

Acceleration of Legal Reformulation Regarding Non-Conviction Based Asset Forfeiture in Indonesia

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Abstract

The eradication of corruption is an important agenda in Indonesia, and one of the crucial aspects is the seizure of assets resulting from such criminal acts. However, Indonesia currently does not have a regulation that specifically regulates asset forfeiture without criminal charges (non-conviction based asset forfeiture), so legal reform in this regard is very important to be carried out by considering aspects of legal certainty and protection of citizens' rights. The purpose of this research is to examine the practice of asset forfeiture without criminal charges (Non-Conviction Based Asset Forfeiture) in other countries that have implemented it effectively, as well as to formulate an ideal model design of asset forfeiture without criminal charges to be implemented in Indonesia by considering aspects of legal certainty. This research will use normative legal research methods with a conceptual approach and a statutory approach. The sources of legal materials to be used include primary, secondary, and tertiary legal materials, with data collection techniques through library research and systematic and in-depth qualitative data analysis. The research results explain that the practice of asset forfeiture without criminal charges (Non-Conviction Based Asset Forfeiture) has been effectively implemented in several countries such as the United States, Italy, and the United Kingdom with different arrangements. Although effective, these countries also establish supervision and legal protection mechanisms to ensure that the implementation is carried out fairly and in accordance with applicable legal principles. The design of an ideal model of asset forfeiture without criminal charges to be implemented in Indonesia should be based on legal principles such as the principle of legality, due process of law, presumption of innocence, and proportionality by establishing a strong legal basis, fair and transparent judicial mechanisms, strict evidentiary standards, legal remedies for asset owners, establishment of an independent and supervised specialized institution, protection of good faith third parties, international cooperation, transparency of asset management, and strict monitoring and evaluation.

I. Introduction

The eradication of corruption has become an important agenda in the effort to realize clean government and good governance in Indonesia. One of the crucial aspects in the eradication of corruption is the seizure of assets derived from such criminal acts. However, the process of asset forfeiture in Indonesia currently still faces various challenges and obstacles, especially related to legal certainty and clear mechanisms.(Arti & Rizky, 2023) Therefore, legal reforms related to asset forfeiture without criminal charges are very important to be carried out so that efforts to eradicate corruption can be more effective and provide a significant deterrent effect.

Currently, Indonesia does not have legislation that specifically regulates non-conviction based asset forfeiture. Provisions related to asset forfeiture are only regulated in Law Number 31 Year 1999 on the Eradication of Corruption as amended by Law Number 20 Year 2001, which unites the asset forfeiture process with the criminal process.(Saputra, 2017) This results in the asset forfeiture process being hampered if there are obstacles in the criminal process, such as difficulty in finding evidence or the defendant dies before the process is completed.

To overcome these obstacles, the Government of Indonesia has sought the establishment of an Asset Forfeiture Bill (RUU) which is expected to provide a legal basis for asset forfeiture without criminal charges. However, the deliberation process of this bill has been going on for quite some time and has yet to be passed. Various parties are concerned that the delay in passing this bill could hamper efforts to eradicate corruption and recover state losses due to such criminal acts.(Agustine, 2019)

On the other side, there are concerns that asset forfeiture without criminal charges could potentially be misused if it is not well regulated and does not have clear legal certainty. Therefore, the formation of laws related to asset forfeiture without criminal charges must consider the principles of human rights, due process of law, and protection of the right to legal ownership. In addition, the asset forfeiture mechanism must also be clearly and transparently regulated to prevent abuse of authority and ensure legal certainty.(Maulana, 2019)

Several countries in the world have implemented asset forfeiture without criminal charges with various models and mechanisms. For example, the United States applies an in rem asset forfeiture system, where the asset itself is considered the "defendant" and can be forfeited without having to prove the owner's guilt. Meanwhile, Italy and Colombia use a non-conviction based forfeiture model, where assets can be forfeited if the owner cannot prove that the assets were legally obtained.(Latif & Ramadani, 2022)

