

# Confiscation of assets without a criminal decision in recovering state financial losses due to crime of corruption

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## ABSTRACT

The focus of this study is a Juridical Review of the Concept of Confiscation of Assets Without a Criminal Decision (Non-Coviction Based Asset Forfeiture) in Recovering State Financial Losses Due to Crime of Corruption. This study aims to analyze and find answers about the legal implications of the application of the concept of non-conviction based asset forfeiture to the current criminal system of corruption and to find answers about the ideal concept in forfeiture of assets without, legal basis, and legal doctrine to review the issues under study. The results showed that (1) the implications of the application of the concept of non-conviction based asset forfeiture to the current corruption crime conviction system (2) the ideal concept of asset forfeiture without a conviction verdict to maximize the return of state financial losses is to establish a special legal regime on non-conviction based on asset forfeiture through a law.

## ABSTRAK

Fokus penelitian ini adalah Tinjauan Yuridis Konsep Perampasan Harta Kekayaan Tanpa Penetapan Pidana (Non-Coviction Based Asset Forfeiture) Dalam Pemulihan Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi. Putusan Penelitian ini bertujuan untuk menganalisis dan menemukan jawaban mengenai implikasi hukum diterapkannya konsep *non-conviction based asset forfeiture* terhadap sistem pidana tindakan pidana korupsi yang berjalan saat ini serta untuk menemukan jawaban mengenai konsep yang ideal dalam untuk perampasan aset tanpa putusan pidana guna memaksimalkan pengembalian kerugian keuangan negara. Penelitian ini menggunakan jenis penelitian hukum normatif merupakan proses untuk menemukan peraturan hukum, dasar hukum, dan doktrin hukum untuk mengulas permasalahan yang diteliti. Hasil penelitian menunjukkan bahwa (1) Implikasi penerapan konsep *non-conviction based asset forfeiture* terhadap sistem pidana tindakan pidana korupsi yang berlaku saat ini (2) Konsep ideal perampasan aset tanpa putusan pidana untuk memaksimalkan pengembalian kerugian keuangan negara adalah dengan menetapkan rejim hukum khusus tentang *non-conviction based asset forfeiture* melalui sebuah undang-undang.

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## I. INTRODUCTION

Human rights in statutory regulations are a reference which is the main source of the provisions of the rule of law, especially those related to the rules of criminal procedural law which are currently

scattered in various provisions starting from the provisions in the Criminal Procedure Code and other sectoral criminal laws and regulations such as the Corruption Crime Eradication Act and its amendments, the Money Laundering Crime Eradication Act and others as the *legal substance* of the Criminal Justice System.

Theft of public assets is a major development problem. Extreme changes in the relationship between states, global markets and civil society are driving new approaches to crime control (Fouladvand S. , 2020). Any infrastructure improvement project will inevitably involve bureaucracy (public officials) and political elites and the private sector which creates multiple opportunities for corruption from the start, that is, from identification of project needs and priorities to implementation and completion (Carr, 2018). Trying to put a numerical figure on the rate or cost of corruption is very difficult if not impossible, as is finding a consistent, reliable and up-to-date source (Turksen, Umut, & Viri Chauhan, 2018). The exact value of state assets that have been stolen from developing countries is nearly impossible to estimate accurately (Greenberg, Linda, Wingate, & Larissa, 2009). The price that must be paid for corrupt behavior is far from the value of the assets stolen by the country's leaders; causing degradation and decreased trust in public institutions, especially those involved in the management of public finances and the government's financial sector.

Stolen funds if they have been transferred abroad will be difficult to recover, where developing countries face obstacles due to limited legal, investigative, judicial capacity; lack of financial resources; and a lack of political impetus. Developing countries are much more vulnerable to money laundering crimes because of legislative gaps that exist from processes of financial sector development, privatization, or the creation of securities markets (Achim, Monica, & Sorin, 2020). Criminalization, seizures, and secrecy attacks form the core of contemporary anti-money laundering frameworks (Turksen U. & Viri, 2018).

