

The Asset Forfeiture Bill in the Perspective of Criminal Law Policy and the Rule of Law: Between Urgency and Legislative Obstacles

T. Banjar Nahor

Faculty of Law, Krisnadwipayana University, Jakarta, Indonesia

Abstract

The legislative process of the Draft Bill on Asset Forfeiture (RUU PA) reflects the complex interplay of law and politics within Indonesia's legal system. Despite its widely acknowledged urgency as an instrument to recover state losses from corruption and money laundering, the bill has yet to be enacted up to the 2025–2026 National Legislation Program. This study seeks to address two central questions: (1) why the Asset Forfeiture Bill has not been passed until now, and (2) how legal, political, and institutional factors influence its formation, and how its formulation can balance the effectiveness of asset recovery with the protection of human rights. Employing a normative juridical method complemented with socio-legal analysis, the study finds that delays in enactment are driven by normative debates on non-conviction based asset forfeiture (NCB), political bargaining within the House of Representatives, and institutional limitations in managing forfeited assets. The study concludes that the ideal formulation of the bill must integrate the principles of the rule of law, establish strong judicial oversight, and strengthen institutional capacity to ensure that NCB mechanisms operate effectively without undermining constitutional rights. Thus, the Asset Forfeiture Bill should not only function as a tool for state asset recovery but also embody Indonesia's commitment to justice and the rule of law.

Keywords: Asset Forfeiture, Legal Politics, Rule of Law.

1. Introduction

The confiscation of assets obtained from criminal activity is one of the most crucial legal issues on the agenda of eradicating corruption and economic crime in Indonesia. Since the Asset Forfeiture Bill was first introduced into the 2012 National Legislation Program (Prolegnas), the urgency of its creation has been repeatedly highlighted by the government, academics, and civil society organizations. This bill is designed to provide a clear legal basis for the state to confiscate and manage assets obtained illegally, even without having to wait for a final and binding court decision (non-conviction-based asset forfeiture/NCB).

Despite this, the Asset Forfeiture Bill has yet to be ratified as of the 2025–2026 National Legislation Program (Prolegnas). This delay has serious consequences: the country potentially loses trillions of rupiah annually because assets resulting from corruption and money laundering cannot be immediately confiscated. This is despite Indonesia having ratified the 2003 United Nations Convention against Corruption (UNCAC) through Law Number 7 of 2006, which explicitly encourages member states to adopt asset forfeiture mechanisms, whether based on criminal convictions or NCBs.

Since its initial academic draft, the legislative process for the Asset Confiscation Bill has been slow and has been repeatedly delayed. Various parties, including academics, anti-corruption civil society organizations, and state institutions, have presented conflicting arguments for and against the bill's urgency, effectiveness, and potential risks. On the one hand, supporters of the bill emphasize the urgency of its passage to enhance the state's ability to return unlawfully acquired assets, prevent asset diversion, and close loopholes that have hampered the state's recovery from financial losses due to corruption and economic crime. In the context of recent legislative politics, the bill has re-entered the 2025–2026 National Legislation Program (Prolegnas), but has yet to reach the ratification stage (Ernes, 2025).

* Corresponding author.

E-mail address: bnahor152@gmail.com

In their research, which highlights the comparison of asset confiscation without criminal penalties in Indonesia and Australia, Irma Reisalinda Ayuningsih and Febby Mutiara Nelson argue that asset confiscation in Indonesia is still carried out through criminal forfeiture mechanisms, based on the Criminal Code, Criminal Procedure Code, the Corruption Law, Law No. 8 of 2010, and Supreme Court Regulation No. 1 of 2013. However, these regulations have not been successful in recovering state financial losses. Meanwhile, Australia uses a more effective asset confiscation mechanism without criminal penalties. The Indonesian government needs to formulate regulations that are responsive to the needs of the community to effectively return assets resulting from criminal acts (Ayuningsih & Nelson, 2022).

