

# The Legal Framework of Asset Forfeiture for Money Laundering in the United Kingdom and Malaysia

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## ABSTRACT

Money laundering has been drawn toward the proceeds of crime for a long time. In this sense, proceeds of crime can be described as money or property earned from profit-oriented crime. Therefore, the necessity for asset recovery, especially to forfeit such proceeds, is considered one of the legal tools to deprive money launderers of illegal profits, and the AML regimes give the power for criminal justice actors to do so. Asset forfeiture is when a law enforcement agency seizes cash, property, or possessions based on the suspicion that these assets were acquired by or will be used for criminal activity. Nonetheless, the authors perceive that such forfeiture measures have their implications. This paper examines the broad concept of money laundering and forfeiture, its legal positions in the UK and Malaysia, and the legal implications that arise. This paper uses a doctrinal legal analysis and secondary data, which analyses primary sources, the POCA 2002 and the AMLATFPUAA 2001, as well as secondary sources, including case law, articles in academic journals, books, and online databases. Furthermore, this paper could be a valuable source of information for practitioners, academicians, and students. It could also be a beneficial guide for policymakers for future amendments to the law.

**Keywords:** Money Laundering Asset Forfeiture Civil Forfeiture Criminal Forfeiture Third-Party Rights

## INTRODUCTION

The forfeiture/confiscation of illegal assets acquired through crime are instruments for active counteraction of serious crimes that are of nature to generate an economic gain for their perpetrators or related persons. Applying such mechanisms indicates laws and governmental policies to combat crime (Grigorov et al., 2014). In the UK, asset forfeiture proceedings are initiated under the Proceeds of Crime Act (POCA) 2002, while the forfeiture of property in Malaysia has been governed by the Anti-Money Laundering, Anti-Terrorism Financing, Proceeds of Unlawful Activities Act (AMLATFPUAA) 2001. Alongside the progress of the AML regime, asset forfeiture/ confiscation in the UK is rather extensive than in Malaysia (Hamin et al., 2017). POCA 2002 consolidated, updated, and reformed the criminal law relating to money laundering to cover all criminal offences, including any dealing in criminal property. Meanwhile, it is noteworthy that depriving criminals of the benefits obtained through illegal activities relating to money laundering remains one of the prime objectives of POCA 2002. Hence, forfeiture, rather known as confiscation, is used by the POCA 2002 as a catch-all act that covers various offences related to forfeiture or cash recovery proceedings (Aurasu & Rahman, 2018).

Unfortunately, no system, process, or measures are perfect from fault as they are also exposed to human errors, and some implications arise during the asset forfeiture/confiscation process. Concisely, this paper seeks to

address the concept of money laundering, the concept of forfeiture/confiscation, the legal framework of asset forfeiture/confiscation under the AML regime in the UK and Malaysia, respectively, as well as its legal implications, especially to property owners and bona fide third party.

## LITERATURE REVIEW

Numerous commentators have examined and commented on the literature on money laundering and asset forfeiture/confiscation.

### The Concept of Money Laundering

The Asia/Pacific Group on Money Laundering (APG) observes that money laundering is not a legal term in international law but is used to describe dirty money turning into clean money loosely. Such an act is when illicit funds are made to appear legitimate (which the term refers to) is interpreted in crucial international instruments, most notably the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention 1988) and the UN Convention against Transnational Organized Crime (Palermo Convention 2000), (APG, 2025). Besides, the United Nations Office on Drugs and Crime (UNODC) refers to money laundering as concealing or hiding the existence, source, movement, destination, or illegal application of illicitly derived property or funds to make them appear legitimate. To finally release laundered funds into the legal financial system, it usually involves a three-part system, i.e., the placement of funds into a financial system, layering of transactions to disguise the source, ownership, and location of the funds, and integration of the funds into society in the form of legitimate holdings (UNODC, 2019).

