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Reconstructing Non-Conviction-Based Asset Forfeiture In Indonesia's Draft Asset Forfeiture Law: A Historical-Comparative Study And The Protection Of Property Rights

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Abstrak

Penelitian ini menganalisis perkembangan historis Non-Conviction-Based Asset Forfeiture (NCB), membandingkan jaminan hukum dalam civil forfeiture Amerika Serikat dan civil recovery Inggris, serta merumuskan rekonstruksi perlindungan hak kepemilikan bagi RUU Perampasan Aset Indonesia. Penelitian hukum normatif menggunakan pendekatan perundang-undangan, konseptual, historis, dan perbandingan, dengan analisis kualitatif-preskriptif atas dokumen hukum, putusan, dan kepustakaan berdasarkan tujuh parameter perlindungan. Hasil kajian menunjukkan pergeseran perampasan dari pertanggungjawaban pelaku menuju hubungan aset dengan tindak pidana, dari in personam menuju in rem, dan dari orientasi pemidanaan menuju pemulihan aset. Perbandingan menunjukkan empat penentu utama: pembuktian hubungan aset–tindak pidana, beban pembuktian awal pada negara, pengawasan hakim sejak tindakan sementara, serta hak substantif pemilik atau pihak ketiga beriktikad baik. Kontribusi penelitian adalah model Rights-Protective NCB Asset Forfeiture yang menerjemahkan tujuh parameter menjadi tahapan hukum: ambang penerapan terbatas, pengujian keterkaitan aset, pembuktian bertahap, kontrol yudisial, perlindungan pihak ketiga, proporsionalitas, dan restitusi atau kompensasi. Model ini berbeda dari pembenaran umum atas perampasan tanpa pemidanaan karena perlindungan konstitusional ditempatkan sebagai syarat kumulatif pada setiap tahap proses, bukan sebagai pengecualian setelah aset dirampas. Hasil tersebut merupakan usulan rekonstruksi normatif berdasarkan hukum perbandingan, bukan bukti empiris tentang efektivitas pelaksanaan RUU yang hingga November 2026 masih dibahas.

***Kata kunci**: Hak Kepemilikan, Non-Conviction-Based Asset Forfeiture, RUU Perampasan Aset, Constitutional Safeguards, Asset Recovery.*

Abstract

This study examines the historical development of Non-Conviction-Based Asset Forfeiture (NCB), compares safeguards under United States civil forfeiture and United Kingdom civil recovery, and proposes a property-rights-protective reconstruction for Indonesia's Draft Asset Forfeiture Law. Employing normative legal research, it combines statutory, conceptual, historical, and comparative approaches and conducts a qualitative-prescriptive analysis of legislation, judgments, and scholarship through seven protective parameters. The findings trace three transitions: from offender-centred conviction-based forfeiture to an asset–crime inquiry, from in personam to in rem proceedings, and from punitive forfeiture to asset recovery. Four determinants emerge from the comparison: a demonstrable asset–crime nexus, the state's initial evidentiary burden, judicial supervision beginning with provisional measures, and substantive protection of innocent owners and bona fide third parties. The proposed Rights-Protective NCB Asset Forfeiture model translates seven safeguards into sequential statutory requirements: narrow activation conditions, a nexus assessment, staged proof, judicial control, third-party protection, proportionality, and restitution or

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compensation. Unlike a general endorsement of forfeiture without conviction, the model treats constitutional safeguards as cumulative conditions throughout the procedure rather than exceptions available only after forfeiture. The results are a normative legislative proposal derived from historical and comparative legal analysis, not an empirical finding that the model has been implemented or has proved effective. As of November 2026, Indonesia's bill remains under deliberation.

***Keywords**: Asset Recovery, Constitutional Safeguards, Draft Asset Forfeiture Law, Non-Conviction-Based Asset Forfeiture, Property Rights.*

1. INTRODUCTION

The forfeiture of assets derived from criminal offenses has evolved from an ancillary instrument of criminal punishment into an important component of the global strategy to deprive crime of its economic benefits. Corruption, money laundering, and organized crime not only generate illicit profits but also enable criminal proceeds to be transferred, concealed, converted, or placed under other jurisdictions and legal persons, making them difficult to reach through conventional criminal proceedings. The Stolen Asset Recovery Initiative (StAR), developed by the World Bank and the United Nations Office on Drugs and Crime (UNODC), regards asset recovery as an instrument that extends beyond punishing offenders to tracing, securing, confiscating, and returning the proceeds and instrumentalities of crime (Brun et al., 2021). In this context, Non-Conviction-Based Asset Forfeiture (NCB Asset Forfeiture) is significant because it allows assets to be forfeited without first requiring a criminal conviction of their owner or possessor. Unlike conviction-based forfeiture, which follows an individual's criminal liability, NCB focuses on the asset and its connection to a criminal offense. It may therefore remain available when an offender has died, absconded, cannot be prosecuted, or when other specific circumstances prevent criminal proceedings from resulting in a conviction (Greenberg et al., 2009).

Article 54(1)(c) of the United Nations Convention against Corruption (UNCAC) invites States Parties to consider non-conviction-based confiscation where prosecution is prevented by death, flight, absence, or other appropriate circumstances (United Nations, 2004). Indonesia ratified UNCAC through Law Number 7 of 2006 (Republik Indonesia, 2006). However, the convention does not itself prescribe an unrestricted domestic power to confiscate assets. The contested question for Indonesia is how an in rem procedure can reach criminally connected property without allowing mere suspicion about a person or unexplained wealth to substitute for proof, notice, judicial review, and protection of legitimate ownership interests (Borlini & Rose, 2024).

Indonesia's Draft Asset Forfeiture Law makes this issue concrete. Non-Conviction-Based Asset Forfeiture permits an asset claim to proceed without depending on the owner's criminal conviction, raising questions about admissible cases, the asset–crime nexus, burdens and standards of proof, judicial oversight, good-faith acquisition, and effective remedies. During August and September 2026, Commission III of the House of Representatives (Dewan Perwakilan Rakyat Republik Indonesia [DPR RI]) sought specific NCB procedural rules and limits on state powers, particularly protection for bona fide third parties (DPR RI, 2026a, 2026d, 2026e). On October 6, 2026, the House approved the bill as a DPR initiative; on November 5, 2026, the House and Government agreed to revise its working title to the Draft Law on Asset Forfeiture Related to Corruption and Other Criminal Offenses, with the scope of other crimes still to be settled (DPR RI, 2026g, 2026h). These steps are legislative developments, not an enacted NCB statute; the specific provisions discussed below from the 2015 harmonization draft are examined as historical drafting material, not asserted to be the final 2026 text.

This protective dimension derives its constitutional foundation from the 1945 Constitution of the Republic of Indonesia. Article 28G(1) protects property under a person's control, while Article 28H(4) affirms that everyone has the right to own private property and that such property may not be arbitrarily taken over by anyone (Republik Indonesia, 1945). Consequently, the establishment of NCB cannot be justified solely by the objective of asset recovery. Forfeiture must have a legal basis, clearly defined objects and criteria, fair procedures, effective objection mechanisms, judicial oversight, and protection for the interests of persons who lawfully acquired assets. The Asset Forfeiture Bill is therefore an important normative context

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because Indonesia is at a stage when legislative design choices can determine whether NCB develops into an accountable asset recovery instrument or instead opens the door to excessive state interference with property rights.

