

Implementation of Assets Configuration Mechanisms in Corruption Crimes as An Effort to Recover State Losses

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Abstract. Efforts to eradicate corruption include arresting perpetrators, imposing criminal sentences, and recovering state losses by seizing assets from corrupt individuals. This involves locating both suspects and their assets. This writing aims to: (1) explain the procedure for seizing assets of those who have committed corruption, and (2) determine if assets not obtained through corruption can be seized. An observational juridical approach is used, with essential data from examiner's agents, and secondary data from laws on corruption, money laundering, the Criminal Procedure Code, and the Criminal Code. Books and journals provide tertiary data. Research findings show two ways to confiscate assets: criminal channels (in personam forfeiture) and civil channels (in rem forfeiture). Assets not obtained through corruption may still be seized if the perpetrator's actions harmed state finances and must be held accountable.

Keywords: Mechanism, Return of assets, Corruption

1 Introduction

Corruption, both directly and indirectly, causes significant losses to the country's finances and economy, and has an impact on the welfare of the people. Corruption results in a decrease in state funds and disruption to the national economy, which ultimately harms the community. In this case, the state and the people become victims, with the state acting as a "victim state" that suffers great losses due to the actions of corruptors. The corruption causes state finances to shrink and the economy to be disrupted, resulting in negative impacts for the people as a whole. [1]

When state assets are stolen or corrupted, the impact is not limited to the financial losses suffered by the state, but also extends to the people. Although some corruptors are sentenced to fines, they often choose imprisonment as an alternative, which ultimately does not restore the losses incurred. [2] It shows that fines alone are not sufficient to recover state losses. Recently, the idea of impoverishing corruptors has emerged as an alternative measure, where corruptors are required to return some of the state losses they have caused. This idea aims to ensure that losses experienced by the state can be minimized and addressed more effectively.

The formal procedural approach through the current criminal procedure law has not adequately addressed the state losses due to corruption. The existing legal system, although designed to handle various forms of crime, has not been able to optimally recover losses caused

by corruption. It is due to several factors, including shortcomings in law enforcement mechanisms and the return of corrupted assets. [3] Losses caused by criminal acts of corruption are state assets that are lost or stolen and must be returned to restore state finances. [4] However, the current legal system often focuses on punishing offenders without adequately ensuring the return of misappropriated assets. For instance, while those found guilty of corruption may face fines or imprisonment, there is often a lack of genuine effort to recover the corrupted assets. [5]

Law enforcement and recovery of criminal assets are two interrelated and inseparable aspects in efforts to eradicate criminal acts, especially corruption. Corruption, as a crime driven by rational calculations or calculations (crime of calculation), requires the management and security of criminal proceeds as a critical element for white-collar criminals. Corruptors usually make careful calculations regarding the benefits to be obtained compared to the risk of punishment that will be encountered. They will continue corrupt actions if they believe that the financial benefits obtained are much greater than the potential punishment that may be imposed. [6] It shows that corruptors often consider not only the potential for punishment as the main risk but also how they can manage and store the proceeds of their crimes safely.

Furthermore, many corruptors are willing to face imprisonment if they estimate that during their detention, their families will continue to live prosperously thanks to the proceeds of their corruption. In other words, they assume that even if they have to face punishment, the profits obtained from the crime of corruption will be enough to ensure the welfare of their families while they are in prison. It reflects how important it is for corruptors to manage and protect the proceeds of their crimes, and how law enforcement and asset recovery strategies must be designed to respond to this rational calculation.

To effectively address corruption, the steps taken cannot be limited to punishing the perpetrators. Efforts to eradicate corruption must be complemented by strategies to stop the flow of proceeds of crime that have been obtained. In other words, punishing corruptors alone is not enough; it is important to also target and confiscate illegally obtained assets. One way to reduce the incentives for corruptors is to seize the property they acquire from their crimes. [3] When corruptors lose access to the proceeds of their crimes, their motivation to continue or repeat the crime is reduced. This is because their primary goal, which is to enjoy the financial benefits of corruption, will be disrupted or rendered useless if the assets are confiscated. This strategy aims to remove the appeal and benefits of corruption, thereby reducing the likelihood of the perpetrators continuing to engage in the crime. By securing and returning the corrupted assets, authorities can prevent perpetrators from enjoying the benefits of their illegal actions.

