹ Dimitris Ziouvas, "International Asset Recovery and the United Nations Convention Against Corruption BT - The Palgrave Handbook of Criminal and Terrorism Financing Law," ed. Colin King, Clive Walker, and Jimmy Gurulé (Cham: Springer International Publishing, 2018), 591–620, https://doi.org/10.1007/978-3-319-64498-1_25.

¹² Jacinta Anyango Oduor et al., *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (World Bank Publications, 2014).

¹³ Prosper Maguchu, "Borders and Boundaries: Importing Asset Recovery 'Duty Free' in Transitional Justice Processes," *Indonesian Journal of International Law* 17, no. 2 (January 31, 2020), <https://doi.org/10.17304/ijil.vol17.2.784>.

¹⁴ Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) Dalam RUU Perampasan Aset Di Indonesia," *Integritas : Jurnal Antikorupsi* 3, no. 1 SE-Articles (March 6, 2017): 115–30, <https://doi.org/10.32697/integritas.v3i1.158>.

¹⁵ Theodore S. Greenberg et al., *Stolen Asset Recovery* (The World Bank, 2009), <https://doi.org/10.1596/978-0-8213-7890-8>.

counsel. The team of investigators who came to Soeharto's yard aimed to hand over evidence and suspects from investigators to public prosecutors, and were represented by Mochtar Arifin and Andi Syaifudin. Regarding the case of misuse of funds committed by Soeharto that dragged 7 social foundations that he led, consisting of: *"Yayasan Dana Sejahtera Mandiri; Yayasan Supersemar; Yayasan Dharma Bhakti Sosial (Dharmais); Yayasan Dana Tidak berkudahan Karya Bhakti (Dakab); Yayasan Amal Bhakti Muslim Pancasila; Yayasan Dana Gotong Royong Kemanusiaan, and Yayasan Trikora. In 1995"*.

Soeharto then issued Presidential Decree No. 90/1995, which stated that this KEPPRES *"Encourages businessmen to contribute 2% of the profits of the Mandiri Fund Foundation."* Despite the fact that the KEPPRES said such a thing, in December 1998, Indonesian President B.J Habibie issued INPRES No. 30/1998 on the Investigation of Soeharto's Wealth. And before that B.J Habibie had initiated the establishment of an Independent Commission to Investigate Soeharto's Wealth. However, this idea was not granted. According to Attorney General Andi M. Ghalib's report to Commission I of the House of Representatives, the investigation of Soeharto's seven social foundations resulted in a total wealth of Rp.4.014 trillion. In addition to the discovery by the Attorney General of accounts in the name of Soeharto in 72 state banks with a value of Rp. 24 billion and Rp. 23 billion in deposits in BCA accounts and the ownership of 400,000 hectares of land in the name of the Cendana Family. Then on October 11, 1999 the Indonesian government stated and responded that the allegations of corruption by Soeharto were not proven. Because of this "the Attorney General's Office issued a Letter of Termination of Investigation (SP3)" against Soeharto's alleged assets.¹⁶

Then after six months, on December 6, 1999, during the Abdurrahman Wahid administration, he reopened the case and conducted a re-examination and revoked the SP3 Soeharto regulation made by the previous Indonesian government. Various kinds of tracking and tracing of the Soeharto case and various parties concerned have been carried out. Summons were also made to Soeharto, but this was ignored on the grounds of Soeharto's unstable health condition. This led to Soeharto being placed on City Detention, then on August 3, 2000 Soeharto was named as a suspect in an alleged case of misuse of Foundation funds.

It was noted that funds amounting to Rp. 400 billion sourced to the Mandiri Fund Foundation between 1996 & 1998 originated from: "The Forestry Department's Reforestation Fund Post and the Presidential Aid Post, Minister of State for Population and Head of the National Family Planning Coordinating Agency Haryono Suyono" they were involved in an alleged case of misuse of funds by diverting funds to the Soeharto Foundation. Since September 1, 1998, the Attorney General's Office has found allegations of irregularities in the budgets managed by the Foundation, although the state has provided data on the assets of the Soeharto Foundation, he still says that he does not have any assets.