The criminal justice system is essentially a criminal law enforcement process. Therefore, it is very closely related to the criminal legislation itself, both substantive law and criminal procedural law, because criminal legislation is basically an *abstracto enforcement of criminal law* which will be realized in *concreto law enforcement*. The important role of criminal legislation in the criminal justice system, because these laws give power to policy makers and provide a legal basis for the implemented policies. The legislature participates in preparing policies and provides legal steps to formulate policies and implement established policy programs. So, all are part of legal politics which essentially function in three forms, namely law formation, law enforcement, and exercise of authority and competence.

The development of criminal acts, especially in criminal acts with economic motives, forces *the status quo* to also align with the development of criminal acts, crimes with economic motives which were initially conventional in nature such as theft, fraud and embezzlement, are now developing to become increasingly complex because they involve educated and often criminal actors. transnational or transnational. This type of crime in addition to generating a lot of wealth at the same time also involves a lot of funds to finance the equipment, facilities and infrastructure that support the implementation of the crime. With this complexity, the handling of criminal acts becomes increasingly complicated and difficult for law enforcement to handle (Indonesia, 2012).

The problem becomes even more complicated when efforts to maximize the return of money for corruption crimes to the state are hampered because the Corruption Law has limited the amount of compensation that can be imposed to the same amount as the money obtained from corruption crimes or as much as can be proven in court. In addition to obstacles to the legal paradigm of eradicating corruption, efforts to recover state funds are also hampered by the characteristics of corruption, which prove very detailed and take a very long time. Meanwhile, on the one hand, attempts by corruptors to hide assets resulting from corruption have been carried out since the corruption (Husodo, 2010).

Occurred Latin phrase *pecunia non olet* which translates to “money doesn't smell” can be lived in the context of law against corruption as a parable which states the difficulty of tracing the proceeds of a planned crime. The world community's answer to the development of planned crime is the reform of regulations that make it possible to secure the proceeds of crime (Rui & Ulrich, Non-Conviction-Based Confiscation in Europe: Possibilities and Limitations on Rules Enabling Confiscation without a Criminal Conviction, 2015).

Recognizing the serious problems associated with large-scale corruption and the need to upgrade mechanisms to combat the damaging effects of corruption, the international community is introducing new frameworks to facilitate tracking, freezing, safeguarding, confiscating, and returning assets stolen through acts of corruption that are hidden in the system . foreign jurisprudence (Greenberg, Linda, Wingate, & Larissa, 2009).

The United Nations Conference against Corruption (United Nations Conference against Corruption, UNCAC) provides a solution to eradicating corruption, which is increasingly multidimensional and complex. At the starting point, the UNCAC provides a basis of reference to Article 54(1)(c) of the UNCAC, which obliges all State Parties to consider appropriation of the proceeds of crime without going through punishment. In this respect UNCAC did not focus on one existing legal tradition nor did it suggest that fundamental differences could hinder its implementation. With this, UNCAC proposes the confiscation of non-criminal assets as a tool for all jurisdictions to consider in combating corruption, as a tool that transcends differences between systems (Webbs, 2005).

Confiscation of assets without going through criminal prosecution ( *in rem* ) is what the author thinks is interesting to study by colliding with the human rights aspect, because in the author's opinion the confiscation of assets which has been carried out so far has been based on court decisions that have permanent legal force (in kracht ) is the implementation of a person is not carried out by forceful efforts to confiscate his assets before he is actually found guilty and it is proven that the assets he owns are related to the crime he committed or in other words are assets that are illegitimate

## II. RESEARCH METHODS

Normative Legal Research is a process of finding legal regulations, legal basis, and legal doctrine to review the issues under study (Christiani, 2016). Normative legal research is research that aims to find and establish ideal regulations that are in accordance with the principles of morality and justice. This research is usually carried out by legal experts or legal experts using analytical and conceptual methods. Normative legal research aims to establish ideal regulations that can be used as a basis or guideline for decision making in the application of law.

