

Implementation Of Non Conviction Based Asset Forfeiture (NCBAF) in Efforts to Recover Assets Resulting from Corruption in The Oil Palm Planatation Sector in Indonesia

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ABSTRACT

Law enforcement in Indonesia's oil palm plantation sector faces various challenges, especially in terms of recovering assets resulting from corruption and environmental damage. Legal systems that rely on conviction-based asset forfeiture mechanisms are often slow and difficult to prove the origin of assets, thus incapable of reaching the full extent of the large ecological and economic losses. This journal examines the potential application of the Non-Conviction Based Asset Forfeiture (NCBAF) mechanism as a faster and more effective alternative solution, especially in the case of corporations with complex ownership structures and illegal land conversion modes. Through jurisprudence analysis and regulatory studies, it was found that legal reform was needed, including amendments to the Asset Forfeiture Bill and clarification of legal phrases related to state losses, so that the asset recovery system can run more fairly and efficiently. This approach is expected to strengthen efforts to eradicate corruption and environmental damage, as well as support the overall recovery of state losses in Indonesia's oil palm plantation sector.

Keywords: Corruption, Forest, Return, State Losses

Introduction

Corruption in the oil palm plantation sector has become a systemic challenge that threatens state finances, natural resource governance, and ecological justice in Indonesia. Based on Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Law No. 31 of 1999), state losses due to corruption crimes in this sector reach very significant figures, even in certain cases, the losses incurred reach tens of trillions of rupiah (Latifansyah, M. A., Rifai, A., & Sadino, S, 2024). However, the success rate of recovering assets resulting from corruption from the KPK's performance achievements for the 2019-2024 period is 2.5 trillion, so the current legal mechanism is considered ineffective in dealing with structured corruption, especially in the oil palm plantation sector.

The oil palm plantation sector is one of the strategic sectors in the national economy that is also very vulnerable to corrupt practices. Law Number 39 of 2014 concerning Plantations regulates various aspects of governance and supervision in this sector (Law of the Republic of Indonesia Number 39 of 2014), but has not fully integrated the mechanism for recovering assets from corruption comprehensively (Christiawan, R, 2020). The complexity of the licensing process, land governance, and great economic value opens up opportunities for abuse of authority, bribery, and document manipulation (Christiawan, R, 2020). Corruption cases in this sector generally involve corporations with complex ownership structures, as well as the use of sophisticated modes such as money laundering, cross-jurisdictional asset transfers, and illegal land conversion (Sutanti, R. D., Pujiyono, & Rochaeti, N, 2022).

In the current legal reality, the recovery of assets resulting from corruption crimes in Indonesia is still dominated by the conviction-based asset forfeiture approach as stipulated in Article 38B of Law 20/2021, Corruption requires a criminal verdict that has permanent legal

force before assets can be confiscated and returned to the state. However, this system faces various obstacles, such as the length of the judicial process, the difficulty of proving the origin of assets, and the tendency of corrupt actors to hide or move assets abroad before the legal process is completed. In addition, Supreme Court Regulation Number 5 of 2014 concerning Guidelines for the Implementation of Additional Crimes of Asset Forfeiture does not cover the non-conviction based asset forfeiture (NCBAF) scheme, even though the United Nations Convention against Corruption (UNCAC) 2003 which has been ratified through Law Number 7 of 2006 recommends this mechanism for cross-jurisdictional cases (Lukito, R, 2020).

A jurisprudential analysis of oil palm plantation court rulings reveals systemic weaknesses in the construction of asset recovery laws. The Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022 in the Surya Darmadi case stipulated that state losses reached Rp 73,920,690,300,000.00 due to the conversion of 37,095 hectares of forest for illegal oil palm plantations, but the assets that were successfully recovered were only around IDR 2,238,274,248,234.00. The Supreme Court in cassation decision number 4950K/Pid.Sus/2023 ignored ecological losses that reached Rp. 39,751,177,520,000.00, guided by the narrow interpretation of "state losses" as stipulated in the Constitutional Court Decision number. 25/PUU/XIV/2016. This shows the disparity between legal reality and legal ideals in the recovery of assets resulting from corruption in the oil palm plantation sector.

