Law on Asset Forfeiture as an Effort to Recover State Losses Due to Acts of Corruption

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Abstract. Acts of corruption harming state finances seem never-ending. Despite establishing institutions, creating legislation, and supervising law enforcement, corruption persists and even increases, as reported by various institutions. The Financial Transaction Reports and Analysis Center (PPATK) proposed the Asset Forfeiture Bill in 2003 to save state assets, but the DPR rejected it. Consequently, current law enforcement relies on the Criminal Code (KUHP), focusing on prison sentences and fines that are disproportionate to the proceeds of corruption. Effective asset confiscation could use the Anti-Money Laundering Law (TPPU) by seizing all suspected assets and shifting the burden of proof to the defendant. Corruption convicts often control assets despite imprisonment, enabling them to manipulate legal rules. Thus, confiscating and returning stolen assets is essential for public benefit. Normative juridical research shows that Asset Forfeiture legislation could provide a legal basis to combat financial crimes like corruption. It is hoped that the DPR will discuss and ratify this law to achieve the goal of eradicating corruption.

Keywords: Code of Conduct, Authorities, Law

1 Introduction

Crimes that harm the state often occur even in the Indonesia Corruption Watch (ICW) report shows that the total amount of corruption in Indonesia found from 2014 to 2023 and has been inkrah in court decisions is IDR 233.7 trillion. [1] This number continued to grow until April 2024 when the PT. Timah case surfaced with state losses of IDR 271 trillion. State losses that occur are not only caused by acts of corruption but can also be through embezzlement, gratuities and others. Various reports from state institutions, in Indonesia the most state losses are caused by acts of corruption. where then Corruption not only occurs in the central government but this crime has spread to remote areas, even involving Law Enforcement Officials who should have the responsibility to eradicate corruption itself.

Corruption has a big contribution to the obstruction of achieving the country's goals so that all the resources owned are not directly proportional to the fate of the community, [2] Therefore, we can assess the level of welfare of a country from how the government of that country manages state money for the benefit of its people. The ease of assessment of this is because the level of people's welfare is directly proportional to the efficiency of state financial management. The more efficient the management of state finances, the welfare of the people will be good, and vice versa, if the

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management of state finances is bad, the level of public welfare is low. This happens because the state losses experienced have a huge impact on the country's economic growth rate.

Corruption cases in the bureaucratic environment are always related to abuse of authority. The position of an official can then easily give orders to commit deviations from applicable rules and laws. Efforts to handle and eradicate corruption have been made by the government with the establishment of laws and the establishment of state institutions such as the Corruption Eradication Commission (KPK), Ombudsman, Financial Transaction Reporting and Analysis Center (PPATK), Indonesia Corruption Watch (ICW) and others.

Efforts have been made in disclosing corruption cases until 2022, reported by Indonesia Corruption Watch (ICW) that there were 579 corruption cases handled by law enforcement officials throughout 2022. The development of the case which then ensnared 1,396 people as suspects has been found guilty by the court, with a total saving of state money of IDR 42,747,547,825,049 (IDR 47.747 Trillion), the potential value of bribes and gratuities of around IDR 693,356,412,284 (IDR 693 Billion), the potential value of illegal levies or extortion of around IDR 11,926,507,750 (IDR 11.9 Billion), and the potential value of money laundering of around IDR 955,980,000,000 (IDR 955 Billion). [3]

The number of such cases is 579 cases with 1,396 people, if averaged then every month there are 16 cases, with 39 of them named as suspects. Although this number should still be able to increase if in the effort to disclose corruption cases there is not much political intervention. This then allows many big corruptors to escape who have harmed the state, or if they have been proven legally guilty through the court, the prison sentence and the return of state losses by the convict are very small and not proportional to the amount of losses that have been committed by the corruptor himself.

In various polemics and discourses regarding the appropriate punishment for corruptors, starting from prison sentences to the discourse on the death penalty as applied by several countries such as China, Prof. Franz Magnis Suseno argues that the death penalty is not the right solution for criminals called corruptors, [4] This is certainly justifiable because the death penalty does not guarantee that someone will be afraid to commit the crime of corruption by seeing the imposition of the death penalty.

The concentration on punishment for convicted corruptors must begin to change and be adjusted to the purpose of someone committing corruption. The orientation of a person committing corruption is to gain as much wealth as possible, so the concentration of law enforcement against corruption convicts should not only be on the legal subjects or perpetrators of the crime, but also on the results of the crime itself. This means that the focus of disclosing corruption cases is how then all state losses proven in the trial must be returned to the state.