## III. DISCUSSION RESULTS

### 1. *Implications of Implementing the Non-Conviction Based Asset Forfeiture Concept on the Current Corruption Criminal Justice System*

Confiscation of assets without sentencing is a civil confiscation mechanism in Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law no. 20 of 2001 (Tipikor Law) which was carried out when criminal remedies were no longer possible to be used in efforts to recover state losses.

There are three main scopes that must be met in order to confiscate assets without sentencing, namely there is not enough evidence to prove the elements of corruption, the suspect dies, and the defendant dies before the court's decision. Even though Indonesia is a state party to the UNCAC, it does not yet have regulations that comprehensively regulate asset confiscation schemes without sentencing.

An asset confiscation regime without sentencing can be more effective in retrieving assets stolen by corruptors because it uses a civil law regime with a lower standard of proof and a reversed proof system. However, the implementation of asset forfeiture without punishment still has several hurdles and needs to be improved to ensure its success. The implementation of the concept of non-conviction based asset forfeiture in the criminal justice system for corruption has several legal implications that need to be considered.

a. Changes to the penal code

The implementation of *non-conviction based asset forfeiture* requires changes in the criminal code, as this reduces the standard of evidence required to commit money laundering or expropriation of assets suspected to be the proceeds of corruption. In order to implement *non-conviction based asset forfeiture*, changes to the criminal code may be required to ensure that the regulations comply with this concept. Here are some changes that may need to be made.

Refine the definition of a crime: The law should provide clear and precise definitions of corruption and other crimes related to money laundering, such as embezzlement, counterfeiting and fraud. So far Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, corruption, embezzlement, forgery and fraud is regulated in several articles, including:

- 1) Article 2 regarding the definition of criminal acts of corruption, including embezzlement, forgery, and fraud.
- 2) Article 3 regarding the elements of corruption, which also includes elements of embezzlement, forgery, and fraud.
- 3) Article 12 deals with criminal acts of corruption committed by government officials, which also includes acts of embezzlement, forgery and fraud.
- 4) Article 18 concerning the crime of embezzlement in the case of using state property and/or non-state property used for the benefit of the government.
- 5) Article 378 of the Criminal Code regarding forgery, which talks about document falsification.
- 6) Article 378 of the Criminal Code regarding fraud, which talks about actions that harm other people by deceiving other people.

Corruption, embezzlement, counterfeiting, and fraud are forms of economic crimes that are detrimental to the economy and society, which can be defined as follows : a particular government or institution. Embezzlement is the act of hiding or defrauding assets or property with the aim of avoiding payment or a fair distribution. Counterfeiting is the act of making, attaching, or using counterfeit documents, money, or goods with the aim of deceiving others. Fraud is the act of taking advantage of another person's trust with the aim of taking advantage illegally. All these forms of crime are detrimental to the economy and society, because they result in an unnatural flow of funds and resources and affect the stability of the economy as a whole.

Standard of proof: The standard of proof must be reduced to commit asset seizures without being prosecuted. This means that legal officials do not have to prove that the suspect committed a crime, but must prove that the assets are suspected of being the result of a criminal act of corruption.

With the current era of globalization, crime has crossed national borders, so to pursue assets resulting from crime taken abroad, can be done through asset recovery. In this case, civil proceedings assisted by MLA ( *Mutual Legal Assistance* ) and the anti-money laundering regime can make it easier for Indonesia to take corruptors' assets abroad. However, before adopting an asset confiscation system without punishment), there are a number of things that must be considered, such as re-structuring within the legal framework in Indonesia, requiring legal expertise and high technical knowledge, expanding the scope of jurisdiction of asset confiscation

without punishment to areas outside Indonesia's jurisdiction, and carry out *checks and balances* before and after the process of confiscating assets without punishment.

For *re-structuring the legal framework*, it is necessary to pay attention to changes in material and formal law, especially civil procedural law. Currently, formal civil law only applies to individual cases or private to private, so there is a need for reform in this regard.

