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Implementation of Confiscation of Beneficial Owner's Assets in Money Laundering Cases (Case Study of Ratu Atut Chosiyah)

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Abstract. *In the national legal framework, the concept of discussion on money laundering was first formulated and enforced in Law Number 15 of 2002 concerning the Crime of Money Laundering. This law was then updated and revised again in Law Number 25 of 2003. The existence of this law is expected by the State (government) to end money laundering, strengthen law enforcement considering the inadequate human resources involved in money laundering cases, and take a new approach to international collaboration in increasingly complex money laundering cases. Law Number 15 of 2002 concerning Money Laundering Crimes explicitly states that money that is laundered generally comes from criminal acts, including corruption as one of its main sources. The perpetrators will try to keep the proceeds of the crime away from their original source and camouflage them in the form of assets that appear legal. Furthermore, money laundering is defined as a set of procedures carried out to change the status of money from criminal acts-which is legally considered illegitimate or haram-into clean and acceptable income according to applicable laws. In practice, asset forfeiture not only functions as a repressive tool, but also as a preventive measure to prevent the shifting or escape of assets to other parties. Unfortunately, until now, the Draft Law on Asset Confiscation which is expected to provide a strong legal basis, is still stuck on the legislator's desk and has not been a priority in the National Legislation Program (Prolegnas).*

Keywords: *Application; Confiscation; Laundering; Money.*

1. Introduction

In the national legal framework, the concept of discussion on money laundering was first formulated and enforced in Law Number 15 of 2002 concerning the Crime of Money Laundering. This law was then updated and revised again in Law Number 25 of 2003. The existence of this law is expected by the State (government) to end money laundering, strengthen law enforcement considering the inadequate human resources involved in money laundering cases, and take a new approach to international collaboration in increasingly

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complex money laundering cases.[1] As stipulated in Article 2 paragraph (1) Law Number 8 of 2010, in the scope of the crime of money laundering as a criminal act that is a continuation of the main predicate crime, such as "corruption, bribery, narcotics, psychotropics, smuggling, banking crimes, capital markets, insurance and customs, gambling, human trafficking, etc."[2]

Law Number 15 of 2002 concerning Money Laundering Crimes explicitly states that money that is laundered generally comes from criminal acts, including corruption as one of its main sources. The perpetrators will try to keep the proceeds of the crime away from their original source and camouflage them in the form of assets that appear legal.[3] Furthermore, money laundering is defined as a set of procedures carried out to change the status of money from criminal acts—which is legally considered illegitimate or haram—into clean and acceptable income according to applicable laws. This practice is carried out for the personal benefit of the perpetrator and is a form of manipulation of the financial system and legal justice in the country. Legal systems rooted in common law recognize the concept of beneficial ownership, which distinguishes between legal ownership and beneficial ownership. Legal ownership refers to the party whose name is officially registered as the owner of an asset, who has the legal authority to transfer or register the asset. In contrast, a beneficial owner is a party who substantially enjoys the economic benefits of the asset, even though it is not formally registered as such owner. This means that this party has control and benefits over the property without having to have legal ownership documents. According to the International Tax Glossary, roles such as nominees and agents are often used to hide the identity of the true beneficial owner, while entities such as conduit companies are usually formed for the purpose of tax avoidance or disguising illegal cash flows.[4]

As an anticipatory step to overcome this problem, eradicating corruption in Indonesia requires a more effective approach, one of which is by encouraging the implementation of asset forfeiture policies. Eradicating corruption is a constitutional and moral obligation to realize legal certainty, benefits, and justice. The rampant criminal acts of corruption not only erode state finances, but also weakens the sovereignty of the people as the legitimate owners of power. In many cases, corruption appears as a form of abuse of power by public officials, who use their positions for personal, group, or corporate gain. When such abuse results in losses to the state's finances and economy, then the act falls into the category of serious corruption. Therefore, the application of asset confiscation as a legal instrument that allows the state to revoke financial benefits from crime is very important.[5]

