

Study Law Plunder Asset Without Sentencing as Alternative Giver Justice for States and Actors Act Criminal Corruption

Khoirul Syahri¹, Zahro Anis Solekha², Laili Jazilatul Khusna³

Abstract. Regulated asset confiscation in criminal acts of corruption based on Article 18 paragraph (1) of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. A form of asset confiscation without punishment as an alternative to giving justice for the state and perpetrators of criminal acts of corruption consists of an asset confiscation system using the Non Conviction Based Asset Forfeiture model and implementing the mandate of UNCAC as the State. The establishment of legal rules regarding confiscation of assets without punishment as an alternative to providing justice for the state and perpetrators of criminal acts of corruption in realizing a welfare state, at least taken in several progressive legal steps, namely improving statutory regulations, strengthening coordination between law enforcement agencies, and speed up the completion of the Asset Return Law.

Keywords : Plunder Asset Without Punishment , Perpetrators , Corruption .

1. INTRODUCTION

The practice of confiscating assets without punishment or *NCB asset forfeiture* in Indonesia and abroad is still relatively rare, especially in cases of criminal acts of corruption, cases that are often found are narcotics. Even so, several cases of money laundering crimes are also often found.

One of case follow criminal ever corruption done draft confiscation of assets without punishment is case Hendra Rahardja who was handled with the help of Australian authorities . The concept used in handling this case is *NCB asset forfeiture*, although it is not specifically stated. In principle, *in absentia* was used in the Hendra Rahardja case even though it was criticized because it was against human rights. However, up to the final level, namely the Judicial Review through the Supreme Court, the judge in the case still stated that the confiscation of assets *in absentia* was still justified by upholding the appeal decision through the DKI Jakarta High Court.

Brief case narrative:

In the ruling in the Hendra Rahardja case, it can be seen that the Panel of Judges can legally accept the investigation process which from the start was carried out *in absentia* . The minutes of the results of the investigation in absentia and the procedures for summoning the suspects and defendants are valid according to law. Furthermore, the DKI Jakarta High Court agreed with the South Jakarta District Court, that the defendants were guilty of committing criminal acts of corruption and considered it legal for the defendants to be examined and tried without their presence at the trial. The DKI Jakarta High Court disagrees with the use of the term *in*

absentia in the decision of the South Jakarta District Court and replaced it with the words "without the presence of the defendant." As stated previously, in its development the term *in absentia* is no longer mentioned in various legislative products, but the term "not present" is used after being legally or properly summoned. These two terms are not different and contain the same meaning.

In the context of returning assets resulting from criminal acts of corruption in the Hendra Rahardja case, even though Indonesia and Australia have an extradition agreement and *Mutual Legal Assistance* (MLA), in reality they cannot guarantee the smooth process of extradition and return of assets resulting from criminal acts of corruption. Hendra Rahardja's assets spread across Australia and Hong Kong cannot immediately be returned. The return of Hendra Rahardja's assets was carried out through a long process and finally the Indonesian Government received more than AUD 642,000. In the process of returning Hendra Rahardja's assets, the government formed an Integrated Search Team for Corruption Convicts and Suspects. The Integrated Team was last formed based on the Decree of the Coordinating Minister for Political, Legal and Security Affairs Number: Kep23/Menko/Polhukam/02/2006 dated 28 February 2006 concerning the Integrated Team for Searching for Convicts and Suspects in Corruption Crime Cases.

In the trial, *the NCB asset forfeiture decisions* in Indonesia and abroad had similarities and differences in their characteristics. The differences lie in the legal culture, social conditions of society, and government politics which influence the practice of *NCB asset forfeiture* in a country. Meanwhile, the similarities are clear, namely the pursuit of state assets taken by perpetrators of criminal acts of corruption. In practice, *NCB asset forfeiture* has contradictions in relation to the terminology of *illicit enrichment* and *unexplained wealth*. This terminology often gives rise to misunderstandings.

In some instances, where The defendant must be willing to lose a lot of funds because he retains the assets that have been confiscated. Even in the case of the Vincent Costello Case in American jurisdiction, police officers confiscated money that the defendant had brought with him solely on the basis of the smell of marijuana. The amount of money confiscated was far greater than the alleged crime. Even though practice errors have not been found in Indonesia, *illicit enrichment* and *unexplained wealth* can be anticipated since the existence of investigative authority. In the academic text of the Draft Law on Confiscation of Criminal Assets written by Ramelan, the investigation must be based on strong suspicions. Care is needed in determining the assets to be confiscated. One of them is considering the rationality of comparing the value of case losses and the additional value of assets.