To meet the demands for legal expertise and high technical knowledge, Indonesia can use external experts or follow the steps of other countries by establishing an independent agency that specifically handles asset recovery. In order to broaden the scope of jurisdiction to confiscate assets without sentencing, it is necessary to consider expanding the scope of the MLA Law to civil lawsuits so that corruptors' assets can be taken.

In order to carry out checks and balances, Indonesia can use methods such as those carried out by Thailand by giving a commission to a special institution that handles the asset recovery process according to the institution's performance, and also ensures high principles of transparency and accountability.

**Expropriation of assets procedures:** The law should provide clear and transparent procedures for expropriating assets without being penalized, including procedures for appealing and recovering assets if insufficient evidence is found for expropriation.

**Confiscation of assets without conviction** benefits JPN in terms of the speed at which an asset is confiscated in relation to a crime. This in rem lawsuit allows JPN to carry out confiscation before the status of a suspect or even before the identity of the perpetrators of the crime is known. This is different from civil lawsuits in the TIPIKOR Law, which can only be carried out after the status of a suspect, accused or convict has been established.

**Protection of suspects' rights:** The law must ensure that the rights of suspects are protected, such as the right to a lawyer and the right to self-defense. The importance of asset confiscation without punishment in Indonesia depends on the views and perceptions of each individual. Some people may consider this very important because it gives the government the ability to take action against criminal acts of corruption without having to wait for the sentencing process which may take a long time.

Conversely, there are also people who think that confiscation of assets without punishment can violate human rights and presumption of innocence. In this regard, it is important for the government to ensure that the asset confiscation process is carried out in a transparent manner and meets adequate legal standards to protect community rights.

In general, it is important to consider a balance between the need to protect people's rights and combat corruption. The government needs to carry out a careful evaluation and take appropriate action to ensure that asset seizure without punishment is carried out properly and meets adequate legal standards.

**Monitoring and evaluation:** The law must ensure that the system of forfeiture of assets without punishment is regularly monitored and evaluated to ensure that procedures and implementation are fit for purpose and uphold the rights of suspects.

The adoption of an instrument of forfeiture of assets without punishment in Indonesia requires special attention from the government, because the principle of forfeiture of assets without punishment is different from the principles of Indonesian civil law in general. Therefore, before implementing asset confiscation without punishment in Indonesia, the government must consider several things and conduct an evaluation first.

First, it is very important to have a specific law on asset confiscation without punishment within Indonesia's national legal framework. Since asset confiscation without punishment requires a different civil law regime and is not in accordance with general civil law, including the instrument of asset confiscation without punishment in the amendments to the TIPIKOR Law is inappropriate and is feared to be ineffective in facilitating its use. Therefore, the formation of

special regulations that regulate the legal basis and procedures for confiscating assets without being prosecuted is very important to avoid legal debates that could hinder its implementation.

As implemented in countries such as Australia and the United States, the formation of this special regulation can ensure that procedures and procedural law for confiscation of assets without sentencing become *lex specialis* from civil procedural law in Indonesia. This will ensure that seizure of assets without conviction has a clear “legal tint” and makes implementation easier. Overall, a special law on asset confiscation without punishment is needed to ensure that this instrument can work effectively and facilitate its implementation within Indonesia's national legal framework.

Second, there needs to be strong support and commitment from the government and law enforcement officials so that the asset confiscation instrument without sentencing can be applied effectively and efficiently. The government and law enforcement officials must understand and believe in the potential for confiscation of assets without punishment in assisting the prevention and eradication of criminal acts of corruption. The existence of strong political will can assist in overcoming obstacles that may arise and ensure that the instrument of confiscation of assets without punishment is properly implemented. This is important because the success of carrying out asset confiscation without punishment will depend heavily on the level of commitment and support from the government and law enforcement officials.