As one of the central bodies established to deal specifically with the rise of money laundering, the Financial Action Task Force (FATF) defines money laundering as processing criminal proceeds to disguise their illegal origin, enabling the criminal to enjoy these profits without jeopardising their source (FATF, 2024). Bank Negara Malaysia (BNM) construes money laundering as converting cash, funds, or property derived from criminal activities to give it a legitimate appearance. It is a process of cleaning dirty money to disguise its criminal origin (BNM, 2022). Additionally, Segarajasingham (2018) perceives that money laundering is a crime against the administration of criminal justice, and it is not a single crime by itself but involves other criminal activities such as drug trafficking, human trafficking, and terrorism. In short, money laundering is concealing the illicit origin of money or assets acquired through criminal activities (Ha, 2021).

### The Concept of Forfeiture/Confiscation

Forfeiture is often used interchangeably with confiscation as "confiscation" of assets or property, also known in some jurisdictions as "forfeiture". Brun et al. (2021) argue that jurisdictions may use different terminology to describe the same legal concept. For example, some use "confiscation", and others use "forfeiture". UNODC (2019) interprets forfeiture as the permanent loss of private property or assets because of legal action by a government authority. Generally, the property owner has failed to comply with the law, or the property is linked to criminal activity. As perceived by the FATF (2024), confiscation includes forfeiture where applicable and means the permanent deprivation of funds or other assets by a competent authority or court order. Forfeiture can also be described as "the power of a court of law to take from a person any benefit derived from criminal activities". It deprives an offender of the benefits of the crime, including proceeds of crime or any movable or immovable property purchased using those criminal proceeds, and this is where the term "confiscation" comes in (Aurasu & Rahman, 2018).

Apart from that, Hamin et al. (2017) observe that forfeiture has long been a practical law enforcement tool for divesting particular property without compensation, imposing a loss by taking away some pre-existing valid rights without compensation. Yatmoko (2022) argues that asset confiscation is one of the government's efforts to compensate for state losses, and it can be done through the judge's decision to recover the assets obtained from the crime. Relating to types of asset forfeiture, Aurasu and Rahman (2016) identify that the forfeiture of criminal proceeds is generally divided into criminal and civil and how these two types of forfeiture work differ.

Likewise, Hamin et al. (2017) highlight that modern forfeiture follows one of two procedural routes, i.e., criminal or civil, depending on the nature of the judicial procedure.

### **Origin of Forfeiture**

Commentators emphasised that the history of asset forfeiture commenced in England. For instance, Fourie and Pienaar (2017) observe that asset forfeiture has an ancient history and tradition, and the roots may be traced back to biblical justifications as a form of punishment. Doyle (2023) indicates that present forfeiture law has its roots in early English law. It is reminiscent of three early English procedures, i.e., deodands, forfeiture of estate or common law forfeiture, and statutory or commercial forfeiture. Banta (2022) perceives that the nature of modern statutory forfeiture in personam and in rem is rooted in English common law. Moreover, English common law reveals two general asset forfeiture propositions that are true of today's modern statutory forfeiture scheme, i.e., in rem forfeiture and in personam forfeiture.

### **Criminal Forfeiture/Confiscation**

For criminal forfeiture, the government must win a criminal conviction against the owner and forfeit the property through a criminal proceeding (Kelly, 2019). Banta (2022) claims that criminal forfeitures are in personam actions, part of the penalty that the government exacts upon conviction of a criminal offence. In other words, criminal forfeitures are done in personam and can be carried out only after the property owner has been convicted (Pimente, 2017). Similarly, Mamak et al. (2022) highlight that criminal forfeiture is in personam and connected with the conviction of a specific person. Moreover, Doyle (2023) also perceives criminal forfeiture as an in personam proceeding, and confiscation is possible only upon the conviction of the property's owner.