Starting from there, why is the implementation of *NCB asset forfeiture* necessary, because so far in practice in the field, confiscation in corruption cases is carried out behind closed doors. The practice of *NCB asset forfeiture* in Indonesia will later result in a determination that can provide stronger legal certainty. This is because the determination will later become a written and published legal document. Any final decision must be in writing, contain a legal basis, and contain a summary of the factual findings and legal conclusions that support the court's decision and forfeiture.

A. Formulation of the problem

Based on the description of the background above, several problems in this research can be formulated as follows:

1. How is asset confiscation regulated ? in criminal acts of corruption?
2. What is the form of confiscation of assets without punishment as an alternative to providing justice for the state and perpetrators of criminal acts of corruption?
3. How to establish legal rules regarding confiscation of assets without punishment as an alternative to providing justice for the state and perpetrators of criminal acts of corruption?

B. Research methods

Based on the research focus, this research is classified as normative legal research. Research this law using several approaches. The research conducted by the author used laws , conceptual approaches , and analytical approach . Based on this, the source of legal materials used in this research is secondary data . The technique for collecting legal materials in this research was carried out through library *research* . The data obtained from the literature study was analyzed qualitatively .

2. RESEARCH RESULTS AND DISCUSSION

A. Regulated Asset Forfeiture In Corruption Crimes

Confiscation of assets in cases of criminal acts of corruption in this case is focused on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (UUPTPK). Confiscation of confiscated goods is regulated in Article 18 and Article 19, as well as Article 38 B and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states that additional penalties that can be imposed on defendants in criminal cases are additional penalties as specified in Article 18 paragraph (1) of Law

Number 20 of 2001 concerning Amendments to the Law. Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

From the provisions of Article 18 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, it can be detailed that the additional penalties specified consist of:

1. Confiscation of tangible movable property used for or obtained from criminal acts of corruption, including the company owned by the convict where the crime was committed, as well as the price of goods that replace those goods, or
2. Confiscation of intangible movable goods used for or obtained from criminal acts of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as the price of goods that replace these goods, or
3. Confiscation of immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed as well as the price of goods that replace these goods.
4. Payment of compensation money in an amount equal as much as possible to the property obtained from the criminal act of corruption.
5. Closure of the entire company for a maximum of 1 (one) year or closure of part of the company for a maximum of 1 (one) year.
6. Revocation of all or part of certain rights that the government has or can give to convicts or removal of all or part of certain benefits that the government has or can give to convicts.

Article 18 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes regulates that the confiscation of property belonging to a convict and then auctioning off the property is only carried out by the prosecutor as the executor of the court decision (Article 270 of the Criminal Procedure Code) if it turns out that the convict has not or does not pay compensation in the amount as stated in the court decision within the specified time limit. The confiscation of property belonging to the defendant does not require first seeking permission from the Chairman of the local District Court or after carrying out the confiscation, immediately reporting it to the Chairman of the local District Court for approval, because this confiscation is not carried out in the context of an investigation, but in the context of implementing a court decision. When confiscating property belonging to the defendant, the prosecutor must estimate the price of the confiscated object, which if auctioned could cover the amount of compensation money as stated in the court decision.

Article 19 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states that a court decision regarding the confiscation of goods belonging

to the defendant is not imposed if the rights of third parties who have good intentions will be harmed. Furthermore, Article 19 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states that if a court decision includes the confiscation of goods belonging to a third party who has good intentions, the third party can submit an objection letter to the court. This provision should be taken into account by the court before imposing additional penalties in the form of confiscation of goods related to goods belonging to third parties.

Article 19 paragraph (2) is a provision that regulates if after the court has handed down an additional criminal decision in the form of confiscation of goods it turns out that there are goods belonging to a third party which were obtained in good faith. From the provisions it is explained that within a period of no later than two months after the court decision is pronounced in a hearing open to the public, a third party can submit a letter of objection to the court which has handed down an additional criminal decision in the form of confiscation of goods which it turns out contains goods that belonged to him which were obtained in good faith. Good.