The instrument of asset forfeiture has a significant impact on eradicating crime, especially corruption. By confiscating the profits from the crime, perpetrators will be more reluctant to commit the crime because of the potential loss of profits. Imprisonment alone is often ineffective if the perpetrator can still enjoy the proceeds of the crime; asset forfeiture ensures that the profits are controlled and returned to the state, making imprisonment more effective. [4] In addition, this step can increase public support for efforts to eradicate crime by demonstrating the government's commitment and increase the deterrent effect that is not obtained from fines that are considered inadequate. Asset confiscation also serves as a warning to potential perpetrators, making them less willing to engage in illegal activities because of the risk of losing all the profits from the crime, even without should go through the criminal justice process. [9]

Although asset confiscation has a significant impact on eradicating criminal acts, especially corruption, it is crucial to update the existing law because there are still obstacles to

its implementation. Current regulations often do not sufficiently support the efficiency and effectiveness of the confiscation process, thus hampering efforts to secure and return assets resulting from crime. Legal reform is needed to overcome these obstacles, strengthen the confiscation mechanism, and ensure that profits from crimes can be confiscated and returned to the state more optimally.

2 Method

The research method used is the normative legal method, which focuses on the study of law in terms of norms, regulations, and applicable legal principles. In this study, a legislative approach will be applied to analyze and interpret relevant regulations, such as Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and other laws and regulations relating to corruption and asset confiscation. This approach aims to understand how current legal provisions regulate the process of eradicating corruption and asset confiscation, as well as to identify potential obstacles in its implementation. In addition, a conceptual approach will be used to discuss and evaluate legal concepts relating to corruption eradication and asset recovery. This approach involves a study of books, journals, and scientific works that discuss theory and practice in the context of corruption law. By combining these two approaches, the study aims to provide an in-depth analysis of the effectiveness of existing laws, evaluate the extent to which applicable regulations can support the eradication of corruption, and offer recommendations for legal reform to improve efficiency and effectiveness in handling corruption and asset confiscation cases.

3 Result and Discussion

3.1 Implementation of Confiscation of Corruption Crime Assets

Corruption is often perpetrated by highly educated and influential individuals, such as politicians, who possess expertise in concealing, destroying, or transferring evidence and proceeds of corruption. Many of them stash and move their ill-gotten gains abroad. In this context, Indonesia's existing legal practices have proven ineffective in addressing this issue, as perpetrators can divert and hide their proceeds overseas, escaping to countries that do not extradite to Indonesia.

In response to these challenges, the Corruption Eradication Commission (KPK) was established to continuously, intensively, and professionally combat corruption, based on Law Number 19 of 2019 concerning the Corruption Eradication Commission. The KPK functions as an independent body free from external influence and acts as a trigger mechanism to enhance the efficiency and effectiveness of anti-corruption efforts undertaken by pre-existing institutions. However, despite the KPK's diligent efforts, recent data indicates a persistent increase in corruption cases, highlighting serious challenges in Indonesia's anti-corruption endeavors.

There has been a significant rise in corruption cases across various sectors in Indonesia, indicating that certain areas are more vulnerable to corrupt practices. The more precise and effective sanctions and regulations are necessary to combat this high incidence of corruption.

One effective measure considered is the imposition of additional penalties, such as asset confiscation, on defendants proven guilty of corruption. Asset confiscation is a legal process initiated after a court decision attains legal force, where assets derived from criminal activities are seized and become state property.

According to Mardjono Reksodiputro, the concept of asset confiscation in Indonesia, adopted from Dutch criminal law, constitutes an additional penalty that can be imposed alongside primary penalties. Efi Laila Kholis notes the distinction between primary and additional penalties: primary penalties are mandatory and imposed by judges based on the nature of the offense, while additional penalties are discretionary and may be imposed in conjunction with primary penalties. In court proceedings, if a defendant is found guilty, the judge is obliged to impose a penalty according to the criminal offense, and in some cases, may choose among various primary penalties. The implementation of asset confiscation aims to deter corruption perpetrators, recover state losses, and prevent further involvement in corrupt activities by the public. Regulated under Article 10 letter b number 2 of the Indonesian Criminal Code (KUHP), asset confiscation serves as an additional penalty enhancing law enforcement effectiveness by ensuring that profits from corruption are not only penalized but also confiscated and returned to the state.

The mechanism for confiscating assets from corrupt convicts begins with asset tracing by a task force responsible for tracking the suspect's assets and related parties during the investigation phase. Once asset data is gathered, verification confirms their link to corruption or money laundering crimes. Confirmed assets are then seized, documented in case files, and presented by the prosecutor in court as proceeds from corruption or money laundering. During prosecution, the prosecutor requests the assets to be confiscated for the state or used to reimburse compensatory fines.

