Asset Forfeiture through Non-Conviction Based Asset Forfeiture and Management of Criminal Proceeds Assets: A Comparative Study with the United States and Thailand

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Abstract

Confiscation is based on the principle that the proceeds of crime must be confiscated, because the convicted person should not benefit from the crime he committed. The procedure for handling confiscated property is something that needs to be regulated. So it is very important in a rule to determine who is responsible for taking the seized goods and holding them, where they should be stored, and what will be done with them. This paper compares and contrasts the NCB non-conviction based asset forfeiture rules owned by Indonesia, the United States and Thailand as well as the responsibilities in managing assets based on the results of confiscation and confiscation owned by these countries. The selection of the United States as a comparison country in this paper is based on the fact that countries that adhere to the common law legal system have commonly practiced the concept of NCB asset forfeiture as an activity in confiscating and seizing assets and the United States has been implementing the concept for decades. While in the Southeast Asian region, Thailand is one of the countries that has long implemented the concept of NCB asset forfeiture and has an independent institution

I. Introduction

Confiscation, as defined by KUHAP, is a set of actions by the investigator as the executor under his control to confiscate and or store concrete or non-concrete objects, both movable and immovable objects, to be used as evidence during the examination at the court session. Forfeiture is based on the principle that the proceeds of a crime should be confiscated, as the convicted person should not benefit from the crime they committed. It is important to point out that asset forfeiture must be complied with and so requires a lot of time, money and specialized teams to investigate and determine the value of the proceeds of crime and what property of equivalent value can be forfeited.(*Model Codes for Post-Conflict Criminal Justice 1*, 2007)

Suppose there is an instrument in asset forfeiture. In that case, first, it is unlikely that the perpetrator will think about committing a criminal offense because it is not profitable, and the state will confiscate the profits. Secondly, the perpetrators can still enjoy the results or benefits of their profits, so imprisonment does not prevent criminal acts from occurring. Third, asset forfeiture can increase public support, warning that the government must fight crime seriously. Fourth, asset forfeiture reflects support for fighting certain crimes. Fifth, fines imposed on offenders are insufficient to provide a deterrent effect. Sixth, the function of asset confiscation is to warn people who are about to commit a crime.(Suhariyono AR, 2014)

The procedure for handling confiscated property needs to be regulated. So it is very important in a rule to determine who is responsible for taking and holding the seized goods, where they should be stored, and what will be done with them.(Suhariyono AR, 2014) Konvensi UNCAC *(United Nations Convention Against Corruption)* It has been established that state parties must make provisions to govern the administration and distribution of seized property. Inherent in these provisions is the question of what to do with the proceeds or property seized.

Indonesia's criminal law provides several provisions that allow for the confiscation and forfeiture of the proceeds of crime. Asset recovery remains one of the biggest gaps as only a small percentage of assets from proceeds of crime are seized from criminals and

returned to their victims. To overcome some of the barriers to asset recovery, NCB Asset Forfeiture emerged as an alternative confiscation supported by the UNCAC. This has been implemented in several countries, both developed and developing countries, with varying degrees of success.(France, 2022) In some jurisdictions, NCB Asset forfeiture is also called civil forfeiture, in rem forfeiture or objective forfeiture, which is actions against the asset itself and not against an individual (in personam). NCB Asset Forfeiture is separate from all criminal proceedings and requires proof that the asset was 'tainted' by the crime. (*Legitimasi Perampasan Aset Pada Pelaku Tindak Pidana Korupsi*, 2007).

The NCB Asset Forfeiture system of proof should be determined based on a balance of probabilities standard of proof. This reduces the burden on the government (authority) and allows it to seize assets when sufficient evidence supports a belief that the assets in question are the proceeds of crime. In this case, the claim is not directed against the individual defendant, but against the goods. Hence, the owner of the goods is a third party with the right to protect the seized goods.(*Legitimasi Perampasan Aset Pada Pelaku Tindak Pidana Korupsi*, 2007)

The experience of Indonesia and other countries shows that the activity of uncovering criminal acts, finding the perpetrators and putting them in prison with the conventional approach of following the suspect, is not effective enough to reduce the crime rate if it is not accompanied by confiscating and seizing the proceeds and instruments of criminal acts. (Arief, 2014) The United States and Thailand, which have long used the follow-the-money approach, have proven to be an effective tool in detecting, preventing, and combating financial crimes.

