



Guarding Property, Recovering Assets: A Constitutional Court Perspective on Non-Conviction-Based Asset Forfeiture in Indonesia

Menjaga Hak Milik, Memulihkan Aset: Perspektif Mahkamah Konstitusi atas Perampasan Aset tanpa Pidana di Indonesia

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History:

Submitted: 26-09-2025

Revised: 27-01-2026

Accepted: 13-03-2026

Keywords:

Constitutional Court; Corruption; Due Process of Law; Money Laundering; Non-Conviction-Based Asset Forfeiture.

Kata Kunci:

Due Process; Korupsi; Mahkamah Konstitusi; Perampasan Aset tanpa Pidana; Tindak Pidana Pencucian Uang.



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<https://doi.org/10.31078/jk2326>

Abstract

Non-conviction-based asset forfeiture (NCBAF) enables recovery of assets derived from crime without a prior conviction, yet may restrict private property rights absent a finding of guilt. This tension implicates due process of law and the proportional limitation of rights under Articles 28D(1), 28H(4), and 28J(2) of the 1945 Constitution. Because current Indonesian law neither expressly regulates NCBAF nor guarantees adequate safeguards, while asset recovery from corruption remains weak, defining its constitutional parameters is urgent. Using a normative juridical method with statutory, conceptual, and case approaches, this study assesses NCBAF through due process and proportionality. The findings show that NCBAF is constitutional insofar as the limitation is prescribed by law, pursues a legitimate aim, follows a fair process, and remains proportional, consistent with the Constitutional Court's view that property rights are not absolute. It concludes that the Asset Forfeiture Bill should include judicial oversight and protection for bona fide third parties.

Abstrak

Perampasan aset tanpa pidana (NCBAF) memungkinkan pemulihan aset hasil kejahatan tanpa putusan pidana, namun berpotensi membatasi hak milik pribadi tanpa penetapan bersalah. Ketegangan ini bersinggungan dengan asas due process of law dan pembatasan hak secara proporsional berdasarkan Pasal 28D ayat (1), Pasal 28H ayat (4), dan Pasal 28J ayat (2) UUD 1945. Karena hukum Indonesia saat ini belum mengatur NCBAF secara eksplisit maupun menjamin perlindungan prosedural yang memadai, sementara pemulihan aset hasil korupsi masih lemah, perumusan parameter konstitusionalnya menjadi mendesak. Dengan metode yuridis normatif melalui pendekatan perundang-undangan, konseptual, dan kasus, kajian ini menelaah NCBAF dari perspektif due process dan proporsionalitas. Hasilnya menunjukkan bahwa NCBAF konstitusional sepanjang pembatasannya ditetapkan oleh undang-undang, memiliki tujuan yang sah, ditempuh melalui proses yang adil, dan bersifat proporsional, selaras dengan pandangan Mahkamah Konstitusi bahwa hak milik bukan hak absolut. Kajian menyimpulkan bahwa RUU Perampasan Aset perlu memuat pengawasan yudisial dan perlindungan pihak ketiga beriktikad baik.

A. INTRODUCTION

1. Background

Non-conviction-based asset forfeiture (NCBAF) may strengthen Indonesia's legal framework for combating corruption and money laundering offenses.¹ However, its implementation raises constitutional concerns, as the mechanism may restrict private property rights in the absence of a prior criminal conviction. Accordingly, NCBAF must be designed within a human rights framework, particularly by reference to the principle of due process of law and the constitutional guarantee of private property rights under Article 28D(1) and Article 28H(4) of the 1945 Constitution of the Republic of Indonesia. In this context, Article 28J(2) of the 1945 Constitution provides the constitutional basis for limiting rights, provided that the limitation is prescribed by law, pursues a legitimate aim, and is implemented through a fair and proportional legal process. Thus, assets allegedly derived from criminal conduct may be forfeited and returned to the state or to the rightful party without disregarding the rights of suspects, defendants, and bona fide third parties.² Constitutional Court Decision No. 021/PUU-III/2005, which reviewed Article 78(15) of Law Number 41 of 1999 on Forestry, offers a limited analogy, as the Court regarded property rights as non-absolute rights that may be limited by statute in the interests of public security and public order.³ Although that decision did not directly assess the legitimacy of NCBAF, its reasoning suggests that restrictions on property rights may be constitutionally justified where they are directed toward protecting the public interest and are situated within the framework of due process of law.

Indonesia's current legal framework does not yet comprehensively support the concept of NCBAF. This is evident, among other things, from Article 38C of Law Number 31 of 1999, as amended by Law Number 20 of 2001 on the Eradication of Corruption Crimes, which permits action against the assets of a convicted person only after a court judgment has become final and binding. The provision that most closely approximates NCBAF practice is Article 67 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes. However, that provision remains limited in scope, and its implementation

¹ Irwan Hafid, "Perampasan Aset Tanpa Pidanaan dalam Perspektif Economic Analysis of Law," *Jurnal Lex Renaissance* 6, no. 3 (2021): 465–80, <https://doi.org/10.20885/JLR.vol6.iss3.art3>.

² Sudarto, Hari Purwadi, and Hartriwiningsih, "Mekanisme Perampasan Aset dengan Menggunakan Non-Conviction Based Asset Forfeiture sebagai Upaya Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Hukum dan Pembangunan Ekonomi* 5, no. 1 (2018): 109–18, <https://doi.org/10.20961/hpe.v5i1.18352>.

³ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 021/PUU-III/2005; see also Edi Kristianta Tarigan, Erni Darmayanti, and Muhammad Khadafi, "Strategi Perampasan Aset Tanpa Putusan Pidana (Non-Conviction Based Asset Forfeiture) dalam Upaya Pengembalian Kerugian Negara akibat Tindak Pidana Korupsi," *Lex Justitia Journal* 7, no. 2 (2025): 43–55.

depends on Supreme Court Regulation Number 1 of 2013 concerning the procedure for resolving applications for the handling of assets in money laundering offenses. Within the Prosecutor's Office, the technical aspects of asset recovery are regulated by Regulation of the Prosecutor's Office of the Republic of Indonesia Number 7 of 2020 on the Second Amendment to Attorney General Regulation Number PER-027/A/JA/10/2014 concerning Guidelines on Asset Recovery,⁴ and should also be read together with Attorney General Guideline Number 7 of 2025 concerning Asset Recovery within the Prosecutor's Office of the Republic of Indonesia.⁵ These developments demonstrate the need to strengthen asset recovery at the technical-institutional level, but they do not replace the need for a statutory framework. Although the Asset Forfeiture Bill has been included in the 2025–2026 Priority National Legislation Program, it remains a draft law and therefore cannot yet serve as a legal basis under current Indonesian law for the comprehensive implementation of NCBAF.⁶ Accordingly, the regulation of NCBAF still requires a specific statute that clearly governs institutional authority, categories of assets, evidentiary standards, procedural rules, protection for bona fide third parties, and judicial oversight.

Within the framework of the Stolen Asset Recovery (StAR) Initiative, NCBAF is conceived as an *in rem* mechanism that proceeds against the asset itself (state *v.* asset), rather than solely against the alleged offender. Such proceedings may be brought before, during, or after criminal proceedings, including where prosecution cannot be pursued or does not result in a criminal conviction, provided that the nexus between the asset and unlawful conduct can still be established under the applicable evidentiary standard.⁷ Accordingly, NCBAF should not be understood as asset forfeiture without legal basis or proof. On the contrary, it still requires proof of a connection between the asset and the criminal offense and must afford the asset owner or bona fide third parties an opportunity to object, establish the lawful origin of the asset, and defend their rights through a fair legal process.

The need to strengthen NCBAF is also linked to the persistent difficulty of recovering corruption proceeds. Assets derived from corruption are frequently transferred, concealed, or

⁴ Kejaksaan Republik Indonesia, Peraturan Kejaksaan Republik Indonesia Nomor 7 Tahun 2020 tentang Perubahan Kedua atas Peraturan Jaksa Agung Nomor PER-027/A/JA/10/2014 tentang Pedoman Pemulihan Aset, <https://peraturan.bpk.go.id/Details/169929/peraturan-kejaksaan-no-7-tahun-2020>.

⁵ Kejaksaan Republik Indonesia, Pedoman Jaksa Agung Nomor 7 Tahun 2025 tentang Pemulihan Aset di Lingkungan Kejaksaan Republik Indonesia, <https://jdih.kejaksaan.go.id/produk-hukum/detail?id=5030>.

⁶ Dewan Perwakilan Rakyat Republik Indonesia, "Paripurna Tetapkan RUU Perampasan Aset Masuk Bersama 51 RUU Prioritas Prolegnas 2025–2026 Lainnya," September 23, 2025, <https://www.dpr.go.id/kegiatan-dpr/berita/Paripurna-Tetapkan-RUU-Perampasan-Aset-Masuk-Bersama-51-RUU-Prioritas-Prolegnas-2025-2026-Lainnya-59616>; Dewan Perwakilan Rakyat Republik Indonesia, "RUU tentang Perampasan Aset Terkait dengan Tindak Pidana," last updated May 21, 2026, <https://www.dpr.go.id/kegiatan-dpr/fungsi-dpr/fungsi-legislasi/prolegnas-prioritas/detail/707>.