However, due to the abstract nature of legal norms, it invites multiple interpretations on theoretical matters where the term state loss itself is questioned or when an action can be said to have harmed the state. These debates occur at the level of state officials in the midst of a discourse on the ratification of the Asset Forfeiture Law. The biggest fear of corruptors to date is asset forfeiture, which is one of the efforts to impoverish corruptors for the actions they have committed, and the legal process in the trial of corruption cases that imposes proof on the defendant.

Actually, the eradication of corruption includes prevention and prosecution, but on the facts of large state losses, strict prosecution is carried out in order to cause fear to the perpetrators. Asset forfeiture and burden of proof are part of strict enforcement. Because if you look carefully,

corruption itself is a well-calculated crime and not just because of a desire. People will dare to commit corruption with the calculation that the act has a low risk, has a light sanction and gets a very large profit.

This writing is then made to describe the purpose and function of making asset forfeiture laws designed as a legal basis in dealing with corruption and examining the efforts that have been made and will be made by Law Enforcement Officials in an effort to recover state losses**.** Based on the explanation above, the author is interested in raising this issue into a research and scientific writing with the title Asset Forfeiture Law as an Effort to Restore State Losses Due to Corruption.

2 Methodology

The research in this paper is conducted in a normative juridical manner. Where the author conducts theoretical research using various legal literature. Normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in solving the problem at hand. [5] Then the data owned by the author is analyzed to obtain a legal argument.

3 Results and Discussion

The crime of corruption has been categorized as an extraordinary crime because of its nature and the impact of corruption that greatly damages the economic order of a nation. In addition, corruption has a very close relationship with the crime of money laundering so that it is then antagonized by various countries, including Indonesia. [6] Meanwhile, the appropriate form of punishment for the crime of corruption is still being debated. As part of criminal acts, corruption crimes should normatively be dealt with by criminal law, although criminal law is not the only hope in crime prevention efforts. [2],

The use of criminal law is generally with the consideration that what is sought in the settlement is more concerned with the interests of the general public. It must then be realized that the relationship in criminal law is a coordination relationship between the perpetrators of corruption crimes and the state that functions to enforce the law itself, not the relationship between the perpetrators of corruption crimes and the harmed.

The efforts used in the eradication of corruption then not only require qualified Law Enforcement Officials (APH) but also require rules. The explanation is in line with Mochtar Kusuma-Atmaja's opinion that the law is not only a complex of rules and principles that govern, but also includes the institutions and processes needed to realize the enactment of the law in reality. [7] Thus, the implementation of corruption eradication does not solely depend on one factor,

The forms of corruption itself are those regulated under Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of the crime of corruption. Where it is explained that corruption is:

Article 2:

> *Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm state finances or the state economy*,

Article 3:

Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of position or position that can harm state finances or the state economy

Meanwhile, the definition of state loss itself departs from what is explained in Article 1 paragraph (22) of Law Number 1 of 2004 concerning State Treasury and Article 1 paragraph (15) of Law Number 15 of 2006 concerning the Supreme Audit Agency, which states that state losses are:

Shortage of money, securities and goods, which is real and certain in amount as a result of intentional or negligent unlawful acts.

There is a strong correlation between the notion of corruption and state losses, where the act of corruption is one of the unlawful acts that actually makes the state experience a shortage/loss of money, securities and goods that are state assets. So that then the public view uniformly views corruption as a heinous act that can make the country worse off.

Even according to some experts such as Franz Maginis Suseno, corruption is considered the most cruel form of crime that is equal to treason against the state. Meanwhile, former chairman of the Corruption Eradication Commission (KPK) Bambang Widjojanto explained that corruption results in public institutions becoming more costly. Meanwhile, Jean Baudrillard stated that corruption is a perfect crime because in reality corruption crimes can transcend legal reality and continue to develop in increasingly advanced motives.

So that then more thought is given to the breakthrough in lawmaking because the existing penalties and laws in the Criminal Code (KUHP) are carried out only for corporal punishment. The idea of the Asset Forfeiture Law then became a new discourse that was rolled out in an effort to recover all forms of state losses. In 2003, the Transaction Reports and Analysis Center (PPATK) ratified The United Nations Convention Against Corruption (UNCAC). It became the Asset Forfeiture Bill and was included in the National Legislation Program (Prolegnas) for the 2005-2009 fiscal year and became one of the 31 Priority Bills for 2008. It was never discussed by the DPR. The journey of this Draft Law then entered a new phase where after the 2005-2009 period the Draft Law underwent changes and improvements, with changes in the title which was changed to the Draft Law on Asset Forfeiture in Criminal Acts.

