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Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice

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Abstract

This article delves into the issue of legal systems and mechanisms for confiscating assets resulting from corruption. Currently, the mechanism for asset confiscation remains unclear, particularly concerning the procedures for asset restitution, the authorized entities responsible for taking over state assets, the eligible assets that can be confiscated to compensate for state losses, and the institutions authorized to receive, store, and manage state assets resulting from acts of corruption. As a consequence, law enforcement effectiveness has been hindered. Hence, it is essential to establish a fair and definitive regulation for the confiscation of assets related to the criminal act of money laundering arising from corruption by implementing the Asset Confiscation Bill. By implementing clear and comprehensive arrangements for managing confiscated assets, it will foster a professional, transparent, and accountable law enforcement system.

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A. Introduction

The distinctive characteristic that sets apart money laundering from other criminal acts is that money laundering is not a singular crime but a dual offense. This can be demonstrated through the form of money laundering as a subsequent crime, known as a *follow-up crime,* arising from a primary offense or the *predicate crime,* which the state formulates as an *unlawful activity* - the original crime that generates proceeds that are subsequently subjected to the process of money laundering.[1]

The implementation of repatriating state finances due to money laundering offenses is currently very challenging to execute. This difficulty arises because such crimes involve various covert modi operandi carried out in highly secretive ways. Additionally, multiple parties are involved, protecting one another, and possessing the power to manipulate and engineer the legal system to conceal these crimes. In fact, money laundering efforts have extended beyond national borders, involving cross-border account transfers. Hence, an extraordinary measure must be taken, which is asset confiscation, to tackle the proceeds of corruption.[2]

The regulation on asset confiscation has not yet been able to establish a fair legal enforcement model for the entire society. The system and mechanisms for confiscating assets resulting from criminal activities, as stipulated in the Anti-Money Laundering Act, are still not optimal because The implementation of confiscation of assets resulting from criminal acts of corruption in Indonesia has been practiced, but has not been optimal due to a lack of awareness and professionalism from law

[1] Suhartoyo, *Argumen Pembalikan Beban Pembuktian Sebagai Metode Prioritas Dalam Pemberantasan Tindak Pidana Korupsi Dan Tindak Pidana Pencucian Uang* (Depok: Rajawali Pers, 2019).

[2] Juangga Saputra Dalimunthe, "Penegakan Hukum Pidana Pengembalian Kerugian Keuangan Negara Melalui Perampasan Aset Hasil Tindak Pidana Korupsi," *Jurnal Indonesia Sosial Sains* 1, no. 2 (2020): 68.

enforcement officials to eradicate corruption crimes. Confiscation of assets resulting from criminal acts of corruption can also be carried out through civil lawsuits, but civil lawsuits are pending which will be issued after the criminal process is no longer possible. As a result, since the beginning the civil lawsuit has lost the right momentum or opportunity to withdraw the corruptor's assets. This discussion found that the implementation of confiscation of assets resulting from corruption still requires other legal instruments in the form of statutory regulations.[3] As can be found in Article 18(a) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Corruption Eradication Law), and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The process of combating money laundering by incarcerating perpetrators (*follow the suspect*) has proven to be insufficiently effective in reducing crime rates if not accompanied by efforts to seize and confiscate the proceeds and instruments of the criminal activitie.[4] Article 54(1)(c) of UNCAC requires all State Parties to consider taking necessary actions to enable the non-conviction based forfeiture of assets in cases where offenders cannot be prosecuted due to reasons such as death, flight, evasion, or non-identification, among other circumstances. In this regard, UNCAC's focus is not limited to a specific legal tradition, as the fundamental differences in each legal tradition may hinder the convention's implementation. Therefore, it is proposed that every State Party adopts non-conviction based forfeiture as a mechanism capable of transcending legal system differences to confiscate

[3] Rizki Delilex, "Implementasi Perampasan Aset Hasil Tindak Pidana Korupsi Menurut Undang-Undang," *Administratum* 4, no. 4 (2019): 46.

[4] Muhammad Yusuf, *Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia* (Jakarta: Kompas Media Nusantara, 2013).

corruption proceeds in all jurisdictions.