Article 38 B of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes stipulates that every person who is accused of committing a criminal act of corruption is obliged to prove otherwise regarding his property which has not been charged, but is also suspected of originating from a criminal act of corruption. In the event that the defendant cannot prove that the property was not obtained as a result of a criminal act of corruption, the property is deemed to have been obtained as a result of a criminal act of corruption and the judge has the authority to decide that all or part of the property is confiscated for the state.

Specifically Article 38 B and 38 C Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001, stipulates that:

1. The public prosecutor must submit a demand for confiscation of the defendant's property when reading out his demands in the main case;
2. The defendant must prove that the assets do not originate from criminal acts of corruption when reading his defense in the main case and can repeat this in the appeal and cassation memo;
3. The judge is obliged to open a special trial to examine the evidence presented by the defendant;
4. The consideration of whether all or part of the property is confiscated for the state is left to the judge with considerations of humanity and life guarantees for the defendant; And,
5. If the defendant is acquitted or declared free from all legal charges in the main case, then the claim for confiscation of property must be rejected by the judge.

6. Objects used for evidentiary purposes that are easily damaged can be sold at auction and the auction results can be used as substitutes to be presented at trial, while some of these objects can be set aside to be used as evidence.

Based on the two articles above, the definition of objects confiscated for the state are objects that must be handed over to the relevant department in accordance with statutory regulations. In order to trace and return the proceeds of criminal acts of corruption abroad, in accordance with Law Number 30 of 2002 concerning the Corruption Eradication Commission, it has the authority to:

1. Request assistance from Interpol Indonesia or other country's law enforcement agencies to search, arrest and confiscate evidence abroad; And
2. Carry out bilateral or multilateral cooperation in eradicating criminal acts of corruption.

B. Form of Confiscation of Assets Without Punishment as an Alternative to Providing Justice for the State and Perpetrators of Corruption Crimes

Actions to confiscate assets (assets) which are suspected to be the result of a crime or criminal act are an anticipatory step in saving and/or preventing the escape of assets which is one of the repressive steps. If a criminal act or crime has occurred then in this case the law enforcement officers must think not only about how to convict the perpetrator to prison but must also think about and consider whether there are any assets resulting from criminal acts from the perpetrator's actions and if there are indications that there are assets resulting from the crime. crime, it is worth considering the legal basis and what steps must be taken to recover the assets resulting from the crime.

Efforts to recover assets resulting from crimes or criminal acts of corruption are by carrying out confiscation actions as additional criminal sanctions in the criminal court decision by the judge regarding assets owned by those convicted of criminal acts of corruption where the assets are the proceeds of criminal acts of corruption and/or assets is used as a means or infrastructure for committing criminal acts of corruption. This is as regulated in Article 18 paragraph (1) point a of Law no. 31 of 1999 concerning Eradication of Corruption Crimes.

This act of confiscation can be carried out based on a criminal decision and/or the need for a criminal trial, thus forming part of the criminal sanction. Criminal confiscation is a system based on objective elements, in which case the prosecutor's authority must prove that the assets in question are the proceeds or instrumentalities of a crime that has been completed or is in the process of its occurrence. Under certain conditions, prosecutors can based on normative values

that make it possible to deprive the perpetrator of the value of benefits from a crime, without proving the relationship between the crime and the object of the asset.

Criminal asset forfeiture is subject to all constitutional and regulatory procedural protections available under the auspices of criminal law. The application of confiscation measures must be included in the indictment filed by the prosecutor against the defendant, which means that the public prosecutor must look for the basis for carrying out the confiscation. At the court hearing, the act of confiscation proposed in the indictment was based on the burden of proof beyond a reasonable doubt.

This criminal confiscation is the result of the operation of the criminal justice system mechanism that has been determined based on the Criminal Procedure Code and Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which begins with the pre-adjudication process, namely the inquiry and inquiry into cases of criminal acts of corruption that have occurred, this is related to proof in order to obtain sufficient evidence and have strong evidence that a criminal act of corruption has occurred. Once the evidence is sufficiently strong and complete that a criminal act of corruption has occurred, it will proceed to the adjudication stage in the form of prosecution, which is the transfer of the case to the corruption criminal court to be examined and decided by a judge at the corruption criminal court trial. The transfer of this case was accompanied by a letter of indictment against the perpetrators suspected of criminal acts of corruption.