Several studies published over the past five years have laid an important foundation for the development of NCB in Indonesia while revealing questions that remain insufficiently addressed. First, Siburian and Wijaya (2022) examine NCB as an anti-corruption instrument and show that it offers a stronger follow-the-money approach that does not invariably depend on successfully proving the offender's guilt. Second, Mukminah et al. (2023) investigate the urgency of regulating NCB in Indonesian corruption cases and emphasize the need for an adequate legal basis to prevent non-conviction-based forfeiture from becoming an avenue for abuse of power. Third, Nurdin (2024) compares the regulation of corruption-related asset forfeiture in Indonesia and the United States, demonstrating that Indonesia still faces regulatory limitations, whereas the United States has developed a civil forfeiture mechanism permitting certain assets to be forfeited without wholly depending on an offender's conviction. Fourth, Fadhila (2025) specifically examines the protection of *bona fide* third parties under NCB and identifies the need to harmonize legal norms and establish clearer protective criteria for those who lawfully acquire or possess assets. Fifth, Azizah et al. (2026) approach NCB from a constitutional perspective, demonstrating its relationship to due process of law, proportionality, property rights, third-party protection, and the need for judicial oversight in the design of the Asset Forfeiture Bill.

Greenberg et al. (2009) systematized good practices for non-conviction-based forfeiture, especially independent asset proceedings and safeguards, while Brun et al. (2021) developed a broader practitioner framework covering asset tracing, restraint, confiscation, and return. Neither work was designed to test the specific textual relationship between Indonesia's successive drafts, its constitutional property guarantees, and the distinct protective techniques of United States civil forfeiture and United Kingdom civil recovery. Recent Indonesian scholarship addresses the urgency of reform (Siburian & Wijaya, 2022; Mukminah et al., 2023), bilateral comparison (Nurdin, 2024), third-party rights (Fadhila, 2025), and constitutional safeguards (Azizah et al., 2026). More recent work even proposes prosecutorial procedures (Fajar et al., 2026) or staged constitutional control (Aldin et al., 2026). The remaining contribution is therefore not the first identification of NCB safeguards: it is the systematic historical-to-functional comparison of seven safeguards and their translation into specific legislative stages, while separating provisions of an older draft, current Indonesian positive law, later legislative developments, and the authors' proposals.

United States civil forfeiture provides a concrete illustration of evidence-based limitation: under the Civil Asset Forfeiture Reform Act of 2000, 18 U.S.C. § 983(c) requires the government to prove forfeiture by a preponderance of the evidence and, where applicable, to establish a substantial connection between the property and the offense. Section 983(d) also recognizes an innocent owner defense (United States, 2000). In Culley v. Marshall (2024), the Supreme Court held that a timely forfeiture hearing is required for seized personal property but a separate preliminary hearing is not invariably constitutionally required. The judgment is relevant as a procedural limit on state retention of assets, not as proof that every model of judicial control requires the same hearing schedule.

Under Part 5 of the United Kingdom's Proceeds of Crime Act 2002 (POCA), civil recovery is directed to recoverable property linked to unlawful conduct rather than necessarily to a criminal conviction. The British model is especially informative about tracing transferred or mixed property, civil standards of proof, and protection of good-faith acquirers (United Kingdom, 2002). Unlike a simple borrowing of either foreign model, Indonesia requires a functional comparison that identifies which safeguards can be translated into constitutional and statutory guarantees under its own legal system (Borlini & Rose, 2024).

The seven parameters were selected by combining the legal functions identified in StAR's good-practices framework (Greenberg et al., 2009; Brun et al., 2021), the distinct evidentiary and proprietary safeguards in 18 U.S.C. § 983 and Part 5 of POCA 2002, and the guarantees of due process and property rights under Articles 28D(1), 28G(1), 28H(4), and 28J(2) of Indonesia's 1945 Constitution. They cover: (1) lawful prerequisites and activation thresholds, (2) the asset–

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crime nexus, (3) burdens and standards of proof, (4) judicial authorization and oversight, (5) innocent-owner and bona fide third-party interests, (6) proportionality of forfeiture, and (7) objections, return, and compensation. Together they follow the lifecycle from initiating a claim to correcting an unlawful interference and furnish a uniform comparison rather than seven unrelated policy preferences.

On this basis, the study aims to analyze the historical development and legal construction of Non-Conviction-Based Asset Forfeiture, compare safeguards for property rights in the United States and the United Kingdom, and reconstruct NCB within Indonesia's Asset Forfeiture Bill in a way that reconciles effective asset recovery with the constitutional protection of property rights. The study's novelty lies in formulating a rights-protective NCB asset forfeiture model that integrates historical, comparative, and constitutional dimensions into a single normative framework. Under this framework, the success of NCB is measured not only by the state's ability to forfeit assets connected to criminal offenses, but also by the law's ability to ensure that every forfeiture rests on a demonstrable asset nexus, follows fair and proportionate procedures, remains subject to judicial control, and provides effective protection for owners and third parties with legitimate legal interests.

2. RESEARCH METHOD

This study uses normative legal research to propose safeguards for Non-Conviction-Based Asset Forfeiture (NCB) under Indonesia's Draft Asset Forfeiture Law; it does not evaluate implementation through interviews or case outcomes. Four approaches are applied in a defined sequence. First, the statutory approach inventories Indonesian constitutional and statutory rules, separates the 2015 harmonization draft from legislative deliberations available through November 5, 2026, and identifies relevant United States and United Kingdom provisions. Second, the conceptual approach defines conviction-based confiscation, in rem proceedings, asset–crime nexus, due process, proportionality, and bona fide ownership. Third, the historical approach identifies how the object and purpose of forfeiture shifted and uses those shifts to specify the legal risks to be compared. Fourth, a functional comparative approach tests the safeguards addressing those risks in United States civil forfeiture under 18 U.S.C. § 983 and United Kingdom civil recovery under Part 5 of POCA 2002; the findings are finally screened against Indonesia's constitutional guarantees to formulate prescriptive rules (Greenberg et al., 2009; Brun et al., 2021; Borlini & Rose, 2024).

The units of analysis are legal provisions, legal principles, judgments, official legislative records, and research publications. Primary materials include the 1945 Constitution; UNCAC 2003; Law Number 7 of 2006; Law Number 1 of 2023 as amended in 2026; Law Number 20 of 2025 on criminal procedure; Indonesia's 2015 harmonization draft and dated parliamentary updates in 2026; 18 U.S.C. § 983; POCA 2002; and the United Kingdom's Crime and Policing Act 2026. Sources were purposively selected for legal authority, direct relevance to NCB, currency, and traceability; journal publications from 2022–2026 inform contemporary debates. Judicial decisions were selected when they directly interpret a safeguard in an asset-forfeiture procedure, have authoritative status, and materially illuminate a drafting choice for Indonesia. Culley v. Marshall, 601 U.S. 377 (2024), meets these criteria because it addresses the timeliness of the forfeiture hearing following seizure and the constitutional distinction between the main forfeiture hearing and a separate preliminary hearing. It does not determine Indonesian law or establish an absolute requirement for an immediate preliminary hearing.

