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Criminal Asset Forfeiture in the Sense of Extraordinary Confiscation

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ABSTRACT

The meaning of confiscation in principle explains that the proceeds of crime must be confiscated, this aims to prevent the convict from being able to utilize or benefit from the criminal acts he committed. Conceptually, confiscation is a State action that is carried out carefully and procedurally. This means that forfeiture requires a strict legal evidentiary instrument first because without it there could be abused of power in its implementation. In Indonesia, the meaning of confiscation is the efforts of law enforcement officials in their interests to prove cases and / or investigations (Article 1 point 16 of the Criminal Procedure Code), with this understanding, the intended confiscation is limitative. The procedure for confiscation is regulated in articles 128, 129 and 130 of the Criminal Procedure Code or the same points as ordinary confiscation. The goal of criminalizing behaviour that generates huge profits illegally is not enough just to punish physically, even if caught and punished, it is possible that these criminals can enjoy their illegal profits. For this reason, a set of administrative rules is needed that can be used as a foothold for deprivation in the face of criminalization.

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1. INTRODUCTION

In recent decades, many countries have made important legal policies in the form of laws that permit the confiscation of assets resulting from crime, while many other countries are in the process of amending their domestic criminal laws to accommodate asset forfeiture. There are at least several bilateral and multilateral meetings that have initiated how asset forfeiture should be carried out. One of these meetings is the United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (1988), Article 5. The United Nations Convention against Transnational Organized Crime, Article 12; the United Nations Convention against Corruption,

Article 31 and Chapter 5; and the International Convention for the Suppression of the Financing of Terrorism, Article 8. Indonesia itself ratified the results of these conventions in its legal policy, namely the Draft Law on Asset Forfeiture of Criminal Proceeds. Criminals who act out of economic motives strive to gain as much wealth as possible. From the criminal's point of view, wealth is literally the "blood" that sustains crime. Therefore, the most effective way to eradicate and prevent crimes for financial reasons is to eliminate the "blood" of the life of crime by confiscating property. This legal argumentation certainly does not minimize the meaning of corporal punishment against criminal offenders. However, it must be recognized that only imposing corporal punishment has proven not to have a deterrent effect on criminal offenders. Indonesia as a state based on law (rechtstaat) and not based on mere power (machtsstaat), law enforcement efforts adhere to the principles of the "Rule of law" (A. Mukhtie Fadjar, 2004), namely: the existence of the rule of law, the principle of equality before the law and the guarantee of human rights by laws and court decisions. The principle of rule of law is 'translated' into the following measures such as protect and promote human rights and fundamental freedoms. (Disantara, 2021). The development of human rights enforcement has received this top priority as proven that human rights have also become a priority in law enforcement (Rahim, 2019). The construction of the criminal law system developed in Indonesia (criminal policy) still aims to uncover criminal acts that occur, find the perpetrators and punish the perpetrators of criminal acts with criminal sanctions, especially "corporal punishment" both imprisonment and confinement. while the issue of legal development within the scope of international law such as the problem of confiscation and confiscation of criminal proceeds and instruments of criminal acts has not become the orientation of the criminal policy side in the criminal law system in Indonesia (*United Nations Convention Against Transnational Organized Crime*, 2000). For example, in the history of efforts to seize assets resulting from corruption crimes in Indonesia, there are still no significant results. Assets taken out of the country, such as in several cases of Edy Tansil, Global Bank, BLBI cases, and other cases, until now law enforcement officers still have difficulties in tracking and seizing them. It is possible that these obstacles occur not only because the legal instruments are weak, but can also be caused by the absence of legal instruments that regulate cooperation with other countries substantially related to their interests in seizing assets resulting from crime.

