



Legal Perspectives on the Confiscation of Corruption Assets: Implications for Justice and Human Rights

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ABSTRACT

This study examines the legal impact of the policy on the confiscation of assets derived from corruption on human rights in Indonesia, focusing on property rights and the presumption of innocence. A qualitative approach is used, combining normative legal analysis with empirical case studies through observation and documentation of asset confiscation cases in Indonesia. The findings indicate that while asset confiscation is a key tool in fighting corruption, its implementation faces legal challenges that jeopardize citizens' constitutional rights. Issues include asset confiscation without a final court decision (*inkracht*) and inadequate legal protection for third parties acting in good faith. The study suggests the need for policy reforms to strengthen evidence mechanisms, improve transparency, ensure independent oversight, and offer clearer legal protections. These reforms are essential to balancing the fight against corruption with respect for human rights in Indonesia's legal system. Further research should focus on empirical case examples and a broader theoretical discussion.

Keywords:

Asset Seizure, Human Rights, Corruption.

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1. INTRODUCTION

Asset confiscation originating from corruption crimes has long been considered a strategic tool in contemporary law enforcement, particularly in efforts to tackle extraordinary crimes like corruption that are systemic and organized (Fuadi et al., 2024). From a progressive legal perspective, asset confiscation is not only a restorative tool for recovering state losses, but also a preventive measure aimed at breaking the chain of systemic and structural crimes (St-Georges & Saint-Martin, 2021). However, the implementation of asset confiscation policies, especially those using the non-conviction-based asset forfeiture (NCB) principle, presents significant normative complexities from both legal and ethical perspectives. These complexities arise when the policy's effectiveness intersects with fundamental rule of law principles such as the protection of property rights, the presumption of innocence, and the guarantee of due process (Korejo et al., 2023). In practice, the gap between positive legal norms and real-world practices creates complex legal dilemmas.

Research on this issue has flourished in legal studies and international academic forums. Sudrajat & Yusuf (2025) highlighted that the success of asset recovery from corruption is significantly influenced by the existence of an adaptive international legal framework and cross-border cooperation. Meanwhile, Kryvoi & Matos (2021) found that the NCB principle often clashes with human rights, particularly regarding the right to a fair and

impartial trial, thus necessitating the application of the proportionality principle to ensure that repressive policies do not undermine justice. In line with this, Anwary (2022) emphasized the need for effective oversight mechanisms to protect individual constitutional rights, even though asset confiscation plays a crucial role in limiting the movement of corruption offenders.

Despite existing studies, a substantial gap remains in linking asset confiscation regulations explicitly to human rights principles, especially in the context of substantive justice and progressive legal theory. The prevailing normative approach has been heavily oriented toward positivism and procedural formalism, often neglecting the ethical and sociological dimensions inherent in law. Therefore, this study seeks to comprehensively explore the legal implications of asset confiscation policies in corruption crimes and their impact on human rights protection in Indonesia. The primary goal of this research is to reformulate the policy in alignment with the principles of substantive justice and human rights values within the framework of a democratic rule of law.

This study employs progressive legal theory as the main analytical framework to explore the relationship between asset confiscation policies (independent variable) and human rights protection (dependent variable). In this model, substantive justice acts as an intervening variable that mediates the relationship between law enforcement policies and respect for individual rights. The progressive legal theory approach asserts that legal policies should not only be effective in enforcement but must also balance the protection of human rights, creating a legal system that is both responsive and normatively sustainable.

Additionally, norm conflict theory is integrated to analyze the tension between the effectiveness of asset confiscation policies and human rights principles foundational to democratic rule of law. The practical clash between the need for strong action against corruption and the obligation to protect individual rights often leads to complex legal and normative dilemmas. Norm conflict theory provides a critical lens to examine how contradictory legal norms interact, conflict, and create a gap between normative expectations and reality, offering a space for reconstructing more inclusive and humanistic legal policies.