Chapter V of UNCAC, which specifically regulates asset recovery, provides the foundation for the government's efforts in combating and preventing corruption. The convention emphasizes the fundamental principle that, concerning asset recovery, the parties must cooperate and provide mutual assistance in confiscating assets (Article 51, United Nations Convention Against Corruption). The importance of asset recovery for developing countries is rooted in the fact that corruption crimes have deprived the state of its wealth, with the stolen assets often being taken abroad by corrupt individuals.

The regulation regarding the repatriation of state assets resulting from money laundering offenses remains unclear, especially concerning the procedures or mechanisms for asset repatriation, the authority responsible for taking over state assets resulting from corruption offenses during the trial process, which assets can be confiscated to compensate for state losses, and which institution is authorized to receive, hold, and manage state assets from corruption proceeds.[5] The need for a draft law on asset seizure, based on the fact that law enforcement efforts, especially money laundering, are based on the original criminal acts contained in law No. 8 in 2010 which also did not produce significant results to the state treasury. In addition, Romli also stated that the applicable law in Indonesia is currently not able to optimally regulate and accommodate activities in order to return assets resulting from corruption and crime in the field of Finance and banking in general.[6]

The mechanism for repatriating proceeds of criminal

[5] Sigit Prabawa Nugraha, "Kebijakan Perampasan Aset Hasil Tindak Pidana Korupsi," *National Conference For Law Studies: Pembangunan Hukum Menuju Era Digital Society* (2020): 1000.

[6] Ariman Sitompul, Pagar Hasibuan, and M. Sahnan, "The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, KPK) In Money Laundering With The Origin Of The Corruption," *European Law Review* 9, no. 10 (2021): 99.

activities must be based on evidence presented in the court proceedings. Until now, despite the successful apprehension of the criminals, the management and accountability of the returned state assets remain unclear, specifically, which institution receives these state assets.[7]

The steps taken by the Indonesian Government to enhance the effectiveness of asset confiscation efforts within the legal system in Indonesia involve the formulation of policies through the draft Asset Confiscation Bill. Having clear and comprehensive regulations on the management of confiscated assets will lead to a professional, transparent, and accountable law enforcement. Therefore, it is imperative for the Indonesian Government to establish and enact the Criminal Proceeds Confiscation Act as soon as possible.[8]

The Bill on asset confiscation describes that Criminal Proceeds Confiscation as stated in Article 1 number 3 of the Bill on Asset Confiscation is an attempt to forcibly confiscate criminal proceeds by the state based on a court decision outside criminal punishment against the perpetrator. The effort to confiscate assets resulting from corruption offenses when these assets flow abroad will undoubtedly create difficulties in terms of tracing, *forfeiting* during the trial process, or *confiscating* after a legally binding decision has been made.[9]

The Bill on Asset Confiscation prioritizes the pursuit of criminal proceeds over the punishment of offenders. As a result, the existence of this bill marks the beginning of a paradigm shift in criminal law, which initially aimed primarily at deterring offenders through *retributionist* measures, and even included *rehabilitationist* efforts. Consequently, the

[7] Ibid. hlm 99

[8] Oly Viana Agustine, "RUU Perampasan Aset Sebagai Peluang Dan Tantangan Dalam Pemberantasan Korupsi Di Indonesia," *Jurnal Hukum Pidana dan Pembangunan Hukum* 1, no. 2 (2019): 99.

[9] Nugraha, "Kebijakan Perampasan Aset Hasil Tindak Pidana Korupsi."hlm 99

implementation of this bill may potentially shift or even replace conventional law enforcement processes in pursuing offenders or lead to a collaboration between the two approaches.[10]

The efforts to combat money laundering by seizing and repatriating the proceeds of such criminal activities will eventually assume a crucial position. This means that the success of combating money laundering should not only be measured by the successful prosecution of offenders but also by the level of success in returning the proceeds of crime to the state.