### **Civil Forfeiture/ Non-Conviction-based Forfeiture**

The literature from various jurisdictions discussed and commented on civil forfeiture/non-conviction-based (NCB) forfeiture. For instance, according to UNODC, "NCB confiscation or forfeiture" means asset confiscation or forfeiture in the absence of the conviction of the wrongdoer. The term is used interchangeably with "civil forfeiture", "in rem forfeiture", and "objective forfeiture" (UNODC, 2012). As stated by FATF, NCB confiscation means confiscation through judicial procedures related to a criminal offence for which a criminal conviction is not required (FATF, 2024). Carpenter et al. (2022) highlight that civil forfeiture enables the government to charge and convict property directly rather than a property owner. Civil forfeiture is generally concerned with things (in rem), and it does not require a criminal sentence because civil forfeiture is an action brought against the property and not the person who owns it (Mamak et al., 2022). Moreover, Tromme (2019) argues that NCB confiscation is generally brought against the asset, not the person. Additionally, the standard of proof for a civil confiscation order is usually lower than that required for acquiring a criminal confiscation order since the former relies on a balance of probabilities test and does not require the prosecution to prove beyond reasonable doubt that a crime was committed.

## **UK LEGAL FRAMEWORK**

In the UK, asset recovery through criminal confiscation, civil forfeiture, and civil recovery powers provided under POCA 2002 are used to deprive criminals of their money or other property connected to criminal activity and recover the proceeds of crime (Home Office, 2023). This part will discuss criminal confiscation, civil forfeiture, and civil recovery under POCA 2002.

### **Criminal Confiscation under POCA 2002**

The POCA 2002 only applies to offences committed on or after March 24, 2003. Before this date, the law on confiscation of any proceeds of crime was governed by the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. The proceeds of crime are the money or assets gained by criminals whilst undertaking criminal

activities and money laundering. Tasman (2024) identifies that those authorities, such as the Crown Prosecution Service, can confiscate such assets due to POCA 2002. The Home Office (2023) emphasised that Part 2 of POCA provides the confiscation of a person's benefit from criminal conduct following a criminal conviction. If the relevant statutory conditions are satisfied, the Court must decide the recoverable amount for that person and make a confiscation order requiring them to pay it. A confiscation order can only be made in the Crown Court under section 6 of POCA 2002. Unlike a forfeiture order, a confiscation order is a fine whereby the convicted defendant must pay money by a specific date. Also, unlike a forfeiture order, a confiscation order does not remove any property or significant assets from the defendant.

Furthermore, Chistyakova et al. (2021) perceive that confiscation orders are the primary tool of asset recovery, which follows the conviction of offenders in criminal courts. The POCA 2002 allows the recovery of proceeds gained from offences for which the offender was convicted or their general criminal conduct. The latter is possible if it is established that the offender has led a "criminal lifestyle" that they would not have otherwise conducted based upon the proceeds of their crime. In criminal lifestyle cases, the offender's assets from the previous six years can be treated as assets from criminal conduct unless the offender can prove otherwise. The value of a confiscation order will depend on two key variables, i.e., the amount of benefit from criminal conduct and the amount of assets available for confiscation. The smaller of the two amounts is used to calculate the order. The value of the criminal benefit is calculated using the total revenues of the offender, not their net profits.

The application of Part 2 of POCA can be seen in a money laundering case in which the defendant was ordered to compensate the victim bank (under a separate statutory power) and confiscate it under POCA (*R v Jawad (Mohid)*, 2013). The statutory assumptions of "criminal lifestyle" also applied. The Court said (perhaps surprisingly) that if a victim had been repaid in full, then including the same sum in the benefit figure would be disproportionate. Still, making a compensation order (which did not guarantee actual payment) did not have the same effect.