This paper compares and contrasts the rules of NCB asset forfeiture or asset forfeiture without criminalization owned by the United States and Thailand. The author would like to review the responsibilities in managing assets based on the results of seizure and forfeiture owned by the United States and Thailand. The selection of the United States as one of the countries that are part of the comparison countries in this paper is based on NCB asset forfeiture as a concept that has developed in countries that adhere to common law. Countries that follow the common law legal system have commonly practiced the concept of NCB asset forfeiture as an activity in seizing and passing assets. The NCB asset

forfeiture mechanism has also been applied for decades by the United States in returning assets resulting from criminal acts. While in the Southeast Asia region, Thailand is one of the countries that has long implemented the concept of NCB asset forfeiture, and Thailand has an independent institution, namely the Anti Money Laundering Office (AMLO), which functions to determine and conduct asset forfeiture and submit asset forfeiture applications to the court.

Based on the description above, the author will review several interesting things related to the topic of this writing more deeply through the comparative law method, where the author will review the practice of non-conviction-based asset forfeiture mechanisms in the country. Furthermore, which institution manages assets resulting from criminal acts after confiscating or seizing these assets, and how do the United States and Thailand manage the assets resulting from criminal acts?

2. Research Method

As for examining a problem being studied in this research, the method used by researchers is the method of legal comparison. Legal research on comparative law is often used to compare the resolution or regulation of the problem being studied in another legal or legal system. Comparative legal research is often conducted to compare the elements of a legal system, including legal substance, legal structure and legal culture.(Irwansyah, 2022) In essence, comparative law is an effort to study the legal system and compare the similarities and differences in the applicable legal system. So which can be the object of study in this legal comparison, among others, examines the comparison of legal systems, legal conceptions, legal sources, causes or cultural background of a country. (Irwansyah, 2022).

Peter de Cruz divides 5 (five) functions and objectives of comparative law, namely (Peter de Cruzz, 1993):

a. Comparative law as an academic discipline;
b. Comparative law as a goal for legalization and law reform;
c. Comparative law as a tool of legal construction;
d. Comparative law as a means to understand various legal rules;

e. Comparative law as a contribution to legal unification and harmonization;

Thus, this research aims to answer all the questions about the problems discussed. This form of research is expected to answer the practice of non-conviction-based asset forfeiture mechanisms in Indonesia, the United States, and Thailand, as well as provide an overview of the management of assets resulting from criminal offenses after confiscating or seizing these assets. So this comparative legal writing not only aims to encourage us to be more critical of the function and purpose of the existence of a studied rule, but no less important is also this comparison as a means to reconstruct the law and fill the gaps contained in the law.

3. Results and Discussion

Asset Forfeiture through Non-Conviction Based Asset Forfeiture and Management of Assets from Criminal Offenses in Indonesia

Arrangement and Practice of Non-Conviction Based Asset Forfeiture in Indonesia

Indonesia has ratified UNCAC 2003 through Law No. 7 of 2006 (konvensi Perserikatan Bangsa-Bangsa Anti Korupsi, 2003)(*G20 Dan Pemberantasan Korupsi*, 2022), however, related to the NCB asset forfeiture concept echoed by UNCAC, it is only contained in the Asset Forfeiture Bill. Asset Forfeiture, as in the provisions of Article 1 number 3 of the Asset Forfeiture Bill, that what is meant by asset forfeiture is a forced effort made by the state to confiscate assets resulting from criminal acts based on a court decision without punishment of the perpetrator. When considered, this article embraces the concept of Non-Conviction Based Asset Forfeiture, where forfeiture is carried out on assets without any punishment from the perpetrator. NCB asset forfeiture offers an alternative to address some of the barriers to asset recovery that policymakers and practitioners worldwide have identified.

Suppose you pay attention to the fact that the civil lawsuits contained in the Corruption Crime Law have little resemblance to those regulated by NCB asset forfeiture. In that case, there are differences in the civil remedies regulated in the Corruption Crime Law and NCB asset forfeiture. As in the Corruption Crime Law, the

ordinary civil system is still used. State losses must be proven in a civil case filed by the public prosecutor under the Corruption Crime Law, in addition to Article 38 of Law No. 20 of 2001, which only regulates civil suits after a court decision is legally binding.(Bismar Nasution, 2009) Meanwhile, NCB asset forfeiture adopts a reverse-proof mechanism. The Corruption Crime Law as contained in the provisions of Article 32 paragraph (1), paragraph (2), Article 33, Article 34, and Article 38, authorizes the state attorney or the aggrieved institution to file a civil lawsuit against the convicted person and/or his heirs both at the level of investigation, prosecution and / or court examination if it has been proven that there is a loss to the state. In contrast, NCB asset forfeiture proves that the assets being sued are the parties who have objected to the fact that there is no connection between these assets and corruption.(Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana, 2012)

The government has prepared an Asset Forfeiture Bill as a mechanism for the confiscation of proceeds of crime as a follow-up to the 2003 UNCAC convention. Still, one of the problems that has not yet been addressed is related to the lack of agreement on the institution that will manage criminal assets. The Attorney General's Office, the Ministry of Law and Human Rights, and the Ministry of Finance are three entities that have the potential to become institutions for managing assets resulting from criminal acts (Purnama, 2021).