Third, facilitating the process of confiscating and expropriating assets related to criminal acts and crimes such as corruption and other criminal activities involving assets located abroad. It should be noted that mutual legal assistance in criminal matters is essential for addressing crime- and criminal-related asset management issues. Therefore, amendments to the MLA Law which include confiscation of assets without punishment as an object of mutual legal assistance in criminal matters will make a significant contribution to preventing and eradicating corruption and other criminal activities.

To maximize the effectiveness of using MLA in confiscating and expropriating assets, the government should prioritize establishing MLA agreements with other countries and ratifying signed agreements. Good and intensive cooperation with other countries can assist Indonesia in taking over corruptors' assets abroad. In this case, the government must also ensure that the MLA Law already has a wide and adequate scope of jurisdiction, so that it can support the duties and functions of law enforcement officials in confiscating and expropriating assets.

Fourth, to ensure that asset confiscation without punishment is implemented effectively and efficiently, good and consistent outreach to the public and law enforcement officials is very important. This will help ensure that they understand the underlying concepts and legal framework of asset seizure without punishment and how this instrument can be used to address asset-related crimes, such as corruption and money laundering.

By ensuring a good and consistent understanding of asset confiscation without prosecution, law enforcement officers will also have a better understanding of how to apply this instrument in practice and how to reverse the burden of proof. This will help ensure that forfeiture of assets without punishment is treated fairly and proportionately and that decisions taken in this context meet good legal standards.

In addition, outreach to the public will also help ensure that this instrument is not received negatively by the public, as is often the case with anti-money laundering regimes. This will help ensure that asset confiscation without punishment is well received by society and help ensure that this instrument has strong public support and is part of a collective effort to combat asset-related crimes.

Fifth, thus, these institutions can play a role in optimizing the economic value of these assets, so that they can be used to recover losses to the state or third parties. In addition, this institution can also play a role in supervising the implementation of asset confiscation so as to ensure that the process is carried out fairly and transparently.

Thus, the handling of asset confiscation based on asset confiscation without punishment can be carried out properly and on target, so that it can assist in fighting financial-based crimes and recovering losses to the state or third parties.

Sixth, the review must pay attention to all the impacts and implications that will be caused by the instrument of confiscation of assets without punishment, including the impact on the economy, social and politics. As is the case with other countries' experiences, the implementation of asset confiscation without punishment must be carried out by taking into account the balance between the goals of preventing and eradicating criminal acts with human rights and social justice. In this case, there needs to be openness and good communication between the government and the community so that the implementation of asset confiscation without punishment does not trigger public unrest and create new problems.

This shows that even though asset confiscation without conviction shares the same basic principles, implementation can still differ between countries. Therefore, the Indonesian government needs to consider and examine various aspects related to the implementation of asset confiscation without punishment in this country. From an economic, social and political perspective, it is necessary to think about the impact of asset confiscation without punishment for the community and the state. The government also needs to consider the model to be implemented, such as the model used in Australia or the Philippines, to optimize the benefits and minimize the negative impacts of carrying out asset confiscation without punishment in Indonesia.

#### b. Changes in the Asset Acquisition Process

The implementation of *non-conviction based asset forfeiture* also requires changes in the process of expropriating assets, because this requires legal officials to prove that the assets are suspected of being the result of a criminal act of corruption without having to prove that the suspect committed a criminal act of corruption.

Foreclosure is indeed a legal tool that has various functions and purposes. In the Laws of the Republic of Indonesia, confiscation can be found in various articles, for example Article 32 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Code, Article 55 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes, and others. These articles explain the conditions and conditions for carrying out a confiscation, as well as the purpose and function of the confiscation. Thus, confiscation is a legal tool that can be used by the State to protect people's rights and obtain justice for crime victims.

The United States government can seize property by filing a lawsuit against the property, without having to wait for the owner to be identified, caught, and charged (Rui, 2012). However, "traditional" methods of confiscation, which are limited to the property involved in the particular offense for which the accused was convicted, are inadequate to deprive criminals involved in corruption offenses of their ill-gotten gains (Trinchera, 2020). In corruption cases, the crime often cannot be uncovered quickly or the accused may not be punished promptly. In addition, in corruption cases, the crime often occurs through unclear channels and can involve assets that are not directly involved in the crime. New efforts and methods are needed in appropriating the proceeds of crime.