Documentary analysis proceeds by legal inventory, historical classification, seven-parameter coding, functional comparison, and constitutional assessment, followed by legislative reconstruction. For every jurisdiction the first parameter records when proceedings may be initiated; the second identifies required links between property and unlawful conduct; the third identifies the party bearing proof and the applicable standard; the fourth maps court approval and review at provisional and final stages; the fifth identifies protected ownership interests; the sixth tests recovery of mixed, instrumental, or disproportionate assets; and the seventh records objection, return, and compensation. Each finding is classified as enacted law, a historical draft provision, a recorded 2026 legislative proposal, or the authors' recommendation. The United

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States and United Kingdom were selected for different, not identical, mechanisms: the former provides federal civil-forfeiture pleading and defenses, while the latter provides a civil-recovery and tracing architecture under POCA. Comparison identifies protective functions rather than mechanically importing foreign institutions. The study's limits are the evolving Indonesian bill, jurisdictional differences, and the absence of empirical observation; accordingly, the proposed model's effectiveness cannot yet be inferred.

3. RESULTS AND DISCUSSION

3.1 Historical Transformation and Construction of Non-Conviction-Based Asset Forfeiture in Indonesia's Draft Asset Forfeiture Law

The findings indicate that Non-Conviction-Based Asset Forfeiture (NCB Asset Forfeiture) should not be understood simply as forfeiture carried out without a criminal conviction. Rather than merely dispensing with the conviction requirement, NCB shifts the focus of the law from personal culpability to the connection between an asset and a criminal offense. This change makes the origin, use, transformation, and criminal connections of assets the principal matters under examination. Global developments point in the same direction. UNODC reports that, of 153 cross-border asset return cases recorded between 2010 and 2023, conviction-based forfeiture was used in 51 percent, while NCB was used in 30 percent. These figures show that NCB does not replace conventional criminal mechanisms but has developed as an alternative route where dependence on individual convictions obstructs asset recovery (United Nations Office on Drugs and Crime [UNODC], 2024). This shift reflects a more fundamental transition from person-oriented confiscation to asset-oriented recovery, in which recovering criminal assets does not invariably depend on the state's success in punishing their possessors.

Historically, this logic is rooted in the distinction between *in personam* and *in rem* forfeiture. *In personam* forfeiture attaches to an individual's liability, so forfeiture follows proof of the offense and the defendant's guilt. By contrast, *in rem* proceedings are directed against property suspected of having a connection to unlawful conduct. Modern developments no longer maintain the fiction that property is literally 'guilty'; instead, they use *in rem* proceedings as a legal technique for separating the determination of an asset's status from its owner's criminal liability. UNODC's regional review of ASEAN, Mongolia, and Timor-Leste shows that NCB mechanisms now take various forms. Some countries use them when offenders die or abscond, while others have developed broader mechanisms for property proven to be the proceeds of crime (UNODC, 2024). This genealogy shows that the defining feature of NCB is not the absence of legal process, but a shift in its focus from 'Can this person be convicted?' to 'Does this asset have a sufficient legal connection to a criminal offense to justify forfeiture?'

This change in orientation became more pronounced when asset recovery was incorporated into crime-control strategies targeting the economic benefits of crime. Through its 2023 amendments to Recommendation 4, the FATF encouraged countries to establish non-conviction-based confiscation regimes insofar as these are consistent with fundamental principles of domestic law. The FATF also expanded its focus to extended confiscation, early-stage freezing and seizure, asset management, and international cooperation in enforcing confiscation orders. This policy responds to the fact that more than 80 percent of FATF-assessed jurisdictions still exhibit low or moderate effectiveness in asset recovery (Financial Action Task Force [FATF], 2025). This position is significant because the evolution of NCB did not arise from an assumption that criminal proceedings are unimportant. Rather, NCB developed because, in certain circumstances, criminal activities generate and move wealth much faster than the justice system can secure a final and binding conviction. Its orientation therefore shifts from punishment-oriented confiscation toward recovery-oriented confiscation without removing the state's duty to provide legal procedures for persons whose proprietary interests are affected. Recent research also stresses that accelerated asset recovery must remain conditioned on legality, human-rights safeguards, and return of value to affected victims (Ochnio, 2024; Borlini & Rose, 2024).

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Indonesia's legal development shows that forfeiture was initially conceived primarily as a consequence of criminal proceedings. Under the new Criminal Code, Law Number 1 of 2023 as adjusted by Law Number 1 of 2026, Article 66(1)(b) continues to classify the forfeiture of certain goods and/or claims as an additional criminal penalty. Article 91(a)–(f) specifies the objects liable to forfeiture, including certain goods and/or claims belonging to convicted persons that were used to commit or prepare a criminal offense, manufactured to commit it, connected to its commission, obtained from it, derived from its economic benefits, or used to obstruct investigation, prosecution, or court proceedings. Article 92(1)–(3) further permits goods that have not been seized to be surrendered or replaced by a sum of money determined by judicial valuation. This framework expands the range of forfeitable objects, but its basic character remains rooted in criminal punishment because forfeiture is imposed as an additional penalty upon a convicted person (Republik Indonesia, 2023, 2026).

Historical criminal procedure also tied asset deprivation to an underlying criminal case. Under Law Number 8 of 1981, former Articles 39 and 46 regulated the categories of items subject to seizure and the return or disposal of seized items in connection with investigation, prosecution, or judicial decisions (Republik Indonesia, 1981). That statute, however, was repealed when Law Number 20 of 2025 on the Criminal Procedure Code entered into force on January 2, 2026 (Republik Indonesia, 2025). The current procedural law updates coercive measures, judicial supervision, and avenues for compensation and rehabilitation. Accordingly, the 1981 provisions are cited here only to explain the historical conviction-centred arrangement; the present legal baseline is the 2025 Code, which must be coordinated with any eventual standalone NCB procedure. Seizure during an investigation must not be conflated with permanent transfer of ownership under a distinct asset-forfeiture regime.

Indonesia's legal system already contains limited openings toward separating forfeiture from conviction, although it has not yet established a fully independent NCB regime. One example is Article 79(4) of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering. It provides that, if a defendant dies before judgment and sufficiently strong evidence establishes that the defendant committed money laundering, the judge may, on the public prosecutor's application, order the forfeiture of seized assets. Article 79(5) states that this forfeiture order is not subject to legal appeal, while Article 79(6) allows any interested person to lodge an objection within 30 days of the announcement of the decision (Republik Indonesia, 2010). These provisions reflect an embryonic NCB approach because the defendant's death does not automatically eliminate the state's ability to pursue assets. Nevertheless, the mechanism remains sector-specific and depends on particular circumstances stipulated by law.

Similar limitations appear in the regulation of corruption offenses. Article 18(1)(a) of Law Number 31 of 1999, as amended by Law Number 20 of 2001, classifies the forfeiture of tangible or intangible movable property and immovable property used in or obtained from corruption, including enterprises owned by a convicted person in which the offense was committed and substitute property, as an additional criminal penalty. Thus, the mechanism retains a strong connection to the status of a convicted person. Recent research on the formulation of Indonesian asset forfeiture policy has also found that regulatory fragmentation disperses asset recovery across several legal regimes without establishing a comprehensive NCB procedure (Vanisrooy & Wijayanto, 2025). This explains why the NCB issue cannot be resolved merely by expanding the list of property subject to seizure or forfeiture. The fundamental question concerns the legal basis for continuing proceedings against assets when the process of establishing an individual's criminal liability encounters obstacles.