The trial agenda was released and scheduled. It was scheduled for August 31, 2000, but again Soeharto did not come to the trial with health reasons. The trial had to be postponed to August 14, 2000 which again Soeharto did not attend the summons again for the same reason, and finally the trial was postponed to September 28, 2000, then it was found that the Panel of

¹⁶ Sri Handayani Retna Wardhani, Nita Ariyani, and Paryadi, "Tindak Lanjut Penuntasan Kasus Korupsi Mendiang Presiden Soeharto Dalam Rangka Mewujudkan Cita-Cita Reformasi," *Kajian Hukum* 7, no. 1 (May 20, 2022): 103–15, <https://doi.org/10.37159/kh.v7i1.9>.

Judges determined that the criminal prosecution against Soeharto was inadmissible and the trial was stopped because there was no guarantee that Soeharto would attend the trial on health grounds, and he had also been released from city detention which finally this case disappeared like the wind until now.

The Swiss government had extended assistance to complete the investigation of Soeharto's wealth that had been deposited abroad. However, this did not go smoothly. In 2003, the Indonesian government stated that there were difficulties in tracing Soeharto's assets in Switzerland. The cause of the obstacles was due to the requirements put forward by the Swiss side burdening Indonesia, the Indonesian Attorney General said "that in principle, we accept the offer from the Swiss government to help trace the assets. But the conditions proposed are too heavy and not easy for us. Then the Swiss government requested that the Indonesian government provide the accounts of Soeharto and his friends." This is a little confusing because if you remember the account number, it seems to be embedded in Switzerland, which logically should be the Swiss government who has full authority and knows better.

From there we know that corruption in Indonesia is not only due to weak regulations in Indonesia but also due to the lack of cooperation between government regulations and foreign countries. The government must grow dynamically and flexibly to meet the needs of society,¹⁷ so that issues such as corruption do not occur in Indonesia. Another solution is to conduct Asset Recovery. With this, firstly it will provide a deterrent effect to the perpetrators. People are more likely to engage in corrupt behavior if they believe that if they are arrested and convicted they and their families will still be able to enjoy their ill-gotten wealth. Recovering illicit assets helps deter corruption by turning it into a higher risk, lower reward activity. Second, by punishing corrupt officials and recovering stolen assets, countries can also generate funds for development and strengthen their criminal justice systems. The end result is stronger law enforcement, integrity and trust in government.

Therefore, the availability of the concept of "Non-Conviction Based Asset Forfeiture (NCB)" in "asset forfeiture" resulting from corruption crimes, is able to end the question of recognizing the shortcomings of the criminal process, namely: with this concept, a lawsuit can still be filed even if the suspect, defendant, or convicted person dies, so that the process can be optimized in returning assets caused by corruptors.

However, on the other hand, the existence of a civil process in terms of "asset forfeiture" as a result of corruption crimes such as those in the "TIPIKOR Law" has also not been very optimal in its efforts because the civil process must go through a formal proof system which in its implementation is arguably quite complicated than in the material proof section. With this, the application in the case of "asset forfeiture" based on the "TIPIKOR Law" has not been maximally successful in recovering losses from the state treasury, so a solution is needed regarding the policies of law enforcers for efforts to return / recover state loss assets, including looking at and adopting provisions regarding asset forfeiture without NCB criminal charges in accordance with the provisions of the "2003 UN Convention Against Corruption" and still paying attention to and adjusting according to the provisions of the legal system in Indonesia,

¹⁷ Sulvia Triana Hapsari, Abdul Madjid, and Nurini Aprilianda, "Confiscation Of Assets In Economic Crime," *Audito Comparative Law Journal (ACLJ)* 3, no. 2 (September 28, 2022): 31–43, <https://doi.org/10.22219/aclj.v3i2.22185>.