Meanwhile, Irwan Hafid, in his research, stated that, based on an economic analysis of law, the goal of corruptors is to maximize profits. This can be overcome by reclaiming their profits. This is a key factor in asset confiscation without criminal prosecution. Furthermore, the use of the NCB asset forfeiture mechanism does not require significant costs. Consequently, NCB asset forfeiture is faster, more effective, and more efficient in recovering state financial losses. Therefore, future law enforcement policies should not focus solely on punishing criminals but also consider the advantages and disadvantages (economic analysis of law) of asset recovery in law enforcement. Supreme Court Regulation No. 01 of 2013 and Law No. 8 of 2010 concerning Money Laundering (TPPU) are instruments that can be used. To optimize the asset confiscation process, the Asset Forfeiture Bill, which incorporates the concept of NCB asset forfeiture, must be passed immediately.

A research gap emerges here. Previous studies have tended to highlight the normative urgency of the Asset Forfeiture Bill, particularly regarding its conflict with the presumption of innocence and the right to property ownership. However, analysis of the political, institutional, and technical dimensions influencing the slow legislative process remains limited. In other words, there is a research gap at the level of interaction between legal factors, legal politics, and institutional capacity in explaining why this bill has been repeatedly delayed.

Furthermore, existing legal research often stops at the descriptive level, without integrating this debate into broader theoretical frameworks, such as criminal law policy theory and the rule of law (*rechtsstaat*) theory. Both frameworks are crucial for explaining the dilemma between the effectiveness of state asset recovery and the protection of citizens' constitutional rights. Therefore, this research seeks to fill this gap by developing an analysis that is not only normative but also socio-judicial, linking legal aspects to political and institutional realities.

2. Research Method

This research uses normative juridical method with socio-judicial extension. Normative juridical is used to analyze relevant laws and regulations, principles, doctrines, and legal theories, especially in relation to asset confiscation mechanisms, both based on criminal decisions (conviction-based asset forfeiture) and without criminal decisions (non-conviction-based asset forfeiture/NCB). Meanwhile, socio-judicial is used as a complement to examine the political dimensions of law and institutions, namely how the tug-of-war of political interests, the capacity of law enforcement officers, and institutional realities influence the slowness of the legislative process. Thus, this research not only positions law as a normative text, but also connects it to concrete political and institutional practices.

To answer the research problem, several approaches were used as follows:

- 1) Statute Approach
Examining the synchronization between the Asset Confiscation Bill and existing regulations, such as the Criminal Code, Criminal Procedure Code, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering, and Law Number 7 of 2006 concerning the Ratification of the UNCAC.
- 2) Conceptual Approach
Using concepts of criminal law and state administration, such as the presumption of innocence, due process of law, criminal law policy, and the principle of the rule of law (*rechtsstaat*), to assess whether the Asset Confiscation Bill is in line with the fundamental values of the Indonesian legal system.
- 3) Comparative Approach
Comparing asset confiscation practices in other countries, for example United States (civil forfeiture) and United Kingdom (civil recovery through the Proceeds of Crime Act 2002), to find best practices that can be adapted in the Indonesian legal context.
- 4) Sociological Approach

Examining the political and institutional realities that influence the slow ratification of the bill, such as the tug-of-war between factions in the DPR, the asset tracing capacity of law enforcement officers, and the management mechanisms for confiscated assets by related institutions.

This research uses three types of legal materials, namely (a) Primary legal materials, in the form of national laws and regulations (Criminal Code, Criminal Procedure Code, Corruption Law, Money Laundering Law, UNCAC Ratification Law), as well as official documents in the form of the Academic Draft of the Asset Confiscation Bill prepared by the BPHN; (b) Secondary legal materials, namely criminal law and state administration literature, journal articles, research results, and the views of legal academics regarding the asset confiscation mechanism; (c) Tertiary legal materials, consisting of legal dictionaries and legal encyclopedias

3. Results and Discussions

3.1. Normative Polemics in the Asset Confiscation Bill

Normatively, the existence of the Draft Asset Confiscation Law (RUU PA) is driven by a legal need to fill a gap in the system for recovering assets resulting from criminal acts. Existing instruments, such as The Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering, only recognize the mechanism of conviction-based asset forfeiture. In practice, this mechanism often faces obstacles because it requires a legally binding court decision, while assets resulting from crime can be quickly transferred or hidden.