The urgency to immediately have regulations that specifically regulate asset forfeiture is increasingly urgent. This is necessary to ensure effective law enforcement, especially in an effort to recover state losses due to corruption crimes. On the other hand, the implementation of asset forfeiture without criminal charges also needs to pay attention to aspects of legal certainty so as not to be abused or violate the rights of citizens.(Ruhijat et al., 2019) Therefore,

an in-depth study of asset forfeiture mechanisms without clear criminal charges and legal certainty is very important. This aims to ensure the realization of justice and optimal law enforcement, while protecting the rights of citizens from arbitrary actions. This research is expected to provide recommendations and input for the formation of appropriate regulations that are in accordance with the principles of applicable law in Indonesia.

Against this background, this research will comprehensively examine issues related to the acceleration of legal reform on asset forfeiture without criminal charges in Indonesia, by considering various aspects, including regulation, implementation, and legal certainty. The problem formulation in this research is:

1. How is the practice of asset forfeiture without criminal prosecution (Non-Conviction Based Asset Forfeiture) in other countries that have effectively implemented the regulation?
2. How to design an ideal model of asset forfeiture without criminal charges (Non-Conviction Based Asset Forfeiture) to be implemented in Indonesia by considering aspects of legal certainty?

II. Research Method

This research will use normative legal research methods. Normative legal research method is a research method carried out by examining and analyzing legal materials that are relevant to the problem under study.(Marzuki, 2021) This method was chosen because this research aims to examine normative aspects related to asset forfeiture without criminal charges in Indonesia, and formulate an ideal model design by considering aspects of legal certainty.

In this research, a conceptual approach and a statutory approach will be used. The conceptual approach is conducted by reviewing and analyzing legal concepts and doctrines relevant to the research topic. This aims to obtain a comprehensive understanding of the concept of asset forfeiture without criminal charges theoretically. Meanwhile, the statutory approach is conducted by reviewing and analyzing laws and regulations related to asset forfeiture, both in Indonesia and in other countries that will be used as comparative studies.(Muhaimin, 2020)

The sources of legal materials to be used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, court decisions, and international treaties relevant to the research topic. Secondary legal materials include books, scientific journals, research results, and other literature discussing asset forfeiture without criminal charges. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other sources that can provide further explanation regarding legal terms or concepts used in this research.(Butarbutar, 2018)

Data collection techniques in this research will be carried out by library research. Literature study is conducted by collecting, studying, and analyzing legal materials relevant

to the research topic.(Sugiyono, 2019) The search for legal materials will be conducted through libraries, legal documentation centers, and reliable online sources. The data analysis technique that will be used in this research is qualitative analysis. Qualitative analysis is carried out by analyzing and interpreting legal materials that have been collected systematically and in depth. In the analysis process, interpretation, reasoning, and logical and objective conclusions will be made based on the data obtained. The results of the analysis will be presented in a descriptive analytical form that describes and explains in depth the problems studied, and provides recommendations or appropriate solutions.(J. Moleong, 2017)

III. Results and Discussion

Asset Forfeiture Practices without Criminal Charges (Non-Conviction Based Asset Forfeiture) In Other Countries That Have Implemented Asset Forfeiture Rules

Asset forfeiture practices without criminal charges (Non-Conviction Based Asset Forfeiture) Asset forfeiture has been implemented in several countries with the aim of combating crimes such as corruption, drug trafficking, and money laundering. In this paper, we will study the practice of asset forfeiture without criminal prosecution in three countries, namely the United States, Italy and the United Kingdom, which have effectively implemented such rules.