### **Civil Forfeiture under POCA 2002**

Part 5 of the POCA sets out powers to seize and forfeit cash through a civil process with reasonable grounds to suspect that it is the proceeds of crime. POCA allows certain authorities to freeze and forfeit monies held in bank and building society accounts and forfeit cash in summary proceedings (Anderson, 2023). In other words, forfeiture powers enable the seizure, freezing, and forfeiture of cash, monies in relevant accounts, or listed assets determined to be or represent property obtained through unlawful conduct or property intended for use by any person in unlawful conduct (Home Office, 2023). This civil regime was bolstered by introducing account freezing and forfeiture orders as part of the Criminal Finances Act (CFA) 2017 (Barnard & Campbell, 2024). Meanwhile, the Home Office (2021) identifies the civil powers under the POCA, including cash seizures, account freezing orders (AFOs), listed asset orders, and forfeiture orders.

Cash seizures enable the seizure of cash with a minimum value of £1,000, which can then be followed by a civil process in the Magistrates Court for the detention and forfeiture of that property. This forfeiture does not require a criminal prosecution or conviction. For AFOs, as part of the CFA 2017 amendments to POCA powers, it provides that senior HMRC officers, constables, SFO officers, and accredited Financial Investigators have the power to apply to the Court for the freezing of money in a relevant account with a minimum value of £1,000. For listed asset orders, as part of the CFA 2017 amendment to POCA powers, it grants HMRC officers, constables, SFO officers, or accredited Financial Investigators the power to seize personal property, such as precious metals and precious stones, watches, artistic works, face-value vouchers and postage stamps worth a minimum value of £1,000. Meanwhile, forfeiture orders can be made by a magistrate's Court following an application by HMRC officers, constables, SFO officers, or accredited Financial Investigators for the forfeiture of cash, monies held in a relevant account, or certain listed assets that have been seized and detained under POCA. There are three types of forfeiture orders: cash forfeiture orders, account forfeiture orders, and listed asset forfeiture orders (Home Office, 2021).



## Civil Recovery under POCA 2002

The UK has a non-conviction-based asset recovery regime known as the civil recovery regime (Anderson, 2023). Civil recovery applies to the proceeds of "unlawful conduct" as defined in section 241 of POCA 2002. Civil recovery proceedings are brought by the National Crime Agency and do not rely on a prior criminal conviction (St Paul Chambers, 2020). Civil recovery powers enable an enforcement authority to recover property determined to be or represent property obtained through unlawful conduct, and the applications are made in civil proceedings before the High Court (Home Office, 2023). Anderson (2023) notifies that Part 5 of POCA allows the High Court to make a civil recovery order (CRO) to recover property obtained through unlawful conduct. The balance of probabilities decides whether the property has been obtained through unlawful conduct. Combined with the broad jurisdictional scope of the definition of "unlawful conduct", civil recovery orders are a powerful and attractive tool for UK prosecutors. These orders are made through a civil process and require no criminal prosecution or conviction (Home Office, 2021).

Moreover, the Home Office (2021) indicates that unexplained wealth orders (UWOs) were introduced as part of the CFA 2017 amendments to POCA powers. They can be granted to specific agencies such as the National Crime Agency (NCA), the Crown Prosecution Service (CPS), the Financial Conduct Authority (FCA), the Serious Fraud Office (SFO), and HM Revenue and Customs (HMRC). UWOs may be granted to individuals or companies suspected of being involved in or linked to a serious crime. Where granted, the UWOs compel the respondent to explain the nature of their interest in the property and how they obtained it. Failure to do so creates a presumption that the property was obtained unlawfully and is a valid target for civil recovery proceedings under Part 5 of POCA. An interim freezing order can also be applied alongside a UWO to prevent the property from dissipating during the proceedings (Home Office, 2021).