The 2015 harmonization draft of the Asset Forfeiture Bill demonstrates an early attempt to separate the legal status of property from personal conviction. Its Article 5(1) listed property derived directly or indirectly from criminal offenses, transformed or donated proceeds, instrumentalities, substitute assets, and property suspected of criminal origin. Article 5(2)(a) referred to assets disproportionate to lawful income, while Article 6(1) used an IDR 100 million threshold and a predicate offense punishable by at least four years' imprisonment (Badan Pembinaan Hukum Nasional [BPHN], 2015). These are provisions of the cited 2015 draft only. They cannot be presented as the authenticated content of the DPR's revised 2026 initiative

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without checking that later draft's exact text; they serve here to illustrate drafting risks relating to trigger conditions, overbreadth, and evidentiary thresholds.

Likewise, Article 7 of the 2015 draft contemplated forfeiture where a suspect or defendant had died, absconded, suffered a condition preventing proceedings, could not be located, or otherwise fell within specific procedural circumstances; it also addressed additional assets discovered after a final conviction (BPHN, 2015). This material illustrates the concept of a proceeding against assets where a conviction route is unavailable, but it does not establish which activating grounds will appear in the bill finally debated or enacted in 2026. The authors therefore treat mandatory subsidiarity and a verifiable criminal–asset connection as recommendations requiring express wording in the later bill.

Nevertheless, the bill's construction cannot be interpreted as authorizing immediate forfeiture whenever the origins of wealth are unclear. The House of Representatives' deliberations throughout 2026 indicate that the standard of initial evidence remains unresolved. Commission III of the House noted that a reversal of the burden of proof must not allow the state to take a person's assets on suspicion alone. Clear initial evidence must exist before the duty to explain an asset's origin is transferred to its owner or possessor. At the same time, protection for third parties who lawfully acquired assets and the management of forfeited assets remain under discussion (DPR RI, 2026a). These findings reveal the conceptual limits of NCB. Moving from a person-oriented to an asset-oriented approach does not mean replacing proof with presumption. Precisely because the object of proceedings changes, the criteria establishing the connection between an asset and a criminal offense must be more precisely formulated.

Developments in the bill's deliberations through September 2026 reinforce this finding. Commission III of the House began directing discussions toward the need for special NCB procedural rules governing evidence, the authority of law enforcement officers, the status and ownership of assets, and protection for parties with legitimate interests. The House also considered that *in rem* NCB could not simply be treated as a variation of conventional criminal procedure, because the subject of examination is the proprietary status and origin of assets (DPR RI, 2026b). This direction demonstrates that NCB's transformation cannot be completed merely by inserting the phrase ‘without conviction’ into legislation. NCB requires its own procedural architecture because state decisions directly affect the proprietary interests of persons who are not necessarily convicted offenders.

The legislative record later changed in a legally relevant way. The DPR approved the bill as its initiative on October 6, 2026, and, on November 5, 2026, Commission III and the Government agreed on the proposed title referring expressly to corruption and other criminal offenses while beginning discussion of the Government's inventory of problems (DPR RI, 2026g, 2026h). The proposed scope of 'other offenses' and the final text of substantive and procedural articles were still subject to deliberation; parliamentary reports cannot be treated as promulgated statutory rules. This distinction also affects the use of the 2015 draft's threshold provisions throughout the present comparison.

The findings also show that the bill's legislative history reflects a change in lawmakers' understanding of forfeiture's objectives. Discussions in August 2026 even raised the possibility of adopting the term asset recovery because ‘asset forfeiture’ was regarded as describing only one stage, while asset recovery encompasses tracing, freezing, seizure, management, forfeiture, and return of assets (DPR RI, 2026c). This terminological change has conceptual significance. Forfeiture, previously positioned at the final stage of criminal punishment, began to be viewed as part of a broader cycle of controlling criminal proceeds. This perspective corresponds to international developments that place identification, tracing, freezing, seizure, forfeiture, management, and return within one asset recovery continuum (FATF, 2024). This paradigm shift explains why the Asset Forfeiture Bill cannot simply be viewed as an expansion of additional penalties under the Criminal Code.

A further consequence is the expansion of state capacity. Under a conviction-based model, the state must in principle establish the offense and the individual's guilt before forfeiture follows a conviction. Under NCB, the state may continue claims against assets when a conviction cannot be obtained under circumstances specified by law. Graviddita and Wijayanto (2025) show that

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reliance on a final and binding criminal judgment can give offenders time to conceal, transfer, or dissipate assets. Yet this procedural advantage has another side. The further forfeiture is separated from conviction, the greater the need to ensure that the state establishes sufficient grounds linking assets to criminal offenses. The effectiveness of NCB therefore cannot be assessed solely by the speed or quantity of assets forfeited.

The need for such limits becomes increasingly apparent when NCB is considered alongside the presumption of innocence and the principle of legality. Huda et al. (2025) demonstrate that NCB can be distinguished from the imposition of criminal punishment on an individual because the proceedings are directed against assets. This distinction does not place NCB outside the rule of law. Where the consequence is permanent loss of ownership, the legal basis of authority, forfeitable objects, evidentiary procedures, and opportunities to challenge the state's claims must be clearly prescribed. The House's September 2026 discussions similarly called for strict formulation of NCB mechanisms to ensure that forfeiture powers remain balanced with the protection of citizens' rights and *bona fide* third parties (DPR RI, 2026d). In other words, shifting the object from the individual to the asset does not diminish due process requirements; instead, it relocates such protections into procedures appropriate to the nature of proprietary disputes.

Taken together, these developments reveal three interconnected historical transformations of NCB in Indonesia. First, a shift from conviction-based to asset-based forfeiture, as the possibility of forfeiture no longer invariably ends when individual criminal liability cannot be determined. Second, a move from the predominance of *in personam* proceedings toward *in rem* mechanisms, because the asset's connection to a criminal offense gains an independent place as an object of examination. Third, a shift from punishment-oriented to asset recovery-oriented forfeiture, as its purpose moves from an ancillary consequence of punishment toward depriving offenders of the proceeds and instrumentalities of crime. These changes do not abolish the older model. NCB operates alongside conviction-based forfeiture and is used where a distinct asset recovery route is required. International standards impose similar limits: NCB may be developed insofar as it is consistent with fundamental principles of domestic law and protects the rights of persons uninvolved in crime (FATF, 2023).

Table 1. Historical shifts and their implications for NCB design (authors' synthesis).

Historical shift	Earlier basis	Changed legal object	Normative consequence
Conviction-based → asset-based	A criminal judgment against a person	Proven status or unlawful origin of a particular asset	Continuing recovery where conviction is unavailable, subject to an asset–crime nexus
In personam → in rem	Personal culpability and sanctions	Property status, tracing, and affected proprietary interests	Special procedural notice, proof, court review, and third-party participation
Punishment-oriented → recovery-oriented	Ancillary punitive confiscation	Tracing, preservation, lawful forfeiture, and return of value	Recovery cannot replace legality, proportionality, or restitution

Ultimately, this development reveals a paradox that underpins the following discussion. The more independent forfeiture proceedings become from criminal convictions, the greater the state's capacity to recover criminal proceeds. At the same time, the need to constrain the exercise of that capacity also increases. NCB should therefore not be designed as a choice between effective asset recovery and the protection of property rights. The legal issue lies in determining when the state may interfere with an individual's property, what evidence must first exist, who bears the burden of proof, how extensively the link between an asset and a crime must be demonstrated, and how owners and third parties may defend their rights. Parliamentary debates over initial evidentiary standards, special procedural rules, limitations on state authority, and third-party protection demonstrate that these matters remain unresolved aspects of the Asset Forfeiture Bill

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(DPR RI, 2026e). This leads to the next stage of the discussion: comparing how the United States and the United Kingdom establish legal safeguards when granting NCB powers to the state.

