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Problems of the Formulation of Asset Forfeiture Resulting from Corruption Crimes: A Comparative and Conceptual Study

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Abstract

Corruption in Indonesia has long been a severe transnational issue requiring appropriate handling. Although Law No. 31 of 1999 and Law No. 20 of 2001 on the Eradication of Corruption have provided a legal basis for combating corruption, weaknesses remain in their implementation. This study aims to evaluate the effectiveness of these laws by employing a legislative approach and analyzing the opinions of scholars. The primary focus of this research is on asset confiscation resulting from corruption, as regulated by the Anti-Corruption Law, which serves as a key instrument in combating corruption. The findings indicate that unclear legal norms and weak coordination among law enforcement agencies still hinder the implementation of asset confiscation. The conclusion of this study emphasizes the need for regulatory improvements and enhanced coordination among institutions to maximize the effectiveness of asset confiscation in efforts to eradicate corruption in Indonesia.

Keywords: *Asset Forfeiture, Corruption Crimes, Comperative and Conceptual Study*

Abstrak

Tindak pidana korupsi di Indonesia telah lama menjadi masalah serius yang bersifat transnasional dan memerlukan penanganan yang tepat. Meskipun Undang-Undang Nomor 31 Tahun 1999 dan Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi telah memberikan dasar hukum untuk mengatasi korupsi, terdapat kelemahan dalam implementasinya. Penelitian ini bertujuan untuk mengevaluasi efektivitas undang-undang tersebut dengan menggunakan pendekatan perundang-undangan dan analisis pendapat para ulama. Fokus utama penelitian ini adalah perampasan aset hasil tindak pidana korupsi, yang diatur dalam UU Tipikor, sebagai instrumen kunci dalam pemberantasan korupsi. Hasil penelitian menunjukkan bahwa penerapan perampasan aset masih terhambat oleh norma hukum yang kurang jelas dan lemahnya koordinasi antar lembaga penegak hukum. Kesimpulan dari penelitian ini menekankan perlunya penyempurnaan regulasi serta penguatan koordinasi antar lembaga untuk memaksimalkan efektivitas perampasan aset dalam upaya pemberantasan korupsi di Indonesia.

Kata kunci: *Asset Forfeiture, Corruption Crimes, Comperative and Conceptual Study*

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Introduction

Corruption is defined as the abuse of power for personal gain, which is a social injustice problem. Efforts to eradicate corruption in Indonesia have been going on for a long time through various steps, including changes in laws and regulations in the field of corruption, establishing corruption as one of the national policy priorities, and committing to realizing good governance and free from corruption, collusion, and nepotism. Corruption is no longer a national problem but has become a transnational phenomenon.[1]

In Indonesia, corruption crimes are regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999. However, the Law still has several weaknesses in its formulation and application. These weaknesses impact the ineffectiveness of law enforcement against corruption crimes. For example, the formulation of Articles 2 and 3 does not determine the exact and measurable amount of state financial losses, which can potentially increase state losses.[2] The phrase "or another person or a corporation" in Article 2 paragraph (1) and Article 3 of the Corruption Law causes confusion and legal uncertainty in law enforcement practice.[3]

Although it has been updated, Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999, amended by Law No. 20 of 2001, still do not meet the principle *of lex certa*. These articles are also multi-interpreted so that they endanger legal certainty, especially related to

[1] Sigit Prabawa Nugraha, "Kebijakan Perampasan Aset Hasil Tindak Pidana Korupsi," *National Conference For Law Studies*, 2020, 978–79.

[2] Srimin Pinem, Muhammad Yusrizal, and Adi Syaputra, "Dinamika Pemberantasan Tindak Pidana Korupsi," *Jurnal Yuridis* 10, no. 2 (2023): 87–94.