⁷ Muhammad Yusuf, *Merampas Aset Koruptor* (Jakarta: Kompas Media Nusantara, 2013); Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, and Larissa Gray, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, DC: Stolen Asset Recovery Initiative, 2009).

disguised through money laundering schemes, making asset tracing and recovery ineffective if they depend entirely on conviction-based mechanisms.⁸ According to the Corruption Perceptions Index (CPI) published by Transparency International, Indonesia scored 34/100 and ranked 110th out of 180 countries in 2022.⁹ In 2023, Indonesia's score remained at 34/100, while its ranking fell to 115th out of 180 countries.¹⁰ In 2024, Indonesia's score increased numerically to 37/100, and its ranking rose to 99th out of 180 countries.¹¹ This improvement, however, did not continue in the 2025 CPI, when Indonesia's score declined again to 34/100 and its ranking stood at 109th out of 182 countries.¹² Taken together, these figures indicate that Indonesia's anti-corruption performance remains volatile and has yet to show sustained improvement. This situation reinforces the urgency of establishing more effective asset recovery instruments, including NCBAF. Nevertheless, the effectiveness of law enforcement is inseparable from the constitutional requirement to safeguard due process of law, private property rights, and proportional limitations on rights, as provided in Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia.

The constitutional guarantee under Article 28D(1) of the 1945 Constitution of the Republic of Indonesia requires that any state action affecting the deprivation or restriction of citizens' property rights, including rights over assets, be carried out through a fair, open, and impartial legal process before a court. In the context of NCBAF, this principle must be read together with Article 28H(4) of the 1945 Constitution, which guarantees private property rights and prohibits arbitrary deprivation of property. The constitutional difficulty arises because the existing statutory framework on asset forfeiture, particularly under the Anti-Corruption Law and the Anti-Money Laundering Law, does not yet expressly regulate NCBAF or provide due process safeguards for asset owners. In its role as the guardian of the constitution, the Constitutional Court has an important function in assessing the constitutionality of legal norms that may conflict with the 1945 Constitution, including norms that affect restrictions on property rights and the guarantee of fair legal protection.¹³

⁸ Farida Pahlevi, "Pemberantasan Korupsi di Indonesia Perspektif Legal System Lawrence M. Friedman," *El-Dusturie* 1, no. 1 (2022), <https://doi.org/10.21154/eldusturie.v1i1.4097>.

⁹ Transparency International, "Corruption Perceptions Index 2022: Indonesia," <https://www.transparency.org/en/cpi/2022/index/idn>.

¹⁰ Transparency International, "Corruption Perceptions Index 2023: Indonesia," <https://www.transparency.org/en/cpi/2023/index/idn>.

¹¹ Transparency International, "Corruption Perceptions Index 2024: Indonesia," <https://www.transparency.org/en/cpi/2024/index/idn>.

¹² Transparency International Indonesia, "Indeks Persepsi Korupsi 2025: Penurunan Kebebasan Sipil & Akses pada Keadilan Mengancam Perjuangan Melawan Korupsi," February 10, 2026, <https://ti.or.id/indeks-persepsi-korupsi-2025-penurunan-kebebasan-sipil-akses-pada-keadilan-mengancam-perjuangan-melawan-korupsi/>.

¹³ Saldi Isra, "Peran Mahkamah Konstitusi dalam Penguatan Hak Asasi Manusia di Indonesia," *Jurnal Konstitusi* 11, no. 3 (2014): 409–27.

Several Constitutional Court decisions in judicial review of statutes provide a limited doctrinal basis from which the concept of NCBAF may be examined, including Constitutional Court Decision No. 77/PUU-XII/2014,¹⁴ Constitutional Court Decision No. 90/PUU-XIII/2015,¹⁵ and Constitutional Court Decision No. 35/PUU-XV/2017.¹⁶ These three decisions affirm the Court’s position on the constitutionality of Article 69 of the Anti-Money Laundering Law, which provides that the investigation, prosecution, and trial of money laundering offenses need not be preceded by proof of the predicate crime. At the same time, the Court emphasized that this provision does not mean that the predicate crime may be dispensed with altogether. In other words, money laundering remains a follow-up crime that presupposes the existence of a predicate crime, even though that predicate crime need not first be established by a final and binding criminal judgment. Within this framework, the three decisions do not directly construct a legal doctrine of NCBAF. They nevertheless offer limited constitutional guidance on the possible strengthening of an asset forfeiture mechanism that is more oriented toward asset tracing, the prevention of asset dissipation, and the protection of the public interest, provided that such a mechanism remains within the bounds of due process of law.

Prior studies on NCBAF published between 2021 and 2025 generally indicate that NCBAF has the potential to enhance the effectiveness of asset recovery and, where supported by adequate procedural safeguards, can be reconciled with the principle of due process of law. The following table maps the relevant prior studies.

Table 1.
Substantive Overview of Prior Studies

Scholar(s)	Issue	Findings	Limitations	Contribution
Tuahuns (2021)	The urgency of adopting NCBAF	Non-conviction-based asset forfeiture plays an important role in recovering state assets derived from corruption, particularly where the assets are held by third parties or where the asset owner is unknown.	The study primarily demonstrates the urgency of NCBAF but does not further elaborate a legal construction of NCBAF suited to the Indonesian legal system.	Explains the urgency of NCBAF in recovering state assets derived from corruption offenses.

¹⁴ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 77/PUU-XII/2014.

¹⁵ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 90/PUU-XIII/2015.

¹⁶ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 35/PUU-XV/2017.

Scholar(s)	Issue	Findings	Limitations	Contribution
Muntahar et al. (2021)	NCBAF within the parameters of human rights protection	NCBAF is not inconsistent with human rights insofar as it is directed toward recovering assets tainted by criminal conduct and is linked to the public interest, economic democracy, and social justice.	The analysis remains focused on general human rights parameters and does not yet place the Constitutional Court's perspective at the center of assessing the constitutionality of NCBAF.	Provides an explanation of the compatibility between NCBAF and the principles of human rights protection.
Ayuningsih and Nelson (2022)	A comparison of NCBAF in Indonesia and Australia	Asset forfeiture in Indonesia remains oriented toward criminal forfeiture and does not yet fully support the recovery of state financial losses, as reflected in Australian practice.	The comparison of cases and decisions remains limited and is therefore insufficient to construct a constitutional model of NCBAF in the Indonesian context.	Enriches the discussion on the urgency and significance of NCBAF through a comparative legal approach with Australia.
Hafid (2021)	NCBAF in legislation and its correlation with the recovery of state finances	The enactment of the Asset Forfeiture Bill is necessary to suppress asset dissipation and improve the efficiency of law enforcement policy in recovering state financial losses.	The analysis relies primarily on an economic analysis of law approach and remains limited in its use of case-based analysis to assess the effectiveness of asset forfeiture.	Provides an analysis of the significance of NCBAF for the effectiveness of recovering state financial losses.

Scholar(s)	Issue	Findings	Limitations	Contribution
Syakhrir et al. (2025)	NCBAF as criminal law reform and a solution for safeguarding state assets	The enactment of the Asset Forfeiture Bill, which incorporates the concept of NCBAF, is necessary and is considered compatible with human rights.	The discussion tends to focus on the Asset Forfeiture Bill and does not examine in greater depth the relationship between NCBAF, Constitutional Court decisions, and the design of due process safeguards.	Provides a perspective on the compatibility of the Asset Forfeiture Bill with human rights principles.

Source: *Tuahuns (2021), Muntahar et al. (2021), Hafid (2021), Ayuningsih and Nelson (2022), and Syakhrir et al. (2025).*

Tuahuns underscores the urgency of adopting NCBAF to prevent state losses, particularly where a suspect or defendant cannot be held criminally liable.¹⁷ Muntahar et al. emphasize the distinction between the legal principles applicable to offenders and those applicable to assets: while the offender remains protected by the presumption of innocence, the asset may be examined through an approach focused on its origin and nexus to criminal conduct.¹⁸ Hafid, using an economic analysis of law approach, shows that NCBAF has the potential to minimize asset dissipation and improve the efficiency of law enforcement policy.¹⁹ Ayuningsih and Nelson, through a comparative approach, find that Indonesia’s legal framework remains oriented toward conviction-based asset forfeiture and therefore does not yet fully accommodate the need for effective asset recovery.²⁰ Meanwhile, Syakhrir et al. stress the urgency of enacting the Asset Forfeiture Bill, which incorporates the concept of NCBAF, as a means of addressing the weaknesses of the current regulatory framework on the forfeiture of assets derived from criminal offenses, which remains dispersed across several statutes and regulations.²¹

¹⁷ Irsyad Zamhler Tuahuns, “Penyitaan Aset Tindak Pidana Korupsi di Indonesia serta Perampasan Tanpa Pidanaan terhadap Pelaku Kejahatan sebagai Upaya Mengisi Kekosongan Hukum,” *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 208–20.

¹⁸ Teuku Isra Muntahar, Madiasa Ablisar, and Chairul Bariah, “Perampasan Aset Korupsi Tanpa Pidanaan dalam Perspektif Hak Asasi Manusia,” *Iuris Studia: Jurnal Kajian Hukum* 2, no. 1 (2021): 49–63, <https://doi.org/10.55357/is.v2i1.77>.

¹⁹ Hafid, “Perampasan Aset Tanpa Pidanaan,” 465–80.

²⁰ Irma Reisalinda Ayuningsih and Febby Mutiara Nelson, “Perampasan Aset Tanpa Pidanaan dalam Perspektif Hukum Responsif,” *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–61, <https://doi.org/10.26623/jic.v7i2.5142>.

²¹ Andi Muhammad Alwi Syakhrir, Abdul Rahman, and Abdul Qohar, “Tinjauan Hukum Perampasan Aset Tanpa Pidanaan dalam Tindak Pidana Korupsi di Indonesia,” *Legal Dialogica* 1, no. 1 (2025): 16–25.