Several articles discuss this, such as "Challenges in Implementing Non-Conviction Based Asset Forfeiture in the Bill on Asset Confiscation in Indonesia."[11], The Bill on Asset Confiscation as an Opportunity and Challenge in Combating Corruption in Indonesia.[12] Policy of Confiscating Assets Resulting from Corruption Offenses. [13]The Enforcement of Criminal Law for the Repatriation of State Financial Losses Through the Confiscation of Assets Resulting from Corruption Offenses. [14]which explains that the Bill on asset confiscation presents opportunities and challenges in resolving the confiscation of assets resulting from corruption offenses. The article ignores and has not yet addressed the ideal formulation regarding the fair and certain regulation of asset confiscation for corruption-related money laundering. Therefore, this article explores the following research questions: First, can the current regulation of asset confiscation for corruption-related money laundering serve as a basis that provides legal certainty and justice

[10] Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) Dalam RUU Perampasan Aset Di Indonesia," *Jurnal Integritas* 3, no. 1 (2017): 123.

[11] Ibid. hlm 123

[12] Agustine, "RUU Perampasan Aset Sebagai Peluang Dan Tantangan Dalam Pemberantasan Korupsi Di Indonesia."

[13] Nugraha, "Kebijakan Perampasan Aset Hasil Tindak Pidana Korupsi."hlm 1000

[14] Dalimunthe, "Penegakan Hukum Pidana Pengembalian Kerugian Keuangan Negara Melalui Perampasan Aset Hasil Tindak Pidana Korupsi."

for asset confiscation? Second, how should the future formulation of the regulation on asset confiscation for corruption-related money laundering be structured to ensure legal certainty and fairness in asset confiscation?

B. Method

This writing is the result of research using normative legal research methods with a statutory and regulatory approach, with analytical descriptive research specifications. Secondary data collected from primary legal materials, both in the form of statutory provisions; secondary legal materials and tertiary legal materials in the form of previous research articles. Secondary data was obtained through literature study and then processed and analyzed qualitatively.

C. Results and Discussion

1. The Regulation of Asset Forfeiture in the Context of Proceeds of Corruption Money Laundering: A Review on Legal Certainty and Justice for Asset Forfeiture

The confiscation of proceeds of crime, in the legal system of Indonesia, is not a new concept. Several criminal provisions have already regulated the possibility of seizure and confiscation of proceeds and instruments used in a criminal act. These provisions are found in the Criminal Code concerning additional penalties. In addition to being regulated in the Criminal Code, provisions regarding the confiscation of proceeds of crime are also stipulated in various specific criminal law provisions scattered throughout the laws that govern them. As can be found in Article 18(a) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Corruption Eradication Law), and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

When communicating about asset seizure and forfeiture, some people, including professionals, use words interchangeably when,

in fact, the terms have unique meanings and refer to distinct processes and concepts. Especially given this potential confusion and misuse, it is important to properly define some commonly used terms.[15]

Asset Seizure involves the physical restraint of an asset or its transfer from the owner or possessor to the custody or control of the government, primarily through a law enforcement agency.[16] his occurs in three main contexts: 1) incident to arrest, 2) adherent to a search warrant, or 3) pursuant to a warrant for specific items subject to forfeiture.

Asset forfeiture entails a legal process whereby the ownership of an asset is removed from individuals because they used it illegally, received or derived it from illicit activity, or employed it to facilitate a crime. The vesting of title with the government follows a civil, criminal, or administrative proceeding.[17]

An asset is a piece of property, an item, or other thing that has intrinsic or external value.

In practice, law enforcement agencies find it extremely challenging to seize the proceeds of crime that have been acquired by perpetrators. There are numerous difficulties encountered in the effort to confiscate the proceeds of crime, such as the lack of adequate instruments for asset seizure, insufficient international cooperation, limited understanding of the mechanisms for asset forfeiture by law enforcement agencies, and the considerable time required until the proceeds of crime can be seized by the state, namely, after

[15] M.S. Colin May, "Asset Seizure and Forfeiture: A Basic Guid, Asset Seizure and Forfeiture: A Basic Guide," *FBI Law Enforcement Bulletin*.

[16] "Author's Definition Based on U.S. CONST. Amend. IV. A Historical and Case-Based Treatment on Search and Seizure (Too Often Simply Lumped Together) Is Available from U.S. Congress, Constitution of the United States of America: Analysis and Interpretation, " (n.d.).