Asset confiscation serves to paralyze and close the pathways used to commit crimes (Cassella, 2015), as well as erase and restore profits derived from these crimes. This is an effective way to provide a deterrent effect for criminals and prevent them from committing financial crimes in the future. Confiscation of assets is also an effective way of returning illegal profits to society, so that they can be used to recover losses suffered by society as a result of the crime. This anti-crime strategy eschews traditional approaches to combating illicit behavior in favor of a new paradigmatic shift towards asset recovery strategies (Fernandez-Bertier, *The Confiscation and Recovery of Criminal Property: A European Union State of the Art*, 2016). Asset

confiscation can be used as part of a restorative justice process by returning assets that have been illegally obtained to victims or people who feel affected by the crime. The concept of restorative justice has been used in many jurisdictions and in many formats (Fouladvand S. , 2020).

Foreclosures generally follow a legal process by which the defendant's assets can be confiscated (Alagna, 2015). Foreclosures generally follow a legal process to ensure fairness and transparency in the foreclosure process. This allowed the defendants to defend themselves and show that the seized assets were the result of legal means. In addition, the legal process also allows a judge or court to decide whether the confiscation action is appropriate and in accordance with applicable law.

It is indeed a fact that civil lawsuits in the Corruption Crime Act (UU TIPIKOR) have some differences from confiscation of assets without being prosecuted. In the TIPIKOR Law, civil lawsuits are imposed after it is proven that there has been "state loss" and demands law enforcement agencies to prove this. However, forfeiture of assets without conviction has the principle of reverse proof and does not require proof of the existence of an element of "state loss." Therefore, asset confiscation without conviction is more effective in dealing with corruption problems and places more burden on those who object. However, even though there are some differences, both of these efforts are aimed at overcoming the problem of corruption and returning state losses to the people.

## 2. *The ideal concept of confiscating assets without sentencing to maximize returns on state financial losses a*

Since the late 1990s, new legal policies have emerged that have significantly overhauled global efforts to tackle crime (Fernandez-Bertier, 2016). The United Nations and the World Bank have also initiated *the Stolen Asset Recovery (StAR) Initiative* which aims to assist developing countries in dealing with laundering of the proceeds of corruption. This initiative was concocted by professionals from 10 different jurisdictions, who then formulated core concepts including:

- a. *Non-Conviction Based Asset Forfeiture* should not replace criminal courts, where it should be complementary, not alternative
- b. The relationship between *Non-Conviction Based Asset Forfeiture* and all forms of criminal action must be explained
- c. *Non-Conviction Based Asset Forfeiture* must exist if criminal action is not available or is not successful
- d. Regulations in implementing *Non-Conviction Based Asset Forfeiture* must be specific
- e. Assets related to a criminal act as a whole are subject to *Non-Conviction Based Asset Forfeiture*
- f. Gross assets acquired prior to legalization related to *Non-Conviction Based Asset Forfeiture* are also subject to forfeiture
- g. Specific actions for investigating and securing seized assets should be delegated to government agencies
- h. The defense (*pleidoi*) must be specific in nature referring to the elements of the confiscated assets and their legal burden ( *onus probandi* )
- i. Those with a potential legal interest in the property to be foreclosed on are entitled to be notified of the proceeding.
- j. The remedies available to plaintiffs if the government fails to obtain a forfeiture judgment must be determined.
- k. There should be a system for planning, maintaining and disposing of assets prior to foreclosure in a fast and efficient manner.
- l. Extraterritorial jurisdiction must be vested in the courts.
- m. Correct terminology must be used, especially when international cooperation is involved.

Several countries that have implemented confiscation without a court decision have a different viewpoint and the results of applying the law. Then Greenberg et al.

