

# Juridical Analysis Of The Mechanism Of Non-Conviction Based Asset Forfeiture In The Settlement Of Corruption Crimes

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## Juridical Analysis Of The Mechanism Of Non-Conviction Based Asset Forfeiture In The Settlement Of Corruption Crimes

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**Abstract.** Corruption is one of the major problems that hinder development and prosperity in Indonesia. In Batam City, the handling of corruption crimes is often not optimal, especially in the aspect of recovering illegally obtained assets. The Non-Conviction Based Asset Forfeiture (NCBAF) mechanism is one of the instruments that is expected to accelerate the process of recovering state losses without having to wait for criminal punishment. This research aims to assist in the regulation of NCBAF laws and standards in resolving corruption crimes in Batam City, as well as identify obstacles faced and efforts that can be made to optimize their implementation. The research methods used are normative juridical and empirical juridical. The normative juridical approach is carried out by reviewing relevant regulations, including Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, as well as related literature. The empirical juridical approach is carried out through case studies and interviews with law enforcement officials in Batam City. The results of the study show that although the NCBAF has been regulated in the regulations, its implementation in Batam City still faces various obstacles, such as lack of coordination between law enforcement agencies, high standards of proof, unclear legal procedures, and limited resources and technical capacity of the apparatus. Examples of corruption in infrastructure assistance, embezzlement of social funds, and corruption in the procurement of goods and services show that assets suspected of originating from criminal acts often cannot be immediately confiscated and utilized by the state. To overcome these obstacles, this study suggests increased coordination between law enforcement agencies through the formation of special teams, the preparation of clear standard operating procedures (SOPs), intensification of training for law enforcement officials, increased international cooperation, and community campaigns to increase public awareness and support. With these steps, the NCBAF is expected to become a more effective instrument in eradicating corruption and recovering state losses in Batam City.

**Keywords:** Juridical Analysis, Asset Forfeiture, Corruption Crime

### 1. INTRODUCTION

Corruption has long been recognized as one of the main obstacles to economic and social development in various countries. Corruption is one of the crimes that is very detrimental to the state finances and economy of a country. Various efforts have been made by the government and law enforcement agencies to eradicate corruption, one of which is through the confiscation of assets resulting from corruption. However, the long and complicated criminalization process is often an obstacle in efforts to return assets to the state. Corruption not only drains state finances but also damages the principles of justice and equality in society. Various mechanisms have been implemented by countries in the world to combat corruption, one of which is through the confiscation of assets resulting from corruption. In Indonesia itself, the implementation of UNCAC, namely the amendment to the Corruption Eradication Law and the Money Laundering Law (TPPU), became the basis for the establishment of the Corruption Eradication Commission (KPK) and the Financial Transaction Reports and Analysis Center (PPATK), and also as the basis for the formation of Law Number 46 of 2009 concerning the Corruption Crime Court.

One of the problems of asset recovery related to corruption, for example, can be seen from the concept of corruption in Indonesia which does not always cause state financial losses. This is because only corruption as referred to in Article 2 and Article 3 of Law Number 46 of 2009 concerning the Corruption Court (UUPTPK), which mentions state financial losses. While Articles 5 to 13 of the PTPK Law do not mention state financial losses. However, corruption that generally does not cause state financial losses causes losses to other parties, both individuals and non-institutions (government institutions). Whatever type of corruption is committed, perpetrators of corruption generally obtain property from the corruption they commit. In criminal trials, assets obtained from criminal acts can be confiscated, and in the court decision the status of the confiscated items is decided, for example confiscated for the state. However, in the criminal trial process, it is also possible for the suspect or defendant to die, thus eliminating the state's right to prosecute the perpetrator in the case, and the trial process is stopped. However, this does not mean that legal action cannot be taken against the assets resulting from the crime or should be stopped.

Thus, this research is not only relevant from an academic perspective but also very important in the context of legal policy and law enforcement in Indonesia. Through this research, it is expected to provide concrete recommendations to improve the mechanism of asset confiscation in corruption cases, while at the same time providing guarantees of justice and protection of human rights. In conclusion, the legal analysis of NCBAF is expected to provide a significant contribution in efforts to strengthen the legal and institutional framework in eradicating corruption in Indonesia. Based on the problems above, the author is interested in making it a scientific work in the form of a thesis with the title "Legal Analysis of the Mechanism of Non-Conviction Based Asset Forfeiture in the Settlement of Corruption Crimes (Research Study in Batam City)".

Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

- a. How is the legal arrangement of the mechanism of asset confiscation without punishment (Non-Conviction Based Asset Forfeiture) in resolving corruption crimes in Indonesia?
- b. How is the implementation of asset confiscation without punishment (Non-Conviction Based Asset Forfeiture) for corruption cases?
- c. What are the obstacles and efforts to implement asset confiscation without punishment (Non-Conviction Based Asset Forfeiture) for corruption cases?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

1. To find out and analyze the legal arrangements for the mechanism of asset confiscation without punishment (Non-Conviction Based Asset Forfeiture) in resolving corruption crimes in Indonesia.
2. To find out and analyze the application of asset confiscation without punishment (Non-Conviction Based Asset Forfeiture) for corruption cases.
3. To find out and analyze the obstacles and efforts to implement asset confiscation without punishment (Non-Conviction Based Asset Forfeiture) for corruption cases.

## 2. LITERATURE REVIEW

The development of criminal acts of corruption is now growing very rapidly, initially corruption was classified as an ordinary crime, but now it has become an extraordinary crime. Corruption has a negative impact on the order of national life and even corruption is a deprivation of the economic and social rights of the Indonesian people. Corruption in Indonesia is now systemic and endemic, not only detrimental to state finances but also threatening the nation's economy. The crime of corruption or what is also called an act of enriching oneself or a group is an act that is very detrimental to other people, the nation and the state. The elements of the crime of corruption when viewed in the provisions of Article 2 paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption states that the crime of corruption is "any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah).

Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption states that, "in the case of criminal acts of corruption as referred to in paragraph (1) being committed under certain circumstances, the death penalty may be imposed." Corruption is very complex and related to various problems, not only legal problems and weak law enforcement but also concerning moral/mental attitude problems, lifestyle problems, culture and social environment, economic needs and economic disparities, cultural/political system problems and development mechanisms and weak bureaucracy/procedures including supervision in the financial and

public service sectors. <sup>3</sup> Corruption is a violation of social and economic rights of the community, so that corruption can be classified as an extraordinary crime (extra-ordinary crimes). Therefore, its eradication must also be carried out in an extraordinary way (extra-ordinary enforcement).<sup>1</sup>

<sup>35</sup> In accordance with the principle of the rule of law, the principles of good governance can only be realized and implemented if they are translated into legal regulations that form the basis for the implementation of government and are enforced in its implementation. In other words, good governance can only be realized if law enforcement is carried out, especially laws that regulate the implementation of government. Therefore, <sup>18</sup> the law must be enforced consistently and non-discriminatively.<sup>2</sup> Law enforcement is a must in professional governance. As stated by Bagir Manan, that "Correct law enforcement is fair and just law enforcement, and fair law enforcement is law enforcement that provides protection and great benefits for everyone and the seeker of justice themselves. The extent to which understanding of the meaning and implementation of law enforcement will greatly determine the real image of law in society. A series of complete, good and perfect principles and rules do not mean much to society if they are not implemented or enforced correctly and fairly."<sup>3</sup>

<sup>7</sup> The authority of the Prosecutor's Office to conduct the process of investigating corruption cases is stated in point 3 of the general explanation of Law Number 16 of 2004 which in essence states: "The authority of the Prosecutor's Office to conduct investigations into certain criminal acts is intended to accommodate several provisions of the law that give the <sup>32</sup> Prosecutor's Office the authority to conduct investigations, for example <sup>30</sup> Law Number 26 of <sup>14</sup> 2000 concerning the Human Rights Court, Law Number 31 of 1999 concerning the Eradication <sup>14</sup> of Criminal Acts of Corruption as amended by Law Number 20 of 2001, and Law Number 30 <sup>9</sup> of 2002 concerning the Corruption Eradication Commission. The implementation of Non-Conviction Based Asset Forfeiture (NCBAF) in Indonesia arose from the urgent need to combat corruption more effectively and efficiently, especially in the context of recovering corrupted assets. Corruption has long been an endemic problem that is deeply rooted in various levels of society and government, causing significant financial losses to the state and hampering economic development and public welfare.