## MALAYSIAN LEGAL FRAMEWORK

Before the enactment of AMLA, several statutes contained special provisions relating to forfeiture or confiscation (Rahman, 2008). These include the Criminal Procedure Code (CPC), Dangerous Drugs (Forfeiture of Property) (DDFOP) Act 1988, the Anti-Corruption Act (ACA) 1997 (Repealed by Malaysian Anti-Corruption Commission Act 2009), the Penal Code, the Dangerous Drugs Act 1952, the Customs Act 1967, and the Excise Act 1976. In 2001, the Anti-Money Laundering Act (AMLA) 2001, which was later amended to the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLATFA) in 2003, was the law governing freezing, seizure and forfeiture of property in Malaysia (Hamin et al., 2017). Meanwhile, in 2015, it was further amended to include the forfeiture of proceeds of an unlawful activity and instrumentalities of an offence. It was then renamed Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA) 2001 (Aurasu & Rahman, 2018). Generally, Part VI of the AMLATFA provides standardised mechanisms applicable to all law enforcement agencies for freezing, seizure and forfeiture of property suspected of money laundering activities (Rahman, 2016). Regarding forfeitures, the 2001 Act provides both civil and criminal forfeiture of criminal proceeds, and both have their strengths and weaknesses in their application (Rahman, 2022). Ganesan et al. (2023) identify that the AMLATFA empowers the Malaysian Courts to forfeit any property subject to a money-laundering offence via sections 55 and 56 of the Act. The rationale of this empowerment is to ensure that all property used in the commission of a money laundering offence is forfeited. Besides, sections 55 and 56 are to be read together with sections 61 and 70, which provide the bona fide third parties' rights and the standard of proof, respectively (Aurasu, 2018).

### Criminal Forfeiture under the AMLATFPUAA 2001

As mentioned earlier, there are two types of forfeiture: criminal and civil. Yasin (2007) clarified that under the old 2001 Act, while the forfeiture of property upon prosecution (criminal forfeiture) came under section 55, forfeiture of property of which no prosecution initiated against the accused (civil forfeiture) came under section 56. Hamin et al. (2017) later observed that these criminal and civil forfeiture provisions remain the

same under the amended 2001 Act. For criminal forfeiture, it is also like a confiscation order in some jurisdictions. It is an order in personam, not in proprietary (Aurasu & Rahman, 2016). Section 55 of the 2001 Act specifies that a forfeiture order can only be issued against property that is proved to be the subject matter or has been used in the commission of a money laundering offence. The Court will issue a forfeiture order if the offence is proved against the accused, or if the offence is not proved against the accused, the Court must satisfy that the accused is not the actual or lawful owner of such property and that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

### **Civil Forfeiture under the AMLATFPUAA 2001**

Unlike criminal charges for money laundering, civil forfeiture proceedings are directed at the property, which is the subject matter of money laundering. Civil forfeiture cases are filed in rem, and the onus of proof in a civil asset forfeiture case is a civil burden of proof (Raof & Sulaiman, 2023). Civil forfeiture under section 56(1) of the 2001 Act emphasises subject to section 61, where in respect of any property seized under this Act, there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the PP may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is a) the subject-matter or evidence relating to the commission of such offence; (b) terrorist property; (c) the proceeds of unlawful activity; or (d) the instrumentalities of an offence. The Court shall also apply the standard of proof required in civil proceedings for property specified under this section. Meanwhile, the application for forfeiture may be made by the PP only concerning properties falling within any of the classifications specified in paragraphs (a) to (d) of section 56(1) of the 2001 Act (Public Prosecutor v JJ Power Groups Enterprise & Ors, 2020).

### **Bona Fide Third-Party Rights**

The Court would require any bona fide third party to prove their claims against the assets and to show cause why they should not be forfeited. The forfeiture application will fail if the third party's rights are upheld (Hamin et al., 2017). The core of this provision is provided under section 61(4) that the court or enforcement agency shall return the property to the claimant when it is satisfied that (a) the claimant has a legitimate legal interest in the property; (b) no participation, collusion or involvement concerning the offence under subsection 4(1) or Part IVA, or a terrorism financing offence which is the object of the proceedings can be attributed to the claimant; (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he knew, did not freely consent to its illegal use; (d) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred to avoid the eventual subsequent forfeiture of the property, and (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property.