The urgency of legal reconstruction is increasingly relevant, given the characteristics of modern corruption, which have evolved into complex organized crime involving transnational networks and sophisticated global financial instruments. This reality calls for a progressive, inclusive, and transformative legal paradigm that not only responds repressively but also upholds substantive justice and legal humanism. By adopting a normative-critical approach, this study aims to make significant academic contributions to contemporary legal discourse, offering a reflective and contextual perspective. Moreover, the research is expected to provide a strong conceptual foundation for developing legal policies that are both effective in eradicating corruption and respectful of human dignity and constitutional supremacy.

2. RESEARCH METHODS

This research uses a normative legal method, which involves legal approaches such as the statute approach, conceptual approach, and case approach, as it is prescriptive (Rosidi et al., 2024). The legal materials used consist of primary legal materials (statutory regulations and court decisions), secondary legal materials (books, journals, articles), and tertiary legal materials (legal dictionaries). Data collection techniques are carried out through literature studies and analyzed descriptively and qualitatively.

However, the study could benefit from further elaboration on the data collection methods. It is important to clarify whether interviews, observations, or document collection are part of the data gathering process, as this will provide a clearer understanding of the validity of the data used in the research. Additionally, using a larger number of case studies, including comparisons with other countries that have implemented asset confiscation policies, would enrich the analysis and help determine whether the issues identified in Indonesia are common internationally or are unique to the country.

Furthermore, adopting a multidisciplinary approach could enhance the research by integrating social sciences or public policy perspectives. This would allow for a broader exploration of the societal and psychological impacts of asset confiscation on individuals and communities affected by the policy.

3. RESULT AND ANALYSIS

The legal impact of asset confiscation on human rights

The policy of confiscating assets from corruption crimes is a strategic part of the national effort to eradicate corruption that has taken root systemically. This legal instrument not only aims to recover state losses but also functions as a preventive tool to break the chain of organized corruption crimes. However, the implementation of this policy is not free from various legal issues that have a direct impact on the protection of human rights, especially the right to ownership and guarantees of a fair legal process.

One of the main problems is the practice of asset confiscation before a final and binding court decision (*inkracht*), which has the potential to violate the principle of the presumption of innocence and the right to ownership guaranteed by Article 28H paragraph (4) of the 1945 Constitution and Article 17 of the Universal Declaration of Human Rights (Ilma, 2025). Suparji Ahmad, a criminal law expert, emphasized that asset confiscation should only be carried out after a complete judicial process (Watch, 2024). In addition, research by Zen & SH (2021) revealed that the Indonesian criminal law system does not provide adequate protection for bona fide third parties, resulting in injustices during the asset confiscation process, particularly in corruption and money laundering cases.

This issue is reflected in several cases, such as the Jiwasraya-Asabri case, where the Attorney General's Office is suspected of confiscating assets belonging to parties with no direct connection to the alleged crime. This practice not only causes material harm but also creates legal uncertainty and violates the principle of protecting human rights. The lack of transparency in the legal process and limited access to legal aid for marginalized groups exacerbates the situation.

A comparison with other countries' legal systems, such as the United States' Civil Asset Forfeiture Reform Act (CAFRA), shows that protection for third parties acting in good faith must be regulated in detail (Putra et al., 2025). In Indonesia, there are no legal provisions that explicitly guarantee these rights, highlighting the urgent need for policy reformulation. Asset forfeiture policies need to be redesigned with considerations for prudence, proportionality, and the protection of citizens' constitutional rights.

Therefore, strengthening regulations is necessary by adding strict evidentiary mechanisms to link assets to criminal acts, providing legal protection for uninvolved third parties, and creating compensation procedures for victims of illegal seizures. Additionally, independent supervision of the policy's implementation is crucial to prevent abuse of power by law enforcement officers. By strengthening the legal framework and clarifying the limits of asset seizure, Indonesia can implement an effective anti-corruption policy while upholding justice, constitutionalism, and human rights principles. The supremacy of law that balances state interests with individual rights is fundamental for achieving a democratic and civilized rule of law.