Other jurisprudence, such as the cassation decision number 4950K/Pid.Sus/2023 returning assets to a third party (PT Agung Cemara Realty) even though the assets come from corruption crimes, show weak coordination between civil and criminal processes in asset recovery (Sejati, P. N. P., & Prasetyo, H, 2023). These inconsistencies further exacerbate legal uncertainty and the ineffectiveness of asset recovery, particularly in cases involving oil palm plantation corporations with complex ownership structures.

Previous studies have discussed the recovery of assets resulting from corruption crimes in Indonesia, but most of them are still general and have not specifically examined the challenges of asset recovery in corruption cases in the oil palm plantation sector. Research by Muhammad Fuad Azwar R (2022) The Concept of Non-Conviction Based Asset Forfeiture as a Legal Policy in Corruption Crimes (Karim, M. S, 2022), but does not specifically highlight the corporate aspects of oil palm plantations, land conversion modes and has not studied the analysis of Supreme Court jurisprudence.

This research aims to fill the existing research gap by integrating the concept of NCBAF in the context of oil palm plantation corporations in Indonesia. The methodological approach used is a normative approach (Hafrida, 2018). so that it can comprehensively reveal the *mode of asset hiding* carried out by plantation corporations. In addition, this study also provides policy recommendations in the form of amendments to the Asset Forfeiture Bill with mandatory environmental audit clauses and clarification of imperative phrases, as well as jurisprudential analysis as in the Constitutional Court Decision No. 25/PUU/XIV/2016 regarding the omission of the word "*may*" in the legal construction of asset recovery. Thus, this research is expected to make an academic and practical contribution in strengthening efforts to recover assets resulting from corruption crimes, especially in the oil palm plantation sector, as well as encourage legal reform that is more responsive to the challenges of structured and cross-jurisdictional corruption.

1. How is the application of *conviction-based asset forfeiture* in the recovery of assets resulting from corruption in the oil palm plantation sector?
2. How can the legal construction of *Non-Conviction Based Asset Forfeiture* (NCBAF) be integrated into the Indonesian legal system to optimize the recovery of corrupt assets of oil palm plantation corporations involving *asset hiding* and illegal land conversion?

The purpose of this study is to analyze the effectiveness of the Non-Conviction Based Asset Forfeiture (NCBAF) mechanism in recovering assets resulting from corruption in Indonesia's oil palm plantation sector, as well as to examine the potential for legal reforms that support its implementation in a fair, transparent, and efficient manner. The research also aims to identify challenges and opportunities for the integration of NCBAF in the national legal system, including strengthening the international legal framework and complex arrangements related to corporate assets

Research Methods

This study adopts a normative juridical approach with the method of legal and comparative studies to examine the dialectic of interests in legal policy related to the recovery of assets from corruption through the NCB mechanism. The legal data used includes primary legal materials in the form of laws and regulations related to efforts to eradicate corruption and asset recovery, secondary legal materials in the form of scientific literature and the opinions of legal experts, and supporting tertiary legal materials. Data collection was carried out through literature studies. The data was then analyzed using descriptive-prescriptive techniques using grammatical, systematic, teleological, and comparative interpretation methods. The goal is to identify the impact of the dialectical of interests on the success of asset recovery, as well as to open up the potential for the application of NCB as an alternative mechanism for asset recovery from the proceeds of criminal acts

Methods Research

Application of Conviction-Based Asset Forfeiture in the Recovery of Corrupt Assets in the Oil Palm Plantation Sector

The conviction-based asset forfeiture mechanism, mandated by Article 38B of the Anti-Corruption Law, has proven ineffective and faces complex structural challenges when applied to corruption cases in the oil palm plantation sector. This ineffectiveness is manifested through several crucial dimensions revealed in the analysis of jurisprudence (Sri, N, 2013).

Legal Explanation

Conviction-based asset forfeiture requires a court decision that has permanent legal force (*inkracht*) against the perpetrators of corruption crimes before assets can be confiscated for the state. This is explicitly regulated in Article 18 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which states that judges can impose additional penalties in the form of confiscation of movable/immovable goods used or obtained from corruption crimes, including convict-owned companies used to commit corruption crimes. In practice, the court has emphasized that the confiscation of assets can be carried out even if the defendant is absent (*in absentia*), as explained in the explanation of Article 38 paragraph (1) of Law Number 31 of 1999, to save the state's wealth and to the reverse evidentiary mechanism regulated in Article 38B paragraphs (1) and (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001, which requires the defendant to prove that his property does not come from a corruption crime. Protection of third parties in good faith is regulated in Article 38 paragraph (7) of Law Number 31 of 1999 jo. Law Number 20 of 2001, which states that the court must consider legal protection for third parties in good faith for assets to be confiscated. If after the verdict with legal force, other assets suspected of being derived from corruption crimes are still found and have not been confiscated, the state can file a civil lawsuit against the convict or his heirs based on Article 38C of Law Number 20 of 2001.