[3] Selfi Suriyadinata and Ananda Putra Rezeki, "Kedudukan Dan Kewenangan Komisi Pemberantasan Korupsi Dalam Pemberantasan Tindak Pidana Korupsi Ditinjau Dari Perspektif Hukum Ketatanegaraan," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 2 (2022): 30–35, https://doi.org/10.52005/rechten.v3i2.81.

the phrase "can harm the state's finances," which is not mentioned definitively and measurably, so it can potentially increase state losses.[4]

In addition, Article 4 and 18 provisions that seek to recover state losses will never be maximized if the perpetrators who return state money are still prosecuted. The scope of the provisions of Article 18 is also narrow and limited, benefiting corrupt actors because it does not include profits obtained from corruption. Thus, the Asset Forfeiture Bill was formulated to regulate provisions related to the punishment of asset forfeiture for corruption convicts.[5] This Bill provides a legal basis for the state to confiscate assets suspected of originating from criminal acts to recover state losses.

In persona asset forfeiture or criminal forfeiture is an act that is closely related to a person's criminalization. This asset confiscation was carried out after it was proven that there was a criminal act, and based on a court decision with permanent legal force, it became the basis for confiscating property from the defendant.[6] This mechanism uses criminal Law. In the legal system in Indonesia, asset forfeiture is part of an additional crime in the form of confiscation of certain goods resulting from criminal acts, which is generally applicable to every criminal act in the realm of criminal Law in Indonesia to prevent convicts from enjoying the proceeds of criminal acts.

As a democratic country and a participant in the 2003 UNCAC convention ratified by Law Number 7 of 2006, Indonesia has not yet adhered to the mechanism of asset forfeiture without criminalization (*NCB asset forfeiture*). Currently, Indonesia adheres to three asset forfeiture mechanisms: criminal *forfeiture or in personam*, civil asset forfeiture, and administrative asset forfeiture. Asset forfeiture regulations in Indonesia refer to various legal provisions with different terminology. The [7] confiscation of assets currently in Indonesia can be carried out only if the perpetrator of the crime has been found guilty by a court decision with permanent legal force (in Kracht), or in other words; a criminal verdict carries out the confiscation of assets. However, the implementation of criminal expropriation has

[4] Dyah Listyorini, Adi Suliantoro, and Fitika Andraini, "Implementasi Undang-Undang Nomor 20 Tahun 2001 Terhadap Mata Kuliah Pendidikan Anti Korupsi Pada Mahasiswa Universitas STIKUBANK Semarang," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 223–32.

[5] Siti Nurhalimah, "The Abolition of Corruption Crimes through the Return of State Losses," *is* 1, no. 11 (2017): 105–6, https://doi.org/10.15408/adalah.v1i11.11419.

[6] Irwan Hafid, "Asset Forfeiture Without Criminalization in the Perspective of Economic Analysis Of Law," *Lex Renaissance* Journal 6, no. 3 (2021): 465–80, https://doi.org/10.20885/jlr.vol6.iss3.art3.

[7] Muhammad Ghulam Reza, "Criminal Legal Policy of Asset Forfeiture 'Non-Conviction Based Asset Forfeiture' in Money Laundering," *Jurnal Civic* 8, no. 1 (2024): 1167–81.

experienced many difficulties, such as the ability of the perpetrator to divert or flee the proceeds of crime abroad and the difficulty of extradition of the perpetrator back to Indonesia.[8]

Concerning corruption crimes, to increase the return of state losses due to corruption crimes, it is necessary to carry out *asset recovery* or confiscation of assets resulting from criminal acts. Asset forfeiture is quite controversial in Indonesia, especially regarding legal aspects. Currently, the Indonesian Government is working on the Asset Forfeiture Bill, which will later regulate the state's confiscation of assets.[9] This Asset Forfeiture Bill has advantages and disadvantages. Therefore, this study examines the problems of the formulation of asset forfeiture resulting from corruption crimes in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, as well as the urgency of the Asset Forfeiture Bill resulting from corruption crimes in recovering state losses.