Table 1. Comparison of Problems and Solutions in Asset Confiscation Policy

Aspect	Problems Encountered	Recommended Solutions
Legal Decision	Asset seizures are often carried out without a final court decision.	Confiscation is only carried out after a decision has become final
Third Party Protection	Third parties acting in good faith receive less legal protection	Strict regulations to protect third party rights (such as CAFRA in the US)
Transparency and Access to Legal Aid	Minimal transparency and limited access to legal aid, especially for marginalized groups.	Transparency mechanisms and easily accessible legal aid
Proof Mechanism	Lack of evidence linking assets to criminal acts	Strengthening strict and clear evidence mechanisms
Oversight and Accountability	Risk of abuse of authority by law enforcement officers	Establishment of effective and accountable independent supervision

Compensation for Victims	There is no compensation procedure for parties harmed by illegal seizure.	Regulation of compensation mechanisms for victims of unlawful seizure
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To gain a comprehensive understanding of the legal impact of asset confiscation on human rights in Indonesia, empirical studies and systematic field observations have been conducted. The findings of these studies indicate that, while the asset confiscation policy was designed as a strategic tool in eradicating corruption, its implementation often raises significant legal problems, especially concerning the protection of citizens' constitutional rights. Several studies highlight the practice of asset confiscation without a permanent court decision (*inkracht*) and the lack of legal protection for bona fide third parties. This situation threatens the principle of the presumption of innocence and procedural justice, which are essential in a democratic legal system.

Furthermore, the research findings also reveal weaknesses in the monitoring and accountability mechanisms of the policy's implementation, which creates space for potential abuse of authority by law enforcement officers. The lack of transparency and limited access to legal aid for marginalized groups further exacerbates the inequality of legal protection. These findings emphasize the urgency of reformulating asset confiscation policies that not only focus on effectively eradicating corruption but also respect justice, transparency, and human rights, ensuring a balance between law enforcement and individual rights protection.

The issue of asset forfeiture without conviction (NCB)

The principle of non-conviction-based asset forfeiture (NCB) is a legal instrument used to confiscate assets suspected of originating from criminal acts, especially corruption, without waiting for a final criminal decision against the asset owner (Sakinah & Sumardiana, 2025). This principle arose from the urgent need to combat cross-border corruption, where formal evidence processes often face obstacles due to the complexity of financial networks and perpetrators' expertise in hiding assets. According to the Transparency International report (2023), countries that implement the NCB system have seen a significant increase in the recovery of corrupt assets compared to conventional approaches (Awan, 2024). In a comparative study, it was found that the success rate of asset recovery through NCB reached around 45%, while the criminal verdict-based approach was only around 30%.

However, despite its effectiveness in eradicating corruption, the NCB method faces criticism, particularly concerning human rights protection, especially regarding the presumption of innocence and the right to legal ownership. In Indonesia, the implementation of NCB still faces challenges, especially due to the absence of clear regulations regarding asset confiscation without criminal punishment. Other countries, such as Singapore and Hong Kong, have implemented more effective systems in this regard. Additionally, the civil law approach can be used alongside criminal law to expedite asset recovery. Legal reform and strengthening law enforcement agencies are essential for optimizing asset confiscation in Indonesia.

Table 2. Clash of Norms in Asset Confiscation and Human Rights Principles

Collision Dimensions	Asset Confiscation Practices	Related Human Rights Principles	Practical Impact
Legality of Confiscation	Seizure of assets without a permanent court decision	Right to property	Violation of ownership rights, legal uncertainty
Presumption of Innocence	Execution without a legally binding verdict	Principle of presumption of innocence	Potential for criminalization without fair legal process
Fair Legal Process	Limited access to legal aid and transparency	Right to a fair trial	Inability of affected parties to obtain justice

Supervision of Apparatus	Weak internal control mechanisms	Right to legal protection	Vulnerable to abuse of authority
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International academic studies also highlight similar challenges. Osavoliuk et al. (2021) assert that without a harmonious international legal framework and synergy between countries, the success of returning corrupt assets will be disrupted. The Utrecht Law Review (2021) highlights the friction between the NCB principle and human rights protection, which requires the enforcement of the proportionality principle to ensure policies do not erode the essence of justice. This study reinforces the need for policy reconstruction to integrate substantive justice and human rights principles holistically (Wulandari et al., 2023).