[17] Stefan D. Cassella, "Introduction to Asset Forfeiture: Lecture Outline," *Asset Forfeiture Law, LLC*, last modified 2016, http://assetforfeiturelaw.us/wp-content/uploads/2016/03/Introduction-to-Asset-Forfeiture.pdf.

obtaining a final and binding court decision.[18]

In the international arena which is America in U.S. Department of Treasury, there have been legal developments that demonstrate that the seizure and forfeiture of proceeds and instrumentalities of crime have become integral parts of efforts to reduce crime rates.[19] Asset Seizure is even regulated in a separate chapter, namely Chapter V of the United Nations Convention Against Corruption (UNCAC), serving as a reaffirmation of the importance of forfeiting proceeds of crime in case resolution.[20] Indonesia has ratified the UNCAC through Law Number 7 of 2006 on the Ratification of the United Nations Convention Against Corruption. With this ratification, Indonesia is a party to the UNCAC. Indonesia should have the same legal standing in taking necessary actions to carry out the forfeiture of assets acquired illegally and transferred abroad.

As a form of punishment, Law Number 31 of 1999, which was amended by Law Number 20 of 2001 concerning the Eradication of Corruption, has imposed sufficiently severe criminal sanctions with layered punishments. As a final effort by law enforcement agencies, the concept of penalizing corruptors should include the formulation of additional sanctions as part of *rule breaking*, namely by implementing the concept of "impoverishing corruptors" firmly and, of course, appropriate legal rules must be formulated to avoid conflicting with the meaning contained in the

[18] Marfuatul Latifah, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia," *Jurnal Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 6, no. 1 (2015): 18.

[19] Kementrian Hukum dan Hak Asasi manusia Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana, Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional Kementrian Hukum Dan Hak Asasi Manusia Republik Indonesia*, 2012.

[20] "Walaupun Subjek Dari UNCAC Adalah Tindak Pidana Korupsi, Hal Tersebut Menunjukkan Pentingnya Perampasan Aset Hasil Tindak Pidana, Serta Mekanisme Yang Ada Dalam Perampasan Aset Dalam Tindak Pidana Korupsi Tersebut Dapat Digunakan Sebagai Mekanisme Umum Un" (n.d.).

principle of legality, as stipulated in Article 1 paragraph (1) of the Criminal Code (KUHP), and to prevent any human rights violations in its implementation.[21]

Asset Seizure can be carried out against assets resulting from Money Laundering Offenses (TPPU) originating from the Underlying Offense (TPA) as stipulated in Article 2 paragraph (1) of the Law on Money Laundering (TPPU) and the Corruption Law (Tipikor Law). Juridically, the confiscation of assets resulting from corruption is regulated in Article 7 paragraph (2) of the Law on Money Laundering (TPPU). On the other hand, asset seizure related to money laundering offenses is determined in Article 81, which states that "If sufficient evidence is obtained that there are still assets that have not been seized, the judge orders the Public Prosecutor to carry out the seizure of those assets."

The implementation of seizure and confiscation of assets derived from money laundering crimes related to corruption (TPPU) needs to be linked (conjunction) to the provisions of corruption offenses, to enable the imposition of additional punishment in the form of asset confiscation against individual legal entities (non-corporate), thus facilitating the maximum confiscation of assets resulting from TPPU related to corruption offenses, leading to the "poverty of corruptors". Based on Article 18 paragraph (1) letter b of the Corruption Law, "it is known that the assets confiscated as an additional penalty are assets obtained from corruption. Meanwhile, if the assets resulting from corruption are transferred in the form of other assets, then the Law on Money Laundering (TPPU) can be applied and enforced." The implementation of the principal punishment on corrupt individuals applied thus far remains imperative. As stated in the quote, "The types of principal punishment are imperative,

[21] Dessy Rochman Prasetyo, "Penyitaan Dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor," *DIH Jurnal Ilmu* 12, no. 24 (2016): 150.

meaning that if the criminal offense is proven and attributed to the perpetrator, then the principal punishment must be imposed according to the penalty prescribed for the criminal offense committed by the perpetrator."