Corruption in Islam is an act that violates sharia. Islamic Sharia aims to realize the benefits for humanity, including protecting property (hifdzul mal) from various forms of violations and abuses. Islam regulates and assesses property from acquisition to expenditure by providing guidance to obtain it through moral means and following Islamic Law, such as not cheating, not using usury, not betraying, not embezzling other people's property, not stealing, not cheating in measurements and scales, not corruption, and so on.[10]

In Islam, corrupt behaviour is expressly prohibited, as Allah Subhanahu Wa Ta'ala says in the Qur'an surah Al-Baqarah verse 188: "*And do not falsely eat the wealth among you, and (not) you bribe the treasure with it to the judges, so that you may eat some of the wealth of others by way of sin, even though you know*."

The problem raised in the paragraph is the prohibition of eating other people's property, which is not their right in general, through deception, including corruption crimes committed by corruptors. Therefore, when discussing efforts to eradicate corruption in Indonesia, the prohibition of corruption has been well explained and contained in Islamic legal sources, both in the Qur'an and Hadith, which explain various prohibitions on

[8] Cepy Indra Gunawan, "Perampasan Barang Bukti Tindak Pidana Pencucian Uang Dalam Rangka Pengembalian Aset Negara," *HAngoluan Law Review* 1, no. 1 (2022): 107–37, https://dataindonesia.id/sektor-riil/detail/angka-konsumsi-ikan-ri-naik-jadi-5648-kgkapita-pada-2022.

[9] Darmadi Djufri, Derry Angling Kesuma, and Kinaria Afriani, "ASSET RECOVERY MODEL AS AN ALTERNATIVE TO RECOVERING STATE LOSSES IN CORRUPTION CASES," *Discipline : Civitas Akademika Magazine, College of Law Pledge Pemuda* 26, no. 2 (2020): 120–32.

[10] Heru Susetyo, "Corruption as a Crime in Islamic Law," *Misykat Al-Anwar Journal of Islamic and Community Studies* 5, no. 2 (2022): 239, https://doi.org/10.24853/ma.5.2.239-260.

corruption classified as treason and tyranny.[11] Although the Government and religion have made great efforts to prohibit corruption, corruption in Indonesia continues to increase, both in terms of the number of cases that occur and the quality of corruption committed by the perpetrators, which tends to be more systematic and widespread.[12]

Based on the description above, this research is important because it explores in depth the formulation of asset forfeiture resulting from corruption crimes in corruption law, how to review the forfeiture of assets resulting from corruption crimes from the perspective of Islamic criminal Law, and how to confiscate assets resulting from corruption crimes in the future.

Method

This research is normative legal research. The approach used includes a statute approach and an analysis of the opinions of scholars (*conceptual approach).*[13] Data is collected through primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations related to research topics, such as Law No. 31 of 1999 and Law No. 20 of 2001 concerning Corruption,[14] Draft Laws (RUU), the Criminal Code (KUHP), and Ulama Opinions. Secondary legal materials include legal journals. Meanwhile, tertiary legal materials come from various sources such as internet links, legal dictionaries, Wikipedia, and previous studies. The data obtained was then processed and analyzed using qualitative descriptive methods.

Discussion

Formulation of Asset Forfeiture Proceeds of Corruption in the Corruption Crime Law

In Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, amended by Law Number 20 of 2001, the formulation of asset confiscation resulting from corruption crimes is

[11] Huzaemah T Yanggo, "Corruption, Collusion, Nepotism and Bribery in the View of Islamic Law," *Tahkim* 9, no. 1 (2013): 1–20.

[12] I Kadek Kartika Yase, "Corruption Crimes in a Hindu View," *Satya Dharma: Journal of Law* 3, no. 1 (2020): 1–23, https://ejournal.iahntp.ac.id/index.php/satya-dharma/article/view/508.

[13] Muhaimin, *Metode Penelitian Hukum*, *Mataram University Press*, vol. 1 (Mataram University Press, 2020), https://revistas.ufrj.br/index.php/rce/article/download/1659/1508%0Ahttp://hipatiapress.com/hpjournals/index.php/qre/article/view/1348%5Cnhttp://www.tandfonline.com/doi/abs/10.1080/09500799708666915%5Cnhttps://mckinseyonsociety.com/downloads/reports/Educa.