The judicial mechanism for criminal acts of corruption above can carry out confiscation of assets resulting from criminal acts of corruption, by including them in the prosecution clause by the public prosecutor in a criminal court trial that is ongoing outside or simultaneously with the indictment submitted to the panel of judges. to be decided and determined. So based on the judge's decision which states that the defendant has been proven to have committed a criminal act of corruption based on the evidence set out in the criminal complaint by the public prosecutor, confiscation action can be carried out to take back the proceeds of the criminal act of corruption and hand them over to the state.

Regarding the imposition of confiscation, items that can be confiscated are items belonging to the convict that were obtained from a crime or that were intentionally used to commit a crime. The act of confiscating assets resulting from criminal acts of corruption as an effort to minimize state losses caused by criminal acts of corruption is an effort that is no less important than eradicating criminal acts of corruption by sentencing the perpetrators to the maximum possible punishment. Steps to minimize state losses must not only be carried out

from the start of case handling, but also absolutely carried out through collaboration with various state institutions and must also be facilitated with the help of financial intelligence.

1. Tracking Stage
2. Asset Freezing or Confiscation Stage
3. Asset Confiscation Stage
4. Stage of Return and Handover of Assets to the State

C. Establishment of Legal Rules Concerning Confiscation of Assets Without Punishment as an Alternative to Providing Justice for the State and Perpetrators of Corruption Crimes

A shared vision in confiscating the assets of perpetrators of criminal acts of corruption in an effort to recover state losses can be carried out by involving various related parties, such as law enforcement agencies, the government and the community . Several things that can be done in order to create a shared vision between related parties are:

1. Firm and fair law enforcement: Efforts to seize the assets of perpetrators of criminal acts of corruption must be supported by firm and fair law enforcement. Law enforcement agencies must ensure that perpetrators of criminal acts of corruption receive punishment commensurate with the crime they committed.
2. Inter-agency collaboration: Law enforcement agencies, the government and the community must work together to confiscate the assets of perpetrators of criminal acts of corruption. This can be done by building coordination and synergy between institutions.
3. Increased information transparency: The public must be given clear and open information regarding efforts to confiscate the assets of perpetrators of criminal acts of corruption. This can strengthen community participation in efforts to recover state losses.
4. Increasing public awareness: The public must be given a good understanding of the importance of efforts to seize the assets of perpetrators of criminal acts of corruption in recovering state losses. This can be done through outreach and education campaigns.
5. Development of information technology: The government can utilize information technology to support efforts to confiscate the assets of perpetrators of criminal acts of corruption. This can be done by building an integrated and trusted information system .

Based on matter By carrying out a shared vision as above, it is hoped that efforts to seize the assets of perpetrators of criminal acts of corruption can be more effective and the results can be maximized in efforts to recover state losses.

The view that can be taken is related to the shared vision in confiscating the assets of perpetrators of criminal acts of corruption in an effort to recover state losses, namely:

1. A shared vision is the key to success in efforts to seize the assets of perpetrators of criminal acts of corruption and recover state losses. With a shared vision between the relevant parties, including law enforcement agencies, the government and the community, efforts to confiscate the assets of perpetrators of criminal acts of corruption can be carried out more effectively and optimally.
2. A shared vision can help build synergy and collaboration between institutions, so that efforts to seize the assets of perpetrators of criminal acts of corruption can be carried out in a more coordinated and integrated manner. In this case, the government needs to facilitate meetings and dialogue between institutions, as well as develop an integrated information system to support asset confiscation efforts.
3. A shared vision can also increase community participation in efforts to confiscate the assets of perpetrators of criminal acts of corruption. In this case, the government needs to carry out outreach and education campaigns to increase public awareness regarding the importance of asset confiscation in recovering state losses.
4. A shared vision can help strengthen firm and fair law enforcement in efforts to seize the assets of perpetrators of criminal acts of corruption. In this case, law enforcement agencies need to ensure that perpetrators of criminal acts of corruption receive punishment commensurate with the crime they committed.