USA(United State America)

The United States is one of the pioneer countries in implementing asset forfeiture without criminal charges, known as "civil asset forfeiture". This practice is regulated in the Civil Asset Forfeiture Reform Act, which was passed in 2000. This law authorizes federal and state governments to seize assets suspected of being related to illegal activities, even if the owner of the assets is not criminally convicted.(Stevenson & Wagoner, 2011)

This rule has been in use since the mid-19th century and was further strengthened with the passage of laws such as the Comprehensive Drug Abuse Prevention and Control Act in 1970 and the Comprehensive Crime Control Act in 1984. These laws give law enforcement broad powers to seize assets suspected of being related to illegal activities, including assets that cannot be traced directly to ownership.(Weedn et al., 2021)

In practice, asset forfeiture without criminal charges in the United States can be carried out through two channels, namely civil forfeiture and criminal forfeiture. Civil proceedings are conducted without any criminal charges against the asset owner, and the burden of proof is on the government. Criminal proceedings are conducted after a conviction in a criminal case, and the assets involved may be forfeited as part of the sentence.(Fitriyani & Maizaroh, 2023)

The process of asset forfeiture without criminal charges in the United States begins with the seizure of assets suspected of being linked to a crime. The government then files a

civil lawsuit to prove that the assets were derived from illegal activities. If successfully proven, the assets can be seized by the government. While this practice has drawn controversy related to the potential for abuse of power, it is also considered effective in cutting off funding sources for organized crime and returning illegally acquired assets.(Irianto, 2022)

One successful application of asset forfeiture without criminal prosecution in the United States can be seen from a major case involving the Bank of Credit and Commerce International (BCCI) in 1991. In this case, the US government was able to seize over \$1 billion worth of assets related to BCCI's money laundering and fraud activities. Although there were no criminal charges against the bank, the government was able to seize the assets through civil proceedings.(Nugraha et al., 2023)

Italy

Italy is one of the countries in Europe that has effectively implemented asset forfeiture without criminal charges, especially in combating organized crime such as the mafia. The law governing asset forfeiture without criminal charges in Italy is Law No. 646/1982, known as the "Rognoni-La Torre Law". This practice is regulated in the Italian Anti-Mafia Law (Codice Antimafia) passed in 2011.(Calamunci et al., 2023) This law allows for asset forfeiture without having to wait for criminal prosecution or conviction of the asset owner, provided that it can be proven that the asset was obtained from the proceeds of crime. Under the law, asset forfeiture without criminal charges can be carried out against assets suspected of originating from organized criminal activity, even if there is no direct evidence linking the assets to a specific crime. Asset forfeiture proceedings are conducted through civil courts, and the burden of proof is on the government to prove that the assets originated from illegal activities.(Tromme, 2019)

The implementation of asset forfeiture without criminal charges in Italy has proven to be effective in combating the mafia, especially in weakening the financial power of such criminal organizations. One successful case was the seizure of over €1.7 billion worth of assets linked to the Sicilian mafia family, Cosa Nostra, in 2014.(Saputra, 2017) One of the successful implementations of asset forfeiture without criminal charges in Italy can be seen in the case of the seizure of assets belonging to the notorious mafia family, Cosa Nostra, in 2019. In this case, the Italian government successfully seized €1.5 billion worth of assets owned by the mafia family, including companies, real estate, and other investments. This asset seizure was carried out through civil proceedings without having to wait for criminal charges or convictions against members of the mafia family.(Irwan, 2021)

UK (United Kingdom)

The UK also implements asset forfeiture without criminal charges, known as civil recovery. This practice is regulated by the Proceeds of Crime Act passed in 2002. The Act authorizes the Asset Recovery Office to bring civil actions against assets suspected of being

derived from illegal activities, without having to wait for criminal charges to be brought.(Kristanto et al., 2022)

One of the mechanisms used is a "civil recovery order" which allows the government to apply for asset forfeiture without having to wait for criminal charges or conviction of the asset owner. The successful implementation of asset forfeiture without criminal charges in the UK can be seen from major cases such as the £109 million asset forfeiture of Pakistani businessman Malik Riaz in 2019. In this case, Riaz's assets located in the UK were seized through civil proceedings after evidence was found that the assets were obtained from the proceeds of corruption and money laundering in Pakistan.(, et al., 2018)