*Non Convection Based Asset Forfeiture* requires stakeholders who play a role in the law enforcement process. In the Albanian context, the competent inspector is allowed to temporarily seize suspicious objects, instruments or assets, to be brought to a special court office, with notifications, reports and transcripts of decisions underlying the said confiscation or confiscation. In Antigua and Barbuda, this authorized official is at the level of the Attorney General, who can retain a property or transfer the property to another law enforcement agency that is directly involved in a forfeiture or confiscation activity.

Australia compiles detailed legal instruments related to asset confiscation without trial. Australia 's Proceeds of Crime Act 2002 (Australian, 2022) which has been amended in 2022 is a compilation of laws that allow freezing, blocking and confiscation of property involved in a crime. The legal compilation aims to:

- a. To confiscate proceeds of crime, instruments of infringement, and benefits derived from infringement, against the laws of the Commonwealth or Non-Governmental Territory; and areas that have no government;
- b. To deprive those of the literary proceeds derived from the commercial exploitation of their fame for having committed an offence; And
- c. To deprive the person of an inexplicable amount of property that the person is unable to fulfill in court is not derived or realized, directly or indirectly, from a particular offence;
- d. To punish and prevent people from breaking the laws of a Commonwealth or Non-Governmental Territory; And
- e. To prevent the reinvestment of proceeds, instruments, benefits, literary proceeds and unexplained sums of wealth in further criminal activity; And
- f. To undermine the profitability of criminal enterprises; And
- g. To enable law enforcement authorities to effectively track proceeds, instruments, benefits, literary proceeds and unexplained amounts of wealth; And
- h. To enforce Australia's obligations under the Council of Europe Convention on Laundering, Searching, Seizure and Seizure of Proceeds of Crime, and other international treaties relating to proceeds of crime; And
- i. To provide foreclosure orders and restraining orders made in respect of self-recovery violations of State or Territory law to be enforced in another Territory.

The legal compilation that has been designed in such a way by the Australian government above can be implemented as an effort to:

- 1) Prevention of criminal acts
- 2) Tools for law enforcement
- 3) Tools for drug addiction recovery
- 4) Tools for prosecution related to drug trafficking.

As a country with diverse historical and cultural backgrounds, Canada has different legal bases in each province related to *Non- Convection Based Asset Forfeiture* . The Province of Alberta may designate a ministry to carry out forfeiture on the basis of:

- a) The Ministry has reason to believe that the property is property obtained illegally or is an instrument of illegal activity,
- b) The Ministry has no reason to believe that there are any bona fide stakeholders with respect to the property, and
- c) This property is located in Alberta and is controlled by a public entity.

The chain of command is a necessity in law enforcement which involves the synergy of legal apparatus and stakeholders in a country. Just like in the province of Alberta, the Province of British Columbia in Canada in implementing laws related to *Non Convection Based Asset Forfeiture* is managed by a director appointed by the ministry with the aim of:

- 1) An order to restrain the disposition or transmission of property or all or part of an interest in property;
- 2) As an order to master, transfer to director or property depository;
- 3) An order designating a person to act as beneficiary manager for the property or all or part of the interest in the property;
- 4) An order for the disposition of property or all or part of the interest in property in order to better safeguard the value of the property or all or part of the interest in property;
- 5) An order directing money order arising from the disposition of the property or all or part of the interest in the property
- 6) For the purpose of securing the performance of an obligation imposed by an order which is for an amount fixed by a court in respect of property or all or part of an interest in property;
- 7) An order deemed appropriate by a court to prevent property from becoming
  - a) removed from British Columbia, or
  - b) used to engage in unlawful activities;
- a. An order deemed appropriate by a court for preservation
  - 1) Property or all or part of an interest in property,
  - 2) the value of the property or all or part of the interest in the property, or
  - 3) rights of creditors and other interest holders;

The responsibility of safeguarding assets so that they can always be subject to the judicial process is very important. In the Province of Manitoba (Canlii, 2022), upon a motion by the director, a court may make one or more of the following provisional injunctions respecting property that is the subject of a proceeding under:

- a. Property disposition restraining orders;
- b. Directions for the possession, delivery, or storage of property;
- c. Orders designating recipients or recipients and managers for the property;
- d. Referrals for the sale or other disposition of the property, if
  - 1) the property is perishable or depreciates rapidly in nature,
  - 2) the sale or disposition of the property will maintain the value of the property, or
  - 3) the cost of managing or maintaining the property will exceed its realizable value;

Confiscation is not only related to things of material value, but objects that threaten state security. The United States Government can seize property in connection with weapons-related crimes (U.S. Government Publishing Office, 2012): 1) Nuclear ; 2) Chemistry ; 3) Biology ; and 4) Radiology.

Indonesia is considered late in implementing legal instruments for confiscation of assets without trial. In the ASEAN context, Thailand was one of the first countries in 1999 (Bhumibol Adulyadej, 1999) to implement asset confiscation without trial related to money laundering in crimes related to narcotics, sexuality, public crimes, banking and financial crimes, malfeasance in the judicial system, threats from organizations secrets or criminal associations, smuggling, terrorism, gambling, crimes committed by criminal groups, criminal acts of stolen property, counterfeiting of securities, falsification of intellectual property rights, falsification of important documents, illegal exploitation of natural resources, murder to enable the acquisition of a assets,

taking hostages for financial gain, theft, extortion, threats, robbery and similar crimes, piracy, unfair trading in securities, and weapons or weapons equipment

As for the Philippines in 2001 has implemented *Non Conviction Based Asset Forfeiture* (Bangko Sentral ng Pilipinas, 2012) which may apply if it is assessed that there is a suspicious transaction related to money laundering This legal basis then allows cooperation between countries in the event of a crime of money laundering abroad. In the context of corruption, these legal instruments can be used if a person is suspected of:

- a. Directly or indirectly soliciting or receiving any gifts, prizes, shares, percentages or benefits for himself or for others in connection with any contract or transaction between the Government and any party, in which a public official in his official capacity has to intervene based on law;
- b. Directly or indirectly soliciting or receiving any gifts, monetary or other material gifts or benefits, for himself or for another person, from anyone for whom a public official, in any way or capacity, has secured or obtained, or will secure or obtain, any government permit or license, taking into account the assistance provided or to be provided,
- c. Causing undue injury to any party, including the government, or giving any private party unwarranted benefit, advantage or preference in carrying out its official, administrative or judicial functions through apparent partiality, obvious bad faith or unforgivable negligence ;
- d. Enter, on behalf of the government, into any contract or transaction in a real and strictly disadvantageous manner for the same, whether or not a public official benefits from it;
- e. Directly or indirectly has a financial or monetary interest in any contract or business transaction in connection with which he intervenes or takes part in an official capacity, or in which he is prohibited by the Constitution or by any law from having any interest whatsoever;

Directly or indirectly having an interest, for personal gain, or having a material interest in any transaction or action which requires the approval of the board, panel or group of which he is a member, and who exercises discretion in such approval, even if he votes against the same thing or he does not participate in the actions of the board, committee, panel or group.

#### IV. CONCLUSION

The implications of applying the concept of *non-conviction based asset forfeiture* to the current criminal justice system for corruption are: 1) Increasing effectiveness in fighting corruption; 2) Reducing costs and time for examining corruption cases; and 3) Strengthening the legal system and protecting human rights.

The ideal concept of confiscating assets without a criminal conviction to maximize returns on state financial losses is to establish a special legal regime regarding *non-conviction based asset forfeiture*. through a law that regulates: 1) Criteria for assets that can be confiscated; 2) Confiscation procedures: The law must regulate the procedures and stages of confiscating assets without sentencing in detail; 3) The rights of asset owners; 4) Coordination with related parties; 5) Governance of confiscated assets; 6) Law enforcement includes sanctions for parties who commit violations related to *non-conviction based asset forfeiture*).

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