Then, the process of "asset forfeiture" as written in the Criminal Procedure Code and as previously explained, the mechanism relies on the disclosure of the crime, which indicates the element of finding the perpetrator and placing the perpetrator in prison and only dripping "asset forfeiture" as an additional punishment, which turns out to be ineffective to eradicate the crime rate. By not making "asset forfeiture" as a focal point in law enforcement of criminal acts that have economic elements, it is tantamount to neglecting the perpetrators of criminal acts in order to continue to control and always enjoy the results of their criminal acts, it is even possible that they will repeat the criminal acts they have committed with a more modern mode and with a more sophisticated way of operating than the more sophisticated ones.

Regarding human rights, the Universal Declaration of Human Rights on December 10, 1948 (UDHR 1948) is a milestone in the universal legal recognition of the importance of the protection of human rights. This declaration succeeded in realizing a new standard of human rights where the intention is not only to clarify what is meant by human rights but rather a noble goal, namely for the development and improvement of the enforcement of human rights for the sake of human dignity.

However, this concept contradicts "Article 28G of the 1945 Constitution of the Republic of Indonesia" which states that "every person has security over the property under his control." However, a person's rights are limited by the rights of others, as stated in the 1945 Constitution on human rights, namely "that human rights are not free but may be limited to the extent that such limitations are established by law." This has led to the birth of "Article 28J of the 1945 Constitution". The restrictions listed in Article 28J embrace from Article 28A to "Article 28I of the 1945 Constitution." Therefore, in this case, no human rights are absolute. In this case, the Court interpreted that "Article 28I paragraph (1)" must be read together and coherently with "Article 28J paragraph (2)" so that it means that "the right not to be prosecuted based on retroactive laws is not absolute." Where the starting point of this discussion is when asset forfeiture is carried out whether the perpetrator of the crime cannot and there is no possibility to maintain his property rights so that it remains under his hands.

So then after analysis, "asset forfeiture" of corrupt suspects is not an act that violates human rights. Before that, "asset forfeiture" of corruption suspects had become a polemic issue because it was considered a violation of human rights. However, here as the author has the opinion that the perpetrator of the crime of corruption is not entitled and does not have the right to his assets, because the state is litigating with his property not with his person on the grounds that the corruptor is not entitled to have rights to assets obtained through corruption.

Corruptors have also defiled state assets and this deserves to be taken away. State assets here have been considered as personal assets. The corruptors are not entitled and have no rights with the proceeds of their corruption. The state also pursues its assets instead of pursuing people because of their tainted assets, then the assets or assets that the state has the right to confiscate are the assets from the proceeds of corruption, not the property as a whole, seen based on the origin of the property, so the point is there. If the crime started in 2020 and the property was purchased in 2015, it cannot be confiscated.

D. CONCLUSION

Thus the author concludes, the concept of "Non-Conviction Based Asset Forfeiture (NCB)" is a solution effort so that the crime is "not profitable", therefore the perpetrators must reflect on the impact that will occur as a result in the future. Then the author states that the concept of "Non-Conviction Based Asset Forfeiture (NCB)" has become the main sequence of legal needs in the Indonesian state because with the concept of "Non-Conviction Based Asset Forfeiture NCB)" it can produce a shortcut in taking over state assets that have been taken as a result of criminal acts related to the state economy, as regulated in "article 54 number 1 Letter C UNCAC". Furthermore, it is associated with NCB which is "confiscation" citing "Article 73 of Law Number 39 of 1999 concerning Human Rights" which aims to recover / restore "asset recovery" of state losses and here the position of the state has become a victim of the criminal act of the perpetrator, then through the element of national interest this can be a barrier between the right to property as stipulated in "article 28G of the 1945 Constitution of the Republic of Indonesia".

E. REFERENCE

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