[14] Riko Aji Pratama and Muhamad Hasan Sebyar, "Legal Protection Against Whistleblowers in Corruption Cases," *Lex Scientia Law Review* 1, no. 4 (2016): 137–54, https://doi.org/https://doi.org/10.62383/aliansi.v1i4.291.

regulated. This Law defines asset forfeiture as expropriating assets obtained from corruption crimes without a court decision to convict the perpetrator (Article 38C of Law No. 20/2001). Asset forfeiture is a solution to eradicate corruption. The issue of asset forfeiture for asset recovery is a solution that can be done to eliminate corruption, both in dealing with legal problems conceptually and operationally. Regarding the regulation of asset restitution, if you look at the model of approach used based on the provisions of the Criminal Code and the Criminal Code, there are additional penalties in Article 10 of the Criminal Code: "revocation of certain rights, confiscation of certain goods, and announcement of judges' decisions."[15] This means that the confiscation of tangible or intangible movable goods or immovable goods (confiscation of assets) is an additional penalty that can be imposed together with the principal penalty in the form of imprisonment or fines. Asset forfeiture in the Criminal Code and Criminal Code is the basis for forming asset forfeiture using the Corruption Law.

Article 18 of the Corruption Law has a fundamental principle: to return assets from corruption crimes. As mentioned in Article 18, paragraph (1) of the Law on the Eradication of Corruption, this provision states:

(1) In addition to the additional crimes as intended in the Criminal Code, the additional penalties are a. Confiscation of tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes, including companies owned by convicts where the corruption crimes were committed, as well as from goods that replace such goods; b. Payment of replacement money in the amount of as much as possible equal to property obtained from corruption crimes; c. Closure of all or part of the company for a maximum period of 1 (one) year; d. Revocation of all or part of certain rights or elimination of all or part of certain benefits that have been or can be given by the Government to the convict.

The provisions of Article 18 paragraph (1) of the Law on the Eradication of Corruption Crimes are compared with the provisions of Article 10 letter b of the Criminal Code concerning additional crimes and Article 39 paragraph 1, which states that "Goods belonging to convicts obtained from crimes or deliberately used to commit crimes, can be confiscated." In this case, it is concluded that the three forms of sanctions regulated in Article 18 of the Law on the Eradication of Corruption Crimes are the seizure of tangible or

[15] Dandy Caliano Anugerah et al., "The Application of Asset Confiscation Proceeds of Corruption Crimes Without Criminalization in the Perspective of Criminal Law," *Anti-Corruption Journal* 3, no. 2 (2023): 62–72, https://doi.org/10.19184/jak.v3i2.November2023.

intangible movable goods or immovable goods used for or obtained from corruption crimes, payment of replacement money, closure of all or part of the company, and revocation of all or part of certain rights or elimination of all or part of sure profits from the company it is related to Article 10 letter b and Article 39 of the Criminal Code.[16]

In Article 17 of the Law on the Eradication of Corruption, it is stated that "In addition to being able to be sentenced as referred to in Article 2, Article 3, Article 5 to Article 14, the defendant may be sentenced to an additional penalty as referred to in Article 18." With the use of the word "may" in the phrase "the defendant may be sentenced to an additional penalty", as stated in Article 17, it becomes clear that for a person who, based on the facts of the trial and the judge's conviction, is legally and convincingly proven to have committed a criminal act of corruption, the application of criminal sanctions for asset forfeiture is an option, not an obligation. This means that the Panel of Judges can impose criminal sanctions for asset forfeiture, but it can also not do so.

The provisions of Article 17 of the Law on the Eradication of Corruption align with the opinions of several legal experts. According to Roeslan Saleh, the additional penalty is an addition to the principal penalty. Therefore, the additional penalty is facultative, so it can or may not be imposed.[17] Meanwhile, Andi Hamzah argued that just looking at his name, it is clear that the additional crime is only in addition to the main crime imposed. So, it cannot stand alone except in certain things, such as the seizure of certain things. This additional penalty is facultative, meaning it can be imposed but not necessarily.

