

The Urgency of Enacting Legislation on Asset Forfeiture from Corruption Crimes

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Submission date: 31-Oct-2024 09:43AM (UTC+0700)

Submission ID: 2503413772

File name: IJSSH_Perampasan_aset_Johanes.pdf (698.36K)

Word count: 2657

Character count: 15283



The Urgency of Enacting Legislation on Asset Forfeiture from Corruption Crimes

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Article History

Keywords

corruption, asset
confiscation, criminal
acts,

Abstract

Technological developments and globalization also contribute to the complexity of corruption crimes. Information and communication technology allows corrupt actors to hide their traces more sophisticatedly, making it difficult to investigate and enforce the law. As a concrete step in supporting the confiscation of assets resulting from criminal acts, there is a discourse to specifically regulate the confiscation of assets through a separate law. As a concrete step in supporting the confiscation of assets resulting from criminal acts, there is a discourse to specifically regulate the confiscation of assets through a separate law. This study aims to find out how urgent it is to establish a law on the confiscation of assets resulting from corruption crimes. This study use a normative juridical research method using a conceptual approach and a statutory approach. The results of this study show that the establishment of a law on the confiscation of assets resulting from corruption crimes is an indispensable step in Indonesia considering the complexity and wide impact of corruption crimes. Corruption not only harms the country's finances but also reduces public trust and hinders economic development. The implementation of the asset forfeiture law cannot run effectively without the active role of supervisory and law enforcement agencies such as the Corruption Eradication Commission (CEC), the Financial Transaction Reporting and Analysis Center (FTRAC), and the Prosecutor's Office. These institutions play a role in tracking, supervising, and implementing the confiscation of assets derived from corruption crimes.

12

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1 Introduction

Criminal acts with economic motives have undergone a significant evolution along with the times. This phenomenon shows a shift from conventional actions to crimes that are increasingly complex and sophisticated (Fuadi, Putri, and Raharjo 2024). Some examples of economic crimes involving economic motives include corruption, money laundering, and illicit narcotics trafficking (Abdullah, Eddy, and Marlina 2021). Although the crime of corruption can have conventional roots, its development has become more complicated as time goes on. Corruption, as a form of economic crime, has a significant impact on a country's economy. This phenomenon is not only limited to traditional practices, but also involves increasingly complex and sometimes difficult aspects to identify. Initially, corruption may occur in the form of bribery or simple nepotism. However, with the advancement of technology and globalization, the modus operandi of corruption has developed to become more complex. Perpetrators can now use the global financial system to hide and launder their corrupt money (Hafid 2021).

Technological developments and globalization also contribute to the complexity of corruption crimes. The use of information and communication technology allows corrupt actors to hide their traces more sophisticatedly, making it difficult to investigate and enforce the law (Muntahar, Ablisar, and Bariah 2021). In addition, globalization opens the door to cross-border corruption, with capital flows involving many countries and international financial institutions. The economic impact of corruption is significant. Corrupt practices can hinder economic growth by reducing investment, increasing business costs, and creating legal uncertainty (Jati and Harmoniharefa 2021). Public funds that should be used for infrastructure development or public services can be diverted illegally, harming the community as a whole. In addition, corruption can also damage investor confidence and hinder a healthy business climate. The economy of a country can be directly affected by the level of corruption in government institutions and the private sector. Public trust in public and private institutions can decrease, reducing participation in economic development and increasing levels of inequality. Therefore, handling corruption is not only a legal responsibility, but also a priority to maintain the stability and sustainability of a country's economy (Nugraha 2020).

Money laundering is also included in other criminal acts that are increasingly complex in their economic motives. Money laundering perpetrators try to disguise the

origin of funds that come from illegal activities or other criminal acts. With the development of technology, especially in the field of finance and banking, perpetrators can easily use digital methods and cross-border transactions to launder money effectively (Najib 2023). As a concrete step in supporting the confiscation of assets resulting from criminal acts, there is a discourse to specifically regulate the confiscation of assets through a separate law. This initiative reflects the agreement to draft a Bill on the Confiscation of Assets Proceeds of Criminal Acts, which is proposed to be included in the 2009-2014 Prolegnas. Although it has been incorporated into the legislative program during the five-year period, discussions on the Bill have not been carried out, although the draft was submitted in 2012 (Najib 2023). The move to draft a special law on asset forfeiture shows a response to the urgency of handling crime and corruption, which is often related to the sustainability of the practice of asset forfeiture resulting from criminal acts. With the existence of a special law, it is hoped that a more focused and comprehensive legal framework will be formed to guide the asset forfeiture process, from identification to return. The decision to include the Draft Law on the Confiscation of Assets Proceeds of Criminal Acts in the 2009-2014 Prolegnas reflects the awareness of the need for concrete and consistent steps in dealing with the problem of corruption (Kurniawan, Alghazali, and Fadhila 2022).

Asset confiscation is considered an important instrument in eradicating corrupt practices, because it not only provides legal sanctions to the perpetrators of criminal acts, but also aims to return illegally obtained assets to the community or the state. Although it has been included in the legislation program, the lack of discussion of the Bill shows that there are obstacles or priorities for other legislation that are more urgent during that period. Several factors such as material complexity, political interests, or other legislative priorities can affect the process of discussing and ratifying the law. It is important to continue to encourage the discussion of the Draft Law on the Confiscation of Assets Proceeds of Criminal Acts so that it can be immediately enacted into law. This will provide a more solid and specific legal foundation to deal with asset forfeiture, increase the effectiveness of law enforcement, and provide a strong signal towards the eradication of corruption in Indonesia. With clear regulations, it is hoped that asset confiscation efforts can be carried out more efficiently and effectively in facing the challenges of corruption that continue to escalate (Agustine 2019).