3.2 Comparative Legal Safeguards for NCB Asset Forfeiture: The United States, the United Kingdom, and Indonesia

The comparative findings show that the principal difference between the United States, the United Kingdom, and Indonesia lies not in their recognition of forfeiture without conviction but in how each system limits state authority when an asset's status is examined independently of its owner's guilt. Legal safeguards under NCB operate from the moment the state identifies assets potentially subject to forfeiture until the owner has an opportunity to defend legitimate interests. Trinchera (2025) shows that constitutional concerns arise when a mechanism originally justified as a remedial measure begins to produce consequences resembling punishment. Accordingly, limitations on asset categories, the connection between assets and unlawful conduct, evidentiary standards, and judicial control cannot be regarded as supplementary elements. They determine whether NCB retains its remedial character or becomes an excessively broad power of forfeiture. This is the starting point for the comparative analysis because safeguards are intended not to obstruct asset recovery but to ensure that the state takes only assets legally qualifying as forfeitable property (Trinchera, 2025).

These differences first emerge in the prerequisites for using NCB and the scope of assets that may be reached. The United States regulates civil forfeiture through various civil forfeiture statutes, whose general procedures are governed by 18 U.S.C. § 983. A criminal conviction of the owner is not a prerequisite for commencing proceedings against the property. The United Kingdom establishes a more explicit construction under Section 240(1)(a) of the Proceeds of Crime Act 2002, which enables an enforcement authority to recover through civil proceedings property constituting or representing wealth obtained through unlawful conduct. Section 240(2) of POCA 2002 confirms that these powers may be exercised in relation to property irrespective of whether criminal proceedings have been brought in connection with it. The British model demonstrates a clearer procedural separation between criminal liability and the legal status of property. The United Kingdom's legal reforms in 2026 retained this characteristic. The Crime and Policing Act 2026 positions civil recovery under Part 5 of POCA as a civil mechanism applying to assets which, in the court's view, derive from criminal conduct or are intended for use in an offense (United Kingdom, 2026).

The comparison becomes more pointed when these prerequisites are linked to the nexus between property and crime. In the United States, forfeiture cannot be justified merely because property belongs to a person suspected of criminal activity. Under 18 U.S.C. § 983(c)(3), where the government's forfeiture theory rests on the property's use to commit or facilitate an offense, or its involvement in an offense, the government must establish a substantial connection between the property and the offense. The individual's legal status is therefore separated from that of the property. Suspicion directed at an owner does not automatically render property forfeitable. The government must still establish a substantive connection between the asset and the conduct underlying the forfeiture claim (United States, 2025). This safeguard illustrates the importance of the nexus requirement. Although NCB shifts the focus from a person to an asset, that very shift demands clearer proof of why a particular asset, rather than simply property owned by a particular person, may be taken by the state.

The United Kingdom employs a different construction to achieve a comparable function. Section 242(1) of POCA 2002 provides that property is obtained through unlawful conduct where it is acquired by or in return for such conduct, whether carried out by the acquirer or another person. Sections 304–307 of POCA 2002 also allow recoverable property to be traced when it has been transferred, converted, mixed with other assets, or has generated further benefits. For example, Section 306(2) of POCA 2002 treats only the portion of mixed property attributable to recoverable property as representing assets obtained through unlawful conduct. These tracing techniques expand the reach of asset recovery while preserving the requirement of attribution. The state does not automatically obtain all mixed property merely because some of its value

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originated unlawfully (United Kingdom, 2002). This model demonstrates that asset-oriented forfeiture still requires a traceable chain of connection.

The next issue concerns burdens and standards of proof. In the United States, 18 U.S.C. § 983(c)(1) expressly places the burden on the government to establish by a preponderance of the evidence that the property is subject to forfeiture. The United Kingdom employs a civil standard under Section 241(3) of POCA 2002, requiring the court to determine on the balance of probabilities whether the alleged unlawful conduct occurred. Both systems apply evidentiary standards lower than proof beyond reasonable doubt, but neither relieves the state of its obligation to establish an initial basis for forfeiture. This comparison matters for Indonesia because transferring part of the burden of proof to the owner must not be understood as extinguishing the state's initial burden. Research into the relationship between NCB and human rights likewise demonstrates that the mechanism's legitimacy depends on the law's capacity to balance effective tracing of wealth with protection against excessive state action (Pongkor, 2025).

This issue is directly related to Indonesia's Asset Forfeiture Bill. The bill permits examination of assets disproportionate to a person's income or other sources of increased wealth where their lawful origin cannot be demonstrated. This creates room for the party in possession to provide evidence concerning the source of the assets. However, this reversal cannot be triggered solely by a person's inability to explain their wealth. During the 2026 deliberations, the House began identifying initial evidence, special procedural rules, asset ownership status, and limits on law enforcement powers as issues requiring clarification before NCB could be implemented. Research on NCB in the banking sector also shows that accelerated asset recovery still requires structured evidentiary procedures so that greater efficiency does not undermine certainty regarding the status of assets (Nurhalimah, 2025). The comparative point concerns the sequence of proof: the state must first demonstrate a measurable basis connecting the asset to criminal conduct before the owner is required to explain its origin.

The next layer of protection is judicial control. In the United States, civil judicial forfeiture brings the government's claim before a federal court and allows persons asserting ownership to file a claim to the property. Moreover, 18 U.S.C. § 983(f) provides a mechanism for requesting the temporary release of assets if continued government possession during proceedings causes substantial hardship that outweighs the risk that the property will be lost, concealed, damaged, or transferred. Examples include seizures preventing a person from operating a business, working, or securing accommodation. This safeguard demonstrates that judicial control operates not only when a final forfeiture decision is made but may also examine the consequences of state possession during the proceedings (United States, 2025). This function is relevant to Indonesia because interference with property rights may arise as soon as assets are frozen or seized, rather than only when a judge orders forfeiture.

The United Kingdom's civil recovery regime also operates through judicial proceedings. Under Section 243 of POCA 2002 an enforcement authority may seek a recovery order, while Section 266 governs the court's order in relation to recoverable property (United Kingdom, 2002). Section 190 of the Crime and Policing Act 2026 introduced a distinct costs-protection rule for enforcement authorities in civil recovery litigation. It is not, by itself, a general guarantee of affordable access for owners: protecting the public authority against adverse costs may generate additional fairness concerns for claimants. For Indonesia the functional lesson is therefore to provide an accessible opportunity for owners and third parties to challenge interim restraints and final forfeiture, including fair notice, representation, reasoned judgments, and effective review, rather than to copy the British allocation of litigation costs (United Kingdom, 2026).

The comparison is particularly important regarding the protection of innocent owners or *bona fide* third parties. The United States expressly provides for this under 18 U.S.C. § 983(d)(1), which states that an innocent owner's interest shall not be forfeited. For interests existing at the time of the illegal conduct, § 983(d)(2) protects an owner who did not know of the conduct or, upon learning of it, took all steps reasonably expected to terminate the illegal use. For interests acquired after the conduct occurred, § 983(d)(3) protects a *bona fide* purchaser or seller for value who, at the time of acquiring the interest, did not know and was reasonably without cause to believe that the property was subject to forfeiture. Section 983(d)(5) further allows courts to

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sever an innocent owner's interest, provide compensation corresponding to that ownership interest, or preserve it subject to a specified interest held by the government (United States, 2025). These safeguards demonstrate that proceedings directed *in rem* do not erase the existence of persons holding legitimate rights over the property. Importantly, § 983(d)(1) assigns the claimant the burden of proving innocent-owner status by a preponderance of the evidence; this is separate from the government's principal burden to prove that the property is forfeitable under § 983(c) (United States, 2000).