In the legal system in Indonesia, asset forfeiture is considered as part of an additional penalty involving the confiscation of specific properties acquired from criminal activities. This generally applies to all criminal offenses falling within the scope of criminal law in Indonesia, with the aim of preventing the convicted individual, who has been proven guilty through a legally binding court decision, from enjoying the proceeds of their criminal activities.[22] The consequence of an additional penalty is that it cannot stand alone and always follows the main case, meaning that an additional penalty can only be imposed alongside the principal punishment. Asset forfeiture can only be carried out if the main case is examined and the defendant is proven guilty. In such cases, the court can decide to seize the assets acquired from the criminal activity and have them destroyed, or take other actions such as donating or auctioning the assets for the benefit of the state.[23]

The asset forfeiture mechanism, as stated in the Criminal Procedure Code (KUHAP), emphasizes the disclosure of criminal acts, wherein the focus lies in identifying and imprisoning the perpetrators, with asset forfeiture being only an additional penalty. However, this approach has proven to be insufficiently effective in reducing crime rates. By not prioritizing asset forfeiture in the enforcement of laws against economically-motivated crimes, there is a tendency to tolerate criminal actors to retain and enjoy

[22] Arizon Mega Jaya, "Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi," *Jurnal Cepalo* 1, no. 1 (2017): 21.

[23] Imelda F.K. Bureni, "Kekosongan Hukum Perampasan Aset Tanpa Pemidanaan Dalam Undang-Undang Tindak Pidana Korupsi," *Jurnal Masalah-Masalah Hukum* 45, no. 4 (2016): 295.

the proceeds of their crimes, and even engage in repeat offenses using more sophisticated modus operandi.[24]

The background underlying the formation of the asset confiscation bill is to achieve legal certainty. This can be seen in the consideration which states that the existing systems and mechanisms regarding criminal asset confiscation are currently unable to support efforts to enforce the law fairly and improve people's welfare as mandated by the Law. -The 1945 Constitution of the Republic of Indonesia so that justice is not achieved. Apart from that, the absence of clear and comprehensive regulations regarding the management of assets that have been confiscated will encourage the realization of law enforcement that is not professional, not transparent, and not accountable. The existence of Articles 18 and 39 of the TPPU Law still creates legal ambiguity, because there is no clarity on the flow of investigations and investigations. And it is still unclear which state institution the assets that have been confiscated are held by. This results in the assets that have been confiscated not being able to be utilized in accordance with the aim of asset confiscation,namely impoverishing corruptors and giving confiscated assets to the victim, which in this case is the state.

If viewed from a justice perspective, the regulation of confiscation of state assets in Indonesia does not reflect justice because the existence of a subsidiary (replacement) mechanism for the obligation to pay assets resulting from criminal acts also causes efforts to confiscate assets resulting from criminal acts to be less effective. Because most convicts will prefer to declare their inability to return the assets resulting from the criminal acts they have committed so that their inability will be punished with bodily

[24] Sudarto, Hari Purwadi, and Hartiwiningsih, "Mekanisme Perampasan Aset Dengan Menggunakan Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Pasca Sarjana Hukum UNS* 5, no. 113 (2017): 1.

imprisonment as a substitute. The existence of a subsidiary mechanism whose duration does not exceed the threat of a basic criminal sentence in exchange for the amount of assets that must be promised to the state is certainly a very promising alternative for convicts, compared to having to return the assets they generated from criminal acts.[25]

Thus, the existence of the Asset Seizure Bill has transformed the paradigm of criminal law, moving away from the most traditional approach, which is focused on deterrence through retribution, to even the most modern approach, which is rehabilitation.[26]

The numerous interpretations of different values and norms in several regulations related to money laundering crimes lead to legal loopholes and do not ensure legal certainty and justice within society.[27] The formulation of values and norms that have multiple interpretations in carrying out punishment is because the TPPU legal regulations regarding confiscation of assets originating from criminal acts (fructum sceleris) do not have a specific explanation, including the reverse burden of proof process in returning and confiscating assets resulting from criminal acts. In this case, Indonesia still adheres to the Criminal Asset Return System, namely Returning Assets by punishing the perpetrator first and then confiscating the assets. So it is vulnerable to interpretation from law enforcement officials regarding the process of confiscating assets from criminal acts.

The legal regulations concerning money laundering, when brought into the realm of the judiciary, tend to emphasize

[25] Latifah, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia."hlm 18.

[26] Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) Dalam RUU Perampasan Aset Di Indonesia."hlm 118-119.