Taken as a whole, prior scholarship positions NCBAF as an instrument capable of strengthening legal certainty and the effectiveness of asset recovery for both the state and injured parties, without displacing the protection of human rights. However, these discussions remain limited in their use of the Constitutional Court's judicial review practice as a basis for assessing the constitutionality of NCBAF. Based on the review of those prior studies, a specific analytical gap remains: how NCBAF may be examined through the parameters of due process of law from the perspective of the Constitutional Court's decisions. This article addresses that gap by developing a legal argument on the proportionality review of NCBAF under Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia. In doing so, it seeks to offer both theoretical and practical contributions to the refinement of Indonesia's asset forfeiture framework through a constitutional and Constitutional Court-centered perspective.

2. Research Questions

This article examines the constitutionality of non-conviction-based asset forfeiture (NCBAF) within the Indonesian legal system by placing the principle of due process of law and Constitutional Court decisions at the center of the analysis. Against that background, this article addresses the following research questions:

1. What is the legal status and conceptual basis of non-conviction-based asset forfeiture (NCBAF) in the Indonesian legal system?
2. How can the principle of due process of law, as reflected in Constitutional Court decisions, serve as an instrument of review and a parameter of constitutional legitimacy for the regulation of NCBAF in balancing the effectiveness of law enforcement, asset recovery, and the protection of citizens' constitutional rights?
3. What are the constitutional implications of implementing NCBAF for the protection of human rights, particularly the right to fair legal certainty and private property rights as guaranteed under Article 28D(1) and Article 28H(4) of the 1945 Constitution of the Republic of Indonesia?

3. Research Methods

This study employs normative legal research using three principal approaches. First, the statutory approach is used to examine the synchronization and consistency of legal norms across statutes and regulations governing asset forfeiture, including the 1945 Constitution of the Republic of Indonesia, the Anti-Corruption Law, the Anti-Money Laundering Law, and technical regulations on the handling and recovery of assets derived from criminal offenses. Second, the case approach is used to analyze the ratio decidendi or legal reasoning in Constitutional Court Decision No. 77/PUU-XII/2014, Constitutional Court Decision No.

90/PUU-XIII/2015, and Constitutional Court Decision No. 35/PUU-XV/2017. The analysis of these decisions is directed toward identifying the limited constitutional guidance they provide on the principle of due process of law relevant to the design of NCBAF regulation in Indonesia. Third, the conceptual approach is used to examine the doctrine of the rule of law, the protection of private property rights, and proportionality review as the basis for formulating constitutional parameters capable of balancing the effectiveness of law enforcement, the recovery of state assets, and the protection of human rights.

The analytical techniques used in this study are systematic and teleological interpretation. Systematic interpretation is used to read asset forfeiture norms in relation to the broader Indonesian legal system, while teleological interpretation is used to understand the regulatory purpose of asset forfeiture within the framework of combating corruption, preventing money laundering, and recovering state losses. In addition, this study applies proportionality review under Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia to assess the extent to which restrictions on private property rights through non-conviction-based asset forfeiture may be constitutionally justified. This proportionality review is used to assess the legitimate aim, suitability, necessity, and proportionality *stricto sensu*, or balancing, between the state's interest in recovering assets derived from criminal offenses and its obligation to guarantee due process of law for suspects, defendants, and bona fide third parties.

B. DISCUSSION AND ANALYSIS

1. The Legal Status and Concept of Non-Conviction-Based Asset Forfeiture in the Indonesian Legal System

NCBAF is, in essence, an *in rem* or civil forfeiture mechanism, meaning that the proceeding is directed against the property or asset itself rather than solely against a person. It is designed to forfeit assets suspected of being derived from criminal conduct, even in the absence of a criminal conviction against the offender, provided that the nexus between the asset and the criminal offense can be established under the applicable evidentiary standard.²² In the context of combating corruption and money laundering offenses, NCBAF plays an important role in safeguarding state assets, recovering losses suffered by the state or victims, and preventing asset dissipation. To date, however, Indonesia has not enacted a specific statute comprehensively regulating NCBAF; its regulation remains partial

²² Ahmad Sofian, Bambang Pratama, and Hanifah Azizah, "Mechanism for Asset Forfeiture in the Money Laundering Criminal Law and Asset Forfeiture Bill: Law Comparison with the United States," *Journal of Law and Sustainable Development* 11, no. 12 (2023): 1–33, <https://doi.org/10.55908/sdgs.v11i12.1712>; Greenberg et al., *Stolen Asset Recovery*.

and dispersed across several statutes and regulations.²³ The core features of NCBAF—its focus on the examination of assets, its independence from a criminal conviction against the offender, and its preservation of an opportunity for asset owners or bona fide third parties to challenge the alleged nexus between the asset and criminal conduct—have not yet been fully accommodated within Indonesia’s criminal justice system. Indonesian criminal law generally continues to treat asset forfeiture as a consequence of, or an ancillary instrument to, criminal proceedings, whether through a conviction judgment or in certain circumstances where the suspect or defendant is tried in absentia, has died, or cannot be held criminally liable.²⁴ This can be seen, among other things, in Articles 32, 33, and 38C of the Anti-Corruption Law, which provide a pathway for recovering state losses through civil proceedings brought by the prosecutors acting as State Attorneys. In substance, however, that pathway is used only where criminal proceedings cannot be pursued or where, after a final and binding judgment, there remain assets of the convicted person suspected of being derived from corruption.²⁵

In addition to the Anti-Corruption Law, the Anti-Money Laundering Law also intersects with the asset forfeiture mechanism. This intersection is reflected in Article 67 of the Anti-Money Laundering Law, which regulates the handling of assets known or reasonably suspected to constitute proceeds of crime following a temporary suspension of transactions by the Indonesian Financial Intelligence Unit (PPATK). Under this provision, PPATK may transfer the handling of such assets to investigators if, within twenty days of the temporary suspension, no person or third party files an objection. If the person suspected of committing the offense cannot be located within thirty days, the investigator may then submit an application to the district court requesting that the assets be declared state assets or returned to the rightful party.²⁶ Article 67 of the Anti-Money Laundering Law therefore provides limited space for handling assets without a prior criminal conviction against the offender. However, the return of the assets or the determination of their legal status still requires a court mechanism, with the procedural rules further regulated under Supreme Court Regulation Number 1 of 2013.

²³ Syakhrir, Rahman, and Qohar, “Tinjauan Hukum Perampasan Aset Tanpa Pemidanaan,” 16–25; Dewan Perwakilan Rakyat Republik Indonesia, “RUU tentang Perampasan Aset Terkait dengan Tindak Pidana.”

²⁴ Andi Nabila Azzahra, “Urgensi Regulasi Perampasan Aset dalam Penerapan Non-Conviction Based Asset Forfeiture sebagai Instrumen Pemberantasan Korupsi,” *Equality: Journal of Law and Social* 1, no. 3 (2026): 179–87; Sudarto, Purwadi, and Hartriwiningsih, “Mekanisme Perampasan Aset,” 109–18.

²⁵ Republik Indonesia, Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi sebagaimana diubah dengan Undang-Undang Nomor 20 Tahun 2001, Pasal 32, Pasal 33, dan Pasal 38C; Azzahra, “Urgensi Regulasi Perampasan Aset,” 179–87.

²⁶ Republik Indonesia, Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, Pasal 65, Pasal 66, dan Pasal 67; Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Nomor 1 Tahun 2013 tentang Tata Cara Penyelesaian Permohonan Penanganan Harta Kekayaan dalam Tindak Pidana Pencucian Uang atau Tindak Pidana Lain.

Supreme Court Regulation Number 1 of 2013 provides technical guidance for resolving applications for the handling of assets as contemplated under Article 67 of the Anti-Money Laundering Law. Its scope, however, remains limited because the mechanism originates from PPATK's temporary suspension of transactions and, in practice, is more closely associated with assets held in bank accounts or within the financial services system.²⁷ This narrow scope creates a legal gap, as not all assets derived from criminal offenses take the form of accounts or financial transactions that can be temporarily suspended. Moreover, the relatively strict time limits under Articles 66 and 67 of the Anti-Money Laundering Law must be assessed against the practical needs of investigators to conduct asset tracing, submit inquiry requests to PPATK, and trace ownership structures that are often complex. This situation creates opportunities for asset dissipation before an application for the handling of assets can be submitted to, and decided by, the court.²⁸

On the prosecutorial side, support for asset recovery can also be found in the authority of the Prosecutor's Office under Article 30A of the Prosecutor's Office Law, which empowers the institution to trace, forfeit, and return assets derived from criminal offenses, as well as other assets, to the state, victims, or rightful parties.²⁹ At the technical level, this authority is supported by Regulation of the Prosecutor's Office of the Republic of Indonesia Number 7 of 2020 on the Second Amendment to Attorney General Regulation Number PER-027/A/JA/10/2014 concerning Guidelines on Asset Recovery, and should also be read together with Attorney General Guideline Number 7 of 2025 concerning Asset Recovery within the Prosecutor's Office of the Republic of Indonesia.³⁰ Nevertheless, these institutional technical regulations cannot substitute for the need for a specific statute comprehensively regulating NCBAF. That need is particularly pressing with respect to the determination of asset categories, evidentiary standards, objection mechanisms, protection of bona fide third parties, limits on law enforcement authority, and judicial oversight in non-conviction-based asset forfeiture.