The Asset Forfeiture Bill then introduced the concept of *non-conviction based asset forfeiture* (NCB), which involves the confiscation of assets without requiring a criminal conviction. This mechanism is intended to expedite the recovery of state losses resulting from criminal acts, particularly corruption and money laundering. However, this regulation has sparked serious controversy because it is considered potentially contrary to the presumption of innocence and the principle of protecting property rights as a human right. In Indonesian criminal law literature, the presumption of innocence is a fundamental principle that must be upheld in every criminal legal process (Hamzah, 2019).

Several legal experts believe that if asset confiscation without conviction is implemented without a strict judicial oversight mechanism, it could lead to a new form of state arbitrariness against citizens. Barda Nawawi Arief emphasized that criminal law policy must maintain a balance between effective crime prevention and the protection of individual rights (Arief, 2010). Therefore, the NCB mechanism in the RUU PA requires strong procedural guarantees, such as clear standards of proof, the right to file an objection, and a restitution mechanism if the confiscation is proven unlawful.

Thus, the normative polemic in the Asset Confiscation Bill does not only revolve around the pros and cons of the effectiveness of state asset recovery, but also concerns a more fundamental question: how the Indonesian legal system can accommodate progressive asset recovery instruments without sacrificing the basic principles of the rule of law and the constitutional rights of citizens.

3.2. Political and Institutional Factors

Another significant obstacle to the ratification of the Asset Forfeiture Bill lies in the political and institutional realm. Since its initial inclusion in the 2012 National Legislation Program (Prolegnas), the bill has been repeatedly withdrawn and re-inserted into the legislative priority list. This phenomenon demonstrates the competing interests between political factions in the House of Representatives (DPR). Some political circles believe that existing legal instruments are sufficient to regulate asset forfeiture, thus creating a new bill that could potentially lead to overlapping legal norms.

Perspective Legal politics explains that every legislative process is influenced by the political configuration and consideration of the interests of the legislators. Satjipto Rahardjo stated that law is never born in a vacuum, but rather is the result of the interaction between societal needs, political pressure, and power dynamics (Rahardjo, 2006). Therefore, the slow legislative process for the Asset Confiscation Bill can be interpreted as a reflection of the weak political consensus among parties in parliament.

On the institutional side, the main challenge is the limited capacity of law enforcement officials to track, seize, and manage assets resulting from criminal activity. Asset confiscation without adequate institutional strengthening risks creating new problems, such as asset depreciation or even misuse during the management process. According to Indriyanto Seno Adji, the success of law enforcement is determined not only by legal norms but also by the institution's ability to effectively exercise its authority (Adji, 2011).

Thus, political and institutional factors are equally important determining factors as normative aspects. Without a strong political consensus and institutional strengthening, the ratification of the Asset Confiscation Bill is likely to be further delayed, despite its undeniable urgency.

3.3. *Technical and Practical Barriers*

In addition to normative and political issues, technical and practical obstacles are also crucial factors in the deliberations of the Asset Forfeiture Bill. These obstacles are primarily related to the limited capacity of law enforcement officials to carry out asset tracing, confiscation, and management of confiscated assets. The process of tracing assets resulting from criminal activity requires the support of information technology, trained human resources, and cross-institutional cooperation mechanisms, both at the national and international levels. Without such support, the effectiveness of asset forfeiture will be severely limited.

The issue of confiscated asset management is also a prominent issue. In practice, confiscated assets often experience a drastic decline in value due to a lack of professional governance. This results in new losses for the state, even after the confiscation process has been legally concluded. According to Yudi Kristiana, weaknesses in the confiscated asset management system not only result in financial losses but also undermine the legal legitimacy of combating money laundering and corruption (Kristiana, 2015).