<sup>24</sup> <sup>1</sup> Sarda Nawawi Arief, *Kapita Selektta Hukum Pidana*, Citra Aditya Bakti, Bandung, 2003, hal. 71

<sup>2</sup> Bagir Manan, *Beberapa Catatan Atas Rancangan Undang-undang Tentang Minyak dan Gas Bumi*, FH U5 PAD, Bandung, 1999, hal. 34

<sup>3</sup> Romli Atmasasmita, *Korupsi, Good Government dan Komisi Anti Korupsi di Indonesia*, Badan Pembinaan Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia Republik Indonesia, Jakarta, 2002, hal. 25

The implementation of NCBAF also requires cooperation between institutions both domestically and internationally, considering that assets from corruption are often stored or invested outside national jurisdictions. One of the main challenges in implementing NCBAF is balancing effectiveness in recovering assets with the protection of human rights, including the right to justice and property rights.<sup>4</sup> This requires a clear procedure to allow parties who feel aggrieved by the asset confiscation process to file objections and receive fair legal review. The successful implementation of the NCBAF is measured not only by the number of assets recovered, but also by how fairly the process is carried out, and how well the mechanism is able to respect the principles of justice and human rights. Thus, the NCBAF is not only an effective tool in the fight against corruption, but also strengthens a fair and transparent legal system.

### 3. RESEARCH METHOD

In the thesis research entitled "Legal Analysis of the Mechanism of Non-Conviction Based Asset Forfeiture in the Settlement of Corruption Crimes", the application of the analytical descriptive research method is a systematic approach to understand, explain, and analyze the mechanism of Non-Conviction Based Asset Forfeiture (NCBAF) and its implications in the context of Indonesian law. Through an analytical descriptive approach, this study aims to provide an in-depth and evidence-based understanding of NCBAF, which can make an important contribution to the development of legal policies and practices in eradicating corruption in Indonesia.

This study will use a normative legal approach to analyze the laws and regulations relevant to the study<sup>5</sup>. Using a normative legal approach to analyze the existing legal framework and its relevance to NCBAF. Then applying qualitative analysis to data from case studies, interviews, and relevant literature to obtain a real picture of this study by adopting an empirical legal approach.<sup>6</sup>

The location of this research is carried out in the Riau Islands Province, precisely in Batam City. This location is determined based on the data that is the object of this thesis research. The population is all elements related to the object of research. As for the sample

<sup>4</sup> July Wiarti, "Non- Conviction Based Asset Forfeiture sebagai Langkah untuk Mengembalikan Kerugian Negara (Perspektif Analisis Ekonomi terhadap Hukum)", *Journal UIR Law Review* 1 (2017), hal. 107.

<sup>5</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif suatu Tinjauan Singkat*, Radja Grafindo Persada, Jakarta, 2013, hal. 47.

<sup>6</sup> *Ibid*, hal. 52.

used by the author is the purposive sampling technique in determining respondents and informants who will be interviewed to meet the primary data needed to complete the research.

#### **4. RESULTS AND DISCUSSION**

##### **Legal Arrangement of Non-Conviction Based Asset Forfeiture Mechanism in Settling Corruption Crimes in Indonesia**

Legal arrangements for non-criminal working mechanisms in resolving corruption crimes in Indonesia must be designed and implemented by taking into account the principles of justice, legal certainty, and protection of human rights. This includes the preparation of clear regulations, fair legal procedures, and effective oversight mechanisms to ensure that the goal of eradicating corruption can be achieved without sacrificing the basic principles of law and justice.

###### **a. United Nations Convention Against Corruption (UNCAC)**

The United Nations Convention Against Corruption (UNCAC) is an international instrument adopted by the United Nations General Assembly on 31 October 2003 and entered into force on 14 December 2005. The Convention aims to combat corruption in all its forms by encouraging member states to adopt legislative, administrative and judicial measures necessary to prevent, detect and punish corruption. One of the main features of the UNCAC is its emphasis on the recovery of assets obtained from corruption as a critical component of the global effort to combat corruption. Article 54 paragraph (1) letter c of the UNCAC underlines the importance of the non-conviction based asset forfeiture (NCBAF) standard.