Upon final court judgment, an execution prosecutor is tasked to implement the court's decision. Cash or bank account balances considered evidence are transferred to the state treasury. If the evidence includes physical assets, these are auctioned off and proceeds are similarly deposited into state funds. Should auctioning fail, as stipulated by Regulation No. 08 of 2018, prosecutors may propose alternative uses to law enforcement agencies or grant them to needy local governments.

Asset confiscation resulting from corruption offenses may proceed through two primary avenues. Firstly, through criminal prosecution, contingent on the prosecution's ability to prove the defendant's guilt and the assets' connection to the alleged crimes. This approach, known as Conviction Assets Forfeiture, is governed by Articles 39 and 46 Paragraph (2) of the Indonesian Criminal Procedure Code (KUHP), specifying the types of wealth subject to seizure. Secondly, asset confiscation may occur during court proceedings, where judges may impose additional penalties, such as asset forfeiture alongside primary penalties, to restore state finances depleted by crime. This process begins during the trial, where judges apply additional penalties as per applicable legal provisions.

Alternatively, if criminal asset confiscation proves unfeasible, civil proceedings under Article 31 of Law Number 20 of 2001 on Corruption Eradication may be pursued. If evidence of corruption is insufficient or the perpetrator cannot be found, investigators may transfer case documents to state prosecutors to file civil lawsuits. This avenue also applies if a perpetrator dies without heirs able to contest asset seizure or if assets cannot be seized through criminal means. Civil asset confiscation offers an alternative solution for recovering state losses. Both

criminal and civil avenues require competent prosecutors to manage and recover state losses. Addressing legal gaps concerning civil asset confiscation, such as unclaimed wealth cases, necessitates regulations ensuring these assets can be legally owned by the state through appropriate judicial processes.

3.3 Obstacles in Confiscation of Corruption Crime Assets

Asset confiscation from corruption crimes faces various obstacles that affect its effectiveness in recovering state losses. One of the main obstacles is the difficulty in tracking and confiscating assets. Corruptors often hide or move assets obtained from their crimes abroad, making the tracking process complicated and time-consuming. In addition, the complexity of obtaining accurate financial data and sufficient evidence is also often an obstacle, especially when assets have been diverted or disguised through various complex financial schemes. Another obstacle is legal and administrative issues. The legal process for asset confiscation is hampered by diverse regulations and procedures that must be followed. For example, in many cases, the legal system takes a long time to complete the judicial process, which can delay asset confiscation. In addition, legal uncertainty regarding the status and process of civil asset confiscation, such as cases where the perpetrator is not found or dies without heirs, also hampers recovery efforts. On the contrary, international challenges also affect asset confiscation. If assets obtained from corruption are transferred to a foreign country, efforts to gain international assistance in confiscation and extradition are often hampered by differences in laws, strict regulations, and complex diplomacy between countries. These barriers frequently require intensive cooperation between states and international institutions to overcome, which is not always easy to achieve. Resource and capacity issues are also significant barriers. Many law enforcement agencies and prosecutors do not have adequate resources or expertise to handle complex asset forfeiture cases. These limitations hamper their efforts to conduct thorough investigations and carry out asset forfeiture effectively. Addressing these barriers requires systemic reform, capacity building of law enforcement agencies, and greater international cooperation to improve the effectiveness of asset forfeiture in combating corruption.

3.4 Update on the Law on Recovery of Corruption Crime Assets in an Effort to Recover State Losses

The history of regulations regarding asset recovery in Indonesia began with the Regulation of the Central Warlord No. PRT/PEPERPU/013/1958, which established rules on the examination, investigation, and prosecution of corruption crimes and ownership of wealth. This regulation stipulated that assets that could not be explained in terms of their source or were disproportionate to one's income could be taken over. Furthermore, it encompassed assets whose ownership was unclear. Thus, this regulation provided the initial foundation for asset confiscation related to corruption crimes in Indonesia.

Further regulations concerning the confiscation of assets derived from corruption crimes are found in several national laws. Law Number 20 of 2001, which amended Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, regulates sanctions that can be imposed on corruption perpetrators. This law introduced two approaches to asset confiscation: criminal and civil routes. Meanwhile, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering provides mechanisms for the Financial Transaction Reports

and Analysis Center (PPATK) to investigate suspicious assets derived from crimes and to determine whether such assets should be seized or returned to their rightful owners.

At the international level, Indonesia is bound by Mutual Legal Assistance (MLA) agreements ratified as part of global efforts against corruption, under the United Nations Convention Against Corruption (UNCAC). The MLA allows nations to work together to investigate, prosecute, and repatriate assets acquired through corrupt practices. Despite Indonesia signing several multilateral and bilateral agreements related to MLA, addressing these agreements is often hindered by various factors, including inefficiencies in using these instruments and the government's lack of concrete steps to maximize the role of MLA. UNCAC, ratified by Indonesia through Law Number 7 of 2006, also serves as a critical legal framework for the prevention and eradication of corruption, supporting international cooperation in the recovery of corrupt assets through programs like StAR (Stolen Asset Recovery).

