

Combating A Culture of Corruption through Asset Forfeiture

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Abstract. Corruption is an act of abuse of power that harms the state for personal gain, corruption is part of an extraordinary criminal offense which ironically has become a cultural problem in Indonesia. Fighting a culture of corruption is a serious challenge in an effort to build a just and integrity society. Law enforcement against corruption in Indonesia is still far from ideal. Character education and the implementation of moral values are still quite low. The Draft Law on Asset Forfeiture comes as a solution to narrow the space for perpetrators. This research shows that the Draft Asset Forfeiture Law has juridical components that are expected to be able to provide heavier punishment to corruptors, and become a legal instrument that strengthens the enforcement of moral values in bureaucratic practices in Indonesia.

Keywords: Asset Forfeiture, Corruption, Moral Approach

1 Introduction

Asset forfeiture is a strategy that aims to reclaim ill-gotten gains through acts of corruption. By removing the financial incentives of corrupt behavior, asset forfeiture not only inflicts losses on the perpetrators of corruption, but is also a potential source of revenue for the state. A rampant culture of corruption not only harms the country in economic terms, but also undermines public trust in government institutions and the legal system.

In this case, there is no country that does not want good governance. To realize the welfare of the people and fulfill the national interest of the country, *good governance* is an important requirement to achieve. The state has a Constitutional order and structure to govern its domestic sector and maximize the efficiency of its governance processes. However, these necessary processes are often undermined by forms of corruption committed by state officials and their bureaucracies.

When corruption is mentioned, many people think of crime in the political process. Corruption is one of the major problems that undermine the effectiveness of the governance process. Corruption is a disease that must be addressed because of its latent effects. For developing countries, the impact of corruption is devastating. The country may not be able to fulfill the needs of its interests due to corruption in its government. Corruption is rooted in the power-hungry nature, influence and wealth of the officials involved in the bureaucratic process. Moreover, the basic notion of political power means that interest is the only goal. This Machiavellian view of politics still persists today and ironically makes allowances for corruption.

Corruption comes in many forms. However, the most common political corruption is through individuals or groups who seek to undermine order and structure for their own gain. [1] In Indonesia, corrupt practices have become so commonplace that it has become an alarming problem. One of the main perpetrators of corrupt practices is people within the bureaucracy itself who seek to enrich themselves. This culture of political deviance is still deeply rooted because bureaucratic services themselves depend on the monetary circulation process that occurs within the government body. There is a kind of "*Supply and Demand*" pattern that maintains corrupt practices in various forms. Corruption is an illegal act that is known to have a wide range of damaging effects, including impacting the national economy, increasing poverty and social inequality, damaging the nation's mentality and culture, distorting the law, and affecting the quality of public services. The higher the level of corruption in a country, in general, the more likely it is that the country is not sufficiently developed economically and politically and that public services are very poor.

In Indonesia, corruption is categorized as an extraordinary crime. The practice of corruption has existed since the days of the Kingdom in the past. Recently, corruption has transformed into an organized and massive crime in various sectors. Government bureaucracy, private and civil sectors are plagued by corruption of various scales and variations. Even the least educated Indonesians are able to understand how corruption works and evolves in various socio-political environments. This makes corruption affect many parts of society and a major obstacle to Good Governance Efforts. Corruption in Indonesia has become a significant problem due to its complexity and the breadth of sectors affected. This fact shapes the way Indonesians view corruption. The commonality of corruption can distort people's moral understanding of corruption. This can lead to greater disaster as people view corruption as an evil act yet they continue to accept the practice.

Corruption is difficult to eradicate, at least in corrupt governments. Indecision is usually found in the process of eradicating corruption. Mainly because the nature of the organization, the environment and the power struggle within the authority body become obstacles in handling it by law enforcement agencies. In addition, there are several factors that cause corruption to hinder the law enforcement process. These factors are:

1. Lack of seriousness of law enforcement officials.
2. Negative attitude in handling corruption cases.
3. Lack of infrastructure support.
4. Reluctance to practice good governance. [2]

Corruption creates dangerous latent losses, not only in Indonesia, but in other countries as well. Corruption is a universal event that requires strong efforts to eradicate it. However, law enforcement against corruption in Indonesia is less assertive and often fails to carry out its duties, and does not even process the law comprehensively for the perpetrators and does not provide satisfactory results. Law enforcement against corruption does not produce satisfactory results and thus requires additional support from the structural and legislative sides. On the other hand, corruption may not be a single crime, but it may have become an entrenched bureaucratic culture in practice.