The United Kingdom performs a similar protective function by limiting tracing. Section 308(1) of POCA 2002 provides that where recoverable property is transferred to someone who acquires it in good faith, for value, and without notice that it is recoverable property, it is no longer traceable into that person's hands. Although technically different from the American innocent owner defense, this protection serves the same normative function. The state cannot indefinitely impose the consequences of an asset's unlawful history on persons who lawfully acquire an interest in it. Even in relation to associated property, British law recognizes the interests of innocent parties and allows adjustments in value where recovery affects their ownership share (Insolvency Service, 2021). This comparison demonstrates that third-party protection cannot be limited to a right to object after forfeiture. It must specify who qualifies as a *bona fide* party, the relevant point at which knowledge of an asset's origin is assessed, how the value of the interest is calculated, and which forms of remedy are available.

The sixth safeguard concerns proportionality. The question is not merely whether an asset is connected to a crime, but whether the nature of that connection is sufficient to justify the complete loss of ownership. Trinchera (2025) distinguishes criminal proceeds or profits from instrumentalities merely used to commit or facilitate an offense. Under this theoretical construction, the justification for NCB is strongest when directed at contraband and proceeds of crime. Forfeiture without conviction becomes more problematic when the object is lawfully acquired property that served only an instrumental role in the offense. This distinction gives substance to the principle of proportionality. The further an asset is removed from the direct proceeds of crime, the stronger the justification the state must provide before extinguishing ownership. This approach is relevant to the Indonesian bill because categories of forfeitable assets should not be treated as a homogeneous group.

The final safeguard consists of objections and remedies. The United States provides claim procedures, the innocent owner defense, release of property on grounds of substantial hardship, and severance or compensation for innocent owners' interests under 18 U.S.C. § 983(d) and § 983(f). The United Kingdom limits recoverability through Section 308 of POCA 2002 and places final decisions on civil recovery under judicial supervision. Both models demonstrate that remedies are necessary not only when a final decision is found to be erroneous. They are also needed when temporary state measures impose disproportionate burdens on parties whose property rights have not been conclusively extinguished. Recent comparative scholarship confirms that NCB can retain its remedial character only if its procedures offer genuine opportunities to challenge state claims and separate unlawful assets from the legitimate interests of others (Trinchera, 2025).

The comparison yields one consistent finding. Minimum safeguards for NCB do not consist of any single procedure, but of a sequence of protections operating from the identification of forfeitable property through the restoration of rights. The state must first have a legal basis and limited prerequisites for the use of NCB. It must then establish a nexus between the asset and a criminal offense under a legally prescribed evidentiary standard. The proceedings must remain under judicial control and allow owners and third parties to contest the state's claim. The scope of forfeiture must also be proportionate to the nature of the asset's connection to the offense. Where legitimately acquired interests exist or state measures lack sufficient grounds, the system must provide effective objection mechanisms and remedies. Deliberations on Indonesia's bill through late September 2026 still left room to clarify these elements, as Commission III of the House continued to receive public and academic submissions on the bill's substance (DPR RI, 2026f). A key difference remains: United States federal civil forfeiture and British civil recovery do not necessarily require proof that criminal prosecution is impossible, whereas this article

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proposes a narrower subsidiary route for Indonesia in light of constitutional property protection; subsidiarity is an Indonesian policy recommendation, not a factual attribute of both comparators (Boucht, 2025; Trinchera, 2025).

Table 2. Seven safeguards: functional comparison and proposed Indonesian legislative response (18 U.S.C. § 983; POCA 2002; BPHN, 2015; DPR RI, 2026h).

Parameter	United States	United Kingdom	Indonesia: 2015 draft / 2026 deliberations	Recommendation for Indonesia
1. Activation/threshold	Independent civil claim; conviction not a condition	Part 5 civil recovery; conviction not a condition	2015 draft Art. 7 lists obstacles; 2026 text evolving	Codify defined, subsidiary grounds plus admissibility evidence
2. Asset–crime nexus	§ 983(c)(3): substantial connection for facilitation cases	POCA ss. 242, 304–307: unlawful property and traceability	2015 draft Arts. 5–6: broad categories and value threshold	Require individualized nexus, distinguish mixed assets and value
3. Proof	Government: preponderance (§ 983(c)); claimant: innocent owner (§ 983(d))	Civil balance of probabilities (POCA s. 241(3))	2015 unexplained-wealth wording; 2026 initial proof debated	State bears main burden; later owner response only after prima facie showing
4. Judicial control	Federal court process; timely hearing (Culley); hardship release § 983(f)	High Court claim and recovery order (POCA ss. 243, 266)	Special NCB procedure under discussion in 2026	Court review of seizure, restraint, merits, and duration
5. Third parties	§ 983(d) protects innocent owners and qualifying purchasers	POCA s. 308 protects good-faith purchasers for value	Bona fide protection discussed; final wording unconfirmed	Definition of good faith, protected shares and notice
6. Proportionality	Severance/compensation for innocent interests § 983(d)(5)	Attribution of mixed property under POCA s. 306	2015 categories broad; no verified 2026 final test	Permit partial forfeiture, severance and value-limited recovery
7. Objection/remedy	Claims, hardship release, severance and compensation provisions	Civil challenge and limits on traceability; costs rules differ	2015 draft alone insufficient to establish final remedies	Ensure timely objection, return, valuation and compensation

These comparative findings do not suggest that either the United States or the United Kingdom should be transplanted as a model for Indonesia. What may be drawn from their experiences are the relevant legal functions. The American substantial connection requirement illustrates the function of limiting the nexus between property and crime. The British concepts of recoverable property and tracing rules illustrate the identification of assets while preserving the interests of lawful acquirers. The preponderance of the evidence and balance of probabilities standards demonstrate that civil standards of proof still require the state to discharge an initial burden. The innocent owner defense, good faith acquisition, judicial control, proportionality, and effective remedies demonstrate that expanding asset recovery powers always necessitates corrective mechanisms against potential state overreach. Recent comparative studies further indicate that asset-oriented NCB requires differentiated procedures and constitutional control where its consequences affect property rights (Borlini & Rose, 2024). These seven protective functions provide the minimum criteria for assessing Indonesia's Asset Forfeiture Bill and form the basis for reconstructing rights-protective NCB asset forfeiture in the following discussion.

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3.3 Reconstructing Rights-Protective Non-Conviction-Based Asset Forfeiture in Indonesia's Draft Asset Forfeiture Law

The findings show that reconstructing NCB in the Asset Forfeiture Bill cannot be accomplished merely by adding property rights protections as exceptions after forfeiture powers have been established. Such protections must be embedded from the determination of when NCB may be invoked and which assets it may reach, through proof of the connection between assets and offenses, to the restoration of rights when forfeiture proves unlawful. This position follows from the character of property rights under Indonesia's Constitution. Article 28G(1) of the 1945 Constitution guarantees protection of property under a person's control. Article 28H(4) guarantees the right to private property and provides that it may not be arbitrarily taken over by anyone. These guarantees do not make property rights absolute, since Article 28J(2) permits limitations prescribed by law for legitimate purposes in a democratic society. This constitutional structure establishes a basic criterion for NCB: the state may restrict property rights to recover criminal assets, but the restriction must pursue a legitimate aim, have a clear statutory basis, follow reviewable procedures, and impose an interference proportionate to its intended objective (Azizah et al., 2026).