Asset Management Institutions in Indonesia

The Criminal Procedure Code states that confiscated objects and state booty are kept and placed in the storage house for confiscated objects and state booty or also known as Rupbasan, as stated in Article 44 paragraphs (1) and (2) of the Criminal Procedure Code and the Ministry of Law and Human Rights (Kemenkumham) which oversees the institution of confiscation and seizure of assets resulting from criminal acts. The authorized official responsible for storing these items depends on the level of examination in the legal process. Therefore, Rupbasan is an institution tasked with managing all confiscated objects and goods seized by the state.

Furthermore, an Asset Recovery Center (PPA) under the prosecutor's office aims to organize asset recovery. In carrying out its duties as the Center of Integrated Asset Recovery System, the Asset Recovery Center must collect and manage databases reliably, securely, and be able to operate properly, and be connected to all prosecutor's work units and ministries/institutions related to asset recovery activities such as the Ministry of Finance, Ministry of BUMN, BPN and PPATK according to their needs, in the form of an Asset Recovery Secured-data system *(ARSSYS).*

The Directorate General of State Assets (DJKN) is a unit in the Ministry of Finance that gets delegation of duties and authority from the Minister of Finance to manage State Property originating from state booty. As for the settlement of state booty, the management of state booty is carried out through a sales and management mechanism carried out through determining the status of use, alienation, utilization, destruction, and / or elimination.

The implementation and management of state-confiscated goods, Rupbasan, PPA, and DJKN, use the State Budget (APBN) funds. When the confiscated object has been decided by the judge to be seized by the state, it, in turn, can be used as an element of non-tax state revenue. Seized objects can be part of non-tax state revenue (PNBP), which has been regulated in Government Regulation No. 22 of 1997 dated July 7, 1997 concerning Types and Deposit of Non-Tax State Revenue, which explains the points of the types of non-tax state revenue that apply to the Attorney General's Office, including the following :

1. Receipts from the sale of booty;
2. Revenue from the sale of confiscated/seized goods;
3. Revenue from compensation and corruption offenses;
4. Receipt of court fees;
5. Other receipts, in the form of found money, auction proceeds of found goods, and proceeds from the sale of goods;
6. Evidence that the rightful party does not take; and
7. Receipt of fines

Asset Forfeiture Through Non-Conviction Based Asset Forfeiture and Management of Assets Proceeds of Crime in the United States of America

The Regulation and Practice of Non-Conviction Based Asset Forfeiture in the United States of America

The United States is one of the countries that apply a common law legal system. NCB asset forfeiture is one of the instruments of confiscating and retrieving assets commonly implemented in countries with a common law legal system. America has had a law on NCB asset forfeiture since 1776.(Theodore S. Greenberg; et al, 2009) This judicial process can occur either pre-charge or post-charge, even if criminal charges are never filed. Actions brought in court are against property, not against a person. (Jean B. Weld, n.d.)

One of the bases for the use of NCB asset forfeiture in the United States is in the case of The Palmyra, which occurred in 1827, where the court did not accept the defense of his client's lawyer. This ship owner said that it was illegal to confiscate and take over the ship owned by his client without a decision, stating that the ship owner had been found guilty.(Tood Barnet, 2001)

In the United States, (NCB) asset forfeiture is governed by various federal and state laws. One federal law that plays a role in this regard is the Federal Civil Asset Forfeiture Reform Act (CAFRA). CAFRA, which has undergone several amendments, provides the legal framework for asset forfeiture without conviction at the federal level.

Further, the passage of the USA Patriot Act of 2001, 18 U.S.C. § 981(a)(1)(b) and §1956(c)(7)(B) provide that civil actions may at least be brought to seize the assets of public corruption, crimes of violence, banking fraud, and other serious criminal offenses committed abroad in violation of the laws of another country, if the assets of those offenses are located in the United States.(Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Terkait Dengan Tindak Pidana, 2022) Furthermore, 28 USC $ 1355 (b) (2) has also stated that a civil forfeiture lawsuit can be filed in the District of Columbia district court if the subject of seizure or expropriation is located abroad (Panggabean, 2020).