Non-conviction based asset forfeiture (NCB Asset Forfeiture) is a concept of government loss recovery that was first developed in Anglo Saxon countries such as the United Kingdom and the United States. This concept aims to repair state losses caused by crime without first imposing criminal sanctions on the perpetrators. After the judicial verdict in the case of J.W. Goldsmith, J.R-Grant against the United States Government, the NCB asset forfeiture was developed, which is in the form of In detail, it adopted the fiction of personhood and rejected the Innocent owner's lawsuit (*United Nations Convention Against Transnational Organized Crime*, 2000). The fact that organized crime increased during the 1970s in the United States is one of the factors that motivated the US Federal Government to confiscate assets related to organized crime, such as assets from drug and narcotics trafficking and illegal gambling (*United Nations Convention Against Transnational Organized Crime*, 2000). In countries that apply the common law system, Non Conviction Based Asset Forfeiture (NCB-AF) is often used as an instrument to confiscate assets originating from, or related to crime. The concept of NCB-AF was first enacted in medieval England, where the British Crown confiscated what was assumed to be an Instrument of Death or more popularly known

as deodorant. In the era of the rise of industrialization in England, work accidents often occurred, if based on the instrument of death or deodant clause, many industries at that time would close. Therefore, the British Parliament abolished the deodorant clause. Although in practice NCB asset forfeiture is often considered oppressive and unfair, the first congress in the United States maintained its use in shipping law by passing a regulation authorizing the federal government to seize ships. The supreme court also supported the use of NCB asset forfeiture in the United States in the palmyra case that occurred in 1827 where the court rejected the argument of the shipowner's lawyer who said that the seizure and takeover of the ship was illegal because it was without a verdict declaring the owner guilty. It is on this event that the United States Government made the In many developing countries, where the level of corruption crime has not been fully controlled, NCB-AF is a legal breakthrough as an asset recovery instrument and is also useful for uncovering wealth obtained by unlawful means. in countries that adhere to the common law system NCB-AF is known as "civil forfeiture", "in rem forfeiture", or "objective forfeiture", which can be interpreted as a legal action. Furthermore, David Scott Romanz explains that NCB-AF is a lawsuit against assets or in rem (David Scoott Romantz, 1994). Where the purpose of this in rem lawsuit is based on the "taint doctrine" which means that a criminal offense is considered to "taint" or tarnish the assets used or which are the result of the criminal offense. Therefore, in international law there are two types of asset forfeiture actions in an effort to recover assets in combating criminal acts, namely: asset forfeiture with civil law mechanism (civil forfeiture, nonconviction based forfeiture). The two types of asset forfeiture have the same two objectives, criminal forfeiture or in rem forfeiture and criminal asset forfeiture (criminal forfeiture or in personam forfeiture). Both types of asset forfeiture have two common objectives.

First, those who violate the law should not be allowed to benefit from their lawbreaking. The proceeds and instruments of a criminal offense must be confiscated and used for the victim (state or legal subject). Second, the prevention of lawlessness by eliminating the economic benefits of crime and discouraging criminal behaviour (Theodore S. Greeenberg, 2009). Criminalizing illicit enrichment / unexplained wealth has been done in many regulations in Indonesia (Bayu Miantoro, 2020). A question arises in the frame of law enforcement in the country, is it possible to criminalize the ownership of these assets only by using the Anti-Money Laundering Law without knowing the criminal origin? To answer this question, it is not only a strong desire to eradicate corruption, but it must also be seen from the aspect of administrative authority. Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption (Anti-Corruption Law) in Indonesia has actually provided a limited solution to the return of corrupt assets on a national scale through civil suits as stipulated in Article 32, Article 33, Article 34, and Article 38 letter c of the Anti-Corruption Law, or through criminal charges as stipulated in Article 11 letter a, Article 18 paragraph (2), Article 38 paragraph (5) of the Anti-Corruption Law. This criminal prosecution is the direction of a limited solution in the effort to return corrupt assets in the form of confiscation of the perpetrator's assets, including for convicts who do not fulfill the obligation to pay restitution. The problem is that this norm is difficult to implement if the corruptor's assets have been integrated outside the competence of Indonesian law enforcement. In addition, in our national legal system, NCB-AF experiences obstacles in its application because formally it has not been fully regulated, especially to reach the issue of returning assets from crimes that are located abroad (Indriyanto Seno Adji, 2009).