In Article 18, paragraph (1), letter A emphasizes that the confiscated property or assets are tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes. However, what is meant by "tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes" is not further explained. In addition, there is also no regulation on how to trace and calculate assets and legally prove that the assets were obtained from the proceeds of corruption charged.

Thus, confiscation of corruption assets is an unclear norm, so the provisions of Article 18 paragraph (1) letter a of the Law on the Eradication of Corruption Crimes are multi-interpreted. The unclear norms of confiscating corrupt assets certainly cause

[16] Agus Pranoto et al., "Juridical Study on Confiscation of Corrupt Assets," *Journal of Legality* X (2018): 91–121.

[17] Roeslan Saleh, *Thoughts on Criminal Liability* (Jakarta: Ghalia Indonesia, 2020), p. 33.

difficulties for law enforcement in its implementation. In addition, law enforcement at each level finally has its perspective or perspective in interpreting what is meant by "wealth obtained from corruption".

Confiscation of Assets Resulting from Corruption Crimes Reviewed from Islamic Criminal Law

Corruption in Islam is an act that violates sharia. Islamic Sharia aims to create benefits for humanity. One of the benefits to be realized is the preservation of property (hifdzul mal) from various forms of violations and misappropriations. Islamic criminal Law recognizes several types of punishment classifications. First, punishment classification is based on associating one punishment with another. Here are known four types of punishment, namely: the main punishment ('uqūbah aṣliyah), the substitute punishment ('uqūbah badaliyah), the additional punishment ('uqūbah tābi'iyah), and the supplementary punishment ('uqūbah takmiliyah).

Second, the classification of punishment is reviewed in terms of the judge's power in determining the severity of the punishment. This group has two types of punishment: punishment with only one limit, meaning no maximum and low limit. For example, volume punishment is a ḥadd punishment (80 times or 100 times) with the highest and lowest limits, where the judge is free to choose the appropriate punishment between the two limits.[18] For example, imprisonment or a volume on *the jarimah ta'zir*. Third, the classification is based on the size of the punishment that has been determined. There are two types of punishment: a predetermined punishment of the type and magnitude, which the judge must carry out without reducing, adding, or replacing it with another punishment, and the punishment handed over to the judge to be chosen according to the perpetrator's circumstances. Fourth; classification is based on the place where the punishment was committed. Here, punishment is differentiated into corporal punishment, that is, punishment imposed on the body; soul punishment, that is, punishment imposed on a person's soul; and property punishment, which is punishment applied to a person's property, such as diyat, fines, and confiscation of property. Fifth, the classification of punishment based on the type of *jarimah* that is threatened with punishment.[19]

[18] Ahmad Syarbaini, "The Concept of Corruption According to the Perspective of Islamic Criminal Law," *Tahqiqa Journal: Scientific Journal of Islamic Legal Thought* 16, no. 1 (2022): 1–14, https://doi.org/10.61393/tahqiqa.v16i1.48.

[19] Susetyo, "Korupsi Sebagai Kejahatan Dalam Hukum Islam."

This group includes: hudud punishment, qisās-diyat punishment, kifarat punishment, and ta'zir punishment. The Muhammadiyah Tarjih and Tajdid Council defines corruption as an unlawful act that aims to enrich oneself or others, harm other parties, personally and nationally, and abuse authority, opportunity, or means because of one's position or position.[20]

Sources of Islamic Law prohibit taking other people's property, which is based on several postulates, including:

Al-Qur'an, Sura al-Baqara verse 188:

"And do not vainly eat the treasure among yourselves, and (not) you bring it to the judges with the intention that you may eat some of the treasure of others by sinful means, even though you know." (QS. Al-Baqarah: 188)

This verse of the Qur'an signals that mankind, especially Muslims, do not commit corruption crimes. In addition, this verse is also followed by QS. An-Nisa verse 29:

"O you who believe! Do not eat each other's property in an unrighteous way, except in a trade that is consensual among you. And do not kill yourselves. Truly, Allah is Most Merciful to you."