²⁷ Gumilang Fuadi, Windy Virdinia Putri, and Trisno Raharjo, "Tinjauan Perampasan Aset dalam Tindak Pidana Pencucian Uang dari Perspektif Keadilan," *Jurnal Penegakan Hukum dan Keadilan* 5, no. 1 (2024): 53–68, <https://doi.org/10.18196/jphk.v5i1.19163>.

²⁸ Syarlis, M. Mustofa, and Novi Indah Earlyanti, "Efektivitas Perma Nomor 1 Tahun 2013 dalam Penanganan Harta Kekayaan Tindak Pidana Pencucian Uang oleh Penyidik Subdit III Dittipideksus Bareskrim Polri," *Jurnal Lentera Bisnis* 14, no. 2 (2025): 1915–33, <https://doi.org/10.34127/jrlab.v14i2.1554>.

²⁹ Republik Indonesia, Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia, Pasal 30A; Muhammad Hasan Pakaja, Ronald J. Mawuntu, and Caecilia J. J. Waha, "Implementasi Peran Jaksa Pengacara Negara yang Profesional, Proporsional dan Akuntabel dalam Pemulihan Kerugian Negara," *Innovative: Journal of Social Science Research* 5, no. 4 (2025): 3880–95, <https://doi.org/10.31004/innovative.v5i4.20513>.

³⁰ Kejaksaan Republik Indonesia, Peraturan Kejaksaan Republik Indonesia Nomor 7 Tahun 2020; Kejaksaan Republik Indonesia, Pedoman Jaksa Agung Nomor 7 Tahun 2025.

Another point of intersection between the Anti-Money Laundering Law and the concept of NCBAF lies in the evidentiary framework under Article 69 of the Anti-Money Laundering Law. This provision states that the investigation, prosecution, and trial of money laundering offenses need not be preceded by proof of the predicate crime. Article 69 therefore provides a basis for examining money laundering offenses without requiring prior proof of the predicate offense. However, it cannot be interpreted as eliminating the requirement of a predicate crime altogether. In Constitutional Court Decision No. 77/PUU-XII/2014, the Court emphasized that the absence of an obligation to prove the predicate crime first does not mean that the predicate crime may be dispensed with, since money laundering remains a follow-up crime that cannot stand alone.³¹ Accordingly, Article 69 of the Anti-Money Laundering Law may be read as a limited argumentative basis for developing NCBAF, not as a direct legal basis for forfeiting assets without proof. This provision must also be read together with Articles 77 and 78 of the Anti-Money Laundering Law, which regulate the defendant's reverse burden of proof concerning assets suspected of being derived from criminal conduct. Although the reverse burden of proof under the Anti-Money Laundering Law is not identical to NCBAF, it reflects a limited recognition of an evidentiary model focused on the origin of assets. The weakness, however, is that the procedural law for handling assets in a manner approaching NCBAF still rests on Supreme Court Regulation Number 1 of 2013, whose scope is confined to applications for handling assets where the offender cannot be located and does not yet provide a comprehensive NCBAF framework.³²

The weaknesses in Indonesia's asset forfeiture framework, as outlined above, reveal at least two principal obstacles to the implementation of NCBAF. First, Indonesian criminal law still tends to position asset forfeiture as an instrument dependent on criminal proceedings or a criminal judgment, making it difficult to accommodate asset forfeiture independently of conviction, as required by the basic character of NCBAF. Second, the procedural framework for asset forfeiture remains heavily dependent on institutional technical regulations with limited scope, particularly in the handling of assets derived from criminal offenses that may be dissipated before they can be recovered through legal proceedings.

³¹ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 77/PUU-XII/2014; Zydane Maheswara Prasetyo et al., "Sinkronisasi Kebijakan Penegakan Hukum: Posisi RUU Perampasan Aset dalam Sistem Hukum Indonesia," *Menulis: Jurnal Penelitian Nusantara* 1, no. 12 (2025): 801–8; Muh. Afdal Yanuar, "Diskursus Antara Kedudukan Delik Pencucian Uang sebagai Independent Crime dengan sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU-XIII/2015," *Jurnal Konstitusi* 16, no. 4 (2020): 721, <https://doi.org/10.31078/jk1643>.

³² Republik Indonesia, Undang-Undang Nomor 8 Tahun 2010, Pasal 77 dan Pasal 78; Syarlis, Mustofa, and Earlyanti, "Efektivitas Perma Nomor 1 Tahun 2013," 1915–33; Fuadi, Putri, and Raharjo, "Tinjauan Perampasan Aset," 53–68.

The effective implementation of NCBAF may serve as one indicator of the state's capacity to protect state assets, restore the rights of injured parties, and direct recovered assets toward public welfare. Because it is oriented toward asset recovery rather than solely toward the punishment of offenders, NCBAF may operate more effectively than asset forfeiture mechanisms that depend entirely on criminal convictions. Using an economic analysis of law (EAL) approach, Hafid situates NCBAF within the maxim that crime should not pay. This approach proceeds from the assumption that offenders act rationally to maximize the benefits of crime, including by concealing, transferring, or disguising criminal proceeds. On that basis, the optimization of asset forfeiture in Indonesia should be pursued through NCBAF in order to maximize the recovery of state losses, particularly in light of the low rate of state-loss recovery cited by Hafid from an Indonesia Corruption Watch (ICW) report, namely 8.7 percent. Accordingly, strengthening the legal framework for NCBAF, including through the enactment of the Asset Forfeiture Bill, is considered essential to improving the effectiveness of asset recovery and preventing the dissipation of criminal proceeds.³³

Conceptually, the Asset Forfeiture Bill may address these two principal obstacles: the dependence of asset forfeiture on criminal conviction and the limited procedural framework currently available under Indonesian law. In the draft bill referred to in this study, the asset forfeiture mechanism is designed not to depend entirely on the imposition of criminal punishment against the offender. The Asset Forfeiture Bill also expands the categories of assets that may be subject to a forfeiture application, so that they are not confined to accounts or transactions temporarily suspended under the regime of Article 67 of the Anti-Money Laundering Law and Supreme Court Regulation Number 1 of 2013. Broader regulation of asset categories, tracing, freezing, seizure, and forfeiture would strengthen the capacity of law enforcement authorities to prevent asset dissipation. The Asset Forfeiture Bill also provides space for international cooperation in tracing, freezing, seizing, and forfeiting assets derived from criminal offenses, in line with the framework of the United Nations Convention against Corruption (UNCAC).³⁴

Indonesia ratified the 2003 UNCAC through Law Number 7 of 2006. UNCAC not only promotes international cooperation in preventing and combating corruption but also places asset recovery at the core of the anti-corruption regime. In the context of NCBAF, Article 54(1)(c) of UNCAC encourages States Parties to consider measures that allow the

³³ Hafid, "Perampasan Aset Tanpa Pemidanaan," 465–80.

³⁴ Badan Pembinaan Hukum Nasional, *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perampasan Aset Terkait dengan Tindak Pidana* (Jakarta: BPHN, 2022), https://bphn.go.id/data/documents/hasil_penyelarasan_na_ruu_tentang_perampasan_aset_terkait_tindak_pidana.pdf; Pusat Pelaporan dan Analisis Transaksi Keuangan, *Draft Final RUU Perampasan Aset*, https://jdih.ppatk.go.id/storage/dokumen_produk_hukum/Draft%20Final%20RUU%20Perampasan%20Aset%20.pdf; Dewan Perwakilan Rakyat Republik Indonesia, "RUU tentang Perampasan Aset Terkait dengan Tindak Pidana."

confiscation of assets without a criminal conviction in certain circumstances, including where the offender has died, absconded, is absent, or in other appropriate cases. Article 54(2) and Article 55 of UNCAC further strengthen the framework for international cooperation in freezing, seizure, confiscation, and mutual legal assistance (MLA). Nevertheless, UNCAC does not prescribe a single technical model for NCBAF. States Parties must therefore formulate a domestic legal design that is compatible with their own legal systems and with principles of human rights protection.³⁵

Technical guidance on NCBAF has subsequently been developed extensively through the Stolen Asset Recovery (StAR) Initiative, established by the World Bank and UNODC, as well as through the recommendations and guidance of the Financial Action Task Force (FATF). The StAR Initiative provides good-practice guidance on non-conviction-based asset forfeiture, including the importance of establishing a nexus between the asset and the criminal offense, ensuring judicial proceedings, protecting bona fide third parties, and setting clear evidentiary standards. Meanwhile, through Recommendation 4 and its updated asset recovery standards, FATF emphasizes the importance of a state’s capacity to identify, freeze, seize, and confiscate criminal proceeds, including through non-conviction-based confiscation regimes, provided that they remain consistent with the fundamental principles of each state’s domestic law.³⁶ The comparison between Indonesia’s legal framework and these international standards is set out in the following table.

Table 2.
Comparison of Indonesia’s Legal Framework and the StAR Initiative/FATF Standards on the Concept of NCBAF

Aspect	Indonesia	StAR/FATF International Standards
Legal basis	The Anti-Money Laundering Law, the Anti-Corruption Law, Supreme Court Regulation Number 1 of 2013, Prosecutor’s Office technical regulations, and the Asset Forfeiture Bill as <i>ius constituendum</i> .	UNCAC, the StAR Initiative, FATF Recommendation 4, FATF Recommendation 38, and FATF asset recovery guidance.

³⁵ Republik Indonesia, Undang-Undang Nomor 7 Tahun 2006 tentang Pengesahan United Nations Convention against Corruption, 2003; United Nations Convention against Corruption, art. 54(1)(c), art. 54(2), and art. 55; Eddy Omar Sharif Hiariej, “United Nations Convention Against Corruption dalam Sistem Hukum Indonesia,” *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 31, no. 1 (2019): 112, <https://doi.org/10.22146/jmh.43968>.