Furthermore, the absence of a dedicated institution to independently manage confiscated assets exacerbates the situation. Currently, asset management authority is spread across various institutions, such as the Attorney General's Office, the Corruption Eradication Commission (KPK), and the Ministry of Finance, without any integrated coordination. This situation creates inefficiency and is prone to abuse. Indriyanto Seno Adji emphasized that law enforcement can only be effective if supported by strong, professional institutions with integrity as the connecting channels.

Thus, technical and practical obstacles are crucial factors to consider when formulating the Asset Forfeiture Bill. Without a well-thought-out institutional design and strengthened capacity of the authorities, the new law is likely to fail to address the real needs of state asset recovery.

3.4. *State Administrative Law Perspective*

From the perspective of state administrative law, the discussion of the Asset Confiscation Bill raises fundamental questions regarding the limits of executive authority in confiscating and seizing assets. As a state governed by the rule of law (*rechtsstaat*), every government action must be subject to the law and implemented by guaranteeing the principle of *due process of law* and protection of human rights. Philipus M. Hadjon emphasized that the principle of the rule of law requires that any form of restriction on citizens' rights must be carried out through clear and fair legal procedures (Hadjon, 1987).

Mechanism non-conviction based asset forfeiture The NCB in the Asset Confiscation Bill places the executive as the primary actor in property confiscation. Without a strict judicial oversight mechanism, this authority has the potential to lead to arbitrary practices and contradict the basic principles of the rule of law. This aligns with Sunaryati Hartono's view that the function of a rule of law state is to ensure legal order, which implies protecting the rights of the people from abuse of power (Hartono, 1976).

Within the framework of state administrative law, the Asset Forfeiture Bill should incorporate principles of accountability and judicial oversight mechanisms. For example, every decision to confiscate or seize assets must be based on a court order, with the right of appeal for any aggrieved party. Furthermore, a restitution mechanism should be established if assets are proven to have been seized without a valid legal basis. This way, the asset forfeiture instrument can remain effective without violating citizens' constitutional rights.

By placing the principle of the rule of law as a foundation, the Asset Confiscation Bill is expected to not only be an instrument for recovering state losses, but also a symbol of respect for the principles of justice, legal certainty, and protection of human rights.

3.5. Criminal Law Perspective

From a criminal law perspective, the Asset Confiscation Bill must be placed within the framework of criminal law policy. Barda Nawawi Arief emphasized that criminal law policy functions not only as a repressive tool, but also as a social policy instrument aimed at protecting the interests of society while simultaneously guaranteeing the protection of individual rights (Arief, 2010). Therefore, the formulation of the Asset Confiscation Bill must prioritize a balance between the effectiveness of state asset recovery and respect for citizens' constitutional rights.

Arrangement non-conviction based asset forfeiture The NCB (Non-Customary Criminal Code) adopted in this bill presents a normative dilemma. On the one hand, the NCB mechanism is seen as a progressive step to expedite the recovery of state losses due to corruption and money laundering. On the other hand, this mechanism has the potential to conflict with the presumption of innocence, a fundamental principle of Indonesian criminal law. Andi Hamzah emphasized that this principle is a key pillar of criminal procedure law and must not be ignored in the judicial process (Hamzah, 2019).

Comparatively, Indonesia actually has international legitimacy to implement NCB, because it has ratified the *United Nations Convention against Corruption* (UNCAC) 2003 through Law Number 7 of 2006. Articles 31–32 of the UNCAC provide the legal basis for participating countries to adopt non-conviction asset confiscation mechanisms. However, implementation in Indonesia must be aligned with the principle of legality (*nullum delictum nulla poena sine lege*) and the principle of due process of law, so as not to give rise to confiscation practices that are contrary to the spirit of the rule of law.

Thus, within the criminal law framework, the Asset Confiscation Bill requires careful formulation so that it can function as an effective instrument for eradicating crime while remaining in line with the fundamental principles of national criminal law.

3.6. Comparative Law

Comparative legal studies are important to examine how other countries regulate asset forfeiture mechanisms, particularly those based on non-conviction-based asset forfeiture (NCB). Two frequently cited examples are the United States and the United Kingdom.