On this basis, the study reconstructs NCB as Rights-Protective NCB Asset Forfeiture. The model does not treat effective asset recovery and the protection of property rights as mutually exclusive objectives. Rather, rights protection is a condition for the legitimacy of NCB. This view accords with developments in proportionality theory concerning restrictions on rights, which require consideration of a legitimate aim, the suitability and necessity of the measure, and the balance between public benefits and harm to individual rights (Borlini & Rose, 2024). In NCB proceedings, this test means that the objective of removing the economic benefits of crime does not automatically justify every form of forfeiture. State authority must pass through safeguards that operate cumulatively. If one layer of protection is absent, the in rem character of NCB may turn from an asset recovery instrument into an unduly accessible means of transferring ownership to the state.

The first layer establishes NCB as a special mechanism subsidiary to conviction-based forfeiture. NCB should not be the first avenue where criminal prosecution of the offender can still be pursued effectively. This reconstruction is necessary because the procedural convenience of NCB may incentivize law enforcement authorities to bring proceedings against assets instead of proving an individual's criminal liability. Circumstances activating NCB must therefore be exhaustively defined. Examples include where a suspect or defendant has died, absconded, cannot be located after a reasonable search, has a condition legally preventing criminal proceedings from continuing, or faces other objective legal obstacles making conviction-based forfeiture impossible. This subsidiarity approach also appears in the evolving European framework, which seeks to broaden asset recovery without making non-conviction-based confiscation a general substitute for criminal prosecution (Boucht, 2024).

A consequence of subsidiarity is the need for clear thresholds for application. Provisions merely stating that a person's ‘whereabouts are unknown’ or that a case ‘cannot be tried’ allow excessively broad interpretations unless accompanied by objective criteria. The proposed reconstruction requires two concurrent thresholds. First, a procedural threshold demonstrating why the criminal conviction route cannot be used or completed. Second, an evidentiary threshold consisting of sufficient initial evidence of a suspected connection between the asset and a criminal offense. Both conditions must be met before an NCB application can be admitted by a court. Borlini and Rose's (2024) study of civil recovery shows that separating asset proceedings from criminal proceedings requires strong procedural justification because it still results in the permanent transfer of proprietary interests. In other words, the impossibility of convicting an individual answers why NCB is necessary, while initial evidence concerning the asset answers why a particular asset warrants examination.

The third layer moves from thresholds to the asset–crime nexus. This reconstruction distinguishes three categories of assets: proceeds, instrumentalities, and substitute or transformed assets. For proceeds of crime, the connection between the asset and the offense is

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relatively strong because the property constitutes direct or indirect criminal proceeds. For instrumentalities, the connection requires stricter examination because the property may have been lawfully acquired but used in a criminal offense. For substitute or mixed assets, forfeiture must be confined to the value that can be traced or attributed to criminal proceeds. This differentiation is important to prevent the notion of 'criminal assets' from becoming an unlimited category. Borlini and Rose (2024) shows that the effectiveness of asset recovery depends significantly on the law's ability to follow the transformation and commingling of assets, but tracing still requires a provable connection. On that basis, the bill should incorporate a substantive nexus test requiring the state to establish a sufficient factual and legal connection between the assets sought to be forfeited and the offense giving rise to the claim.

Reconstructing the nexus directly affects the burden and standard of proof. The model proposed in this study rejects an automatic reversal of the burden of proof at the outset of proceedings. The state must first discharge an initial burden of establishing two matters. First, there must be sufficient grounds to conclude that a criminal offense generated, used, or affected a particular asset. Second, a reviewable connection must exist between that asset and the offense. Only after this threshold has been met may the owner bear a responsive burden to explain the source of acquisition or basis of ownership. This staged structure differs from the assumption that a person's inability to establish the origin of their wealth is sufficient to justify forfeiture. Boucht's (2025) analysis of developments in non-conviction-based confiscation shows that the use of presumptions and shifts in the burden of proof requires limits because they can substantially affect procedural balance. Under the rights-protective model, reversed proof therefore operates as a responsive stage after the state has discharged its initial burden, not as the starting point of the state's claim.

The fifth layer consists of judicial authorization and judicial review beginning when measures are first taken against an asset, rather than only at the final forfeiture decision. This reconstruction distinguishes temporary freezing or seizure from permanent forfeiture. Interim measures may be necessary to prevent the transfer or concealment of assets, but they must be subject to time limits and judicial scrutiny. Permanent forfeiture may occur only by judicial decision after the owner or other interested parties have received notice and a reasonable opportunity to be heard. Courts must also have the power to vary, revoke, or narrow measures against assets when their initial justification no longer exists. Borlini and Rose (2024) regard judicial control as central to the legitimacy of freezing and forfeiture because state interference with property begins as soon as the owner's access is restricted. This construction broadens judicial control beyond the requirement that 'forfeiture must be ordered by a court' to require judicial oversight throughout the entire cycle of state intervention in assets.

Such oversight remains insufficient unless the bill establishes substantive protection for innocent owners and bona fide third parties. The proposed reconstruction distinguishes original owners unaware that their assets were used for a criminal offense, persons who acquired interests after the offense in good faith and for reasonable value, and those holding partial proprietary interests, such as secured creditors. None of these parties can be treated in the same way as the offender or persons who knowingly receive criminal proceeds. The bona fide owner defence should be defined as a substantive right to exclude legitimate interests from forfeiture, rather than merely a procedural right to object. Fadhila's (2025) study of third-party interests in asset recovery shows that an approach concerned exclusively with unlawful asset origins may overlook changes in legal relationships after assets have passed to others. The reconstructed model therefore requires examination of a third party's knowledge, good faith, consideration given, time of acquisition, and reasonable conduct before their interest may be affected by NCB.

Furthermore, these protections must be accompanied by a proportionality test governing the scope of forfeiture. Judges must examine not only whether an asset has a connection to criminal activity, but also whether forfeiture of the entire asset is proportionate to the nature of that connection. This test is particularly important for mixed assets, jointly owned property, assets used only partly as instrumentalities of crime, and property whose value greatly exceeds the economic benefit obtained from an offense. In the context of property rights, proportionality prevents a minimal connection to criminal activity from being used to justify complete

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deprivation of ownership. Borlini and Rose (2024) show that modern forfeiture regimes require assessments more sensitive to the intensity of state interference where measures reach assets not wholly of unlawful origin. Accordingly, the bill should empower judges to order partial forfeiture, severance of interests, or payment of equivalent value where forfeiture of an entire asset would impose an excessive burden.

Where only an identifiable share of an asset derives from unlawful conduct, the model prioritizes severance of the recoverable share or a corresponding monetary value instead of confiscation of the whole. For a jointly owned residence or a productive enterprise, the judge should assess protection of innocent co-owners, preservation of essential use, and the feasibility of a narrower order. If an interim measure or final forfeiture is overturned, restitution should be ordered in specie where possible; if an asset has been sold, diminished, or irreversibly transferred, the judgment should provide an enforceable procedure for monetary equivalent and compensation for legally established direct loss. These remedies require explicit legislative allocation of responsibility for valuation, asset-management proceeds, and the authority executing the return order.