³⁶ Greenberg et al., *Stolen Asset Recovery*; Financial Action Task Force, “Amendments to the FATF Standards to Strengthen Global Asset Recovery,” November 16, 2023, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/amendment-FATF-standards-global-asset-recovery.html>; Financial Action Task Force, *Asset Recovery Guidance and Best Practices* (Paris: FATF, 2025), <https://www.fatf-gafi.org/en/publications/Methodsandrends/asset-recovery-guidance-best-practices-2025.html>.

Aspect	Indonesia	StAR/FATF International Standards
Definition of NCBAF	NCBAF has not yet been expressly regulated under current Indonesian law. Elements approximating NCBAF appear only in limited form in Article 67, Article 69, Article 77, and Article 78 of the Anti-Money Laundering Law, as well as in the Asset Forfeiture Bill.	NCBAF is understood as an asset forfeiture mechanism conducted through judicial proceedings in connection with criminal conduct, but without requiring a criminal conviction against the offender.
Conditions for forfeiture	There must be suspicion or proof of a nexus between the asset and the criminal offense. Under current Indonesian law, non-conviction-based mechanisms remain limited, including where the offender cannot be located, as provided in Article 67 of the Anti-Money Laundering Law and Supreme Court Regulation Number 1 of 2013.	The standards do not prescribe a single universal model, but emphasize that forfeited assets must remain connected to criminal conduct and that the mechanism may be used where criminal proceedings cannot be pursued or are ineffective.
Rights of asset owners	These rights are guaranteed under Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia, including the right to fair legal certainty, protection of private property rights, the right to object, and protection for bona fide third parties.	The mechanism must guarantee objection procedures, judicial examination, protection for bona fide third parties, due process of law, and the right to a fair trial.
Evidentiary framework	The Anti-Money Laundering Law recognizes the reverse burden of proof under Articles 77 and 78, but this mechanism must remain situated within the framework of the right to present a defense and judicial supervision.	Non-criminal evidentiary standards or certain reverse-proof mechanisms may be used, provided that they are consistent with the fundamental principles of domestic law and the protection of the rights of interested parties.

Aspect	Indonesia	StAR/FATF International Standards
Implementing institutions	Investigators, public prosecutors, the Corruption Eradication Commission (KPK), PPATK, and the Prosecutor's Office act in accordance with their respective authority in tracing, freezing, seizing, prosecuting, forfeiting, and recovering assets.	The state may act through law enforcement authorities, civil or administrative authorities, financial intelligence units, and asset management institutions, subject to judicial oversight.
Technical guidance	Supreme Court Regulation Number 1 of 2013 and Prosecutor's Office technical regulations provide limited guidance, but there is not yet a comprehensive NCBAF procedural framework at the statutory level.	The StAR Good Practices Guide for Non-Conviction Based Asset Forfeiture and the FATF Asset Recovery Guidance and Best Practices provide technical guidance.
Constitutionality	A clear formulation remains necessary under Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia.	Human rights protection, property rights, due process of law, and access to courts are essential conditions to ensure that NCBAF does not operate arbitrarily.
Regulatory status	The current framework remains partial and fragmented. The Asset Forfeiture Bill has entered the legislative agenda but has not yet become binding law.	NCBAF has been implemented in various forms in several jurisdictions, with models differing according to each jurisdiction's legal tradition and fundamental principles.

Source: Compiled from Indonesian legislation and regulations, UNCAC, the StAR Initiative, FATF Recommendation 4, FATF Recommendation 38, and the FATF Asset Recovery Guidance and Best Practices.

Although limited provisions already exist in the Anti-Corruption Law and the Anti-Money Laundering Law, NCBAF in Indonesia continues to face two principal constraints: the lack of independence of asset forfeiture from criminal proceedings and the absence of a sufficiently flexible procedural framework. These constraints arise because Indonesia has not yet enacted a specific statute comprehensively regulating non-conviction-based asset forfeiture procedures. To date, this mechanism has been accommodated only in the Asset Forfeiture Bill. Yet even the regulation of NCBAF under that bill continues to raise constitutional challenges, particularly in relation to the protection of private property rights.³⁷

³⁷ Kezia Melisa and I. Putu Rasmadi Arsha Putra, "Pengaturan Hukum Pidana Perampasan Aset dalam Upaya Pemberantasan Korupsi di Indonesia," *Jurnal Kertha Wicara* 15, no. 3 (2025): 146–68.

From a human rights perspective, the state has an obligation to respect, protect, and fulfill the human rights of its citizens. Human rights doctrine distinguishes between rights that may not be derogated from under any circumstances, or non-derogable rights, and rights that may be limited by statute, provided that constitutional requirements are satisfied. Article 28I(1) of the 1945 Constitution of the Republic of Indonesia enumerates rights that may not be derogated from under any circumstances: the right to life, the right not to be subjected to torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted under retroactive law. Outside this category, other rights, including private property rights, remain constitutionally protected but may be limited insofar as the requirements of Article 28J(2) of the 1945 Constitution are met.³⁸

At both the international and domestic levels of human rights law, the right to property is a protected right and may not be arbitrarily deprived. Article 17 of the Universal Declaration of Human Rights (UDHR) affirms that everyone has the right to own property, alone as well as in association with others, and that no one shall be arbitrarily deprived of property. A similar guarantee is found in Article 28H(4) of the 1945 Constitution, which provides that every person has the right to private property and that such property shall not be arbitrarily taken over by anyone. The protection of property rights, however, does not preclude limitations on those rights. Article 29(2) of the UDHR provides that, in the exercise of rights and freedoms, everyone is subject to limitations determined by law for the purpose of securing recognition and respect for the rights and freedoms of others, morality, public order, and the general welfare in a democratic society. This principle corresponds to Article 28J(2) of the 1945 Constitution and Article 70 of Law Number 39 of 1999 on Human Rights. Accordingly, the phrase “shall not be arbitrarily deprived” does not mean that property rights are immune from limitation altogether. Rather, it means that any limitation must be imposed by law, pursue a legitimate aim, follow a fair legal process, and satisfy the requirement of proportionality.³⁹

Judicial process, or due process of law, in international human rights law is reflected in Article 10 of the UDHR and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee equality before courts and tribunals and the right to a fair and public hearing by a competent, independent, and impartial tribunal. This principle

³⁸ Osgar S. Matompo, “Pembatasan Terhadap Hak Asasi Manusia dalam Perspektif Keadaan Darurat,” *Jurnal Media Hukum* 21, no. 1 (2014): 57–72.

³⁹ Universal Declaration of Human Rights, arts. 17 and 29(2); Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28H ayat (4) dan Pasal 28J ayat (2); Republik Indonesia, Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, Pasal 70; Muntahar, Ablisar, and Bariah, “Perampasan Aset Korupsi Tanpa Pidana,” 49–63.

is consistent with Article 28D(1) of the 1945 Constitution, which guarantees recognition, protection, legal certainty grounded in fairness, and equal treatment before the law. NCBAF is therefore not inherently incompatible with human rights, provided that it is implemented on the basis of statute, subject to judicial oversight, affords interested parties an opportunity to object and present a defense, and complies with the principle of proportionality.⁴⁰

In the context of corruption and money laundering offenses, restrictions on private property rights may be linked to the state's obligation to protect the public interest and recover losses suffered by the state or victims. Corruption, as an extraordinary crime, has far-reaching consequences: it not only causes state financial losses but also undermines good governance, obstructs development, and erodes public trust in state institutions. Its impact is also systemic because criminal proceeds may be transferred, concealed, or disguised through money laundering. For that reason, private property rights over assets suspected of being derived from criminal conduct may still be limited by statute, provided that the limitation is directed toward protecting the public interest and is carried out through a fair legal mechanism. In this regard, Constitutional Court Decision No. 021/PUU-III/2005 provides a limited point of comparison, as the Court affirmed that property rights are not absolute and may be limited by statute in the interests of public security and order.⁴¹

With respect to NCBAF, any restriction on citizens' private property rights must be accompanied by comprehensive asset forfeiture procedures. Although NCBAF has appeared in limited form in several provisions of current Indonesian law, the absence of a specific statute means that its implementation continues to face normative constraints and potential human rights risks. These legal gaps relate primarily to the limits of law enforcement authority, the scope of assets subject to forfeiture, evidentiary standards, objection mechanisms, protection of bona fide third parties, and judicial oversight. Regulation is therefore required to establish clear evidentiary standards and provide strict judicial supervision so that NCBAF operates consistently with the principle of due process of law within a rule-of-law state.⁴²

The current position of NCBAF in the Indonesian legal system remains fragmented across several statutes, regulations, and institutional technical rules. The existing framework has not yet established a single statutory umbrella that comprehensively regulates definitions,

⁴⁰ Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, art. 14; Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28D ayat (1).

⁴¹ Dewi Asri Puanandini, Vita Suci Maharani, and Putri Anasela, "Korupsi Sebagai Kejahatan Luar Biasa: Analisis Dampak dan Upaya Penegakan Hukum," *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 4, no. 1 (2025): 44–52, <https://doi.org/10.59818/jps.v3i3.1173>; Ewapriyandi Fahmi Saputra and Hery Firmansyah, "Politik Hukum dalam Upaya Pemberantasan Tindak Pidana Korupsi melalui Pembaharuan Pengaturan Tindak Pidana Korupsi sebagai Extraordinary Crime dalam KUHP Nasional," *UNES Law Review* 6, no. 2 (2023): 4493–504; Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 021/PUU-III/2005.