###### **b. Law on the Eradication of Corruption (UUPTK)**

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (UUPTK) in Indonesia is an important legal basis in efforts to eradicate corruption in this country. Articles 2 and 3 of UUPTK are the core of this regulation which defines acts of corruption and determines applicable sanctions. Article 2 paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (UUPTK) states that "Any person who independently, unlawfully, carries out an act that benefits himself or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR

<sup>8</sup> 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

**c. Law on Money Laundering (TPPU)**

Legal regulation of the mechanism of non-conviction based asset forfeiture in resolving corruption crimes in Indonesia. The Money Laundering Law (TPPU) in Indonesia has a significant role in supporting efforts to eradicate corruption by allowing <sup>13</sup> the confiscation of assets suspected of originating from criminal acts, including <sup>16</sup> corruption, without requiring prior criminal punishment. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering comprehensively regulates the mechanism for tracing, freezing, confiscating, and confiscating assets suspected of originating from illegal activities.

<sup>33</sup> **Implementation of Non-Conviction Based Asset Forfeiture for Corruption Cases**

Non-Conviction Based Asset Forfeiture (NCBAF) is a legal mechanism that allows the use of assets suspected of originating from criminal acts without requiring prior criminal punishment. In Indonesia, provisions regarding NCBAF are regulated in the Money Laundering Law (TPPU) and the Corruption Eradication Law (UUPTPK). The main objective of NCBAF is to accelerate the process of returning illegally obtained assets to the state, reduce financial losses, and ensure that the proceeds of corruption cannot be used by the perpetrators. In Batam City, there was a corruption case involving the use of Regional Revenue and Expenditure Budget (APBD) funds for fictitious projects. Several high-ranking officials were involved in calculating this budget, but the legal process was slow and ineffective. Many assets suspected of originating from the proceeds of this crime could not be confiscated due to complex and lengthy legal procedures. The implementation of NCBAF could allow the confiscation of assets suspected of being related, without waiting for the criminal process to be completed, so that state losses could be reduced more quickly.

One official in Batam City is suspected of receiving gratification in the form of property assets and luxury vehicles as an imbalance in the ease of licensing and government projects. Although there is strong evidence regarding the receipt of this gratification, the legal process faces various obstacles, including the loss of evidence and difficulties in tracking the assets that have been transferred. The implementation of NCBAF allows authorities to immediately seize and secure the assets based on strong suspicions that the assets originate from criminal

acts, even though there has been no binding court decision.<sup>7</sup> The implementation of NCBAF in Batam City faces various challenges that cause this mechanism to not run optimally. Although legally, NCBAF has been adopted in regulations, its implementation in the field is often hampered by several factors. One of the main factors is the lack of effective coordination between law enforcement agencies, such as the Police, the Prosecutor's Office, the Corruption Eradication Commission (KPK), and the Financial Transaction Reports and Analysis Center (PPATK).

The implementation of NCBAF for corruption cases in Batam City still faces many challenges that hinder its effectiveness. From the perspective of legal system theory, the lack of coordination between law enforcement agencies, the unclear substance of the law, and the legal culture that is not yet fully supportive are the main factors that hinder the implementation of NCBAF. From the perspective of legal certainty theory, the unclear procedures, inconsistency in application, and protection of basic individual rights are also significant obstacles. To improve the effectiveness of NCBAF in Batam City, there needs to be a joint effort to improve coordination between agencies, clarify legal procedures, and increase awareness and understanding of the importance of this mechanism in eradicating corruption.

### **Obstacles and Efforts to Implement Non-Conviction Based Asset Forfeiture for Corruption Cases**

Obstacles to the implementation of non-conviction based asset forfeiture for corruption cases in Batam City, namely:

One of the main obstacles in implementing NCBAF in Batam City is the lack of effective coordination between law enforcement agencies. NCBAF involves various agencies such as the Police, the Prosecutor's Office, the Corruption Eradication Commission (KPK), and the Financial Transaction Reports and Analysis Center (PPATK). The lack of good coordination between these agencies can result in inefficiencies in the process of identifying, attaching, and confiscating assets. For example, data and information that is not synchronized or not well integrated between agencies can slow down and complicate the legal process<sup>8</sup>.

The implementation of NCBAF requires strong enough evidence to prove that the seized assets are truly derived from the proceeds of corruption. This high standard of proof is often an obstacle because assets suspected of being the proceeds of crime are often diverted or transferred in complex ways. Corruptors usually have access to significant resources to hide

<sup>7</sup> Ketut Kasna Dedi, Kepala Kejaksaan Negeri Batam, Wawancara pada tanggal 5 Juni 2024

<sup>8</sup> A.H. Satrio, Kasi Pius Kejaksaan Negeri Batam, Wawancara pada tanggal 5 Juni 2024

the traces of their assets, making it difficult for law enforcement to collect sufficient evidence.