[27] Achmad Firdaus, "Pengembalian Aset (Asset Recovery) Dalam Tindak Pidana Pencucian Uang Lintas Negara," *JUSTITIA : Jurnal Ilmu Hukum dan Humaniora* 8, no. 3 (2021): 304.

legal certainty without ensuring legal justice and benefit. This means that the focus is more on apprehending the perpetrators rather than prioritizing asset recovery for the affected parties.

2. Future formulations regarding the regulation of Asset Forfeiture for the proceeds of Money Laundering and Corruption must ensure legal certainty and justice in conducting asset seizures

According to Lawrence R. Frence, social justice entails the structural commitment and political dedication of society to direct the resources of modern civilization for the benefit of the public, particularly those who are economically, socially, politically, and/or culturally disadvantaged. The implicit assumption of the social justice perspective is that the integrity of a community is at risk when its members are systematically deprived of their dignity, and that structural poverty is the main cause of such conditions. One of the primary causes of structural poverty is corruption crimes.[28]

In line with several current theories of "justice," the efforts to forfeit proceeds from Money Laundering Crimes (MLC) can be seen through the perspective of Teguh Prasetyo's notion of the concept of "dignified justice," which suggests that "Law that creates a dignified society is a law that humanizes people, meaning that it treats and upholds the values of humanity according to their essence and purpose of life." This is because humans are noble creatures as creations of the One Almighty God, as stated in the second principle of Pancasila, which is "just and civilized humanity." This principle values the recognition of the dignity and nobility of human beings, along with all their rights and responsibilities, as well as the need for fair treatment towards

[28] Lawrence R. Frey Et.al, "Looking For Justice In All The Wrong Places: On a Communication Approach to Social Justice," *Communication Studies* (1996): 110.

fellow humans, oneself, the environment, and towards God.[29]

The implementation of efforts to forfeit proceeds from Money Laundering Crimes (MLC) is closely tied to the ultimate goal of maximizing the benefit for the nation and the state. The theory of "dignified justice" encompasses all the objectives and other related aspects concerning the execution of forfeiture by law enforcement agencies against MLC perpetrators. It is a legal theory that upholds the values and rights of individuals to receive fair and equitable treatment in various legal and societal dynamics. The forfeiture of proceeds from Money Laundering Crimes (MLC) must be maximally utilized for the benefit of society, upholding the values of justice that flourish in Indonesia, based on Pancasila. It should strive to achieve all the aspirations of the nation, founded on belief in the One Almighty God, with a high sense of humanity that is just and civilized, preserving solid unity based on deliberation, to realize comprehensive social justice for the nation and state.[30]

The awareness of nations within the United Nations (UN) through various international conferences has led to the acknowledgment of corruption as a new dimension of crime in the context of development. Indonesia, as one of the signatory and ratifying countries of UNCAC, as formalized in Law No. 7 of 2006, remains committed to its national sovereignty while being bound to take measures to implement the provisions of the convention. Concerning asset forfeiture without criminal prosecution, Indonesia has proposed it as a legislative product (Bill) to the House of Representatives (DPR) since 2012 through the development of an Academic Draft.

The content of the Asset Seizure Bill is considered highly revolutionary in the process of law enforcement against the acquisition of criminal proceeds.

[29] Teguh Prasetyo, *Hukum Dan Sistem Hukum Berdasarkan Pancasila*, 2014.

[30] Prasetyo, "Penyitaan Dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor."hlm 157.

This can be seen, at least, from three paradigm shifts in criminal law enforcement.[31] Firstly, the party accused in a criminal act is not only the legal subject as the perpetrator of the crime but also the assets acquired from the crime. Secondly, the judicial mechanism used for criminal acts is the civil justice system. Thirdly, the court's decision does not impose criminal sanctions as those imposed on other criminals.