The implementation of provisions for confiscating assets derived from corruption crimes (known as "tipikor" in Indonesian) faces various challenges, especially when done without criminal conviction. Indonesia's legal system, to date, is relatively new in handling asset confiscation issues without criminal judgments. The proposed asset confiscation bill includes the implementation of a Non-Conviction (NCB) Asset Forfeiture system to address difficulties in reclaiming corrupt assets. This system offers several advantages, such as ease in filing confiscation cases in court without relying on criminal processes, and flexibility in addressing situations where defendants have died, disappeared, or cannot be prosecuted.

The NCB concept provides an alternative avenue for law enforcement to access and seize assets suspected to be the proceeds of corruption crimes, without the lengthy and often challenging criminal legal process. Under this system, confiscation can proceed even if the defendant is absent or the criminal case cannot proceed. The Bill aims to strengthen the legal system by introducing more effective and expedited asset confiscation mechanisms, which can help restore state losses due to corruption crimes.

The importance of the NCB system is driven by the fact that criminal judicial processes often take a long time and face many obstacles. In corruption cases, the burden of proof is frequently reversed, where suspects must prove the legitimacy of their wealth. However, in practice, suspects repeatedly fail to show the origins of their assets. Therefore, to enhance law enforcement effectiveness, the asset confiscation system must be strengthened and integrated as part of primary penalties within the criminal system. Thus, asset confiscation penalties can become an integral part of the punishment, providing better legal certainty and ensuring more effective state loss recovery. Legal reforms supporting asset confiscation as part of primary penalties are expected to address existing challenges and strengthen efforts to eradicate corruption in Indonesia.

Legal reforms in asset recovery are crucial for enhancing the effectiveness of the legal system and ensuring that assets derived from corruption crimes can be quickly and fairly returned to the state. Several important aspects of necessary legal reforms include:

1. **Implementation of the Non-Conviction Based (NCB) Asset Forfeiture System**
The system allows for the confiscation of assets without waiting for a criminal verdict. It is essential to consider criminal justice process often takes a long time and can experience various obstacles. With the NCB system, law enforcement officers can more easily access and confiscate assets suspected of originating from criminal acts, even if the defendant cannot be found or cannot continue the case.

2. **Reform to the Reversal of the Burden of Proof**
The reversal of the burden of proof, where the defendant must prove that his assets were obtained legally, should be strengthened and applied consistently. It will facilitate law enforcement by placing the burden of proof on the party suspected of being involved in the crime. This reform can reduce the difficulty in proving the origin of assets and accelerate the recovery of state finances.
3. **Increasing International Cooperation**
Given the global nature of corruption and money laundering, international cooperation is key to asset recovery. Legal reform should include increasing international cooperation through bilateral and multilateral agreements, such as Mutual Legal Assistance (MLA) and other international conventions. This will facilitate returning assets from abroad and strengthen coordination between countries to eradicate corruption.
4. **Adjustment of Regulations for Ownerless Assets**
Regulations should be updated to handle cases where assets related to criminal acts cannot be returned to their rightful owners, such as in cases where the perpetrator has died or has no heirs. In such cases, the assets should be regulated as "ownerless assets" and processed to become state property to avoid waste and ensure that the assets are utilized properly.
5. **Strengthening Additional Criminal Sanctions**
Additional criminal sanctions, such as asset confiscation, need to be strengthened and made an integral part of criminal penalties. By including asset confiscation as the main penalty, there will be better legal certainty in recovering state losses. The update should ensure that additional criminal sanctions are not optional but mandatory to strengthen the deterrent effect and prevent future corruption.

With these reforms, it is hoped that the Indonesian legal system will be more effective in returning assets resulting from corruption, reducing obstacles in the legal process, and improving state financial management.

4 Conclusion

Legal reforms in asset recovery to restore state finances are essential to improve the effectiveness of the justice system and law enforcement. The implementation of the Non-Conviction Based (NCB) Asset Forfeiture system will facilitate the seizure of assets without waiting for a criminal verdict. Meanwhile, reforms to the reversal of the burden of proof and strengthening additional criminal sanctions will speed up the process and ensure legal certainty. In addition, increased international cooperation and regulatory adjustments to deal with ownerless assets are also needed to address the global challenges in eradicating corruption. These reforms aim to strengthen the legal system in returning assets resulting from criminal acts and optimizing the recovery of state losses.

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