Criminalization is a term often used by law enforcement that is not used for the benefit of law enforcement itself. According to the definition of language, criminalization means the definition of crime or people who commit crimes (Partanto, Pius, Al Barry, M. Dahlan, 1994), while in criminology, criminalization means the process of changing the behavior of people who commit crimes and become criminals. In order for criminalization to go hand in hand with the wishes of society and the demands of social development, guidelines are absolutely necessary. Criminalization should consider the following aspects (Arief, Muladi, 1992). (1) Criminalization must not appear to cause overcriminalization which is categorized as the misuse of criminal sanction; (2) Criminalization must not be ad hoc; (3) Criminalization must contain elements of victimizing actual and potential victims; (4) Criminalization must take into account cost and result analysis and the ultimum remidium principle; (5) Criminalization must produce enforceable regulations; (6) Criminalization must be able to obtain public support; (7) Criminalization must contain elements of subsocialitet causing harm to society, even if it is very small; and (8) Criminalization must pay attention to the warning that every criminal regulation limits the freedom of the people and provides the possibility for law enforcement officials to curb that freedom. In order for the confiscation of assets from the proceeds of crime to be implemented in a justiciable sense, it considers aspects of public support, which later the government policy must be disseminated in the community well in the sense of socialization. Indonesia is one of the countries that ratified the UNCAC agreement which was ratified by the Government of Indonesia into Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption on April 18, 2006. In addition, Indonesia has also regulated "mutual legal assistance", where one of the basic principles is the principle of reciprocity (Yunus Husein, n.d.).

Imperatively, Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) provides the duty and authority of the Indonesian National Police (POLRI) to confiscate objects or tools that have a connection with criminal acts. Then, the police investigator will hand it over to the prosecutor to be used as evidence in the trial process. Confiscation in the Criminal Procedure Code (KUHAP) is regulated separately in several sections, most of which are regulated in Chapter V part 4 (four) Articles 38 to 48 of the Criminal Procedure Code and Articles 128 to 130 of the Criminal Procedure Code. in Article 1 point 16 of the Criminal Procedure Code. In Article 1 point 16 of the Criminal Procedure Code, it explains the definition, namely: Confiscation is a series of investigator actions to take over and or keep under the control of movable objects, tangible or intangible for the purposes of evidence in the investigation, prosecution and examination in court. In other words, confiscation carried out by investigators illustrates the authority of the State to prove the existence of unlawful (criminal) acts which are administratively used in the litigation process in accordance with the Criminal Procedure Code. Historically, the proceeds of corruption are closely related to money laundering cases which are in the exercise of certain jurisdictions the proceeds of crime may be concealed. In this regard, Article 54 paragraph 1 (b) of UNCAC requires each member State to ensure their ability to seize proceeds of crime from other countries in relation to money laundering cases. In other words, this paragraph also opens up the possibility for each State Party to establish a process of asset forfeiture in rem. Therefore, UNCAC recommends the adoption of improved procedures for cases where a criminal conviction cannot be obtained, i.e. when the accused has died, absconded, and for other reasons. For these cases, the drafting of a Non-Conviction Based Asset Forfeiture (NCB) Law should be the most appropriate solution.

In public law, criminal law is a tool of social control that plays an important role in controlling human behavior, law as a tool of social engineering. The state is required to be able to realize order and compliance for a common goal, namely social welfare. In the review of the welfare state, development will be focused on improving welfare through giving a more important role to the state in providing universal and comprehensive social services to its citizens (Fitryantica, 2019). The state is required to be able to realize order and compliance for a common goal, namely social welfare. In a welfare state, development will focus on improving welfare by giving the state a more important role in providing universal and comprehensive social services to its citizens. Therefore, in the context of criminal policy, the confiscation of assets resulting from crime is a manifestation of the State's duty to realize the social welfare of society. However, the spirit of law enforcement in the form of confiscation is conceptually contrary to: First, the understanding of incentives and disincentives, Second, the possibility of a clash between the principle of due process of law/Rule of Law with the commitment to uphold NCB, Third, the judicial system or judicial independence in the implementation of NCB. And Fourth, the law on property rights ("Aset Dirampas Tanpa Putusan Pemidanaan Bisakah," 2020). Because of this basis, the application of NCB-AF must be more careful and not appear to violate human rights. According to Sudarto and Hari Purwadi (Sudarto, Hari Purwadi, n.d.). The most appropriate and simple way to conduct an asset forfeiture mechanism without criminalization or NCB asset forfeiture is that initially the assets suspected of being the proceeds of crime are blocked and withdrawn from economic traffic, namely through confiscation requested by the court. Furthermore, through a court order, the property is declared Subsequently, the court will announce the confiscation through media that can be accessed and known by the public for approximately 30 (thirty) days. This period is considered sufficient for third parties to know that the goods have been seized by the court. If third parties contest the seizure within this period, they can go to court and provide convincing evidence that they own the property as well as explain how the property was obtained. Asset forfeiture through criminal mechanisms in the Anti-Corruption Law, the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) basically have no fundamental differences, because they both await a court decision with binding legal force, so it takes a long time and is not optimal in efforts to recover state losses. The confiscation of assets resulting from crime through criminal mechanisms in the Corruption Law, the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) does not show a fundamental difference, because both await a court decision with binding legal force, therefore it takes a relatively long time and is not optimal in recovering State losses. David Scoott Romantz said that there are at least two types of deprivation in international law principles, namely deprivation in personam and deprivation in rem (David Scoott Romantz, 1994). Criminal forfeiture (in personam) is an action directed against an individual person. The forfeiture is an integral part of the criminal sanction so that it can be carried out based on a criminal court decision.