Nevertheless, the process of corruption still needs to be eradicated. The Indonesian government has planned a law (RUU / Draft Law) to further suppress corrupt practices. In simple terms, the Asset Forfeiture Bill aims to find ways to minimize the State's material losses due to corruption by seizing it from the perpetrators of corruption (*asset recovery*) so that the losses suffered by the state are not too large. The Asset Forfeiture Bill may be one of the strategies that the Indonesian government will implement, as it can provide a deterrent effect as

well as heavier penalties for perpetrators of corruption. This measure is geared towards strengthening the evidence-based judicial process which is often ineffective in convicting perpetrators due to lack of evidence.

The mechanism of asset forfeiture in the eradication of corruption in Indonesia can be seen in three ways. First, it can be handled criminally by law enforcement officials through legal proceedings and obtaining a final court decision with the prosecutor acting as executor by confiscating property. Second, in civil cases, if there is insufficient evidence and the suspect dies but in fact there are state losses, the prosecutor can file a civil suit. Third, administratively through excise, tax or customs.

The harmonization of the Asset Forfeiture Bill with the Principles of Justice signifies a commitment to creating a balanced and moral legal system. The success of an asset forfeiture law is not only measured by its capacity to crack down on crime and seize assets resulting from criminal activity, but also by the extent to which it maintains the integrity and fairness of the law. [3]

The Draft Law on Asset Forfeiture is expected to be effective after the legislative process is accepted by the House of Representatives, and should be one of the ways to eradicate corruption. Although corrupt practices are still prevalent, the Asset Forfeiture Bill could be a step forward in eradicating corruption, as Indonesia is a signatory to the United Nations Convention Against Corruption (UNCAC) multilateral treaty, Indonesia should reduce corruption as much as possible.

Based on the explanation above, the research problem formulation can be stated; What deterrence can be provided by the Asset Forfeiture Bill against corruption crimes? and How can moral views help reduce corruption through the Asset Forfeiture Bill?

2 Research Methodology

The research method used in this article is normative juridical research. The sources of legal materials used in this research are primary legal materials and secondary legal materials. The type of approach used in this research is a moral approach. The data processing method used is an analytical method which is then outlined in analytical descriptive writing.

3 Results and Discussion

The main problem of corruption in Indonesia is rooted in many sectors. Corruption has become a culture that Indonesian society is still working hard to eradicate. Traditional intergenerational views on corruption prove the existence of a power struggle mechanism, which opens up opportunities for corrupt practices. [4] The narrative of corruption eradication enforcement has yet to produce results in reducing the number of corruption crimes. High-ranking officials commit corruption, while their subordinates follow suit. As a social pathology, corruption utilizes and provides loopholes in the order and structure itself. The complexity of bureaucracy and the basis of power struggle make the decision-making process based on the willingness to pay and bribe method.

Corruption undermines the idea of *good governance* and the reforms that the Indonesian government has undertaken since 1998. Corruption is still a widespread financial turnover in the bureaucracy and the promised rewards of corrupt acts are still far greater than the benefits

that can be provided from proper and good governance processes. The act of corruption therefore promises benefits that will make the perpetrator choose the act of corruption after considering the benefits and consequences. This often happens in developing countries such as Indonesia and other developed countries. [5] Incentives that provide opportunities for corruption in Indonesia are very dangerous. It can harm law enforcement and justice, democracy, and even development programs implemented by the government. Corruption is a symptom that shows social disease, which provides evidence that the relationship between government and bureaucracy is not functioning properly. This makes it difficult to create good policies, enforce transparency, and ultimately weaken the foundations of government.

Corruption trends in Indonesia vary. In general, the trend of corruption that occurs in Indonesia is bribery. This action can almost be found in various lines of government and various sectors. Although law enforcers have tried to enforce it, the public still considers the practice of bribery to be implicit. Besides bribery, another heinous act of corruption is extortion. Ranging from gentle to cruel, extortion almost occurs in various sectors. Extortion may not be widely understood by the public, but other terms that are more familiar to Indonesians have the same connotation, namely thuggery and illegal levies. These terms refer to acts of illegal levies committed among the lower classes of society. However, it does not rule out the possibility that extortion is also carried out at higher levels of bureaucracy. In addition to extortion, one of the derivative criminal acts of corruption that is often committed in Indonesia is money laundering. Money laundering is one of the steps to eliminate the illegality of corruption. This action is dangerous because it can reduce the punishment for the perpetrators of corruption if investigators and prosecutors cannot prove the flow of illegal funds. This is what the Asset Forfeiture Bill aims to eradicate.