The Asset Seizure Bill describes that Criminal Asset Seizure, hereinafter referred to as Asset Seizure, as stated in Article 1 number 3 of the Asset Seizure Bill, is a coercive measure taken by the state to seize criminal assets based on a court decision, without relying on the conviction of the perpetrator. The effort to seize assets from corruption crimes when these assets flow out of the country undoubtedly creates challenges in terms of tracing, forfeiting during the trial process, or confiscating after a legally binding court decision.[32]

Not all assets are subject to seizure. Article 2 of the Asset Seizure Bill stipulates the assets that can be seized under this law, namely: (1) Assets acquired directly or indirectly from criminal acts, including those that have been gifted or converted into personal, other individuals', or corporate wealth, in the form of capital, income, or other economic gains derived from such wealth; (2) Assets strongly suspected of being used or already used to commit criminal acts; (3) Other legitimate assets used as replacements for Criminal Assets; or (4) Assets believed to be findings originating from criminal acts. (Asset Seizure Bill). Meanwhile, the provisions for assets that can be seized consist

[31] Komisi Pemberantasan Korupsi, "Tantangan Penerapan Perampasan Asset Tanpa Tuntutan Pidana Non Conviction Based Asset Forfeiture Dalam RUU Perampasan Aset Di Indonesia.," *Komisi Pemberantasan Korupsi*, last modified 2019, https://acch.kpk.go.id/id/artikel/riset-publik/tantangan-penerapan-perampasan-aset-tanpa-tuntutan-pidana-non-conviction-based-asset-forfeiture-dalam-ruu-perampasan-aset-di-indonesia.

[32] Nugraha, "Kebijakan Perampasan Aset Hasil Tindak Pidana Korupsi."hlm 994

of assets with a value of at least Rp100,000,000.00 (one hundred million Indonesian Rupiah); or assets derived from criminal acts punishable by imprisonment for 4 (four) years or more. However, in the event of changes in the minimum asset value, the adjustment of the minimum value is determined by Government Regulation.

The basis for asset seizure is applicable to any individual who possesses assets that are disproportionate to their income or cannot be justified by legitimate sources of wealth, and if they fail to provide valid proof of the origin of such assets, they may be subject to seizure under the Asset Seizure Bill.[33] The disproportionate assets are regarded as "unusual assets," which are calculated by subtracting legitimate income from the total wealth. Article 14 of the Asset Seizure Bill stipulates that asset seizure may be carried out in the following situations: when the suspect or defendant has died, fled, suffered permanent illness, or their whereabouts are unknown; or when the defendant is discharged from all criminal charges. Additionally, asset seizure can also be performed on assets related to cases that cannot be prosecuted; or when the defendant has been convicted by a legally binding court decision, and it later becomes known that there are assets derived from the crime that have not been confiscated.[34]

Regarding asset forfeiture without criminal prosecution, Indonesia has proposed it as a legislative product (Bill) to the House of Representatives (DPR) since 2012 through the development of an Academic Draft. In general, the content of the Asset Seizure Bill is considered highly revolutionary in the process of law enforcement against the acquisition of criminal proceeds. This can be seen, at least, from three paradigm shifts in criminal

[33] Yunus Husein, *Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi* (Jakarta Pusat: Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2019).

[34] Ibid.

law enforcement.[35] Namely, first, the accused party in a criminal act is not only the legal subject as the perpetrator of the crime but also the assets obtained from the crime. Second, the judicial mechanism used for criminal acts is the civil justice system. Third, the court's decision does not impose criminal sanctions as those imposed on other criminals.

The Asset Seizure Bill presents the breakthrough needed by law enforcement officials to strengthen the legal system, particularly in implementing non-conviction based forfeiture of criminal assets without a criminal court decision. The non-conviction based forfeiture system offers a broad opportunity to seize all assets suspected to be the proceeds of crime and other assets that are reasonably suspected to be instrumentalities for committing crimes, especially those falling under serious or transnational organized crime categories. The existence of such a system might prove to be effective since forfeiture through criminal prosecution is considered to be a very time-consuming process.[36] Through the proposed Asset Seizure Bill initiated by the government, it is hoped that efforts for recovering proceeds of crime can be effectively carried out. Several challenges that the government needs to address are related to issues concerning property rights and ensuring a fair judicial process. Considering that the in rem seizure approach has shifted the focus from the substantive truth of criminal wrongdoing to the mere formal requirement of proving the origin of wealth, in the implementation of the Asset Seizure Bill, the government must emphasize that the mechanism used does not prove an individual's guilt but

[35] Korupsi, "Tantangan Penerapan Perampasan Asset Tanpa Tuntutan Pidana Non Conviction Based Asset Forfeiture Dalam RUU Perampasan Aset Di Indonesia."