⁴² Syarlis, Mustofa, and Earlyanti, "Efektivitas Perma Nomor 1 Tahun 2013," 1915–33.

asset categories, authority, procedures, evidentiary standards, objection mechanisms, third-party protection, and the management of forfeited assets. This fragmentation reinforces the urgency of enacting a specific statute on non-conviction-based asset forfeiture, particularly in the context of corruption offenses that often develop into money laundering offenses. NCBAF can function optimally and remain within the bounds of Indonesia's rule-of-law framework only if it is designed through a specific statute that integrates the effectiveness of asset recovery with the protection of citizens' constitutional rights.⁴³

As to the constitutionality of NCBAF, the mechanism must be assessed through proportionality review. Robert Alexy's theory of constitutional rights provides a relevant framework for determining whether restrictions on property rights through NCBAF can be constitutionally justified. Under this framework, the inquiry begins with the identification of a legitimate aim, namely whether the limitation of rights serves a purpose that is constitutionally justifiable. For NCBAF, that legitimate aim lies in the protection of the public interest, the recovery of state or victim assets, and the prevention of the dissipation of criminal proceeds. The analysis then proceeds through three stages. The first is suitability, which asks whether NCBAF is a rational and appropriate instrument for achieving asset recovery and preventing asset dissipation. The second is necessity, which asks whether there is no equally effective alternative that would impose a less restrictive limitation on private property rights. The third is balancing, or proportionality *stricto sensu*, which asks whether the public benefits of NCBAF are commensurate with the intensity of the restriction imposed on property rights. Within this framework, private property rights may be understood as relative rather than absolute rights, and may therefore be limited so long as the limitation is imposed by law, pursues a legitimate aim, observes due process of law, and provides adequate safeguards for suspects, defendants, asset owners, and bona fide third parties.⁴⁴

2. The Constitutional Court's Perspective on Non-Conviction-Based Asset Forfeiture from the Standpoint of Due Process of Law

The Constitutional Court of the Republic of Indonesia is a constitutional adjudicatory body vested with the authority to review statutes against the 1945 Constitution of the Republic of Indonesia and to adjudicate other constitutional matters assigned to it by the Constitution. The Court forms part of an independent judicial power, as provided in Article

⁴³ Syahrir, Rahman, and Qohar, "Tinjauan Hukum Perampasan Aset Tanpa Pemidanaan," 16–25; Azzahra, "Urgensi Regulasi Perampasan Aset," 179–87.

⁴⁴ Robert Alexy, "Constitutional Rights, Democracy, and Representation," *Ricerche Giuridiche* 3, no. 2 (2014): 197–209; Irene Angelita Rugian, "Prinsip Proporsionalitas dalam Putusan Mahkamah Konstitusi: Studi Perbandingan di Indonesia dan Jerman," *Jurnal Konstitusi* 18, no. 2 (2021): 461, <https://doi.org/10.31078/jk1829>.

24C of the 1945 Constitution and Law Number 24 of 2003 on the Constitutional Court, as amended. In performing this function, the Constitutional Court acts as the guardian of the constitution as well as its authoritative interpreter, including when assessing the constitutionality of legal norms that may restrict private property rights, fair legal certainty, and the protection of human rights.⁴⁵

The principle of due process of law may be understood as a fair legal process: a fundamental principle requiring that any state action affecting citizens' basic rights be lawful, non-arbitrary, transparent, and subject to review before an independent and impartial judicial body. Historically, the term due process of law developed within the constitutional tradition of the United States, particularly through the Fifth and Fourteenth Amendments to the United States Constitution. Substantively, however, the same idea is also recognized within the Indonesian legal system through the principles of the rule of law, human rights protection, and the guarantee of fair legal certainty.⁴⁶

In constitutional doctrine, due process of law has two principal dimensions: procedural and substantive. Procedurally, it requires proper notice to interested parties, the right to be heard, the right to present a defense, the right to challenge evidence, the right to an independent and impartial tribunal, and the right to seek legal remedies. Substantively, it requires that restrictions imposed by the state be not only procedurally valid, but also rational, proportional, and consistent with justice and human rights. A limitation on rights, therefore, is not justified merely because it has been enacted through a valid legislative process; it must also pursue a legitimate aim and rest on a substance that can be constitutionally defended.

Under the 1945 Constitution, the principle of due process of law is principally reflected in Article 28D(1), which provides that "every person has the right to recognition, guarantee, protection, and fair legal certainty, as well as equal treatment before the law." This principle is also inseparable from Article 1(3) of the 1945 Constitution, which affirms that Indonesia is a state based on law. In the criminal justice context, due process of law provides the foundation for protecting the rights of suspects, defendants, victims, and interested third parties. Accordingly, every asset forfeiture mechanism, including NCBAF, must be situated within a fair, measurable, and judicially supervised legal process.⁴⁷

⁴⁵ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 24C; Republik Indonesia, Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi; Felicia, "Kedudukan Mahkamah Konstitusi dalam Sistem Hukum Ketatanegaraan Indonesia," *Jurnal Indonesia Sosial Teknologi* 3, no. 4 (2022): 574–85, <https://doi.org/10.36418/jist.v3i5.422>.

⁴⁶ Max Crema and Lawrence B. Solum, "The Original Meaning of 'Due Process of Law' in the Fifth Amendment," *Virginia Law Review* 108 (2022): 2305–41.

⁴⁷ Teddy Anggoro, "Mengembalikan Supremasi Pasal 28D Ayat (1) UUD NRI 1945 Terkait Putusan Mahkamah Konstitusi yang Memberikan Upaya Hukum Kasasi atas Putusan Penundaan Kewajiban Pembayaran Utang,"

Within the field of asset forfeiture, the Constitutional Court has an important role in ensuring that restrictions on property rights are not imposed arbitrarily and remain consistent with Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution. Although the Court has never directly reviewed the constitutionality of NCBAF as a standalone legal regime, several Constitutional Court decisions in cases reviewing the Anti-Money Laundering Law may be used to identify limited constitutional guidance on the relationship between proof of the predicate crime, protection of the public interest, and the guarantee of due process of law. These decisions are set out in the following table.

Table 3.
Constitutional Court Decisions Relevant to the Due Process Dimension in the NCBAF Discourse

Constitutional Court Decision	Constitutional Issue	Provision Reviewed	Ratio Decidendi or Legal Reasoning
Constitutional Court Decision No. 77/PUU-XII/2014	Due process of law in the adjudication of money laundering offenses where proof of the predicate crime is not required to be established first.	Article 69 of the Anti-Money Laundering Law in relation to Article 28D(1) of the 1945 Constitution of the Republic of Indonesia.	The Court held that the provision stating that the predicate crime need not first be proven in the investigation, prosecution, and trial of money laundering cases is not contrary to the 1945 Constitution. However, the provision does not mean that the predicate crime may be dispensed with altogether.
Constitutional Court Decision No. 90/PUU-XIII/2015	Due process of law in the adjudication of money laundering offenses where the petitioner was only a suspect in a money laundering case.	Article 69 of the Anti-Money Laundering Law in relation to Article 1(3) and Article 28D(1) of the 1945 Constitution of the Republic of Indonesia.	The Court affirmed that money laundering is a follow-up crime that still requires the existence of a predicate crime. However, the predicate crime need not first be proven by a final and binding court judgment before the money laundering case is examined.

Jurnal RechtsVinding 13 (2024): 65–81; Rasina Padeni Nasution and Swity Milen, “Praktek Due Process of Law dalam Sistem Peradilan Pidana Indonesia Ditinjau dari Putusan Pengadilan Negeri Medan Tahun 2022–2023,” *Jurnal Begawan Hukum* 2, no. 1 (2024): 117–28.

Constitutional Court Decision	Constitutional Issue	Provision Reviewed	Ratio Decidendi or Legal Reasoning
Constitutional Court Decision No. 35/PUU-XV/2017	Due process of law in the adjudication of money laundering offenses and the protection of the rights of interested parties.	Article 1 point 5 and Article 69 of the Anti-Money Laundering Law in relation to constitutional rights provisions under the 1945 Constitution of the Republic of Indonesia.	The Court reaffirmed its position in Decision No. 77/PUU-XII/2014 and Decision No. 90/PUU-XIII/2015 that money laundering still requires a predicate crime, but proof of the predicate crime need not precede the examination of the money laundering case.

Source: *Constitutional Court Decision No. 77/PUU-XII/2014, Constitutional Court Decision No. 90/PUU-XIII/2015, and Constitutional Court Decision No. 35/PUU-XV/2017.*

On the basis of these decisions, it is clear that the Constitutional Court has not directly assessed NCBAF. However, when the Court’s reasoning is read together with the concept of NCBAF under the Stolen Asset Recovery (StAR) Initiative, it provides limited constitutional guidance relevant to the design of NCBAF in Indonesia. This guidance is most apparent in the Court’s position that the examination of money laundering offenses need not await prior proof of the predicate offense, provided that the predicate offense remains the basis for the existence of the money laundering offense. In this context, the Court appears to leave room for a law enforcement model oriented toward tracing and preserving assets, particularly where there is a risk of asset dissipation, where the offender has died, absconded, or cannot be located. That space, however, must remain bounded by due process of law, because the absence of a requirement to prove the predicate offense first is not equivalent to eliminating the obligation to prove the nexus between the asset and the criminal offense.⁴⁸

In addition to these three decisions, Constitutional Court Decision No. 25/PUU-XIV/2016 is also relevant as a limited point of reference, although it does not directly concern NCBAF. That decision reviewed the constitutionality of Article 2(1) and Article 3 of the Anti-Corruption Law, particularly the word “may” in the element of state financial loss or loss to the state economy. Through that decision, the Court emphasized the importance of actual state loss in the construction of corruption offenses. The decision also reflects the

⁴⁸ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 77/PUU-XII/2014; Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 90/PUU-XIII/2015; Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 35/PUU-XV/2017; Greenberg et al., *Stolen Asset Recovery*.