The process of asset forfeiture without criminal charges in the UK begins with an initial investigation by the Asset Recovery Office. If strong evidence is found that the assets have been derived from illegal activities, the Asset Recovery Office can bring a civil action in the High Court. If the claim is granted, the asset can be seized by the government. This practice has proven effective in recovering the proceeds of crime and hindering organized crime activities in the UK.(Fitriyani & Maizaroh, 2023)

While the practice of asset forfeiture without criminal prosecution has proven to be effective in combating crime, it has also generated controversy related to potential human rights violations and government abuse of power. Therefore, in implementing this practice, countries have established various oversight mechanisms and legal safeguards to ensure that asset forfeiture is conducted fairly and in accordance with applicable legal principles.(Hidayat & Karim, 2023)

These oversight mechanisms and legal protections include transparent and accountable judicial processes, strict evidence in civil lawsuits, and the right to appeal for aggrieved asset owners. In addition, these countries also set clear time limits in the asset forfeiture process to avoid excessive restraint of property rights.(Pratiwi et al., 2016)

Comparative studies of asset forfeiture practices without criminal charges in these countries show that this practice can be an effective instrument in fighting crime, especially organized crime and corruption. However, its implementation must be done with caution and followed by strict oversight mechanisms to ensure the protection of citizens' rights and the principles of applicable law.(Hapsari et al., 2022)

The experience of these countries in implementing asset forfeiture without criminal charges can be a valuable lesson for Indonesia in its efforts to formulate appropriate and effective regulations related to similar practices. By considering the best practices and challenges faced by other countries, Indonesia can design a model of asset forfeiture without criminal charges that is in accordance with national conditions and needs, and guarantees the protection of citizens' rights and legal certainty.(Hidayat & Karim, 2023)

In the Indonesian context, comparative studies of asset forfeiture practices without criminal charges in other countries can provide valuable learning and input. The experience of these countries can serve as a reference in designing regulations and mechanisms for asset

forfeiture without criminal charges that are appropriate to be applied in Indonesia. However, of course, it must be adjusted to the legal context, culture, and socio-economic conditions in Indonesia.(Fajrin & Triwijaya, 2019)

In general, the practice of asset forfeiture without criminal prosecution has proven to be effective in assisting law enforcement and the recovery of assets from criminal offenses in various countries. However, its implementation must be done carefully and pay attention to aspects of human rights protection and legal certainty. By considering the experiences of other countries and adjusting them to the Indonesian context, it is hoped that a model of asset forfeiture without criminal charges can be formulated that is effective, fair, and in accordance with the principles of applicable law in Indonesia.

By studying the practice of asset forfeiture without criminal charges in countries such as the United States, Italy and Columbia, we can gain valuable lessons in our efforts to combat organized crime and other criminal acts in Indonesia. However, its application must be adapted to the legal and cultural context of Indonesian society, as well as considering aspects of legal certainty and protection of citizens' rights.

Design of Asset Forfeiture Model without Criminal Charges (Non-Conviction Based Asset Forfeiture) Ideal to be Applied in Indonesia by Considering Aspects of Legal Certainty

In an effort to realize effective and fair law enforcement, the design of an asset forfeiture model without criminal charges (Non-Conviction Based Asset Forfeiture) that is ideal for implementation in Indonesia must comprehensively consider aspects of legal certainty. Legal certainty is a fundamental principle that must be upheld to prevent abuse of authority and protect the rights of citizens.(R. et al., 2022) Therefore, in formulating the model design, the approach of legal formulation policy or criminal law is very important.

One important aspect that needs to be considered in the design of asset forfeiture models without criminal charges is the protection of property rights. The right to property is a human right guaranteed in the constitution and international legal instruments.(Farida, 2022) Therefore, asset forfeiture mechanisms without criminal charges should be complemented by clear and strict procedures to ensure that property rights are not violated arbitrarily.