Several provisions in this law provide a legal basis for asset forfeiture, including the condition that no criminal conviction is required to take such action. One aspect related to asset forfeiture is the government's ability to access and seize assets involved in terrorist activity or other crimes. The USA Patriot Act authorizes the civil forfeiture of all assets, both foreign and domestic, belonging to any person, entity or organization involved in planning or committing acts of terrorism against the United States or its citizens and residents.(Stefan D. Casella, 2023)

In pursuing NCB asset forfeiture seizures, US courts must exercise control over the property to be seized. NCB asset forfeiture actions require proof of a connection between the property seized and the criminal offense. The United States may pursue NCB asset forfeiture actions against certain designated foreign offenses for money laundering and some US offenses with an inherently foreign component, which include acts of corruption, bribery of public officials, misuse, theft, or embezzlement of public funds by or for the benefit of public officials, extortion and violations of multilateral treaties requiring extradition or prosecution.(Leasure, 2016) Thus, the asset itself is the NCB asset forfeiture that is resisted or challenged here. In some cases, namely : *United States v. Approximately 600 Sacs of Green Coffee Beans,* 381 F. Supp. 2d 57 (D.P.R 2005); *United States v. One Etched Ivory Tusk of African Elephant, 871 F. Supp. 2d 128* (E.D.N.Y 2012); *or United States v. 160 Cartons of Glass Water Pipes,* 2014 WL 936293 (C.D. Cal. Mar. 10, 2014).(Lilik Mulyadi, 2020)

Asset Management Organization in America

The Asset Forfeiture Program was created in 1984 when Congress passed the Comprehensive Crime Control Act, which provided the necessary legal and regulatory instruments for federal prosecutors and agents to keep pace with and get ahead of those who commit crimes for economic gain. In the United States, the United States Marshals Service (USMS) is the federal agency responsible for executing court orders, including confiscating and selling seized assets(*Asset Forfeiture*, n.d.). The US Marshals Service plays a critical role in identifying and evaluating assets that represent proceeds of crime and efficiently managing and selling assets seized by the Department of Justice.

The US Marshals Service manages various assets including real estate, commercial businesses, cash, financial instruments, vehicles, jewelry, art, antiques, collectibles, vessels and aircraft. Proceeds from the sale of assets are used to run programs, compensate victims, and support various law enforcement efforts. Marshals manage the distribution of proceeds and payments to victims of crime and other innocent third parties, all of which help to reduce the financial losses incurred by criminal activity. The agency applies best practices from private industry to ensure that assets are managed and sold efficiently and cost-effectively.

The US Marshals Service values manages and sells real property assets legally ceded to the United States (US) Government. In most cases, the US Marshals Service sells properties using the traditional means of listing the property with a licensed broker, pricing the property at Fair Market Value, and advertising the property on popular industry websites (Realtor.com, Zillow, Redfin, dll.). As well as RealLook.com, which is a website run by the US Marshals Service Real Estate Property National Contractor. The US Marshals Service manages and sells a wide array of assets including, but not limited to, vehicles, boats, aircraft, jewelry, and artwork. In addition, the US Marshals Service is responsible for selling intangible assets such as virtual currencies, domain names, and various other licenses.

The Comprehensive Crime Control Act of 1984 (PL 98-473), codified at 28 USC § 524(c), established the Department's Asset Forfeiture Fund (AFF) as a special fund within the Department of the Treasury to receive forfeiture proceeds under any law enforced or administered by the Department of Justice. The Department of Justice administers the AFF to support the Program's objectives. The Treasury Department has its asset forfeiture fund and program. The Secretary of the Treasury oversees the Treasury Forfeiture Fund (TFF), established under 31 USC § 9705, which accepts deposits from TFF participants in the Department of the Treasury and the Department of Homeland Security.

Asset Forfeiture through Non-Conviction Based Asset Forfeiture and Management of Proceeds of Crime Assets in Thailand

Non-Conviction Based Asset Forfeiture Practice in Thailand

The NCBAF mechanism in Thailand is regulated through the Anti-Money Laundering Act B.E. 2542 (AMLA), as last amended by the Anti-Money Laundering Act (No. 5) B.E. 2558 (2015). The AMLA provides for a non-punitive-based confiscation system for proceeds of crime of origin (Seehanat Prayoonrat, 2009). The AMLA defines the property that can be seized as follows: "Property in connection with the commission of an offense" means :

1) *"money or asset obtained from the commission of an act constituting a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used for the commission or aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense under (8) of the definition of "predicate offense";*
2) *money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or*
3) *fruits of the money or asset under (1) or (2)."*
Provided that it is immaterial whether the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person."

Based on the above Article, it can be understood that asset forfeiture can involve money or assets obtained from basic criminal acts or money laundering, including assistance or involvement in such acts. It also includes assets used or possessed to commit such acts. Forfeiture may involve the distribution, disposal, or transfer of such assets, and the proceeds may also be forfeited. Article 49 of the AMLA provides that where there is convincing evidence that an asset is related to an offense, The Secretary-General will refer the case to the public prosecutor for consideration and petition the Court to certify that the assets belong to the state immediately. Suppose the public prosecutor considers that the case is not sufficiently complete to petition the Court for all or part of the assets to become state property. In that case, the public prosecutor shall immediately notify the Secretary-General to take further action.