The application of section 61 can be seen in the Court's judgement. It was held that the amount of RM10,000 seized for the account held at the OUB Bank in the respondent's name, i.e. Lau Kwai Thong, would be forfeited to the Government of Malaysia (PP v Lau Kwai Thong, 2009). The third-party claimant's evidence did not in any way address all the specific circumstances that have been outlined under section 61(4). The requirements enshrined in section 61(4)(a) to (e) of the AMLATFA must be read conjunctively, and all the conditions from subparagraph (a) to (e) must be satisfied. Besides, a similar pronouncement was made by the Court in construing a third-party claim under section 61(4)(a) to (e) of the AMLATFA (PP v Raja Noor Asma Raja Harun, 2013). It was held that the Court can adequately release the claimed property to a bona fide third party under section 61(4)(a) until (e) of the Act, but it must be fulfilled conjunctively. This view means that a bona fide third party must fulfil all requirements regarding the balance of probabilities under that subsection. Concisely, a bona fide third party must satisfy all circumstances under section 61 of the 2001 Act, and it is read conjunctively. Aurasu and Rahman (2016) assert that the burden of proof is on the claimant. Hence, it poses a challenge to the third party, as it may not be as easy as it may seem.

## LEGAL IMPLICATIONS

There are several legal implications on asset forfeiture/confiscation measures, such as encroachment on human and property rights in NCB forfeiture, difficulties for innocent property owners in civil forfeiture cases, difficulties in criminalising money laundering offenders, increasing use of POCA's civil asset recovery powers and misuse of the incentive scheme.

### Encroachment on Human and Property Rights in NCB Forfeiture

While Article 54(1)(c) of the United Nations Convention Against Corruption (UNCAC) encourages member states to allow confiscation without a criminal conviction, NCB attracts considerable criticism as it arguably clashes with human rights and due process protections. With regards to NCB forfeiture as well, France (2022) perceives that there are concerns that this asset recovery tool violates fundamental rights, contradicts the rule of law provisions, and can be easily abused by authorities to persecute opponents and dissidents. Furthermore, Lisanawati (2015) observes that NCB asset forfeiture is difficult. Usually, the problem is dealing with the abuse of power by law enforcement agents since assets belong to a person. Civil forfeiture has been considered an "arbitrary interference with property rights" because it is enforced against whoever holds or owns the affected property. It can potentially impact innocent third parties when the property they benefit is seized without compensation or replacement (Tromme, 2019).

Besides, as observed by Fauzia and Hamdani (2021) for implementing the NCB concept, it is feared that it will confuse law enforcement regarding the violation of the rights of suspects. Tromme (2019) claims this abuse problem is more apparent in the United States because it is argued that law enforcement trespass on property rights, where property refers to land, cars, houses, and other movable and immovable goods. Thus, the courts have an essential role in ensuring NCB does not infringe on property rights.

### Difficulties for Innocent Property Owners in Civil Forfeiture Cases

In addition to civil forfeiture measures described before, Knepper et al. (2020) claim that civil forfeiture is a vast national phenomenon and a fundamental threat to property rights and due process. Civil forfeiture laws generally make it easy for governments to forfeit property and hard for people to fight. Moreover, civil forfeiture laws stack the deck against property owners, compromising due process and inevitably sweeping up many innocents. Hamin et al. (2017) also suggest that with civil forfeiture, property owners are effectively guilty until proven innocent since the burden of proof is shifted from the state to the owners to prove that they are innocent of the crime in forfeiture cases.

Additionally, France (2022) argues that civil forfeiture has the potential to impact innocent third parties when the property from which they benefit is seized without compensation or replacement. This risk is higher as the laws begin to include both proceeds and instrumentalities of crimes. The innocent property owners are at risk of forfeiture because forfeitability turns on the guilt of the property, not the guilt of its owner. Even in jurisdictions that recognise an "innocent owner" defence, the burden is typically on the owner to prove their innocence (Pimentel, 2017). Meanwhile, under the AMLATFPUAA, Rahman (2022) observes that this 2001 Act imposes stringent forfeiture rules regarding the proceeds gained from unlawful activities. In contrast to civil forfeitures, Pimente (2017) argues that criminal forfeitures are done in personam and can be carried out only after the property owner has been convicted. Thus, it is far less problematic and controversial.