In this context, the design of an asset forfeiture model without criminal charges can adopt the principles of applicable criminal procedure law, such as due process of law and presumption of innocence. This means that prior to asset forfeiture, there must be a fair and open judicial process, where asset owners have the opportunity to defend themselves and prove that the assets they own were legally obtained. In addition, the burden of proof must be placed on the law enforcement authorities to prove that the assets are the proceeds of a criminal offense.(Fauzia & Hamdani, 2022)

In the context of legal formulation policy, the design of an asset forfeiture model without criminal charges must consider the legal principles applicable in Indonesia, such as the principle of legality, the principle of presumption of innocence, the principle of due process of law, and the principle of proportionality.(Utari & Arifin, 2019) This aims to ensure that the application of asset forfeiture without criminal charges does not contradict the principles of Indonesian law and constitution.

Furthermore, the design of the asset forfeiture model without criminal charges should also set a high standard of proof, such as "proof beyond reasonable doubt". This standard of proof must be able to prove that the assets to be seized originate from a criminal offense, without the need for a criminal court decision first. A strict standard of proof is necessary to ensure legal certainty and avoid arbitrariness in the asset forfeiture process.(Rampadio et al., 2022) In addition, the design of asset forfeiture models without criminal charges should include an appeal mechanism or other legal remedies for aggrieved asset owners. This is important to ensure that there are checks and balances in the justice system and provide an opportunity for asset owners to seek justice in the event of errors or abuse of authority in the asset forfeiture process.(Syarafi & Syahbandir, 2024)

From a criminal law perspective, the design of an asset forfeiture model without criminal charges must consider aspects related to the application of penalties or sanctions. In this case, asset forfeiture without criminal charges can be viewed as a form of punishment or sanction against the perpetrator of a criminal offense, even though there is no criminal court decision. Therefore, the model design must ensure that the implementation of asset forfeiture without criminal charges still fulfills the principles of criminal law, such as the principle of legality, the principle of justice, and the principle of proportionality.(Mahmud et al., 2022)

In the context of legal certainty, the design of the asset forfeiture model without criminal charges must ensure the existence of strict supervision and accountability mechanisms. This can be realized by establishing a special institution or body responsible for conducting asset forfeiture without criminal charges. This institution or body must have clear authority, and be closely monitored by an independent supervisory institution to prevent abuse of authority.(Syarafi & Syahbandir, 2024)

In addition, the design of an asset forfeiture model without criminal charges must ensure that there are legal remedies that can be pursued by the owner of the asset forfeited. These legal remedies can be in the form of an appeal mechanism or a lawsuit to the court to question the legitimacy of the asset forfeiture process. With clear legal remedies, asset owners have the opportunity to defend their rights and ensure that the asset forfeiture process is carried out fairly and in accordance with applicable legal provisions.(Nugraha et al., 2023)

From an institutional perspective, the design of an asset forfeiture model without criminal charges could involve a special institution that is independent and specialized in handling asset forfeiture cases. This institution can consist of judges, prosecutors, and

investigators who have expertise and experience in the field of asset forfeiture. The existence of this specialized institution is expected to increase the effectiveness and legal certainty in the asset forfeiture process.(Suud, 2020)

Another aspect to consider in the design of an asset forfeiture model without criminal charges is the protection of bona fide third parties. In certain situations, the assets to be forfeited may be owned or controlled by third parties who are not involved in the criminal offense.(Ndaomanu, 2023) Therefore, the design of the model should provide mechanisms to protect the rights of good faith third parties, as well as provide fair compensation if their assets are seized.