[36] Kausar Dwi Kususma, "Kajian Yuridis Perampasan Aset Hasil Tindak Pidana Korupsi Melalui Sarana Mutual Legal Assistanc'e" (n.d.): 13.

solely establishes that an asset is the result of criminal activity.[37]

The concept of imposing additional penalties, such as asset forfeiture, on perpetrators of Money Laundering Crimes (MLC) by law enforcement agencies, as stated in legally binding court decisions, including the seizure and confiscation of legitimately acquired assets from corrupt individuals under the implementation of "poverty for corruptors," serves not only as a deterrent but also as an extraordinary "prevention concept" when carried out by the government with the support of relevant legislation. Enhancing multilateral cooperation in asset seizure, confiscation, and recovery for MLC is a necessary and obligatory requirement that the government must fulfill and implement through various appropriate methods and mechanisms in line with existing legislation.

The seizure of corrupt assets, implemented through the concept of "poverty for corruptors," represents a spirit of reform reflecting the government's seriousness through law enforcement agencies to take concrete and decisive actions aimed at achieving the return of the state's financial losses through the confiscation of assets or legitimately acquired property from corrupt individuals. The concept of "poverty for corruptors" is more of an "expected outcome" resulting from juridical efforts through the implementation of asset confiscation derived from corruption in order to optimize the recovery of state losses.

The implementation of "poverty for corruptors" can be interpreted as the effort made by law enforcement agencies to deter perpetrators of corruption in accordance with legally binding court decisions. The explicit understanding of "poverty conditions" in the context of "poverty for corruptors" is

[37] Korupsi, "Tantangan Penerapan Perampasan Asset Tanpa Tuntutan Pidana Non Conviction Based Asset Forfeiture Dalam RUU Perampasan Aset Di Indonesia."

achieved through "asset seizure," which is a necessary reality that law enforcement must carry out based on court decisions against corrupt individuals until the state's losses are fully recovered, and the defendants feel genuine remorse (deterrence) as the concept allows for the possibility of confiscating legitimately acquired assets from corrupt individuals.

The implementation of the concept of "poverty for corruptors" means that, in addition to serving the main sentence as currently practiced, corrupt individuals should also have their legitimately acquired assets confiscated to the value of the state's financial losses, in accordance with legally binding court decisions. The term "poverty for corruptors" represents a new determination by the government, through law enforcement agencies, to take concrete and decisive actions aimed at achieving the return of the state's financial losses through the seizure and confiscation of corrupt individuals' assets.

By creating high-quality legal provisions in the context of asset recovery and ensuring appropriate legal measures to enforce regulations without psychological intervention and pressure. Legal rules among regulations related to asset recovery and seizure, besides prioritizing legal certainty, justice, and legal utility, often overlook the harmonization of regulations and the judicial system in Indonesia to avoid overlapping between laws. Then, coordination among the state government institutions, namely the Executive, Legislative, and Judiciary, is required to prevent arbitrariness in the implementation and enforcement of the law regarding asset recovery. International cooperation is also crucial as state assets are often taken by perpetrators and placed in foreign countries. Furthermore, there is a need for a legislative instrument ratified from conventions related to asset seizure and recovery aimed at combating transnational crimes. In the context of asset recovery and seizure, Indonesia must align

its national laws with international laws to facilitate international cooperation and diplomatic relations concerning asset recovery and seizure.[38]

D. Conclusion

The system and mechanism for confiscating assets resulting from criminal acts regulated in the Law on the Prevention and Eradication of Money Laundering is still not optimal so that the return of state assets resulting from criminal acts of corruption will not be optimal. There needs to be a comprehensive regulation regarding the return of state assets resulting from laundering crimes, namely the mechanism for returning state assets resulting from corruption crimes along with procedures for managing and storing them, including the institutions in the Asset Confiscation Bill. The content of the Asset Confiscation Bill is considered very revolutionary in the process of law enforcement regarding the acquisition of proceeds of crime.

[38] Firdaus, "Pengembalian Aset (Asset Recovery) Dalam Tindak Pidana Pencucian Uang Lintas Negara."

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