2 Materials and Methods

In this writing, the author applies a normative juridical research method, utilizing both a conceptual approach and a legislative and regulatory approach (Marzuki 2022).

3 Results and Discussions

¹³ In Indonesia, the confiscation of assets resulting from criminal acts is a practice that has been regulated in the legal system as part of efforts to eradicate crime and recover state losses. This is not a new concept, and several criminal provisions have regulated the possibility of confiscating and confiscating the proceeds and tools used in a criminal act. These regulations can be found in the Criminal Code (KUHP), especially related to additional crimes. The Criminal Code as the main legal framework in Indonesia includes additional criminal provisions related to the confiscation of assets resulting from criminal acts. This concept gives authority to law enforcement agencies to confiscate property that is suspected of originating from a criminal act or used to commit a criminal act. This additional crime aims to cut off the financial resources of criminals, so that it can provide a deterrent effect and reduce incentives to engage in illegal activities (Indra, Panjaitan, and Hutahaean 2023).

¹ Besides the Criminal Code, regulations concerning the confiscation of assets derived from criminal activities are also outlined in laws specifically targeting certain types of crimes. For example, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Corruption Law) contains provisions related to the confiscation of assets resulting from corruption. Article 18(a) of the Corruption Law establishes a legal framework for the seizure and forfeiture of assets suspected of being derived from corruption. Likewise, Law Number 35 of 2009 concerning Narcotics contains analogous provisions governing the confiscation of assets obtained through narcotics offenses. This aligns with the government's initiatives to curb the illegal narcotics trade by removing the financial incentives for offenders (Sigalingging 2021).

² Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU) also provides a legal basis for the confiscation of assets resulting from money laundering crimes (Muntahar et al. 2021). Basically, the purpose of this asset confiscation is to stop the circulation of money from criminal acts, thereby preventing financing for further criminal activities. The principle of confiscation of assets resulting from this criminal act is in line with the state's efforts to eradicate crime as a whole. Therefore, law enforcement agencies in Indonesia have strong authority to investigate, confiscate, and seize assets resulting from criminal acts as an integral part of efforts to eradicate crime and restore justice .

Asset confiscation in a country is a serious effort to fight crime and corruption, and to achieve success in this regard, political support from various levels of government is crucial. Parliament, as a legislative body, plays an important role in drafting the legal framework that facilitates asset forfeiture. The political will of parliament reflects their determination to tackle the problem of corruption with effective and measurable legal measures (Dewi and Triadi 2023).

Asset forfeiture laws often face political challenges, especially when certain interests feel threatened by the policy. Resistance from various circles can slow down the process of forming this law. In Indonesia, current regulations still require a criminal verdict before assets can be confiscated, which means there must be a court decision declaring the perpetrator guilty. This hinders the rapid recovery of assets, especially if the perpetrator escapes or the assets are stored abroad. Technical challenges include the ability to track assets that are outside Indonesian jurisdiction, such as assets that are hidden abroad or invested in the form of assets that are difficult to trace. Without international cooperation and qualified technology, this tracking becomes very difficult (Fuadi et al. 2024).

To overcome this, it is proposed to use the *Non-Conviction Based Asset Forfeiture* (NCB) mechanism which allows the confiscation of assets without having to wait for a criminal verdict. With this law, the state can confiscate assets as an effort to prevent and recover state losses from corruption crimes, even when the perpetrators cannot be tried in court. One of the regulatory models that can be adopted in Indonesia for asset forfeiture laws is the concept of *Non-Conviction Based Asset Forfeiture* (NCB). This NCB system allows the state to confiscate assets without the need to wait for a criminal court decision that declares the perpetrator guilty. In some cases, this model is applied in other countries such as the United Kingdom, the United States, and Singapore, which have legal frameworks that allow for direct forfeiture of assets when there is strong evidence that they were illegally acquired (Bima and Suwanto 2022).

The implementation of the asset forfeiture law cannot run effectively without the active role of supervisory and law enforcement agencies such as the Corruption Eradication Commission (CEC), the Financial Transaction Reporting and Analysis Center (FTRAC), and the Prosecutor's Office. These institutions play a role in tracking, supervising, and implementing the confiscation of assets derived from corruption crimes. As the main institution in the eradication of corruption, the CEC has the authority to investigate, prosecute, and manage confiscated goods. With the new asset forfeiture law, the role of the CEC can be strengthened to facilitate a faster and more effective forfeiture process. FTRAC plays a role in the analysis of suspicious financial transactions. Through reporting and analysis, FTRAC can provide

important information that helps identify the flow of funds and assets obtained illegally. In its implementation, the Prosecutor's Office plays a role in bringing this case to court. With the asset forfeiture law, the Prosecutor's Office can act directly to ensure that assets related to corruption crimes can be immediately confiscated and managed (Jati and Harmoniharefa 2021).

4 Conclusion

The establishment of a law on the confiscation of assets resulting from corruption is an indispensable step in Indonesia considering the complexity and widespread impact of corruption crimes. Corruption not only damages the country's finances but also reduces public trust and hinders economic development. Currently, asset forfeiture regulations in Indonesia still rely on criminal judgments to allow for expropriation, which hinders the rapid and effective recovery of assets, especially in the case of assets hidden abroad. The use of the *Non-Conviction Based Asset Forfeiture* (NCB) approach is proposed as an alternative that can speed up the forfeiture process without having to wait for a court decision. With the existence of a special law on asset confiscation, law enforcement agencies such as the CEC, FTRAC, and the Prosecutor's Office can obtain a strong legal basis to track and confiscate assets resulting from corruption crimes. Therefore, the establishment of a law on the confiscation of assets derived from corruption offenses is urgent to increase the effectiveness of eradicating corruption in Indonesia, restore state losses, and uphold clean and transparent governance.

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PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7