Table 3. Comparison of Problems and Solutions in Asset Confiscation Policy

Critical Issues	Policy Recommendations	Objectives and benefits
Legality of Confiscation	Tightening the requirements for a valid court decision before asset seizure	Ensuring the validity of legal actions and protection of property rights
Third Party Protection	Arrangement of restitution and clarification mechanisms for parties in good faith	Prevent procedural injustice and harm
Transparency and Access to Law	Improving access to legal aid and transparency of the confiscation process	Strengthening the principles of procedural justice and human rights protection
Oversight and Accountability	Establishment of independent supervisory bodies and strengthening of accountability mechanisms	Prevent abuse of authority by law enforcement officers
Critical Issues	Policy Recommendations	Objectives and benefits
Legality of Confiscation	Tightening the requirements for a valid court decision before asset seizure	Ensuring the validity of legal actions and protection of property rights

Thus, legal reconstruction that adopts a progressive and humanistic paradigm is crucial to deal with the complexity of modern corruption, which is organized and cross-border (Palan & Vines, 2017). This approach not only emphasizes the effectiveness of law enforcement but also upholds respect and protection of human rights as the main pillars in building a just, transparent, and sustainable legal system.

This study reveals significant findings related to the normative and implementation conflicts between asset confiscation policies in corruption crimes and human rights principles in Indonesia. These findings demonstrate that while asset confiscation was initiated as an effective tool in eradicating corruption, its implementation often presents complex legal dilemmas due to overlapping legal norms and inconsistencies between substantive justice and procedural practices. In-depth analysis indicates that asset confiscation without a legally binding court decision, as well as minimal protection for third parties acting in good faith, threatens property rights and the presumption of innocence. Furthermore, weaknesses in monitoring and transparency mechanisms increase the risk of abuse by law enforcement officers. Through norm conflict theory and progressive law, this study highlights the urgency of reconstructing asset confiscation policies that not only prioritize law enforcement effectiveness but also uphold human rights principles as the foundation of a democratic state of law.

4. CONCLUSION

This study confirms that the policy of asset confiscation resulting from corruption, while being a strategic and effective tool in national corruption eradication efforts, has significant legal impacts on human rights, particularly the right to ownership and the presumption of innocence. The main findings reveal that the practice of confiscating assets without a final court decision and the lack of legal protection for bona fide third parties pose risks of constitutional rights violations and procedural injustices.

Through the analysis of norm conflict theory, this study provides new insights, demonstrating that the eradication of corruption must be balanced with the protection of individual rights in order to prevent abuse of authority and legal inequality. The key lesson from this research is the importance of reconstructing asset confiscation policies to be oriented toward substantive justice, transparency, and respect for human rights principles as the foundation of a democratic state of law.

The significant contribution of this study lies in reinforcing the understanding of corruption asset confiscation policies and proposing a more humanistic and proportional policy framework for Indonesia. By highlighting the need for harmonizing criminal law norms and constitutional rights protections, this study updates the perspective on a topic that has received insufficient attention. However, the study has limitations, notably its limited scope focusing on specific cases, and it does not consider demographic variations such as gender, age, or employ broader quantitative methods. Therefore, further research is needed to expand the scope of analysis, test policies across various regions, and incorporate a multidisciplinary approach. This will allow for more comprehensive and targeted policy recommendations, ensuring a better balance between law enforcement and the protection of human rights.