Referring to the decision of Bahtsul Masail, Regional Administrator of Nahdlatul Ulama Central Java, Waqi'iyyah Commission at Al Inayah Boarding School, Batang Regency on Monday, 27 Muharram 1445/14 August 2023, state law to confiscate assets is permissible, even mandatory. The confiscation of assets resulting from criminal acts, such as corruption, narcotics crimes, human trafficking, and others, is part of returning assets from criminal acts (*raddul mazhlim*) to their owners, individuals, institutions, or the state. The decision of bahtsul masail results from a discussion based on several references from fiqh books related to ghayr sahih. The first is from the book Al-Fiqhul Islami wa Adillatuhu by Shaykh Wahbah az-Zuhaili, namely:

"As for illegal ownership, the state has the right to intervene to return property to its rightful owner. In fact, the state has the right to confiscate the illegal ownership, both in the form of movable and immovable property, as Umar bin Khattab r.a. once did in dividing (deliberation) the property owned by some of his governors that is not their right, for the sake of a public benefit, namely to keep the governorship away from various things that are not good and so that the position is not used as a means of accumulating wealth. Because ownership is limited only to good and mubah assets. As for illicit property obtained through illegal means, such as bribery, fraud, usury, fraud in measures and scales, hoarding and monopoly, using influence, position and power to accumulate wealth, then all of them cannot be a legitimate cause for ownership." (Shaykh Wahbah az-Zuhaili, Al-Fiqhul Islami wa Adillatuhu).[21]

[20] Endang Jumali, "The Application of Ta'Zîr Criminal Sanctions for Perpetrators of Corruption Crimes in Indonesia," *Ash-Shari'ah* 16, no. 2 (2014): 113–24, https://doi.org/10.15575/as.v16i2.631.

[21] Wahbah Az-Zuhaili, *Al-Fiqhu Al-Islamiyyu Wa Adillatuhu Jilid 5* (Damaskus: Dar al-Fikr, 2007).

Confiscation or confiscation of assets is a type of ta'zir punishment debated among scholars. However, Jumhur scholars allow the confiscation of property if the conditions for obtaining the property are not met. The first condition is that the asset is legally acquired. Second, the asset is used according to its intended purpose. Third, the use of the property does not violate the legal rights of others. Ulil Amri has the authority to determine ta'zir punishments, such as confiscation and confiscation, as sanctions for the perpetrator's crimes, as long as all of these prerequisites have been met.[22']

Scholars have two main views on the return of assets resulting from corruption crimes. The first group, led by Imam Shafi'i and Ahmad bin Hanbal, argued that even though the corruptor had been convicted, he was still obliged to return the money that had been corrupted. This opinion is based on a hadith that states that a person is obliged to restore the rights of others he has stolen, even after being punished for cutting his hands off. Imam Shafi'i and Imam Ahmad argue that punishment and fines or compensation for corruptors can be united. This opinion shows that individuals who commit corruption must be responsible for the assets that have been corrupted and receive ta'zir sanctions. They put forward that corrupt perpetrators have violated two rights: the right of Allah to prohibit corruption and the right of fellow human beings, which requires them to return the property of others.[23]

Looking at the arguments in the formulation of the identification of corruption acts above, the tendency of scholars to categorize corruption as ta'zir is clear. This conclusion is at least based on the dominant elements, such as ghulul (embezzlement) and rishwah (bribery).

Confiscation of Assets Resulting from Corruption Crimes in the Future

In Indonesia, some criminal provisions have regulated the possibility of confiscating and confiscating the proceeds and instruments of criminal acts. However, based on these provisions, deprivation can only be carried out after the perpetrator of the crime is legally and convincingly proven to have committed a criminal act in court. This poses a challenge, as there are situations where the perpetrator of a criminal act cannot be tried in court for

[22] Qasim Khoiri Anwar, "BUDAYA TA'ZIR BIL MAL DALAM PERSPEKTIF ULAMA CONVENTION," *Idea* 1, No. 2 (2016): 262–390.