Judging from the real evidence of the disparity in the amount of State Losses and Assets Successfully Recovered in the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022 in the Surya Darmadi case, it is clear evidence of this disparity. Although the state loss was set at Rp. 39,751,177,520,000.00, the assets that were successfully recovered were only around Rp. 2,238,274,248,234.00. This shows that conventional mechanisms fail to reach and confiscate all illegally acquired assets (Latif, S, 2020). Another fundamental obstacle is the narrow judicial interpretation of the phrase "state loss". The Constitutional Court Decision No. 25/PUU/XIV/2016 has implicitly limited the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022 implicitly in the calculation of state financial losses to calculable direct financial losses (such as money), thus ignoring the very massive ecological loss dimension, which is often the dominant impact of corruption crimes in the natural resources sector, such as illegal land transfer. In the case of Surya Darmadi, the country's economic losses reached Rp. 39,751,177,520,000.00, but it was not legally recognized as a recoverable part in the case of corruption in the oil palm plantation sector (Janri Wolden Halomoan Sirait, 2017).

This approach reflects the failure of the legal system to adapt to the specific characteristics of corruption crimes in the oil palm plantation sector, where the impact is not only financial but also environmental and social. The Constitutional Court Decision No. 25/PUU/XIV/2016 implicitly limits losses to direct financial losses that can be calculated, thus ignoring the losses to the country's economy, which are actually very massive in the case of land conversion, comprehensively which should include non-financial aspects. The Supreme Court judge's consideration in cassation decision number 4950K/Pid.Sus/2023 reaffirms the narrow view of "state losses" which only includes financial aspects, ignoring substantial losses to the country's economy as part of asset recovery efforts. In contrast, financial losses in the Corruption Law are limited by the Constitutional Court's decision which states that state financial losses must be *Actual Loss*, not *Potential Loss* (Saputra, D. E., & Khalid, A, 2018). These restrictions create significant challenges in the recovery of corrupt assets, especially in sectors involving broad environmental impacts such as oil palm plantations, where estimated environmental losses often far exceed direct financial losses (Mahfud, M., Farsia, L., Roesa, N., & Safrina, S, 2021). Weak coordination between criminal and civil law enforcement, as well as disproportionate protection of third parties, have exacerbated the ineffectiveness of recovering corrupt assets (Aminah, A, 2019). So this creates a legal loophole that is used by corrupt actors to hide or transfer assets, making it difficult to track and confiscate assets thoroughly.

Efforts to optimize *asset recovery* can be carried out at the initial stage of handling corruption cases, namely at the investigation stage. The prosecutor as a law enforcement apparatus acting as an investigator can do, first, through tracing the assets/property belonging to the perpetrator by profiling the perpetrator and the parties involved, the prosecutor can identify (*asset tracing*) the defendant's assets, the place where the assets are stored, evidence of asset ownership to support the data in the preparation of the payment of fines and replacement money. Second, it can block the perpetrator's account assets to prevent the perpetrator from providing a loophole for the perpetrator to transfer assets to third parties, such as his wife/husband, children, family, and even drivers, aides and helpers trusted by the perpetrator. Third, confiscating assets/property belonging to the perpetrator in the form of securities, vehicles, houses, or other movable goods in preparation for paying fines or compensation so that the return of losses can be optimal and according to the assets that have been corrupted (Heri Joko Saputro and Tofik Yanuar Chandra, 2021).