This system is an action that is separate from the criminal justice process so it requires evidence that can state that a property has been tainted by a criminal act. The concept of taint is based on the dogma of the "taint doctrine" which states that criminal acts are deemed to taint property used or obtained from criminal acts. In contrast, in rem (civil) forfeiture is much more effective, but not advisable if law enforcement has sufficient capacity to prosecute the offender. Given that, to tackle crime, criminal sanctions must still be used as well as the confiscation of assets resulting from crime, this means that

the in rem forfeiture model cannot bypass all criminal law processes that should be imposed on a criminal.

However, if there is a situation where it is not possible to use the criminal route, then in rem forfeiture can be used. It is a very good option if the criminal forfeiture and in rem forfeiture approaches are carried out simultaneously. Asset forfeiture based on NCB-AF in the frame of legal policy will also leave several options, namely whether the asset forfeiture will be formed in the form of applicable law (Lex Generalis), or made in a separate law (Lex Specialis). As we know, NCB-AF is a lawsuit against assets (in rem), while Criminal Forfeiture is a lawsuit against people (in personam). This of course creates differences in proof in court. In criminal forfeiture, the public prosecutor must prove the fulfillment of the elements in a criminal offense such as personal culpability and mens rea of a defendant before being able to confiscate the assets of the defendant (Tood Barnet, 2001). Therefore, because it is criminal in nature, Criminal Forfeiture also requires the prosecution to prove it with a beyond reasonable doubt standard. In contrast, because it is civil in nature, NCB-AF does not require the prosecution to prove the elements and guilt of the person who committed the criminal offense (personal culpability). It is sufficient for the prosecution to show that the alleged reason for the confiscation of the property is related to the criminal offense. Here the public prosecutor must be able to prove by the preponderance of evidence standard (formal proof) that a criminal offense has occurred and the assets in question are closely related to the criminal offense (Stefan D. Cassella, 2003). On the other hand, the owner of the asset must be able to prove using the same standard that the asset being sued is not related to the criminal offense being prosecuted. In the concept of civil forfeiture (NCB), it uses a reverse proof system where the owner of the assets being prosecuted must prove that he is innocent or did not know that the assets being prosecuted were the proceeds, used or related to a criminal offense (Tood Barnet, 2001). This is of course slightly different from a general civil lawsuit which requires the claimant to prove the existence of an unlawful act and the loss suffered. But it should also be noted that the proof of the asset owner in NCB-AF only relates to the relationship between a criminal offense and the asset being prosecuted or in other words the owner only needs to prove that "the asset is innocent". if the owner is unable to prove that "the asset is innocent" then the asset is forfeited to the state. So in NCB-AF the owner of the asset does not have to prove that he is innocent or not involved in a criminal offense. The relationship between the alleged crime and the owner's involvement with the crime is irrelevant in the trial and only the relationship between the owner and the asset being prosecuted is relevant is the focus of the trial. To facilitate an understanding of how NCB-AF works, the following case example can be seen: "For example, a criminal rents a car from a car rental company and commits a bank robbery. The government then conducts an NCB-AF on the car to confiscate and repossess it. During the course of the trial, the Government must be able to prove the link between the robbery committed and the car used in accordance with civil evidentiary standards"(Bismar Nasution, 2009).