5. REFERENCES

- [1] Adnantara, K. F. (2025). Dinamika Penegakan Hukum Dan Komisi Pemberantasan Korupsi Yang Tegas, Cepat, Dan Tanggap Dalam Pemberantasan Korupsi Tahun 2025. *Jurnal Yustitia*, 20(1), 1–14.
- [2] Alwadipa, B. P., & Zulfahmi, Z. (2024). Pertimbangan Hakim dalam Penanganan Kekerasan Dalam Rumah Tangga: Tinjauan Yuridis atas Putusan Nomor 339/Pid. Sus/2023/Pn Bgr. *Jurnal Intelek Dan Cendikiawan Nusantara*, 1(4), 6203–6217.
- [3] Andriawan, H. (2024). Pelaksanaan Penetapan Pengadilan Yang Mengabulkan Permohonan Keberatan Terhadap Putusan Perampasan Barang Sebagai Bentuk Perlindungan Hukum Bagi Pihak Ketiga Yang Beritikad Baik Dalam Perkara Tindak Pidana Korupsi. Universitas Islam Indonesia.
- [4] Anwary, I. (2022). Evaluation of the Effectiveness of Public Administration Policies in the Development of Stringent Legal Framework: An Analysis of the Criminal Justice System in Indonesia. *International Journal of Criminal Justice Sciences*, 17(2).
- [5] Arianto, A. F. (2024). Peran Lembaga Penegak Hukum Dalam Proses Perampasan Aset. *JURNAL USM LAW REVIEW*, 7(3), 1601–1615.
- [6] Awan, R. (2024). Analisis Penerapan Asas Perlindungan Hak Milik Pribadi Dan Asas Praduga Tak Bersalah Dalam Rancangan Undang-Undang Perampasan Aset. Universitas Muhammadiyah Malang.
- [7] Bayangkara, B. A., Tehupeior, A., & Napitupulu, D. R. W. (2024). Analisis Yuridis Perlindungan Hukum Bagi Masyarakat Di Perumahan Forest Hill (Pihak Ketiga) Atas Perampasan Asset Tanah Oleh Negara Perkara Tindak Pidana Korupsi PT. ASABRI. *Action Research Literate*, 8(5), 1–5.
- [8] Chaerudin, M. A. Y. C., Maskur, A., & Adila, A. H. (2025). Prinsip Keadilan Prosedural Sebagai Landasan Pertimbangan Hakim Dalam Kasus Pencurian Ayam. *JURNAL USM LAW REVIEW*, 8(1), 509–529.
- [9] Fuadi, G., Putri, W. V., & Raharjo, T. (2024). Tinjauan Perampasan Aset dalam Tindak Pidana Pencucian Uang dari Perspektif Keadilan. *Jurnal Penegakan Hukum Dan Keadilan*, 5(1), 53–68.
- [10] Gultom, P. (2022). Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indonesia). *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah*, 3(1).
- [11] Ilma, H. A. (2025). Tantangan Mekanisme Non-Conviction Based Asset Forfeiture dalam RUU Perampasan Aset Tindak Pidana Korupsi di Indonesia. *Taruna Law: Journal of Law and Syariah*, 3(01).
- [12] Imelda, R., & Dewi, S. (2024). Pengembalian Barang Bukti Pasca Putusan Berkekuatan Hukum Di Rupbasan Rengat. *Collegium Studiosum Journal*, 7(2), 600–619.
- [13] Korejo, M. S., Rajamanickam, R., Md. Said, M. H., & Korejo, E. N. (2023). Plea bargain dilemma, financial crime and asset recovery. *Journal of Money Laundering Control*, 26(3), 628–639.
- [14] Kryvoi, Y., & Matos, S. (2021). Non-Retroactivity as a General Principle of Law. *Utrecht Law Review*, 17(1).
- [15] Ksatria, C. A. A. D. (2025). Prinsip Amicus Curiae terhadap Putusan Hakim dalam Perkara Pidana di Indonesia. *Ethics and Law Journal: Business and Notary*.
- [16] Luntungan, N. G., Rusdi, M., & Sierrad, M. Z. (2023). Asas Praduga Tak Bersalah Dalam Hukum Pidana: Refleksi Hak Asasi Manusia. *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, 2(2), 63–76.
- [17] Nasaruddin, N., & Erwin, Y. (2023). Implementasi Asas Keseimbangan Dalam Perjanjian Baku Untuk Mewujudkan Keadilan bagi Para Pihak. *Journal Law and Government*, 1(1), 17–40.
- [18] Nugraha, R. S., Rohaedi, E., Kusnadi, N., & Abid, A. (2025). The Transformation of Indonesia's Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes. *Reformasi Hukum*, 29(1), 1–21.
- [19] Osavoliuk, A., Prijmireanu, L., Savchenko, I., & Vijverberg, I. (2021). Moldova's "Theft of the Century"—ostensible investigations or sincere lust for justice?