Some of the provisions that regulate corruption crimes that are currently in force still cause various problems that are quite complex and require attention and improvement. One of the main problems that arises is the existence of provisions that allow the substitution or

placement of the obligation to pay money in lieu of punishment with imprisonment or body confinement. This provision stipulates that the length of the body imprisonment must not exceed the threat of the law. Compensation is a form of punishment or additional criminal punishment in corruption cases. In essence, both legally and doctrinally, judges are not required to always impose additional penalties. However, especially for corruption cases, it needs to be considered because corruption is an act that is contrary to the law that is detrimental or at least can harm the state's finances. So even though the compensation is only an additional crime, it is very unwise to allow the defendant not to pay the compensation as a way to recover the state's losses (Indriyanto,1998). This arrangement indirectly provides an opportunity for perpetrators of corruption crimes to choose the option of extending their prison sentence rather than having to pay a replacement fee that usually has to be paid as part of a criminal sanction. Thus, corrupt perpetrators who are able and want to avoid paying the ransom are likely to choose to extend the prison term, because in some cases, this may seem more advantageous or easier to do than paying the ransom. In addition, this provision can cause other problems, such as potential control or distortion of interpretation in the application of punishments, which can ultimately reduce the effectiveness of the corruption eradication system itself. With the opportunity for perpetrators to choose prison sentences rather than paying compensation, the aspect of supervision and law enforcement needs to be strengthened so that this provision is not abused and can still have a deterrent effect on perpetrators of corrupt crimes (Adnan Topan Husodo,2010). The *conviction-based asset forfeiture mechanism* is considered ineffective because: (a) the slow process of the criminal justice process is not proportional to the speed with which the perpetrator transfers assets; (b) very heavy evidence in the criminal process; (c) narrow interpretation of "state loss"; and (d) the absence of adequate legal instruments to pursue assets that have been transferred to a third party. Nonetheless, there are inherent challenges in Indonesia's criminal law system because forfeiture and forfeiture of assets are still categorized as additional crimes, not principal crimes, so the priority of enforcement is often not commensurate with principal crimes.

Legal Construction of Non-Conviction Based Asset Forfeiture (NCBAF) to Optimize the Recovery of Corrupt Assets of Oil Palm Plantation Corporations

Corruption in Indonesia is systemic, harming state finances and disrupting economic stability. The main motive is to enrich themselves, so that corruption assets become the main support for crime. Therefore, an effective strategy to cut corruption is to *follow the money*, namely confiscating and confiscating all assets and tools of crime. To overcome the fundamental weaknesses in the *conviction-based* system, the integration of the *Non-Conviction Based Asset Forfeiture* (NCBAF) mechanism into the Indonesian legal system is a necessity. NCB *asset forfeiture* is one of the efforts that can be made to return assets to the state or to the party entitled to the unfair ownership of assets suspected of a crime, without having to be preceded by criminal charges (Wiarti, J, 2017). rather, it focuses on proving that the assets come from or are related to *ill-gotten gains*. The confiscation of assets is carried out without having to wait for a criminal verdict containing errors and providing punishment for the perpetrators. NCB asset forfeiture is a way to seize assets from crime. In the common law system, two types of asset forfeiture are known, namely: 1) Ordinary common law forfeiture or forfeiture that applies based on a court decision. The act of confiscation is seen by the competent authorities as a consequence of the crime. Ordinary common law forfeiture becomes forfeiture in personam, so that forfeiture can be done to all tangible and personal property owned by the convict after being decided by a court decision and 2) Statutory

forfeiture or forfeiture that applies under the law. Statutory forfeiture is a forfeiture that is enforced without the need for a court decision (Setyowati, S. &, 2021).

This approach has the potential to significantly improve the effectiveness of asset recovery because it allows for the seizure of assets without having to wait for a criminal verdict with permanent legal force, a process that often takes a long time and provides an opportunity for perpetrators to hide or transfer their assets. NCBAF also overcomes the often complex burden of proof in corruption cases by shifting the burden of proving the origin of assets to the owners, rather than to the prosecutor to prove a direct link to a particular crime. The availability of a civil mechanism in the confiscation of assets resulting from corruption can answer the shortcomings of the criminal mechanism, including being able to file a lawsuit even if the suspect, defendant, or convicted person dies so that it can increase efforts to recover losses from the corrupted state. However, on the other hand, the availability of civil mechanisms in efforts to confiscate assets resulting from corruption as contained in the Corruption Law has also not been maximized because the civil process adheres to a formal proof system which in practice can be more difficult than material proof (Siburian, R. J, 2022).

Recent crime countermeasures have not only targeted the perpetrators of illegal activities, but have also begun to focus on efforts to restore the profits illegally obtained from such actions, known as asset recovery. In the context of corruption, the return of state losses through the confiscation of assets resulting from crime is very important (Kistiana, Y, 2015). Yenti Ganarsih emphasized that asset forfeiture is one of the important strategies in law enforcement to eradicate corruption, which is usually carried out through money laundering criminal mechanisms (Ganarsih, Y, 2023). This approach strengthens law enforcement efforts by not only targeting the perpetrators, but also their crime proceeds.