2. METHOD

This research is normative research, which aims to find answers to legal problems using normative legal theories that are doctrinal in nature. This research will use a statute approach and conceptual approach to analyze the issue of asset forfeiture from crime in the context of realizing legal justice. The data used is secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal mater

3. RESULTS AND DISCUSSION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explains that the Republic of Indonesia is a State of Law. Therefore, all state actions must be based on regulations or positive laws that have been made constitutionally and apply in Indonesia. In the system of legislation in Indonesia, the regulation of NCB asset forfeiture is not yet qualified enough so that the application of NCB asset forfeiture cannot be optimized by law enforcement officials. However, this does not mean that law enforcement officials cannot apply this mechanism of asset forfeiture without punishment, because supporting regulations that can be used as a legal basis for the application of this mechanism already exist (Yunus Husein, n.d.). Legal policy in the seizure of property with the concept of NCB asset forfeiture, (in procedural law), proof can be carried out by reversing the burden of proof (reverse proof). The prosecutor in the postulation of the lawsuit is sufficient only to postulate that the property that is the object of the lawsuit is related to a criminal offense. Then the defendant as the party who controls the property and objected to the asset forfeiture action must prove to the court that the property of the object of the lawsuit has absolutely nothing to do with the criminal offense. The basis for the regulation of NCB asset forfeiture in Indonesia can be found in many legal arrangements, for more details can be seen in the following table.

Table 1.
Supporting Regulations for the Implementation of NCB Asset Forfeiture

No.	Nama Peraturan	Pasal	Keterangan Pasal
1	United Nations Convention against Corruption (UNCAC 2003) which has been ratified by Law No. 7/2006	Article 51	“The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard."
		Article 54 paragraph 1 letter c	“Consider taking such measures as may be necessary to allow consfiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight, or absence or in other appropriate cases”
		Article 20	“Subject to its constitution and the

			fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she can not reasonably explain in relation to his or her lawful income.”
2	Law No. 8 Year 2010 on Prevention and Eradication of Money Laundering Crime	Article 67 (2)	"In the event that the alleged perpetrator of the criminal offense is not found within 30 (thirty) days, the investigator may submit a request to the district court to decide the Asset as a state asset or returned to the rightful person."
		Article 79 (4)	In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed a criminal offense of Money Laundering, the judge at the request of the public prosecutor decides on the forfeiture of the confiscated assets.
3	Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001	Article 33	In the event that the suspect dies during the investigation, while there has clearly been a loss of state finances, the investigator shall immediately submit the investigation case file to the State Attorney or submit it to the aggrieved agency for a civil lawsuit against the heirs.
		Article 34	In the event that the defendant dies during the examination at the court session, while there has

			clearly been a loss to the state, the public prosecutor shall immediately submit a copy of the hearing file to the State Attorney or submit it to the aggrieved agency for a civil lawsuit against the heirs.
		Article 38 (5)	In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that he/she has committed a corruption crime, the judge at the request of the public prosecutor shall determine the forfeiture of the confiscated goods.
4	Law 30 of 2002 on the Corruption Eradication Commission	Article 47 Ayat (1)	Based on a strong suspicion of sufficient preliminary evidence, the investigator may conduct seizure or forfeiture without the permission of the Chief of the District Court in connection with his investigative duties.
5	Supreme Court Regulation No. 1 Year 2013 on Procedures for Settlement of Application for Handling of Assets in the Crime of Money Laundering or Other Crimes	Article 1	This regulation applies to requests for handling assets submitted by Investigators in the event that the suspected perpetrator of a criminal offense is not found as referred to in Law No. 8 of 2010 concerning Prevention in Eradication of Money Laundering Criminal Acts.
6	Supreme Court Circular Letter Number 3 Year 2013 on Case Handling Guidelines: Procedure for Settlement of Application for Assets in the Crime of Money Laundering and Other Crimes	Article 3	Application for handling of assets as referred to in Article 2 must be completed with: a. Minutes of the temporary suspension of all or part of transactions related to assets known or suspected to be the proceeds of a criminal offense at

			the request of PPATK; b. Case files of investigation results; and c. Minutes of the search for the suspect.