Suppose the public prosecutor still believes there are insufficient grounds to petition the Court for all or part of the assets to become state property. In that case,

the public prosecutor shall immediately notify the Secretary-General to refer the matter to the Council for consideration. The Council shall consider and determine the matter within thirty days of its receipt from the Secretary-General. Upon the determination of the Council, the public prosecutor and the Secretary-General shall act following such determination. If the Council does not decide within the time limit, the opinion of the public prosecutor shall be followed.

Further after this process, if there is no legal action within a certain time and no claims on the withheld assets, the assets can be transferred to the AMLF (Anti Money Laundering Fund). If there is a claim after two years or more, the assets can be returned to the claimant. The assets will go into the AMLF without a claim within five years.

The court orders public notice and allows interested parties to file claims before issuing a forfeiture order. If there is evidence that a person claims ownership or interest in the assets, the Secretary-General will notify the person in writing to exercise their rights. Suppose there is a loss due to a criminal offense. In that case, the Secretary-General may request the public prosecutor file a petition to return or pay the asset's value to the injured party.

This process ensures fair and transparent procedures in the seizure of crime-related assets. It can be seen in the recent case that AMLO confiscated some of the large assets belonging to Stark Corp, which totaled around 349 million baht. The investigation team set a 90-day deadline for owners to report their assets. AMLO also plans to investigate money laundering suspects further.(Reporter, 2023)

Asset Management Institution in Thailand

On the other hand, Thailand has an independent law enforcement agency under the supervision of the Ministry of Justice. It operates under the direction of the Anti-Money Laundering Board, the Anti-Money Laundering Office (AMLO). The AMLO is responsible for investigating money laundering cases related to securing NCB assets. Under the provisions of the AMLA 1999, the nine enforced money laundering offenses of origin are drug-related, trafficking in women and children, human trafficking, public fraud, embezzlement of financial institutions, abuse of office,

extortion, tax evasion, election law violations, terrorism, and illegal gambling.

The AMLO has broad powers in that it can identify, trace, search, detain, and seize illegal proceeds involved in money laundering. The AMLO is also authorized to conduct electronic surveillance to obtain evidence related to money laundering upon court approval. The AMLO also acts as Thailand's financial intelligence unit. In addition, AMLO is responsible for the custody, management, and disposal of seized property. Once AMLO seizes assets, AMLO's Asset Management Bureau is responsible for safeguarding, storing them until forfeited, and disposing of them.(Theodore S. Greenberg; et al, 2009)

The AMLA was amended in March 2008 to enhance the role of the AMLO in asset management, establish a confiscation fund, implement strict controls on how confiscated assets are handled, promote transparency, and ensure that no one person has complete power over any part of asset management. According to the Ministerial Regulation on AMLO Work Organization, the Asset Management Bureau is responsible for tasks related to compiling an accounting system for seized or attached items, storing and maintaining seized or attached items, forwarding seized items to the Ministry of Finance, returning seized or attached items that have been released to the owner of the items, and appraising assets following the AMLA.(Theodore S. Greenberg; et al, 2009)

A seizure program's success depends on using sound asset management procedures. Assets must be effectively maintained while in AMLO care to minimize damage and depreciation. So that assets with good economic value can be recovered for the benefit of the government at the end of the case period. Once seized, the assets must be evaluated, or a qualified third party must conduct a valuation to establish their market value. The AMLA Amendment of March 2, 2008, requires the establishment of an Anti Money Laundering Fund. To facilitate an efficient and cost-effective mechanism for the administration of seized assets,

The establishment of the AMLF was mandated by the March 2, 2008 amendment to the AMLA to provide a cost-effective and affordable framework for the administration of seized assets, in addition to financing the seizure program and

enabling asset sharing. A portion of the seized funds or assets are handed over to the Ministry of Finance for the benefit of the state treasury after a final order of the District Court has seized the assets. The rest is kept in the AMLF. Furthermore, the proceeds from the abandoned assets are deposited into state funds and treasuries. The fund can be used for various purposes to achieve the objectives of the AMLA, including providing resources to support investigations, prosecutions, and asset management, raising public awareness, conducting training, supporting international cooperation, and so on (Theodore S. Greenberg; et al, 2009).

Comparison Results

The following is presented in table 4.1 related to the NCB asset forfeiture mechanism for managing assets from criminal acts in each country.