From the perspective of legal formulation policy or criminal law, the design of an asset forfeiture model without criminal charges must be based on universally accepted legal principles, such as the principles of legality, non-retroactivity, and proportionality. The principle of legality requires a clear and firm legal basis before asset forfeiture is carried out. The principle of non-retroactivity guarantees that asset forfeiture can only be carried out against criminal offenses that occur after the enactment of asset forfeiture regulations. Meanwhile, the principle of proportionality ensures that asset forfeiture measures are carried out proportionally and not excessively.(Jannah et al., 2023)

In its implementation, the design of the asset forfeiture model without criminal charges must also be supported by competent human resources with integrity and adequate infrastructure. Law enforcers involved in the asset forfeiture process must have adequate knowledge and skills, as well as a good understanding of the principles of law and human rights. In addition, there is a need for continuous training and education to increase the capacity and professionalism of law enforcers in implementing asset forfeiture without criminal charges.(Fauzia & Hamdani, 2022)

Another aspect to consider in the design of asset forfeiture models without criminal charges is international cooperation. Crimes that generate illegal assets often involve cross-border crimes, which requires close international cooperation in the asset forfeiture process. The design of the model should facilitate international cooperation, both in the form of bilateral and multilateral agreements, to facilitate the process of identification, tracking and seizure of assets located outside the territory of the state.(Prawira & Alamsyah, 2023)

Then, the design of the asset forfeiture model without criminal charges must ensure transparency and accountability in the management of assets that have been seized. Seized assets must be managed transparently and accountably, ensuring that they are used for the public interest and not misused for the benefit of certain individuals or groups. The model design can regulate strict monitoring and reporting mechanisms for the management of forfeited assets, and involve public participation in the monitoring process..(Syarafi & Syahbandir, 2024)

Finally, the design of an asset forfeiture model without criminal charges must be accompanied by strict monitoring and evaluation mechanisms. This aims to ensure that the

implementation of asset forfeiture is carried out in accordance with legal principles and is not misused for the benefit of certain individuals or groups. The monitoring and evaluation mechanism can involve independent institutions, such as external supervisory institutions or civil society organizations.(Nugraha et al., 2023)

By considering these aspects, the design of an ideal model of asset forfeiture without criminal charges to be implemented in Indonesia is expected to realize effective law enforcement while upholding legal certainty and protection of citizens' rights. This is important to ensure justice, public trust, and the rule of law in efforts to eradicate criminal acts, especially corruption.

4. Conclusion

The practice of asset forfeiture without criminal charges (Non-Conviction Based Asset Forfeiture) has been effectively implemented in several countries such as the United States, Italy, and the United Kingdom. In the United States, this practice is known as "civil asset forfeiture" and is regulated in the Civil Asset Forfeiture Act. In Italy, this practice is regulated in the Anti-Mafia Law and has proven effective in combating organized crime such as the mafia. While in the UK, the practice of asset forfeiture without criminal charges is known as "civil recovery" and is regulated in the Crime Prevention Act. Despite its effectiveness, these countries have also established oversight mechanisms and legal safeguards to ensure that it is implemented fairly and in accordance with applicable legal principles.

The design of an ideal model of asset forfeiture without criminal charges (Non-Conviction Based Asset Forfeiture) to be implemented in Indonesia by considering aspects of legal certainty must be based on applicable legal principles, such as the principles of legality, due process of law, presumption of innocence, and proportionality. This can be realized by establishing a strong legal basis, fair and transparent judicial mechanisms, strict evidentiary standards, legal remedies for asset owners, the establishment of independent and supervised special institutions, protection of good faith third parties, international cooperation, transparency of asset management, and strict supervision and evaluation to prevent abuse of authority and protect the rights of citizens.

Based on the research results, suggestions that can be given for the implementation of asset forfeiture without criminal charges (Non-Conviction Based Asset Forfeiture) in Indonesia by considering aspects of legal certainty and protection of citizens' rights are that Indonesia needs to form special regulations governing asset forfeiture without criminal charges with a strong legal basis and fair and transparent judicial mechanisms. The regulation should set strict evidentiary standards, provide legal remedies for asset owners, establish an independent and supervised specialized institution, protect good faith third parties, regulate international cooperation, ensure transparency of asset management, and regulate strict monitoring and evaluation. This aims to ensure that the application of asset forfeiture without criminal charges is carried out in accordance with legal principles such as the principle of legality, due process of law, presumption of innocence, and proportionality, so that it can be

an effective instrument in combating corruption without compromising legal certainty and citizens' rights.

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