The final element in this sequence is an effective remedy where state measures are found to be unlawful or excessive. The right to object has limited practical value if a successful party cannot be restored to their legal position. The Rights-Protective NCB model therefore requires restitution of assets when forfeiture is overturned, return of proceeds generated from asset management, compensation where assets have been sold or cannot be returned, and the possibility of damages for direct losses caused by unlawful measures. Remedies should also be available for interim measures subsequently found to lack sufficient justification. The European Court of Human Rights continues to regard access to procedures for challenging interferences with property and the ability to obtain redress as elements of the balance between the public interest and property rights protection (European Court of Human Rights, 2024). In Indonesia, this construction is further supported by Article 28D(1) of the 1945 Constitution, which guarantees recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law.

Operationally, the proposed statute should require an authority seeking NCB to file a reasoned application identifying the legal trigger, the suspected unlawful conduct, the particular asset, its ownership history, and supporting prima facie evidence. A judge would first decide whether provisional freezing or seizure is justified and time-limited, with prompt notice and a procedure to contest ongoing restraint; urgent ex parte intervention should be followed by an effective adversarial review. At the merits stage the state should bear the ultimate burden of proving forfeitable status on a clearly specified civil evidentiary standard, while an owner may respond with evidence of lawful acquisition and may invoke a separately defined bona fide owner defense. The judgment should identify the recoverable value and protected shares, provide reasons for rejecting narrower alternatives, and distinguish forfeiture of proceeds from instrumentalities and mixed property. These are proposed Indonesian statutory rules, informed by 18 U.S.C. § 983 and POCA 2002, not provisions already verified in the evolving 2026 bill (United States, 2000; United Kingdom, 2002; Borlini & Rose, 2024).

The reconstructed model comprises seven protective parameters arranged in a procedural sequence. Subsidiarity and the two activation thresholds together form the first parameter: when NCB can be initiated. The following parameters determine which property can be reached through a reviewable asset–crime nexus; how the state and the respondent discharge their respective evidentiary responsibilities; when judges must authorize or review restraints and forfeiture; which innocent-owner and bona fide third-party interests must be excluded; how partial or value-limited forfeiture is ordered; and how objections, restitution, and compensation repair unjustified interferences. Treating these functions as one cumulative sequence addresses both the institutional efficiency and constitutional legitimacy of asset recovery (Borlini & Rose, 2024; Azizah et al., 2026).

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Table 3. Seven proposed constitutional safeguards in the Rights-Protective NCB model (authors' synthesis).

Parameter / risk	Protective function	Constitutional foundation	Drafting recommendation (authors' proposal)
1. NCB invoked too freely or without prima facie basis	Subsidiarity and dual activation thresholds	Arts. 28D(1), 28J(2)	Limited statutory triggers plus evidence of crime-linked property before admission
2. Poorly differentiated asset–crime connection	Traceable nexus	Arts. 28G(1), 28H(4)	Differentiate proceeds, instrumentalities, mixed and substitute assets
3. Burden reversed without state evidence	Staged proof and express final standard	Art. 28D(1)	State first proves prima facie nexus, then retains ultimate legal burden; owner responds
4. Restraint unreviewed until final order	Judicial review throughout	Arts. 28D(1), 28G(1)	Court review of interim restraint, hardship, final forfeiture and appeal
5. Bona fide interests left exposed	Substantive innocent-owner defense	Art. 28H(4)	Define good faith, knowledge, acquisition for value, partial interests and protected shares
6. Full asset taken for partial taint	Proportionality	Art. 28J(2)	Partial forfeiture, interest severance, value-based order and reasons
7. Wrongful forfeiture without effective correction	Objection and restoration	Arts. 28D(1), 28H(4)	Return asset or proceeds, recover legal share, compensate proven direct loss

Table 3 shows that property protection requires seven substantive and procedural rules rather than a general declaration that third parties may object. Clear activation criteria and a nexus determine which claims can be heard; staged proof and judicial review structure the proceedings; substantive innocent-owner protections and proportionality limit the scope of deprivation; and restitution and compensation make successful challenges effective. Each item is a legislative recommendation and not a provision conclusively established in the ongoing 2026 bill (Fadhila, 2025; Borlini & Rose, 2024).

The model can be understood through the sequence effective asset recovery → NCB Asset Forfeiture → constitutional safeguards → protection of property rights. The arrows in this construction do not imply that rights protection begins only after forfeiture. Rather, constitutional safeguards operate within every stage of NCB. Effectiveness lies in the state's ability to reach assets where conviction-based forfeiture cannot operate. Legitimacy lies in the state's ability to demonstrate that interference with property satisfies legality, necessity, fair procedures, and proportionality. This perspective accords with the international view that asset recovery should be assessed not merely by the volume of assets returned, but also by the quality of the institutions and procedures employed to obtain them (Borlini & Rose, 2024).

Ultimately, the findings interpret the development of NCB not as a move from criminal law to a less constrained sphere of forfeiture, but as a transformation in the form of legal accountability. When the state no longer needs to await a conviction before challenging an asset, the justification for its authority shifts to the quality of the nexus, proof, judicial control, proportionality, and remedies. The looser the connection between NCB and a criminal judgment, the stronger the constitutional safeguards that must surround it. This interpretation accords with global proportionality theory, which understands the legitimacy of restrictions on rights not

merely in terms of the importance of the state's objectives, but also in terms of the law's capacity to demonstrate that the methods employed are genuinely necessary and do not impose excessive harm on rights holders (Borlini & Rose, 2024). Rights-Protective NCB Asset Forfeiture is therefore proposed as a construction reconciling two interests often treated as opposing. The state retains an instrument for depriving crime of its economic benefits, while property rights remain protected through substantive, procedural, and remedial limits operating from the beginning to the end of the forfeiture process.

4. CONCLUSION

This normative study identifies three interconnected historical changes in asset forfeiture: the transition from conviction-dependent to asset-centred recovery, from predominantly in personam to in rem procedure, and from ancillary punishment toward recovery of unlawfully connected assets. Its functional comparison produces seven legally distinct safeguards. First, activation criteria must define when NCB is permissible; the proposed Indonesian route is subsidiary and requires both a procedural trigger and an initial evidentiary basis. Second, the state must identify and substantiate the asset–crime nexus, distinguishing proceeds, instrumentalities, and mixed or substituted property. Third, the state must carry a specified initial and ultimate burden before any responsive evidential burden is placed on the owner. Fourth, judicial control must cover provisional restraints as well as the final decision. Fifth, innocent owners and bona fide acquirers must have substantive defenses. Sixth, the court must limit forfeiture to a justified proportion or value. Seventh, accessible objections, return, and compensation must remedy unlawful or excessive interference. The American model offers explicit proof and innocent-owner rules, while the British model offers civil recovery and tracing techniques; neither is proposed for direct transplantation.

The resulting Rights-Protective NCB Asset Forfeiture model makes these seven conditions cumulative across the stages of filing, provisional control, adjudication, and restoration of rights. It is proposed as a reconstruction consistent with Articles 28D(1), 28G(1), 28H(4), and 28J(2) of the 1945 Constitution, not as a tested account of Indonesian implementation. In particular, the 2015 draft's article numbers and thresholds are historical legislative material and must not be confused with enacted law or the final wording of the 2026 initiative, which remained under deliberation in November 2026. Once legislation is enacted, further research should compare the final law with the seven parameters and empirically evaluate prosecutorial proof, judicial review of interim measures, decisions protecting innocent third parties, proportionality in mixed-asset cases, and actual restitution or compensation following wrongful forfeiture.

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