Court's caution in distinguishing state losses arising from administrative error from state losses that fall within the domain of corruption offenses. Accordingly, Decision No. 25/PUU-XIV/2016 may be read as a reminder that the effectiveness of asset recovery must not come at the expense of legal certainty, adequate proof, and the boundary between administrative, civil, and criminal mechanisms.⁴⁹

The three decisions concerning Article 69 of the Anti-Money Laundering Law, together with Decision No. 25/PUU-XIV/2016, show that the Constitutional Court has not directly constructed a legal doctrine of NCBAF. Nevertheless, these decisions provide limited constitutional guidance that asset recovery mechanisms not wholly dependent on a criminal conviction may be considered, provided that they satisfy constitutional requirements. Those requirements include a clear legal basis, a legitimate aim, proof of the nexus between the asset and the criminal offense, judicial oversight, protection of the asset owner's rights, and protection for bona fide third parties.

These Constitutional Court decisions may therefore serve as an argumentative basis for requiring the legislature to formulate clear constitutional parameters for NCBAF. Such parameters are necessary to ensure that NCBAF does not become an arbitrary forfeiture mechanism, but instead operates as an effective asset recovery instrument consistent with human rights principles. The urgency of establishing these parameters is heightened by the fact that recovering state losses through criminal proceedings often takes considerable time, while assets derived from criminal offenses may be transferred, disguised, or concealed during the course of the proceedings.⁵⁰

3. Constitutional Implications of Non-Conviction-Based Asset Forfeiture for Human Rights Protection in Indonesia

At the international level, the normative basis for non-conviction-based asset forfeiture is found in the 2003 United Nations Convention against Corruption (UNCAC). UNCAC regards corruption as a crime that poses a serious threat to the stability and security of societies, democratic values, ethics, justice, sustainable development, and the rule of law. Accordingly, UNCAC not only emphasizes the prevention and eradication of corruption, but also places asset recovery as a fundamental principle of international cooperation. Indonesia ratified UNCAC through Law Number 7 of 2006, making UNCAC's asset recovery principles an important reference point in the development of national law on asset forfeiture.⁵¹

⁴⁹ Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 25/PUU-XIV/2016.

⁵⁰ Elżbieta Hryniewicz-Lach, "Improving Asset Confiscation: In the Quest for Effective and Just Solutions," *ERA Forum* 25, no. 2 (2024): 231–47, <https://doi.org/10.1007/s12027-024-00806-8>; Hafid, "Perampasan Aset Tanpa Pidanaan," 465–80.

⁵¹ Republik Indonesia, Undang-Undang Nomor 7 Tahun 2006; Hiarij, "United Nations Convention Against Corruption," 112.

In the context of NCBAF, Article 54(1)(c) of UNCAC encourages States Parties to consider measures that allow the confiscation of assets without a criminal conviction in certain circumstances, including where the offender has died, absconded, is absent, or in other appropriate cases. Article 54(2) and Article 55 of UNCAC also regulate international cooperation in freezing, seizure, confiscation, and mutual legal assistance (MLA). UNCAC, however, does not provide a single technical design for NCBAF. States Parties must therefore formulate national mechanisms that are compatible with their respective legal systems while continuing to respect human rights principles.⁵²

Technical guidance on NCBAF has been developed extensively by the Stolen Asset Recovery (StAR) Initiative, established by the World Bank and UNODC. The StAR publication authored by Greenberg et al. is not a binding legal instrument, but it provides good-practice guidance for states in designing NCBAF regimes. The guidance emphasizes that NCBAF is an in rem mechanism directed against assets rather than solely against persons, and that it must still require proof of the nexus between the asset and the criminal offense, judicial oversight, protection for bona fide third parties, and adequate procedural safeguards.⁵³

In addition to the StAR Initiative, the Financial Action Task Force (FATF) provides important guidance through Recommendation 4 on confiscation and provisional measures. FATF encourages states to establish mechanisms that enable the identification, tracing, freezing, seizure, and confiscation of criminal proceeds. Developments in FATF standards have also increasingly emphasized the importance of asset recovery, including the possible use of non-conviction-based confiscation mechanisms, provided that they remain consistent with the fundamental principles of domestic law. Although FATF recommendations are not binding in the same way as international treaties, these standards exert significant influence on national legal reform, particularly in anti-money laundering and asset recovery regimes.⁵⁴

The implementation of NCBAF, however, is inseparable from human rights protection standards. The StAR Initiative and FATF guidance must be read together with the principles set out in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), particularly the right to a fair hearing, access to a court, protection against arbitrariness, and protection of property. In the Indonesian context, these principles are reflected in Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia. NCBAF can therefore be constitutionally

⁵² United Nations Convention against Corruption, art. 54(1)(c), art. 54(2), and art. 55.

⁵³ Greenberg et al., *Stolen Asset Recovery*.

⁵⁴ Financial Action Task Force, "Amendments to the FATF Standards"; Financial Action Task Force, *Asset Recovery Guidance and Best Practices*; Nurhani Mouriska and Ani Purwati, "Peran Financial Action Task Force (FATF) dalam Harmonisasi Penanggulangan Pencucian Uang Global," *Jurnal Riset Multidisiplin Edukasi* 2, no. 8 (2025): 321–34, <https://doi.org/10.71282/jurmie.v2i8.813>.

justified only if it is designed as a lawful and proportional legal mechanism subject to judicial oversight.⁵⁵

The application of NCBAF carries significant constitutional implications because it permits assets to be forfeited without a prior criminal conviction against the offender. The potential constitutional difficulty arises primarily in relation to private property rights guaranteed under Article 28H(4) of the 1945 Constitution, which provides that every person has the right to private property and that such property shall not be arbitrarily taken over by anyone. Article 28D(1) of the 1945 Constitution also guarantees fair legal certainty and equal treatment before the law. Accordingly, if NCBAF is implemented without a clear legal basis, without an objection mechanism, without judicial oversight, or without an opportunity for the asset owner to defend his or her rights, the mechanism risks violating the principles of non-arbitrariness and due process of law.⁵⁶

Nevertheless, private property rights are not absolute. Article 28J(2) of the 1945 Constitution provides that the exercise of every person's rights and freedoms may be limited by statute to secure recognition and respect for the rights and freedoms of others and to satisfy just demands based on considerations of morality, religious values, security, and public order in a democratic society. In the context of corruption and money laundering offenses, restrictions on property rights may be justified where the forfeited assets are proven to have a nexus with criminal conduct and the forfeiture is carried out to recover losses suffered by the state or victims. The constitutional question surrounding NCBAF, therefore, is not whether property rights may be limited at all, but whether such limitation is imposed by statute, pursues a legitimate aim, follows a fair legal process, and is proportional.⁵⁷

The application of NCBAF must also take account of the presumption of innocence. Because NCBAF does not require a prior criminal conviction, the mechanism is often questioned on the ground that it may be perceived as imposing punishment without conviction. That perception can be avoided if NCBAF is expressly designed as an asset recovery mechanism focused on the legal status of the asset and its nexus to criminal conduct, rather than as a disguised form of punishment against the asset owner. NCBAF law must therefore guarantee notice to interested parties, the right to object, the right to

⁵⁵ Universal Declaration of Human Rights, arts. 10 and 17; International Covenant on Civil and Political Rights, art. 14; Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28D ayat (1), Pasal 28H ayat (4), dan Pasal 28J ayat (2).

⁵⁶ Giava Zahrannisa, Fira Natasha Sinuraya, and Salsa Juanita Prihapsari, "Pandemi dan Pertaruhan Peradilan Pidana: Penjaminan Due Process of Law melalui Zonasi, Transformasi, dan Reformasi E-Litigasi Pidana di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 1, no. 2 (2021): 142–56, <https://doi.org/10.15294/ipmhi.v1i2.53265>.