Complicated legal procedures and the lack of clear guidance on the implementation of NCBAF also hamper the implementation of this mechanism. Unclear standard operating procedures (SOPs) and inconsistent regulations can cause confusion among law enforcement officers and slow down the process of asset implementation. In addition, corruptors often exploit loopholes in the law and procedures to file for approval or appeal against the handover decision, which can result in a protracted and ineffective legal process.

Lack of resources and technical capacity among law enforcement officers is also a significant obstacle in implementing NCBAF in Batam City. Law enforcement officers may be less equipped with the skills and knowledge necessary to conduct complex financial investigations and trace hidden assets. In addition, budget and operational resource constraints may limit the ability of law enforcement agencies to carry out their duties effectively.

Legal culture and public perception of corruption also affect the effectiveness of NCBAF implementation. In Batam City, as in many other areas, corruption is often considered commonplace and difficult to eradicate. This perception can reduce public support for anti-corruption efforts and hinder law enforcement. In addition, distrust of the legal system and law enforcement can exacerbate the situation, making the public reluctant to report corruption cases or provide information needed for investigations.

Corruption often involves assets held or invested abroad. This adds complexity to the implementation of NCBAF as it requires international cooperation to track, freeze and seize assets held abroad. This process can be hampered by differences in laws, bureaucracy and the absence of effective agreements or working mechanisms between Indonesia and other countries. The obstacles to implementing non-criminal asset forfeiture (NCBAF) for corruption cases in Batam City are very diverse, ranging from coordination between law enforcement agencies, high standards of proof, legal and procedural obstacles, resource constraints, to social and cultural obstacles and international challenges

## 5. CONCLUSION AND SUGGESTION

### 22 Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn:

- a. Legal regulations for the mechanism of asset confiscation without criminal punishment (Non-Conviction Based Asset Forfeiture) in resolving corruption crimes in Indonesia are comprehensively regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption (UUPTPK), and Law

Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, which provide a legal basis that allows investigations, public prosecutions, or judges to seize and confiscate assets suspected of originating from criminal acts without requiring criminal penalties against the perpetrators, accelerate the process of recovering state losses, and ensure that assets resulting from corruption cannot be used by the perpetrators.

- b. The implementation of non-conviction based asset forfeiture in corruption cases in Batam City still faces various challenges that cause law enforcement for corruption crimes to be less than optimal, such as cases of corruption in infrastructure assistance, embezzlement of social funds, and corruption in the procurement of goods and services, which show that assets suspected of originating from criminal acts often cannot be immediately confiscated and utilized by the state. By increasing the effectiveness of corruption eradication, the implementation of NCBAF needs to be improved through the formation of a special team, clear operational procedures, training for law enforcement officers, and increasing international cooperation.
- c. The implementation of non-conviction based asset forfeiture for corruption cases in Indonesia faces various obstacles, including coordination agreements between law enforcement agencies, high standards of proof, unclear legal procedures, and limited resources and technical capacity of officers. To overcome these obstacles and increase the effectiveness of NCBAF implementation, efforts are needed to improve coordination between institutions through the formation of special teams, the preparation of clear standard operating procedures (SOPs), intensive training for law enforcement officers, increased international cooperation, and public campaigns to increase public awareness and support.

### **Suggestion**

From this conclusion, the author can provide several suggestions, namely:

- a. It is recommended that law enforcement officers improve coordination between institutions by forming a special team consisting of representatives from the Police, Prosecutor's Office, and the judiciary to handle corruption cases in an integrated manner. In addition, it is important to provide intensive training to law enforcement officers on financial investigation techniques, asset tracking, and the implementation of NCBAF so that they are more competent in handling complex corruption cases.
- b. It is recommended that the Government prepare and disseminate clear and detailed SOPs on the implementation of NCBAF, including steps for investigation, inclusion, and confiscation of assets, as well as procedures for handling legal approval from asset

owners. In addition, the government must ensure the availability of adequate budget allocations to support law enforcement activities, including improving technology and operational resources.

- c. It is recommended that the public be actively involved in efforts to eradicate corruption by participating in public campaigns that raise awareness of the negative impacts of corruption and the importance of supporting the implementation of NCBAF.

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