Table 4.1

Comparison of Non Conviction Based Asset Forfeiture and Asset Management Arrangements in Indonesia, the United States and Thailand

NCB Asset Forfeiture in Indonesia	*Asset Forfeiture is a forced effort made by the state to take over Criminal Assets' control and/or ownership based on a court decision that has obtained permanent legal force without being based on the perpetrator's punishment.* (RUU Perampasan Aset Pasal 1 angka 3)
Indonesian Asset Management Institute	▪ PPA is a work unit under the Attorney General's Office responsible for ensuring the optimal implementation of asset recovery in Indonesia with an integrated asset recovery system pattern in an effective, efficient, transparent, and accountable manner. ▪ Rupbasan is a work unit under the Ministry of Law and Human Rights (Kemenkumham). State-confiscated goods are technically managed by the Directorate of Prisoner Services and Management of State-Confiscated Objects and State-Confiscated Goods. ▪ DJKN is a unit in the Ministry of Finance that is delegated duties and authority from the Minister of Finance to carry out the management of State Property originating from state-confiscated goods.
Sources of funding	Anggaran Pendapatan Belanja Negara (APBN)

NCB Asset Forfeiture in the United States	Civil Asset Forfeiture Reform Act of 2002 *[...] "(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property."* *"(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—* *"(A) the Government notifies the court that it intends to seize the property before trial; and* *"(B) the court—"* *(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or* *(ii) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.* *"(e)If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure."* **(Section §985, United States Code is amanded by inserting after section 984)**
United States Asset Management Institute	The United States Marshals Service (USMS) has primary authority over managing assets seized in its custody, which may be seized or confiscated under laws enacted by agencies within the Department of Justice and certain other federal agencies by agreement. Arrangements for property services or commitments relating to the management and disposition of such properties are the responsibility of USMS.
Sources of funding	Asset Forfeiture Fund (AFF)
NCB Asset Forfeiture in Thailand	Thailand Anti Money Laundering Act of B.E 2542 (1999) **(Section 49)** *Subject to Section 48 paragraph one, in the case where there is convincing evidence that any asset is the asset connected with the commission of an offense, the Secretary-General shall refer the case to the public prosecutor for consideration and filing a petition to the Court for an order that such asset be vested in the State without delay.* *In the case where the public prosecutor considers that the case is not so sufficiently complete as to justify the filing of a petition to the Court for its order that the whole or part of that asset be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for taking further action. For this purpose, the incomplete items shall also be specified.* *The Secretary-General shall take action under paragraph two without delay and refer additional matters to the public prosecutor for*

	reconsideration. If the public prosecutor is still of the opinion that there is no sufficient prima facie case for filing a petition to the Court for its order that the whole or part of that asset be vested in the State, the public prosecutor shall notify the Secretary-General thereof without delay for referring the matter to the Board for its determination. The Board shall consider and determine the matter within thirty days as from its receipt from the Secretary-General, and upon the Board's determination, the public prosecutor and the Secretary-General shall act in compliance with such determination. If the Board has not made the determination within such time limit, the opinion of the public prosecutor shall be complied with. *When the Board has made the determination disallowing the filing of the petition or has not made the determination within the time specified and action has already been taken in compliance with the public prosecutor's opinion under paragraph three, the matter shall become final and no action shall be taken against such person in respect of the same asset unless fresh and material evidence is obtained which is likely to persuade the Court to give a forfeiture order. In such case, where there is no claimant to the restrained asset within two years from the date the Board decided not to file a petition or failed to make a decision within the prescribed time limit, the Office shall transfer the asset to the Fund, and in the case where a claimant files a petition under another law permitting the exercise of the right to claim the return of the asset even though the two-year period has lapsed, the Office shall return the asset to the claimant. If the asset is in the condition that cannot be returned, payment in cash shall be made from the Fund. If there is no claimant within five years, the asset shall fall into the Fund. Rules and procedures in respect of the retention and management of asset or money that is yet to be claimed shall be in accordance with the regulations prescribed by the Board.* *Upon receipt of the petition filed by the public prosecutor, the Court shall order the notice thereof to be posted at that Court and the same shall be published for at least two consecutive days in a newspaper widely distributed in the locality in order that the person may claim ownership or interest in the asset may file an application before the Court has an order. At the same time, the Court shall also order the submission of a copy of the notice to the Secretary-General for posting it at the Office and at the Police Station where the asset is located. If there is evidence of whosoever making any claim of ownership or interest in the asset, the Secretary-General shall notify in writing to that person for the exercise of the rights therein. The notice shall be sent by registered post with advice of receipt to such person's latest address as shown in the evidence.* *In the case under paragraph one, if there is a fact that there are damaged persons caused by the predicate offence, the Secretary-General shall request the public prosecutor to also file a petition to the court for an order to return or repay the value of assets connected with the commission of the offence to the damaged persons instead of forfeiting to the state. When there is such return or repayment order under this paragraph, the Office shall proceed in accordance with the order without delay.*

Thai Asset Management Institute	An independent law enforcement agency under the supervision of the Ministry of Justice operates under the direction of the anti-money laundering council, namely the Anti-Money Laundering Office (AMLO). AMLO is responsible for confiscating, managing, and disposing of confiscated property. Once AMLO confiscates assets, AMLO's Asset Management Bureau is responsible for safeguarding the assets, storing them until confiscated, and disposing of them.
Sources of funding	Anti-Money Laundering Fund