In 2010 - 2014 this bill became one of the 69 priority bills for 2014. However, the House of Representatives never discussed it again. Likewise, in the 2015-2019 period, until 2022 the DPR crossed out the draft Asset Forfeiture Law. This shows that the DPR as the people's representative does not want the Asset Forfeiture Law. In the concept of returning state assets, the proceeds of corruption that are known in the investigation and investigation will then be confiscated for the state or returned to the rightful owner. For this reason, efforts to prevent and eradicate corruption require a strong legal basis to ensure and function to provide legal certainty, the effectiveness of law enforcement and the tracking and return of assets resulting from corruption.

In the conventional application of law, forfeiture can only be carried out if what is alleged (criminal act) is legally proven in court as stated in the verdict pronounced by the Panel of Judges to be confiscated either for the state or to be returned to the rightful party, and the verdict has permanent legal force (inkracht van gewijde). [8] The closeness of corruption and money laundering makes investigators in carrying out their investigation and investigation duties always focus on

tracing the flow of money (follow the money) or financial transactions. This method of tracing the flow of funds is effective to find out who is also involved and where the proceeds of corruption are hidden because it can happen that the proceeds of corruption can change form into movable and immovable assets as an effort to disguise the proceeds of corruption.

So that the regulation of asset confiscation against wealth that is suspected of being the proceeds of crime requires a more modern model of handling assets and no longer handling with conventional approaches, this is related to the ineffectiveness of the criminal rules that have been implemented so far. The control of the assets of the proceeds of crime by corruptors because they are not confiscated makes corruption convicts still able to move freely even though they are in prison, this is because the power of money is very large and can control anyone including law enforcement officials and the rule of law, besides that it provides opportunities for people related to crime to still be able to enjoy the proceeds of crime.

As for the classification of criminal assets that can be confiscated by the state, the classification of assets allegedly obtained from criminal acts can be as follows, namely: [9]

a. 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 wealth;
b. Assets that are strongly suspected of being used or have been used to commit a criminal offense;
c. Other legitimate assets as a substitute for Criminal Assets; or
d. Assets that are found items suspected of originating from criminal acts

The meaning of asset forfeiture can also function as a system for handling state assets (asset forfeiture system) both administratively and judicially where in a broad sense that securing state assets can be done by seizing individual or corporate assets obtained from the proceeds of corruption crimes. Asset forfeiture in its development is better known not in statutory regulations but in court decisions that order forfeiture of assets that have been confiscated or payment of compensation for state losses incurred by the criminal act. The concept of asset forfeiture as an operational medium, in an effort to recover assets that have been unlawfully obtained by other parties (stolen asset recovery) after being pronounced by the Panel of Judges in a Court Decision with permanent legal force (in kracht van gewijsde) in a criminal case is felt to have more principles of justice than the fines for criminal acts that have been imposed so far because the fines paid are not proportional to the state losses incurred by the criminal.

Given that there is no regulation regarding asset forfeiture, in a narrow interpretation, the concept of asset forfeiture in general still uses the concept of crime in what is contained in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP). Meanwhile, in the arrangement of asset forfeiture specifically through the Asset Forfeiture Law, there will certainly be differences in interpretation in interpreting the assets that are seized.

Simply put, the asset forfeiture system for corruption crimes can use the concept of asset forfeiture in handling money laundering crimes, which is carried out through the following forfeiture system:

a. Administrative Forfeiture

   Administrative Forfeiture, which is an action of state administrative officials or parties authorized to take over assets suspected of being unauthorized assets, which based on statutory provisions can be seized without going through criminal charges or civil lawsuits (non-judicial). Basically, administrative forfeiture is carried out by parties authorized in certain areas that are

allowed to confiscate assets found in the investigation process. Case handling in administrative forfeiture itself is not based on judicial sense.

b. Criminal Forfeiture

Criminal Forfeiture is part of the punishment of a criminal offense, which is usually said that criminal forfeiture is in perionam action against the defendant, not an inrem action against the property involved in the offense. This shows that the criminal forfeiture model is carried out in relation to the punishment of a convicted person imposed based on a criminal court decision with permanent legal force (in kracht van gewijde), not on a lawsuit against property related to a criminal offense. Usually, the court in a criminal forfeiture case will ask the convicted party to pay restitution or seize assets belonging to the convicted person as a substitute if the assets that can be seized directly have been lost or cannot be found.

The provisions regarding the variant of criminal forfeiture in the Indonesian legal system can be seen in the application of Article 10 Letter b Number 2 of the Criminal Code, which is applied as an additional punishment to add to the main punishment so that it is impossible to be imposed alone.