At higher levels of the bureaucracy, there is a need to eliminate highly corrupt programs, but the State still has a responsibility to ensure that public-facing programs can be implemented with minimal risk of corruption. There are several strategies that might support this. For example, limiting official discretion by simplifying and streamlining regulations, expanding the supply of benefits, clarifying eligibility criteria, introducing legal payments for services where appropriate, giving citizens choice over public services and policies, or redesigning systems to meet the needs of society. These are just some of the strategies that might work to stop corruption-related efforts.

In relation to the moral values held by government officials, these values need to be further strengthened because of the relationship between morals and law. Morals set norms about what is considered good and bad actions, implemented through law, morals play a role in ensuring that there is no violation of the interests of society. [6] Morality is not simply following the norms of society. Morality is also not limited to the rules that have been applied in regulations and legal processes. Morality arises as a result of the interaction of human reason in weighing the good and bad of an act. The approach through morality finds difficulties in handling acts of corruption due to the massive and structured nature of these acts. This does not mean that an approach through morality is unnecessary. Although there is an analysis that states through the culture of corruption and law enforcement approach that the level of morality and religion can suppress the culture of corruption, [7] However, no significant correlation was found in developing countries, which in fact still have high levels of corruption.

Preventing crime through a moral approach is not an easy thing, especially in the field of corruption crimes. Through the concept of the psychology of evil, the *status quo* in acts of corruption provides a greater incentive for evil than good in the consideration of profit and loss. In addition to profit and loss considerations, corruption also stems from the nature of politics itself. In addition, government bureaucracies also tend to enhance personal lifestyles and wealth.

This encourages personal ambition to be prioritized over integrity in the implementation of clean governance. The government needs a comprehensive change in the government environment to support a culture of clean governance and anti-corruption.

Morality is a very important aspect of human life, but morality is often ignored in situations that are full of potential crimes. Morality can be applied without religion, but counseling and crime prevention based on spiritual moral approaches are often underestimated. [8] In fact, morality has an important role in maintaining the integrity of the values adopted in society and government.

The Asset Forfeiture Bill is a plan initiated by the House of Representatives to eradicate corruption. The Asset Forfeiture Bill emerged as a proposed solution to the increasingly alarming corruption cases. Corruption law enforcement in Indonesia still focuses on the perpetrators and pays less attention to the legal process related to assets used as corruption materials. This makes the resolution of corruption crimes difficult because more and more perpetrators have various strategies to cover up their traces of corruption. The perpetrators even make their corruption actions seem legitimate through efforts such as money laundering. [9]

The idea of confiscating corruptors' assets is actually not new. Article 2 paragraph (1) of Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of the Crime of Corruption states that an important element in the crime of corruption is "state financial losses". Based on the history of legislation in Indonesia, it can be understood that Law Number 20 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of the Crime of Corruption has regulated that state financial losses must be returned and replaced by the perpetrators of corruption (*asset recovery*). [10] The regulatory framework regarding the settlement of corruption crimes through asset forfeiture has been legalized through the above explanation, but in law enforcement practice, the process does not go well and tends to be ineffective.

The Asset Forfeiture System itself has two kinds of legal processes, the first is called *in personam confiscation*, this confiscation of assets focuses on the type of crime and act of corruption committed by the perpetrator and is more likely to examine the criminal offense from the perspective of the perpetrator. *In personam* forfeiture has no legal process on behalf of the asset itself and does not provide much leeway to return the asset to the State. The second is called forfeiture *in rem*, forfeiture *in rem* emphasizes the prosecution of corruption which also involves the confiscation of assets and the return of assets resulting from corruption to the State. This can be done through a thorough investigation that has been contained in the draft asset forfeiture law. This *in rem* forfeiture is expected to narrow the scope of corruption and minimize the potential for exploitation of loopholes in Indonesia's legal and constitutional regulations.