Based on Table 4.1 above, Indonesia does not yet have specific regulations that regulate the NCB asset forfeiture provisions or confiscation of assets without punishment. Indonesia still uses the criminal forfeiture approach or confiscation of assets in person after a criminal court decision has permanent legal force. However, in the Indonesian Asset Confiscation Bill, the concept of NCB asset forfeiture has begun to be adopted to recover assets resulting from criminal acts. This new paradigm for Indonesia addresses the weaknesses in legal regulations related to the asset confiscation system that applies in Indonesia. To ensure that the implementation of the asset confiscation bill using the NCB asset forfeiture concept does not conflict with one of the fundamental principles in criminal law, namely the 'principle of presumption of innocence', confiscation of assets based on the NCB asset forfeiture only applies if the KUHAP procedure cannot be carried out.(Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Terkait Dengan Tindak Pidana, 2022)

If explained in more detail and detail, confiscation of assets without punishment can be said to be a relatively comprehensive confiscation mechanism where the process starts from tracking assets, freezing assets, confiscation of assets, confiscation of assets (forfeiture), asset management, up to the utilization and maintenance of assets. However, the NCB asset forfeiture process can run effectively and efficiently according to expectations if there is a strong will from the attorney general's office as a representative of the state's interests to submit an asset request to the court. Apart from that, there must be feedback from the court that the NCB asset forfeiture process is a legal instrument as an implementation of the provisions of Article 54 paragraph (1) letter c AK 2003/ UNCAC because the existing positive legal

instruments cannot accommodate defendants who are declared free due to criminal acts. Not proven, the suspect died (suing his heirs), the defendant died (suing his heirs), and the defendant died before the court decision. Then, based on the available evidence, the public prosecutor asked the judge to confiscate assets related to the corruption case for the state (Article 79 of Law Number 8 of 2010). The construction and description of this aspect are impossible to apply to the provisions of Article 10 Letter B concerning the confiscation of goods. In certain cases, as well as the suspect, the defendant, is not a party to the case, so the alternative is that the assets become the target of confiscation and must be submitted to the court. (Lilik Mulyadi, 2020)

Meanwhile, the United States and Thailand have regulated their laws and regulations related to the provisions of the NCB asset forfeiture. In the United States, at the federal level, CAFRA explains that asset owners must be notified of the government's intention to confiscate assets, and asset owners have the right to file civil lawsuits to challenge confiscation. What is no less important here is that the government must provide sufficient evidence to support asset confiscation, and the asset owner does not have to be found guilty in a criminal court. Meanwhile, the USA Practical Guide to Asset Recovery also states that :

> *[...] actions are against property rather than a criminal defendant, and do not require a conviction. In pursuing a NCB confiscation, the USA court must exercise control over the property subject to confiscation. NCB confiscation actions require proof of the nexus between the particular property subject to confiscation and criminal conduct.*

Based on the USA Practical Guide to Asset Recovery, it is explained that in confiscating NCB asset forfeiture, the US court must exercise control over the property to be confiscated. NCB confiscation actions require proof of a connection between the particular property to be seized and the criminal offense. The implementation of NCB asset forfeiture also brought benefits to this country, where in 2006, the United States succeeded in taking over assets amounting to US$ 1.2 billion originating from and related to a major criminal act.(Cassella, 2008)

Meanwhile, the application of NCB asset forfeiture in Thailand as contained in table 4.1, explains that if there is evidence that believes that an asset is related to the commission of a criminal act, the Secretary-General forwards the case to the public

prosecutor for consideration to submit a petition to the Court to order confiscation. These assets are for the benefit of the state without any delay. The application of the NCB asset forfeiture was also seen in the case of confiscation of assets worth millions of dollars in Thailand involving suspected wildlife smugglers, where prosecutors used AMLA to target criminal assets even without criminal penalties. As per Thailand's Anti-Money Laundering Law of 1999 (AMLA 1999), money laundering charges can be brought for transferring and concealing profits from illegally exploiting natural resources.

Suppose there is convincing evidence that an asset is related to the commission of a criminal act. In that case, the public prosecutor can apply to the court to have the assets handed over to the State. Anyone claiming ownership of an asset must demonstrate ownership and show that the asset is not connected to any violation. Using powers under this law, in March 2021 Thai authorities ordered the seizure and freezing of assets worth 200 million baht (USD 6.37 million) related to alleged wildlife trafficking offenses.(Jonathan Spicer and Juhani Grossman, 2022)

Thailand provides commissions to special institutions for handling asset recovery as this institution aims to encourage the pursuit of assets and protect the authorities (officials) appointed by corruptors who use bribes to maintain ownership of their assets. The success of a forfeiture program depends on good asset management practices and ensuring that assets are maintained in good condition when seized so that economic value can be recovered from them for the benefit of the government at the end of the case. The most important thing is to maintain these assets effectively while in AMLO's care to minimize damage and depreciation. Once confiscated, the assets must be appraised by a qualified third party to determine their market value.