[23] Abdul Saipon, "The Value of Women's Education in Surah Al-Ahzab Verses 28-35 and 59 and Its Application in Islamic Education," *Tawazun: Journal of Islamic Education* 12, no. 2 (2019): 4–11, https://doi.org/10.32832/tawazun.v12i2.2610.

various reasons, such as death or inability to be found, or due to a lack of evidence to support the charges to court, among other reasons.

In addition to the challenges in the legal paradigm related to eradicating corruption, efforts to return state money are also constrained by the detailed and time-consuming nature of proving corruption crimes. On the other hand, corruption perpetrators have tried to conceal corruption assets since the beginning of the crime. The 2 to 3 years to complete a corruption case provides a very loose time for the perpetrator to remove traces of assets obtained from corruption. The difficulty in detecting assets resulting from corruption crimes increases if assets are transferred to other countries.

The current corruption law has several weaknesses, both in its formulation and in the application of the Law. These weaknesses result in ineffective and inadequate law enforcement of corruption crimes. However, these weaknesses are contained in several formulations of articles on corruption in the Corruption Law, such as the formulation of Articles 2 and 3, which do not determine the amount of state financial losses in a definite and measurable manner so that they have the potential to increase state financial losses. In addition, the provisions of Article 4 and Article 18, which are efforts to recover state losses, will never be maximized if the perpetrators who return state money are still prosecuted. The provisions of Article 18 are also narrow and limited, benefiting corrupt actors because they do not cover profits obtained from corruption.

Weaknesses in existing regulations regarding the confiscation of assets resulting from corruption crimes, as stated in Article 18 of Law Number 31 of 1999 jo Law Number 20 of 2001, have several weaknesses:

1. **Less Detailed Forfeiture Procedure**: The provisions regarding the asset forfeiture procedure are still unclear and detailed, primarily related to its implementation before a court decision with permanent legal force. This causes the asset forfeiture process to be slow and ineffective.
2. **No Temporary Confiscation**: The current Law does not regulate the mechanism for temporary confiscation of assets suspected of originating from corruption crimes. As a result, there is a high risk that corrupt actors could hide or divert these assets before a court decision with permanent legal force.
3. **Less Effective Asset Tracking and Identification**: Existing regulations are less specific in regulating the role of law enforcement agencies, such as the Corruption

Eradication Commission (KPK), in tracking and identifying assets obtained from corruption crimes. In addition, cooperation between law enforcement agencies at home and abroad in tracking corruption assets must also be improved.

An update of asset forfeiture regulations is urgently needed to overcome these weaknesses. The new Bill must include more detailed and adequate provisions for confiscating assets resulting from corruption crimes. Here are some of the articles in the proposed Bill:

Article 38A of the Bill:

1. Assets obtained from the proceeds of corruption crimes, either directly or indirectly, must be confiscated by the state.
2. Confiscated assets include movable and immovable goods and disguised or concealed assets.

Explanation: This article affirms the state's obligation to confiscate assets obtained from the proceeds of corruption without waiting for a court decision with permanent legal force. Thus, the asset forfeiture process can be carried out faster and more effectively.

Article 38B of the Bill:

1. Asset forfeiture can be carried out before a court decision with permanent legal force through a temporary confiscation mechanism.
2. Provisional seizures may be extended based on the needs of investigation and prosecution, with the court's approval.

Explanation: This article introduces a temporary forfeiture mechanism that allows the seizure of assets to be carried out before a court decision with permanent legal force. This temporary confiscation is essential to prevent corrupt actors' escape or concealment of assets.

Article 38C of the Bill:

1. The Corruption Eradication Commission (KPK) is authorized to track, identify, and confiscate assets suspected of originating from corruption crimes.
2. The KPK is obliged to cooperate with relevant agencies, both at home and abroad, to ensure the effectiveness of asset tracking and confiscation.