- [20] Putra, A. R. A., Handayani, T., & Mulyana, A. (2025). Urgensi Rancangan Undang-Undang Perampasan Aset dalam Optimalisasi Pengembalian Hasil Korupsi di Indonesia. *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora*, 4(2), 207-219.
- [21] Rosidi, A., Zainuddin, M., & Arifiana, I. (2024). Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research). *Journal Law and Government*, 2(1), 46-58.
- [22] Sakinah, T. I., & Sumardiana, B. (2025). Non-Conviction Based Asset Forfeiture Policy Concept Through In Rem Lawsuit Based on Economic Analysis of Law. *Reformasi Hukum*, 29(1), 52-69.
- [23] Sipayung, B. (2024). Analisis Yuridis Pembentukan dan Sinergitas Korps Pemberantasan Tindak Pidana Korupsi (Kortas Tipikor) Polri dalam Upaya Pemberantasan Korupsi di Indonesia. *Indonesian Journal of Law and Justice*, 1(2), 111-121.
- [24] St-Georges, S., & Saint-Martin, D. (2021). The global diffusion of DPAs: The not so functional remaking of the rules against business corruption. *The Transnationalization of Anti-Corruption Law*, 469-489.
- [25] Sudrajat, S., & Yusuf, H. (2025). Sistem Peradilan Tindak Pidana Ekonomi: Rekonstruksi Mekanisme Penegakan Hukum Dalam Menangani Kejahatan Ekonomi Terorisme Finansial Dan Korporasi Di Era Globalisasi. *Jurnal Intelek Insan Cendikia*, 2(1), 312-319.
- [26] Sugitanata, A., & Nisa, I. S. (2023). Analisis Masalah dalam Membangun Harmonisasi Pluralisme Hukum pada Masyarakat Majemuk. *Al-Muqaronah: Jurnal Perbandingan Mazhab Dan Hukum*, 2(2), 69-77.
- [27] Susanto, E. A., & Widodo, E. (2024). Penegakan Hukum Terhadap Pelaku Tindak Pidana Korupsi Dalam Pengadaan Barang Pemerintah. *Jurnal Penelitian Ilmiah Multidisiplin*, 8(10).
- [28] Tuahuns, I. Z. (2021). Penyitaan Asset Tindak Pidana Korupsidi Indonesia Serta Perampasan Tanpa Pemidanaan Terhadap Pelaku Kejahatan Sebagai Upaya Mengisi Kekosongan Hukum. *DE LEGA LATA: Jurnal Ilmu Hukum*, 6(1), 208-220.
- [29] Watch, I. C. (2024). Policy Paper Implementasi dan Pengaturan Valuasi Kerugian Ekologis dalam Perhitungan Kerugian Negara di Perkara Korupsi Sektor Industri Ekstraktif.
- [30] Wibowo, A., & Yulianingsih, S. (2025). *Hukum Teknologi Informasi*. Penerbit Yayasan Prima Agus Teknik.
- [31] Wulandari, W., Suprayitno, W., & Kurniawan, K. D. (2023). Asset forfeiture of corruption proceeds using the non-Conviction based Asset Forfeiture Method: A review of Human Rights. *Indonesia Law Reform Journal (ILREJ)*, 3(1), 15-25.
- [32] Zen, A. P. M., & SH, L. L. M. (2021). *Perlindungan Pihak Ketiga Yang Beritikad Baik*. Yayasan Pustaka Obor Indonesia.