The assets that are decided to be confiscated are only assets that have been previously confiscated by investigators. Meanwhile, in the event that during the examination process in court, the Panel of Judges considers that there are still assets that need to be confiscated after there is sufficient evidence, the Panel of Judges in front of the trial can order the public prosecutor to confiscate the assets. Meanwhile, for the assets that have been confiscated, in the end, along with the verdict, in the event that the perpetrator is found guilty, the Panel of Judges will also decide as an additional punishment:

1) Forfeited to the state, in the event that the original criminal offense is an offense that harms the state or there are no direct victims, such as corruption, narcotics, gambling.
2) Forfeited to be returned to the rightful owner, in the event that the original criminal offense is one in which there is a direct victim, such as embezzlement, fraud, theft.

Specifically in the handling of money laundering offenses, assets suspected of being proceeds of crime are given an obligation to the defendant to prove that the confiscated assets are not the proceeds of crime. This is conceptually referred to as shifting the burden of proof as contained in Articles 77-78 of Law No. 8/2010 on the Prevention and Eradication of ML. In this case, the defendant is required to prove that the assets related to the case, as confiscated by the investigator or by the public prosecutor, are not derived from or related to the criminal offense as charged by the public prosecutor by submitting sufficient evidence regarding the assets.

Meanwhile, the shifting burden of proof is not a means to prove the innocence of the defendant, but only a means to optimize asset forfeiture of the proceeds of the crime committed by the defendant.

c. Civil Forfeiture

In addition to criminal cases, asset confiscation such as the Civil Forfeiture model is used for asset forfeiture that is not a criminal case. Where the seizure by the state is carried out by filing a lawsuit against the property or in rem lawsuit to the Court or does not need to be proven first he committed a simple criminal offense, we can see this with the return of state assets such as Taman Mini Indonesia Indah and several other state assets that have not been in the control of the state for a long time.

The model of asset forfeiture that can be carried out is known as the in personam approach, namely through filing a civil lawsuit directly to the "persona" of the person suspected of controlling the unlawful assets. The "in personam forfeiture" approach can currently only be found in the anti-corruption regime. In the event that a state loss actually occurs, but legally does not constitute an act of corruption, because there are difficulties related to proof because one or more elements are not found sufficient evidence, or in the event that the suspect dies during the investigation or examination process in court, in these circumstances a lawsuit can be filed by the State Attorney or by the aggrieved agency to the party suspected of harming state finances or to his heirs.

Furthermore, confiscated goods from the crime can be auctioned based on statutory regulations. The auction of confiscated goods in addition to providing benefits for buyers and sellers, the implementation of the auction also provides benefits for our country, through the implementation of the auction there is certainly revenue for the state in the form of PNBP (Non-Tax State Revenue) and through the implementation of the auction will also provide benefits to the economy, including:

1) Giving a definitive answer on the price/value of an item in terms of one's subjectivity affects the quality of the item, the creativity of the manufacturing and the artistic value of the item.
2) Provides a definitive answer on the price/value of an item in times of economic uncertainty.
3) Provides a definitive answer regarding the ownership status of an item.
4) Prices formed at auctions can serve as standards and barometers in certain sectors of the economy.

In this case Muhammad Yusuf argues that the return of state assets requires a more effective process, namely by making comprehensive laws and regulations. [10] Furthermore, regarding its relationship with other crimes such as Corruption, Muhammad Yusuf argues that it is necessary to apply the criminal rules of money laundering, this is done so that state financial losses incurred due to corrupt practices can be optimally returned to the State Treasury. This is based on the fact that in corruption cases that are in the legal process and the suspect dies, then by order of the Law the legal process must be stopped because it cannot prosecute a dead person.

4 Conclusions and Suggestions

4.1 Conclusion

The regulation of Asset Forfeiture in the form of legislation has a function as a legal basis in dealing with various crimes that harm state finances such as corruption. The return of assets, which can be in the form of money, valuable paper, or other objects, is useful for improving state finances which will be used for the development of the country's economy. However, in reality, Indonesia itself does not yet have standardized rules regarding Asset Forfeiture resulting from various criminal acts. In addition to laws and regulations, it is also necessary to have honest and capable law enforcement officials in an effort to recover state losses**.** Because until now the penalties given to corruption offenders are very light and do not even have a deterrent effect, even though several

regulations regarding the imposition of punishment have clearly explained the sanctions for criminal acts committed.

4.2 Suggestions

Seeing the function and purpose of making the Asset Forfeiture Law, it is hoped that the legislature as the people's representative can immediately discuss and ratify the Law, so that what is aspired to eradicate corruption can be achieved because anyone will think repeatedly if they are going to commit corruption crimes. In an effort to enforce good rules such as Asset Forfeiture, law enforcement officers who are honest and have good ethics are needed, because good rules run by law enforcement officers who are also corrupt will be in vain. Therefore, law enforcement officers in various institutions related to corruption crimes must be trustworthy officers, not law enforcement officers who also protect or even enjoy the proceeds of corruption by accepting supa from corruption convicts.

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