In international law, there are multilateral agreements related to NCB Asset Forfeiture, including (Theodore S. Greeenberg, 2009)

a) United Nations Convention against the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 1988;

b) United Nations Convention against Transnational Organized Crime (UNCTOC) in 2000;

c) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism in 2005;

d) Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1990; Strasbourg Convention.

e) Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997.

In addition to regulations that allow the realization of NCB Asset Forfeiture in Indonesia, there are also regulations that have the potential to hinder its implementation. These regulations include:

Table 2
Regulations that Potentially Hinder the Implementation of NCB Asset Forfeiture in Indonesia

No.	Name of Regulation	An explanation
1	Draft Law on Asset Forfeiture	As the law on asset forfeiture has not yet been passed, it cannot be used as a basis for the application of NCB asset forfeiture.
2	The Criminal Procedure Code (KUHAP)	a. There is no procedural law arrangement related to NCB asset forfeiture in KUHAP. b. There is no provision in Indonesian legislation that recognizes assets as a subject of criminal law or as a subject of civil law that can be found guilty and held criminally or civilly liable. c. The subject in criminal law is a

		person.Wirjono Prodjodikoro, said that in the view of the Criminal Code (KUHP), the subject of criminal act is a human being as an individual (Wirjono Prodjodikoro, 2003). This can be seen in the formulation of criminal offenses in the Criminal Code which shows the power of thought as a requirement for the subject of the criminal offense, as well as the form of punishment or punishment contained in the articles of the Criminal Code, namely imprisonment, confinement, and fines. d. There are articles that contradict the NCB asset forfeiture concept. For example Article 196 paragraph (1): "The court shall decide the case in the presence of the defendant except in cases where this law provides otherwise". Based on this article, criminal cases should not be decided in absentia but in absentia is permitted as long as the law provides otherwise. In the Anti-Money Laundering Law and Anti-Corruption Law, in absentia trials are permitted as long as the court has attempted to summon the defendant and the defendant does not appear with unclear requirements.
3	The Criminal Procedure Code (KUHAP)	a. There is no legal arrangement for NCB asset forfeiture procedures in KUHAP. In addition, there are no provisions in Indonesian laws and regulations that recognize assets as a subject of criminal law or as a subject of civil law that can be found guilty and held criminally or civilly liable. b. The subject in Civil Law is a person. Subekti in his book entitled Principles of Civil Law says that in law, person (person) means the bearer of rights or the subject in law (Subekti & Intermasa, 1992). c. Subjects in Civil Law are Legal Entities. Subekti said that besides people, bodies or associations also have rights and perform legal acts like a human being. These bodies or associations have their own wealth, participate in legal traffic through their administrators, can be sued, and can also sue before a judge.
4	Law Number 39 Year 1999 on Human Rights	Article 36 paragraph (2) states, "No one shall be deprived of his property arbitrarily and unlawfully" this provision can be an obstacle to the application of the NCB Asset Forfeiture

		Concept if not done carefully and responsibly.
5	Law Number 31 Year 1999 on the Eradication of Corruption	Article 18 paragraph (1) letter a states, "In addition to the additional punishment as referred to in the Criminal Code, as additional punishment are: "forfeiture of tangible or intangible movable property or immovable property used for or derived from corruption offenses, including companies owned by the convicted person in which the corruption offenses were committed, as well as of property that replaces such property." The article states that forfeiture of goods is an additional punishment. As it is understood that additional punishment does not stand alone, it is dependent or related to the main criminal offense. The main punishment under Article 10 of the Criminal Code consists of death penalty, imprisonment, confinement, and fine. Meanwhile, the application of NCB asset forfeiture focuses on asset forfeiture without criminalization, which means that in its application, it ignores the need for additional punishment.

4. CONCLUSION

Government policy regarding the seizure of assets resulting from crime in the frame of confiscation absolutely must consider the aspects of criminal criminal policy (politics) in the discussion of the formation of laws and regulations, as the basis for its legal footing. Forfeiture in the sense of confiscation is a State action that must be based on the prevailing positive legal norms (*ius contitutum*) so that it absolutely also requires the commitment of the ruling government, in order to achieve the aspired law (*Ius constituendum*) which is able to overcome the problem of crime. Legal Policy The confiscation of assets from crime must also consider the need for law enforcement that is not only repressive but also considers international standards set by the United Nations or other international institutions competent in the prevention and prosecution of transnational crimes.

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