Success in the fight against corruption requires a lot of collaboration from various factors. Good government management, consistent transparency and integrity, and deep-rooted moral understanding are expected to suppress the intention to commit acts of corruption. [11] The author argues before entering the main discussion between the relationship between morality and the Draft Law on Asset Forfeiture, that the process of preventing corruption must be done radically. Radical does not mean through violent actions that are not in accordance with the constitution and laws, but radical in the sense of a deep-rooted and fundamental process. Building an anti-corruption culture requires commitment and time, and an anti-corruption culture requires real implementation of moral values reflected in laws and norms, so that morality is not only reflected and written in laws and regulations, but also reflected through the practice of governance. In implementing moral values, it is mandatory to apply honesty, integrity, courage, justice and discipline. [12] The application of moral values requires a true

and practical example, a figure who leads the bureaucracy by firmly adhering to moral values will be very likely to culturally change the way society views corruption.

The return of assets resulting from corruption crimes in positive law is a law enforcement system carried out by the state as a victim of corruption crimes to revoke, confiscate, eliminate rights to assets resulting from corruption crimes through a series of processes and mechanisms, both criminal and civil. Based on Article 4 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of the Crime of Corruption, it explains that the return of state financial losses or the state economy does not eliminate the punishment against the perpetrators of the crime as referred to in Article 2 and Article 3 has fulfilled the elements of the Article in question, then the return of state financial losses or the state economy, does not eliminate the punishment against the perpetrators of the crime. The return of state financial losses or the state economy is only one of the mitigating factors. Referring to Article 2 explains, among other things, that the element of harming the state in the crime of corruption is a formal offense, that is, the existence of a corruption offense is sufficient with the fulfillment of the elements of the act that have been formulated, not with the occurrence of the consequences. Thus, an act that has the potential to harm state finances can already be categorized as corruption. [13] The existence of loopholes in the existing laws and regulations in law enforcement against

The Asset Forfeiture Bill goes hand in hand with the existence of moral values. In fact, not only through the Draft Asset Forfeiture Law, but all efforts and actions directed at reducing corruption have a good impact on the country. The Draft Asset Forfeiture Law not only narrows the scope of corruption, but also shows that in the handling of criminal offenses, no other corrupt practices are allowed to enter through the loopholes of structure and order. By minimizing all potential corruption, morality enforcement is expected to occur in various lines of government and related sectors. [14] Moral integrity can be maintained if law enforcement instruments also emphasize the real, firm, and consistent practice of integrity itself. [15]

The Draft Law on Asset Forfeiture could provide harsher penalties for perpetrators of corruption if passed through the legislative process in the House of Representatives. Corruption perpetrators not only get justice through the criminal process, but if this type of in rem forfeiture passes, the perpetrators of corruption can be subject to civil proceedings. There are various types of assets that can be seized, namely: [16]

- a) Assets resulting from criminal offenses or assets obtained directly or indirectly from criminal offenses including those that have been donated or converted into personal property, other people, or corporations, in the form of capital, income, and other economic benefits obtained from such assets;
- b) Assets that are known or reasonably suspected of being used or have been used to commit a criminal offense;
- c) Other legal assets belonging to the perpetrator of the criminal offense as a substitute for assets that have been declared forfeited by the state; or
- d) Assets that are found items that are known or reasonably suspected of originating from criminal acts.

In addition, Point 2 of the same article states that;

- a) Assets that are not balanced with income or not balanced with the source of additional wealth that cannot be proven legally and are suspected of being related to Criminal Assets obtained since the enactment of this Law; and
- b) Assets that are confiscated objects obtained from the proceeds of a criminal offense or used to commit a criminal offense.

This means that the draft Asset Forfeiture Law is a serious plan. The dominant points in the Asset Forfeiture Bill emphasize narrowing the scope of corruption and minimizing the losses suffered by the state from these acts of corruption. The Asset Forfeiture Bill could be an option to radically reform corrupt morality in the bureaucracy. This is because a structure that has loopholes and a set of rules that have weak points will ultimately make corruption even more rampant.

Morally, corrupt practices should bring shame to the perpetrators. Corruption is not something to be proud of. Corruption should be seen as a shameful and heinous act. The Asset Forfeiture Bill is one of the tightening instruments that is expected to shame corruptors. This is because not only criminal punishment awaits, but also moral punishment through asset confiscation and forced impoverishment [16] Although some legal observers still state that this draft still needs refinement, it would be nice if there was no draft that narrowed corruption at all.