Based on matter Thus , a shared vision in confiscating the assets of perpetrators of criminal acts of corruption in an effort to recover state losses is very important and must be supported by all relevant parties. If seen in general, the contents of the Asset Confiscation Bill contain three paradigm changes in criminal law enforcement. First, the party accused of a crime is not only the legal subject as the perpetrator of the crime, but also the assets obtained from the crime. Second, the justice mechanism used for criminal acts is the civil justice mechanism. Third, court decisions are not subject to criminal sanctions as are imposed on perpetrators of other crimes. The parties with an interest in the assets in question (could be the parties suspected of being the perpetrators) can become relevant parties in the trial to defend these assets. The use of civil mechanisms in criminal cases is a pragmatic choice for the global community within UNCAC to eradicate crime, especially corruption. Even so, up to now there have been no *NCB asset forfeiture decisions* related to corruption cases. Therefore, efforts need to be made to mainstream the implementation of *the NCB asset forfeiture* in investigating corruption cases in order to help quickly stabilize the country's financial system due to increasingly rampant criminal acts of corruption.

3. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusion

1. Regulated asset confiscation in criminal acts of corruption is based on Article 18 paragraph (1) of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The importance of confiscation of assets for developing countries is based on the fact that criminal acts of corruption have confiscated the country's wealth, where the wealth was taken away by those convicted of corruption. Indonesia is currently struggling to improve governance especially facing the country's economic decline which is caused by corruption.
2. A form of asset confiscation without punishment as an alternative to providing justice for the state and perpetrators of criminal acts of corruption consists of an asset confiscation system using the *Non Conviction Based Asset Forfeiture model* which is needed in order to return assets resulting from criminal acts of corruption more effectively, because it is in accordance with *follow the money* or *follow the assets* and carry out the mandate of UNCAC as a ratifying country in order to return assets resulting from criminal acts of corruption more effectively, because it is in accordance with *follow the money* or *follow the assets* and carry out the mandate of UNCAC as the State.
3. Establishment of legal rules regarding confiscation of assets without punishment as an alternative to providing justice for the state and perpetrators of criminal acts of corruption In realizing a welfare state, at least several progressive legal steps are taken, namely improving statutory regulations related to criminal acts of corruption, strengthening coordination between law enforcement agencies, and accelerating and finalize the Asset Forfeiture Act .

B. Suggestion

1. It would be better if in the future confiscation of assets resulting from criminal acts of corruption efforts to eradicate criminal acts of corruption need to be increased. One of them is by revising the confiscation of assets resulting from criminal acts of corruption by looking at international instruments and also the development of asset confiscation practices in various countries.
2. Should The actions that must be taken in confiscating assets as contained in the Asset Confiscation Bill have been fully regulated, namely tracing, searching, blocking, confiscating, and the performance of asset confiscation must be further improved, so that the process can run better.
3. It would be better if in overcoming obstacles in confiscating assets for criminal acts of corruption, stronger synergy is needed between the relevant law enforcers, so that the future legal concept in returning assets for criminal acts of corruption can create a strong rule of law.

BIBLIOGRAPHY

Constitution Number 8 of 2010 concerning Prevention And Eradication Act Criminal Washing Money .

Criminal Code (KUHP).

Criminal Procedure Code (KUHAP).

Dirdjosisworo, Soedjono , *The Function of Criminal Law in Combating Corruption in Indonesia* , Bandung : Sinar Bandung, 2014.

Hartanti, Evi , *Corruption Crimes* , Jakarta : Sinar Graphics, 2009 .

Husein, Yunus , "Legal Explanation Regarding Confiscation of Assets Without Punishment in Corruption Crime Cases", Center for Indonesian Law and Policy Studies (PSHK) in collaboration with the Center for Legal and Judicial Research and Development (Puslitbangkumdil) of the Supreme Court of the Republic of Indonesia, and the United States Agency International Development (USAID).

Info on the Indonesian Attorney General's Work Unit Integrated Team, via <http://www.kejaksaan.go.id> , accessed at June 6th 20 23 , 20.10 WIB .

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes .

Reda, Ramelan Mantovani , David Pauline, *Guide for Indonesian Public Prosecutors in Handling Assets Obtained by Crime* , Bekasi : Bieneka, 2014.

Suradji, Mugiyati, Sutriya, *Study of Criminalization, Return of Assets, International Cooperation in UN Conventions* , Jakarta : National Legal Development Agency, Department of Law and Human Rights, 2014 .

The 1945 Constitution of the Republic of Indonesia.

Waluyo, Bambang , *Crime and Punishment* , Jakarta : Sinar Graphics, 2004.

Yanuar , Purwaning M. , *Return of Corruption Proceeds Assets: Based on the 2003 UN Convention Against Corruption in the Indonesian Legal System* , Bandung : Alumni, 2014.