⁵⁷ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28J ayat (2); Matompo, "Pembatasan Terhadap Hak Asasi Manusia," 57–72.

be heard before a court, the right to establish the lawful origin of the asset, the right to legal assistance, the right to legal remedies, and protection for bona fide third parties.⁵⁸

The constitutional justification for NCBAF rests on the premise that property derived from criminal conduct cannot be treated in the same way as lawfully acquired property. Private property is indeed protected by the Constitution, but that protection is not intended to shield criminal proceeds, assets whose origins have been disguised, or property obtained by harming the public interest and victims' rights. At the same time, suspicion that an asset is derived from criminal conduct cannot replace the obligation of proof. The state must still prove the nexus between the asset and the criminal offense under an evidentiary standard prescribed by statute and tested before a court. NCBAF is therefore justifiable only where the restriction of private property rights is carried out through a mechanism that guarantees proof, defense, and judicial supervision.⁵⁹

Corruption as an extraordinary crime has far-reaching consequences because it causes state financial losses, obstructs development, erodes public trust in government institutions, and threatens public welfare. These consequences become more complex when the proceeds of corruption are transferred, concealed, or disguised through money laundering. In such circumstances, the state has an obligation to protect the public interest through an effective asset recovery mechanism. That effectiveness, however, must remain within the bounds of the rule of law. Constitutional Court Decision No. 021/PUU-III/2005 is instructive by analogy because the Court affirmed that property rights may be limited by statute in the interests of public security and order. Although the decision does not directly concern NCBAF, it demonstrates that restrictions on property rights may be justified, provided that they are lawful and non-arbitrary.⁶⁰

On this basis, the constitutionality of NCBAF must be assessed through proportionality review. This review is relevant because NCBAF creates a tension between two constitutional interests: the protection of private property rights and the public interest in recovering assets derived from criminal conduct. In Robert Alexy's theory of constitutional rights, proportionality review is used to determine whether a limitation on a right can be justified

⁵⁸ Johansyah and Abdul Roni, "Asas Praduga Tak Bersalah dalam Proses Penyidikan," *Solusi* 21, no. 1 (2023): 17–35, <https://doi.org/10.36546/solusi.v21i1.805>; Wulandari, Wasis Suprayitno, Kukuh Dwi Kurniawan, and Merve Özkan Borsa, "Asset Forfeiture of Corruption Proceeds Using the Non-Conviction Based Asset Forfeiture Method: A Review of Human Rights," *Indonesia Law Reform Journal* 3, no. 1 (2023): 15–25, <https://doi.org/10.22219/ilrej.v3i1.24496>.

⁵⁹ Muntahar, Ablisar, and Bariah, "Perampasan Aset Korupsi Tanpa Pemidanaan," 49–63; Wulandari et al., "Asset Forfeiture of Corruption Proceeds," 15–25.

⁶⁰ Puanandini, Maharani, and Anasela, "Korupsi Sebagai Kejahatan Luar Biasa," 44–52; Saputra and Firmansyah, "Politik Hukum dalam Upaya Pemberantasan Tindak Pidana Korupsi," 4493–504; Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 021/PUU-III/2005.

through the stages of legitimate aim, suitability, necessity, and proportionality *stricto sensu*, or balancing. For NCBAF, this test can be used to formulate a legal design that is not only effective in recovering assets but also satisfies the requirements of due process of law.⁶¹

Table 4.
Proportionality Review and the Design of NCBAF Legal Norms in Indonesia

Stage of Proportionality Review	Result of the Review	Design of Legal Norms
Legitimate aim	NCBAF pursues a legitimate aim when it is directed toward protecting the public interest, recovering losses suffered by the state or victims, and preventing the dissipation of assets derived from criminal offenses.	NCBAF legislation must expressly formulate the purposes of asset forfeiture, namely the recovery of assets derived from criminal offenses, the protection of the rights of victims or the state, and the prevention of asset transfer or concealment.
Suitability	NCBAF is a suitable instrument for achieving asset recovery, particularly where criminal proceedings cannot operate effectively because the suspect or defendant has died, absconded, cannot be located, or where the assets are at imminent risk of transfer.	The legal norms must regulate asset tracing, freezing, seizure, applications for asset forfeiture, and judicial oversight from the earliest stages so that assets are not lost or disguised before the case is decided.
Necessity	NCBAF is necessary where conventional criminal mechanisms or administrative mechanisms are insufficiently effective to recover assets derived from criminal offenses, and where no equally effective but less restrictive alternative is available with respect to property rights.	The statute must position NCBAF as a mechanism to be used in specified circumstances, subject to clear requirements, measurable evidentiary standards, reasonable time limits, and the state's obligation to prove the nexus between the asset and the criminal offense.

⁶¹ Alexy, "Constitutional Rights, Democracy, and Representation," 197–209; Rugian, "Prinsip Proporsionalitas," 461.

Stage of Proportionality Review	Result of the Review	Design of Legal Norms
Balancing or proportionality <i>stricto sensu</i>	The public benefits of NCBAF may be considered proportionate to the restriction of property rights where the mechanism is accompanied by robust due process safeguards.	The legal norms must guarantee the right to notice, the right to be heard, the right to object, the right to establish the lawful origin of the asset, the right to legal assistance, the right to legal remedies, protection for bona fide third parties, accountable asset management, and restoration of rights where the forfeiture is declared unlawful.

Source: *The 1945 Constitution of the Republic of Indonesia, Constitutional Court Decision No. 021/PUU-III/2005, “Constitutional Court Decision No. 77/PUU-XII/2014”. Constitutional Court Decision No. 90/PUU-XIII/2015, Constitutional Court Decision No. 35/PUU-XV/2017, the StAR Initiative, FATF, and Robert Alexy’s theory of proportionality.*

On the basis of this proportionality review, the legitimate aim of NCBAF does not lie in the restriction of property rights as such, but in the recovery of losses suffered by the state or victims, the protection of the public interest, and the prevention of the dissipation of assets derived from criminal offenses. The weakness of Indonesia’s current law lies in the continuing dominance of asset forfeiture mechanisms that depend on criminal proceedings under the Anti-Corruption Law, as well as the limited procedural framework for handling assets under the Anti-Money Laundering Law, which still rests on Supreme Court Regulation Number 1 of 2013. These limitations may create room for asset dissipation, particularly where assets have been transferred, disguised, or placed beyond the reach of conventional criminal mechanisms.

As to necessity, NCBAF may be justified where the mechanisms currently available are insufficiently effective to recover assets derived from criminal offenses. Administrative mechanisms under the Government Administration Law may serve as an alternative in cases involving state losses arising from administrative error, as reflected in Constitutional Court Decision No. 25/PUU-XIV/2016. However, such administrative mechanisms cannot fully replace the need for NCBAF where the assets to be recovered are connected to

corruption, money laundering, or other criminal offenses that cause losses to the state or victims. NCBAF may therefore be positioned as a special mechanism to be used where conventional criminal avenues are inadequate, provided that it remains subject to evidentiary requirements and judicial oversight.

As to balancing, the application of NCBAF should not be understood as giving absolute priority to public rights over individual rights. A more precise formulation is that the public interest in asset recovery may limit private property rights, provided that the limitation is proportional and accompanied by procedural safeguards. Accordingly, NCBAF must not extinguish the defense rights of asset owners, suspects, defendants, or bona fide third parties. On the contrary, it must afford those parties an opportunity to prove that the disputed assets were lawfully acquired, are not connected to criminal conduct, or are held by bona fide third parties.⁶²

Using Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia as constitutional parameters, NCBAF may be constitutionally justified if it satisfies four requirements. First, NCBAF must be established by statute, not merely through institutional technical regulations. Second, NCBAF must pursue a legitimate aim, namely the recovery of assets derived from criminal offenses and the protection of the public interest. Third, NCBAF must be based on proof of the nexus between the asset and the criminal offense under a clear evidentiary standard. Fourth, NCBAF must guarantee due process of law, including the right to object, the right to present a defense, judicial oversight, protection for bona fide third parties, and effective legal remedies.

The relationship between NCBAF and the effectiveness of law enforcement must also be understood within the framework of the rule of law. As a state based on law, Indonesia is obliged to provide legal instruments capable of preventing criminal proceeds from being enjoyed by offenders or by other parties who have no lawful entitlement to them. Where the proceeds of corruption or money laundering are concealed and disguised in such a way, the state cannot rely solely on the punishment of offenders. It must also be able to trace, freeze, seize, forfeit, and return assets to the state, victims, or rightful parties. Within this framework, optimizing asset recovery through NCBAF grounded in due process of law is not a violation of human rights, but part of the state's obligation to protect the rights of the public and victims from the consequences of criminal conduct.⁶³

⁶² Greenberg et al., *Stolen Asset Recovery*; Hryniewicz-Lach, "Improving Asset Confiscation," 231–47.

⁶³ Leonid Merzlyi, "Observance of Due Process of Law in the Investigating Judge's Rulings," *Naukovij Visnik Užgorods'kogo Nacional'nogo Universitetu* 2, no. 80 (2024): 171–76, <https://doi.org/10.24144/2307-3322.2023.80.2.26>; Wulandari et al., "Asset Forfeiture of Corruption Proceeds," 15–25.

C. CONCLUSIONS

Non-conviction-based asset forfeiture (NCBAF) is constitutionally justified within the Indonesian legal system insofar as the resulting limitation on private property rights is prescribed by law, pursues a legitimate aim, is carried out through a fair legal process, and remains proportional, in accordance with Article 28D(1), Article 28H(4), and Article 28J(2) of the 1945 Constitution of the Republic of Indonesia. At present, the legal status of NCBAF remains partial under the Anti-Corruption Law, the Anti-Money Laundering Law, Supreme Court Regulation Number 1 of 2013, and institutional technical regulations, leaving Indonesia without a comprehensive statutory framework governing asset categories, institutional authority, evidentiary standards, objection mechanisms, protection for bona fide third parties, and judicial oversight. The constitutional foundation for this position rests on the Constitutional Court's recognition, in Decision No. 021/PUU-III/2005, that private property rights are not absolute and may be limited by statute to protect the public interest. By contrast, Constitutional Court Decisions No. 77/PUU-XII/2014, No. 90/PUU-XIII/2015, and No. 35/PUU-XV/2017 offer only limited and indirect guidance, indicating that asset recovery need not always depend on prior proof of the predicate crime, provided that the nexus between the asset and the criminal offense is established. Accordingly, NCBAF should be enacted through a specific statute, most immediately the Asset Forfeiture Bill, which includes judicial oversight and adequate protection for bona fide third parties so that the recovery of state assets can be pursued effectively without disregarding citizens' constitutional rights.

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