In the United States, civil forfeiture is a mechanism known as the seizure of assets through a civil process with a lower standard of proof than criminal law. The government can seize assets suspected of being connected to a crime, even if the perpetrator has not yet been convicted. However, this practice has drawn widespread criticism because it is considered to open up opportunities for abuse of state authority against citizens, especially when the burden of proof is not balanced (Cassella, 2013).

In contrast, the UK, through the Proceeds of Crime Act 2002, established a civil recovery mechanism by placing the courts as the primary supervisor. This mechanism is seen as more aligned with the rule of law, as it still provides judicial oversight over any asset confiscation decisions. Thus, asset confiscation not only serves as an instrument for the country's economic recovery but also remains within the framework of protecting individual rights (Arief, 2018).

For Indonesia, this comparative experience provides important lessons. The adoption of NCB must be accompanied by a strong institutional design and a clear judicial oversight mechanism. Without judicial oversight, the implementation of NCB has the potential to lead to injustice and contradict the principles of the rule of law (*rechtsstaat*). Therefore, the Asset Forfeiture Bill needs to integrate best practices from other countries while still adapting them to the principles of legality and the national criminal justice system.

3.7. Critical Discussion with Previous Research

Several researchers have studied the Asset Forfeiture Bill. For example, Irwan Hafid emphasized that the implementation of non-conviction-based asset forfeiture (NCB) has legitimacy within the framework of economic analysis of law. He argued that NCB can be viewed as an instrument to cut off the economic benefits of criminal acts, thus preventing perpetrators or third parties from financially benefiting from them. This analysis provides a theoretical basis for the effectiveness of eradicating crime, not just through criminal sanctions but also by targeting the assets obtained from crime.

Meanwhile, Irma Reisalinda Ayuningsih and Febby Mutiara Nelson highlighted the constitutionality of the NCB mechanism. They emphasized that asset confiscation without criminal prosecution potentially violates the presumption of innocence and the protection of citizens' property rights. Irma's study suggests that NCB must be

carefully positioned within the framework of a state based on the rule of law, prioritizing the principle of due process of law and strict judicial oversight.

Compared to those two studies, this research attempts to fill an underexplored analytical niche: political and institutional factors. While Irwan's focuses on economic effectiveness and Irma's on constitutionality, this research combines normative aspects with the dynamics of legal politics. The delay in the ratification of the Asset Confiscation Bill stems not only from normative polemics but also from competing political interests and limited institutional capacity. Therefore, this research broadens academic discourse by offering a more comprehensive analysis, integrating normative, political, and institutional perspectives.

4. Conclusion

- a. The delay in ratification of the Asset Forfeiture Bill until the 2025–2026 National Legislation Program (Prolegnas) was caused by a combination of normative, political, and institutional factors. From a normative perspective, debate persists over the constitutionality of the non-conviction-based asset forfeiture (NCB) mechanism, particularly its potential conflict with the presumption of innocence and the protection of citizens' property rights. From a political perspective, the tug-of-war between factions in the House of Representatives (DPR) and the lack of political consensus have repeatedly delayed the legislative process. From an institutional perspective, the limited capacity of law enforcement officials in asset tracing, confiscation, and asset management raises doubts about the bill's effectiveness if passed without adequate institutional strengthening.
- b. Juridical, political, and institutional factors are interrelated in the development of the Asset Forfeiture Bill. Juridical controversies demand procedural guarantees to ensure that the NCB does not conflict with the principles of the rule of law (*rechtsstaat*). Political factors demonstrate that law is not merely a normative product, but also the result of compromise between political forces in parliament. Meanwhile, institutional factors demonstrate that legal norms can only be effective if supported by strong, professional, and accountable institutions. The ideal formulation of the Asset Forfeiture Bill must be able to bridge the need for effective state asset recovery with the protection of human rights. This can be achieved by designing a transparent NCB mechanism, based on judicial oversight, and supported by an integrated and accountable confiscated asset management system.

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