Therefore, it is important to consider checks and balances before and after the NCB asset forfeiture. Bearing in mind that the process of confiscating assets resulting from crime tends to be vulnerable to misuse by law enforcement officials. It should also be aligned with the principles of high transparency and accountability. So, with the principle of transparency, abuse can be avoided by certain parties.(Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana, 2023)

The confiscation of NCB assets forfeiture in civil and common law jurisdictions originates from the provisions in UNCAC, which requires all party states to consider confiscating the proceeds of crime without penalty. UNCAC proposes that asset confiscation through NCB asset forfeiture be considered in all jurisdictions to eradicate acts of corruption. Referring to the provisions for implementing NCB asset forfeiture in countries that adhere to civil law and common law legal systems, it is found that there are differences and similarities.

This will be explained in table 4.2 regarding NCB asset forfeiture in civil law and common law jurisdictions.(Theodore S. Greenberg; et al, 2009)

Table 4.2

Comparison of the use of NCB asset forfeiture

Legal System	Civil Law	Common Law
Equality	Actions against Property or assets *(in rem)*	
	Confidence is not required	
	Requires proof of unlawful acts	
Difference	The standard of proof required foreclosing a conviction beyond a reasonable doubt	The standard of proof required foreclosure on the balance of probabilities or preponderance of the evidence
	The court's jurisdiction is criminal	The court's jurisdiction is civil
	Prosecutor's discretion is limited	The prosecutor's discretion is broad

(Sumber: Stolen Asset Recovery, 2009)

If noted, NCB asset forfeiture offers an alternative to overcome some of the obstacles to asset recovery that policymakers and practitioners worldwide have identified. Where this concept is a new paradigm for Indonesia to address the weaknesses in legal regulations related to the asset confiscation system that applies in Indonesia. So, according to the author, Indonesia can learn lessons related to the experiences of the United States and Thailand, which have implemented NCB asset forfeiture in their countries for many years. However, different standards of proof

between each country can be based on differences in legal systems.

Management of assets resulting from criminal acts requires an approach that includes essential principles. The law enforcement impact of confiscation, beyond punishing perpetrators for wrongdoing and removing incentives to commit crimes, must remain paramount. Regarding managing assets resulting from criminal acts, the implementing agency must have clear procedures to recognize and record all assets confiscated during the investigation and litigation process. Such procedures should also involve managing and disposing of assets with transparency and determining whether the assets will be sold, retained, or used for a specific purpose, such as supporting crime prevention programs or other public needs. Efficient asset management can also contribute to the recovery of funds to support crime eradication efforts and optimize the economic benefits that can be gained from the confiscation of such assets.

The comparison results also show that the institutions or bodies that manage assets resulting from criminal acts after confiscation or forfeiture of assets in the United States, Thailand and Indonesia also have diversity. As the United States and Thailand have followed the money approach, it is important to have institutions with special competence in this field. In the United States, the U.S. Marshals Service generally does not seize assets, except for judicial forfeitures made under a federal court order. However, marshals manage assets seized by other federal agencies, such as the Federal Bureau of Investigation, the U.S. Immigration and Naturalization Service, and the Drug Enforcement Administration *(DEA)*.(G. Patrick Gallagher, 1989)

The US Marshals Service serves as the primary custodian of confiscated property. The U.S. Marshals Service identifies and evaluates assets and manages and disposes of most assets seized and forfeited through the program. In the United States and Indonesia, there is a separation of authority for institutions that confiscate and manage assets. Meanwhile, unlike in Thailand, asset confiscation and management are only carried out by AMLO. It has broad authority to investigate assets, trace and freeze assets, confiscate and manage assets, involve international cooperation and so on.

4. Conclusion

The conclusions of this study are as follows :

a. Indonesia, the United States and Thailand have provisions regarding confiscated assets' confiscation and management. The differences that each country has based on the results of the comparison above, which have been presented in this article, are not intended to show which country has the most superior standards among others in confiscating assets resulting from criminal acts and managing the assets resulting from these confiscations.

b. However, this comparison can provide knowledge and learning both for law formation for legislators and as a construction tool for courts and the judicial process to fill gaps in the law. NCB asset forfeiture seizures offer an alternative to overcome some of the barriers to asset recovery that policymakers and practitioners worldwide have identified. Indonesia can also learn from the successful experience of the United States and Thailand in implementing the NCB asset forfeiture concept. The existence of effective asset management procedures has a good impact on the government, which can obtain economic benefits from confiscation to enable it to protect and serve the community better.

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