Its legal construction can be integrated as follows:

In addition, asset confiscation without having to go through a criminal process, namely without having to wait for a verdict against the perpetrator, is also supported by various international legal instruments that have been ratified by Indonesia. This is reflected in Law Number 6 of 2006 which regulates the eradication of terrorism financing and Law Number 7 of 2006 which adopts the United Nations Convention Against Corruption (UNCAC).

This approach to asset forfeiture also accommodates the principles of the 40 Financial Action Task Force (FATF) Recommendations which specifically regulate the prevention of money laundering crimes. Therefore, this mechanism is an integral part of the modern legal system that aims to strengthen law enforcement and increase efficiency in the recovery of assets resulting from crime.

NCBAF as an Independent Civil Law Instrument NCBAF must be built as a civil lawsuit in rem (against objects), not in personam (against people). In the context of palm oil corporations, the state (represented by institutions such as PPATK or KPK) can directly sue certain assets (such as land, shares, or funds in banks) to civil courts. The focus of the proof is to show the relationship (nexus) between these assets and corruption crimes, for example through forensic financial audits and money tracing. This is very effective at overcoming the mode of asset hiding because the state does not have to wait for criminal proceedings against a particular individual to be completed; assets can be frozen and confiscated more quickly.

Reverse Burden of Proof in Specific Cases To address the complexity of the corporate ownership structure, NCBAF's legal construction can apply a limited burden of proof reversal. Once the state proves that there is a strong indication (*prima facie*) that an asset was acquired from illegal activities (e.g., land obtained from a corrupted permit), the burden of proof shifts to the asset holder (corporation or third party) to prove that the asset was obtained lawfully

and in good faith. This will make it difficult for corporations to hide assets behind complicated structures.

Integration with Mandatory Environmental Audit Clauses:

Given that the main mode is illegal land conversion, the construction of NCBAF must be integrated with environmental audit obligations. In the Asset Forfeiture Bill, there must be a clause stating that every plantation corporation that is the subject of NCBAF's lawsuit is required to undergo an independent environmental audit. The results of these audits can be the main evidence in court to prove that a piece of land was acquired and processed through illegal means (e.g., without an EIA, violating the function of protected forests), thus strengthening the state's position in its NCBAF lawsuit.

Elimination of the Phrase "Can" and Use of Imperative Phrases:

Its legal construction should abandon phrases that are optional (such as "can be seized") and switch to imperative phrases ("must be seized"). The recommendation for amendments to the Asset Forfeiture Bill must adopt lessons from the Constitutional Court's Decision No. 25/PUU/XIV/2016. This imperative phrase will eliminate the discretion of the judge that can lead to inconsistencies in the verdict and ensure that once the relationship of the asset to the criminal act is proven, forfeiture is a mandatory legal consequence. An optimal legal construction of NCBAF requires: (a) a civil lawsuit approach *in rem*; (b) the application of a reversal of the limited burden of proof; (c) integration with mandatory environmental audit instruments; and (d) the use of imperative phrases in laws and regulations. Thus, NCBAF can be a strategic tool to pursue palm oil corporation assets that are hidden, transferred, or acquired from illegal land conversion modes, beyond the limitations of *conviction-based systems*.

Conclusion

Based on the analysis of the application of the legal system in the recovery of assets resulting from corruption in the oil palm plantation sector in Indonesia, it can be concluded that the current conviction-based asset forfeiture mechanism still faces various challenges, such as the length of the judicial process, the difficulty of proving the origin of assets, and the imbalance between legal reality and practice in the field. This system is also not able to optimally overcome the sophisticated modes used by corrupt actors, including illegal land conversion and cross-jurisdictional asset hiding. Therefore, the application of the Non-Conviction Based Asset Forfeiture (NCBAF) mechanism is proposed as a more effective and faster alternative in asset recovery, especially for the case of corporations with complex ownership structures. In addition, legal reforms, including regulatory revisions and strengthening of the international legal framework, are indispensable so that the asset recovery system can run fairly, transparently, and comprehensively. Thus, the integration of the NCBAF approach is expected to strengthen efforts to eradicate corruption and environmental damage in Indonesia's oil palm plantation sector more effectively and sustainably.

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