It is hoped that from the existence of this Draft Law, the perpetrators of corruption will rethink and discourage their intention to commit acts of corruption. Although based on juridical studies, the Draft Law on Asset Forfeiture still requires refinement in order to reduce the strategic potential of perpetrators of corruption, from a moral perspective, the impoverishment of perpetrators of corruption is a good progress. There is no clear regulation that can be used as a tool to confiscate goods or money from perpetrators of criminal acts of origin or money laundering. The limited scope of the regulation provides a possible loophole to avoid confiscation that is strongly suspected to be the result of crimes owned or controlled. [17] The improvement of the structure of this draft law can provide a better sense of justice for the government and society.

Morality is an innate feeling in humans. Humans have thoughts and feelings to distinguish between good and bad. Morality often encounters various obstacles. Some crimes are committed because urgent needs and situations are more important than morality. However, there are also crimes that occur when the perpetrator discards the morality that exists within him. Corruption is an act that the perpetrator does voluntarily. Corruption occurs in various bureaucratic environments that are actually still able to meet the needs of the perpetrators. This shows that the crime of corruption is not an urgent crime for the perpetrators. The crime of corruption is committed voluntarily without coercion. This crime is motivated by greed for material attributes, which are generally contested in political contestation and power struggles within the bureaucracy.

Morality can have a good preventive effect if the values that distinguish good and bad can be internalized and implemented effectively. This process is not short and is often overlooked in the Indonesian government bureaucracy. If moral values have been implemented properly and attentively, then simply the practice of *good governance* can run smoothly. Moral values strongly support law enforcement. Morality is considered in line with the draft Asset Forfeiture Law. This is because disciplined and strict law enforcement is needed so that the perpetrators are aware of the crimes they commit and make them reconsider every time they want to commit these crimes again.

So far, not much character education has been able to change the culture of corruption in the government bureaucracy. It is not that the process is not well implemented or ignored, but that the moral values have never been properly applied. This makes the culture of corruption continue for generations. In addition, shifting cultural values and views on norms also affect how these moral values are applied. Therefore, the relationship between morality and legal instruments in this study is interdependent. It can be said that morality alone is unable to prevent and minimize crime, especially structured corruption. Conversely, no legal instrument can provide a deterrent effect and prevent crime if the people themselves do not obey the law and

do not uphold the values of morality. Indonesia has moral values contained in Pancasila as the basis of state ideology. Pancasila can be a guideline in the life of the nation and state. This proves that Indonesia does not lack a source of moral values. From a *das sein* perspective, it should not be difficult to create good governance in Indonesia, and realize good, clean and accountable governance.

4 Conclusions and Suggestions

4.1 Conclusion

Corruption is a dangerous and latent crime in Indonesia. Corruption is a vile and destructive disease that must be eradicated in the life of the state. Corruption has a negative impact on the structure and order of state life. Corruption eradication in Indonesia has been carried out and ongoing for a long time, but has not produced satisfactory results. Corruption is committed by perpetrators who take advantage of the loopholes in the legal instruments and regulations that have been in place so far. Corruption is contrary to the concept of morality in the realm of law. The worsening level of corruption in Indonesia and moral backwardness make the level of corruption continue to increase. Indonesia already has a set of regulations to deal with corruption cases against perpetrators through asset forfeiture, but these regulations are not effective. Therefore, it is necessary to draft regulations that are able to provide a strong deterrent and deterrent effect for perpetrators of corruption. The existence of the draft Asset Forfeiture Bill is a new hope in the eradication of corruption in Indonesia. The draft has a more comprehensive set of rules in its articles.

The success of developed countries in eradicating corruption is not only due to good law enforcement or high morality and adherence to norms. However, this success cannot be separated from a transparent and accountable government management system supported by the use of information technology in every public service provided by the government. From the perspective of morality, this new draft regulation is believed to have a deterrent effect on perpetrators of corruption. Legal instruments go hand in hand with morality and vice versa.

4.2 Suggestion

The analysis of crime and law cannot be seen in a narrow perspective. The suggestions that can be given in this study are that a comprehensive morality framework is still needed to eradicate corruption completely. Then, a psychological approach is needed in seeing how corruption crimes occur, and designing anti-corruption policies and laws that are comprehensive enough to fight corruption in the long term, both at the grassroots and bureaucracy. Through a comprehensive analytical framework, it is expected to be able to reveal the root causes of corruption and completely minimize the *mens rea* that can lead to acts of corruption.

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