Explanation: This article emphasizes the role of the KPK in tracking, identifying, and confiscating assets suspected of originating from corruption crimes. In addition, this article

also emphasizes the importance of cooperation with relevant agencies at home and abroad to ensure the effectiveness of asset tracking and confiscation.

Article 38D of the Bill:

1. The court can order confiscating assets suspected of originating from corruption crimes based on sufficient evidence, even if the defendant has not been found guilty.
2. The confiscated assets can be used for the benefit of the state, including the return of state losses due to corruption crimes and the development of anti-corruption programs.

Explanation: This article allows the court to order the forfeiture of assets suspected of stemming from a corruption crime based on sufficient evidence without waiting for the defendant to be found guilty. The confiscated assets can be used for the benefit of the state, including the return of state losses and the development of anti-corruption programs.

Part 38E RUU:

1. The defendant or a third party who feels aggrieved by the asset forfeiture can appeal through the established judicial mechanism.
2. The court must decide on the appeal within the stipulated time to ensure fairness and legal certainty.

Explanation: This article provides an appeal mechanism for defendants or third parties who feel aggrieved by asset forfeiture to protect their rights. The court must decide on the appeal within the stipulated time to ensure fairness and legal certainty.

The Asset Forfeiture Bill is expected to be an important means for law enforcement officials to eradicate corruption and other criminal acts and become an important instrument in confiscating assets obtained from crimes and returning assets that the perpetrators have confiscated. In this regard, there are five points of urgency for the importance of the Asset Forfeiture Bill: first, saving time and costs for handling cases. Second, the scope of asset forfeiture is further from the applicable regulations so that it can increase the potential *for asset recovery*. Third, asset substitution for assets that cannot be confiscated abroad. If assets resulting from criminal acts abroad cannot be confiscated, they can be replaced with assets equivalent to that value. Fourth, managing seized assets in one institution is more effective and efficient. Fifth, the reverse proof system must be applied in its entirety through this mechanism, where the respondent must be able to prove that the assets produced are not the result of a criminal act.

Efforts to reform criminal Law by forming a bill (RUU) and the criminal code (KUHP) are basic needs of the community to create fair law enforcement. Criminal law reform is a policy that demands changes from all aspects that touch philosophical aspects, namely changes or orientations to the principles to the level of values that underlie them.

Conclusion

As regulated by the Corruption Law, confiscating assets resulting from corruption is essential to eradicating corruption in Indonesia. The goal is to return state assets confiscated by corruptors and provide a deterrent effect. However, its implementation is still constrained by unclear legal norms and weak coordination between law enforcement agencies. Therefore, it is necessary to improve regulations and strengthen coordination to maximize the effectiveness of asset confiscation in eradicating corruption. The confiscation of assets resulting from corruption crimes in Islamic criminal Law is referred to as ta'zir punishment and is divided into four categories. Confiscation of assets can be imposed if the conditions for obtaining such assets are not met, such as assets obtained illegally, used for improper purposes, and violating the legal rights of others. In the context of the return of assets resulting from corruption crimes, there are two main views from scholars, namely that corruptors are obliged to return the money that has been corrupted, even after receiving the punishment of cutting off their hands, and the punishment and fines or compensation for corruptors can be united. Asset forfeiture is regulated as an act of expropriating assets obtained from corruption crimes without needing a court decision to convict the perpetrator. The process of confiscating assets resulting from corruption crimes in Indonesia previously took a long time, so the Asset Forfeiture Bill proposes asset forfeiture without criminal charges (*non-conviction based asset forfeiture*) to speed up the process of asset forfeiture from criminal offenders.

Developing clearer regulations on confiscating corrupt assets and improving coordination between law enforcement agencies is important to ensure their effectiveness. Socialization and training on asset forfeiture procedures, including *non-conviction based asset forfeiture*, is essential. The use of information technology and a multidisciplinary approach will maximize results. Integrating Islamic criminal law principles into national regulations can increase the legitimacy of society. In addition, it is necessary to strengthen the asset return mechanism and monitor the continuous implementation of this policy.

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