### Difficulties in Criminalising Money Laundering Offenders

Rahman (2008) highlights that the fight against money laundering consists of two essential legal devices, i.e., the criminalisation of money laundering and the confiscation/forfeiture of the proceeds of crime. Unlike other crimes, Nazri et al. (2019) argue that money laundering investigation and prosecution include the elements of asset forfeiture to ensure that the LEAs and prosecutors can intercept the criminal activities and their illegal proceeds, interfering with the profit motive and collecting maximum unlawful proceeds. Also, they contend

that Malaysia and Australia widely use asset forfeiture in their money laundering investigation. Nevertheless, both countries are facing difficulties in criminalising money laundering offenders, which does not help to deter money laundering activities. Thus, the offenders can still commit money laundering because their illegal proceeds have yet to be forfeited.

### **Increasing Use of POCA's Civil Asset Recovery Powers**

In the UK, the LEAs are increasingly resorting to POCA's civil asset recovery powers to recover money or assets to constitute property obtained through unlawful conduct or intended for use in unlawful conduct without the need for a criminal conviction to do so. Tregunna (2023) perceives that law enforcement often sees civil recovery as a more accessible option to maximise chances of recovery due to the lower burden of proof and the typically broad interpretation of "recoverable property". Besides, civil recovery is the only option in some cases, but criminal investigations and prosecutions can and should be pursued in many cases. However, the perpetrator is often still at large, no longer even needing to have been arrested, charged, or convicted for their ill-gotten gains to be forfeited.

### **Misuse of Incentive Scheme**

In most states and under federal law in the USA, Williams et al. (2010) reveal that law enforcement can keep some or all of the proceeds from civil forfeitures. This incentive has led to concern that civil forfeiture encourages policing for profit, as agencies pursue forfeitures to boost their budgets at the expense of other policing priorities. In fact, under equitable sharing, federal law provides as much as 80 per cent of the proceeds to state law enforcement and stacks the deck against property owners. Wright (2021) notices that the US Statutes give law enforcement a financial incentive to go after innocent people. Without regard to the owner's guilt or innocence, Kneeper et al. (2020) perceive that many billions go directly to law enforcement, including police and prosecutors, who seize and forfeit property.

Moreover, the incentives will bring more forfeitures as the property is seized for forfeiture to the government, not because the owner has been found guilty of a crime, but because the property is said to "facilitate" a crime, whether a crime was ever proved or prosecution even begun (Pilon & Burrus, 2022). Besides, Mamak et al. (2022) suggest that a potential problem with policing for profit depends on the technical provisions that specify who can benefit from the money. Those provisions differ depending on the country.

## **CONCLUSION**

In conclusion, the worldwide crime of money laundering is a serious concern which has always been associated with organised crime. Hence, the forfeiture/confiscation regime is one of the most potent regimes to confiscate all illegal proceeds, facilitate and deter further crime, and prevent further damage to an individual or community property. With the introduction of civil forfeiture into the regime and a lower burden of proof, law enforcement agencies can apprehend the suspects and target the illegal proceeds from illegal acts. Nevertheless, several legal implications in civil forfeiture have arisen, especially toward innocent property owners and bona fide third parties. Hence, it is vital for the criminal justice players involved in the asset forfeiture/confiscation process to enforce and implement the forfeiture procedures and transparently exercise their duties to ensure the law's effectiveness and prevent abuses within the whole system. Meanwhile, even though Malaysia's legal position on asset forfeiture aligns with the United Nations Convention and the FATF Recommendations, Malaysia should adopt POCA 2002 as the benchmark and make further amendments to forfeiture provisions in her Anti-Money Laundering law.

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