[1]Moeljatno (2015), *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta).
[2]Soedarto, *Hukum dan Hukum Pidana*, (Bandung: Alumni, 1977).
[3]F. Zakirfan (2018), *Peranan Penyidik dalam Penyidikan Tindak Pidana Pencucian Uang yang Dilakukan oleh Travel Umroh (Studi Kasus First Travel)*, (Tesis, tidak diterbitkan).
[4]Anthony Tiono & R. Arja Sadjiarto (2013), "Penentuan Beneficial Owner Untuk Mencegah Penyalahgunaan Perjanjian Penghindaran Pajak Berganda", *Tax and Accounting Review,* Vol.3, No.2, p.3-4
[5]International Consortium of Investigative Journalist. *"Pandora Papers: An Offshore Data Tsunami"*.https://www.icij.org/investigations/pandora-papers/about-pandora-papers-leak-dataset/, (accessed on 30 April 2025) .

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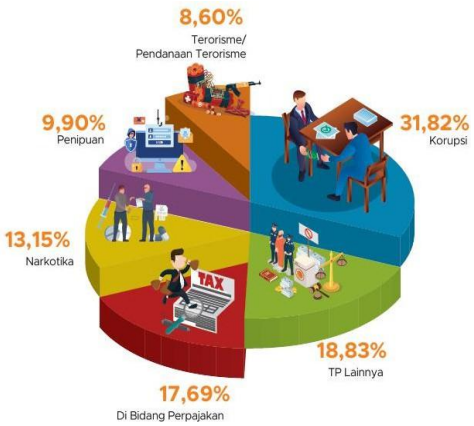
Table 1.1 Composition of Predicate Crimes in TPPU Decisions for 2021-2023



Source: Anti-Money Laundering and Countering the Financing of Terrorism (APUPPT) Statistical Bulletin.[15]

In practice, asset forfeiture not only functions as a repressive tool, but also as a preventive measure to prevent the shifting or escape of assets to other parties. Unfortunately, until now, the Draft Law on Asset Confiscation which is expected to provide a strong legal basis, is still stuck on the legislator's desk and has not been a priority in the National Legislation Program (Prolegnas). In fact, the ratification of this regulation is very important to address the weaknesses of the current legal system which is still not optimal in tracing and confiscating assets resulting from crime, especially if the assets are no longer in the hands of the perpetrators directly. Furthermore, the asset recovery approach needs to focus not only on the main perpetrators, but also on assets under the control of third parties, including beneficial owners, who often act as intermediaries or store the proceeds of crime. Without strong and effective legal instruments, the state will continue to have difficulty in reaching and returning assets that have been hidden through complex money laundering schemes.[6]

Weak regulations and the difficulty of proving the seizure of assets owned by beneficial owners are major problems in law enforcement, especially in corruption and money laundering. In Indonesia, although there are a number of regulations related to money laundering, identification of beneficial owners is still limited and difficult. This is due to the lack of transparency of data on company ownership and assets owned by individuals who actually control or benefit from an entity. In addition, complex and layered ownership structures, including the use of nominees or shell companies, are often used to hide the identity of the true beneficial owner.[7] This limitation is further exacerbated by the lack of regulation requiring disclosure of beneficial ownership in every transaction companies, which makes it difficult for law enforcement to track and prove who actually controls the assets.[8] Without a strong mechanism to uncover and trace this flow of ownership, the process of

[6] Buletin Statistik APUPPT Vol. 11, No. 9 - Edisi September 2023
[7] Sagala, R. (2020). *Tantangan Penegakan Hukum dalam Pencucian Uang di Indonesia*. Jakarta: Penerbit Hukum, p. 45.
[8] FATF. (2018). *The Role of Beneficial Ownership Transparency in Preventing Money Laundering and Terrorist Financing*. Financial Action Task Force, p. 12

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confiscating criminal assets owned by beneficial owners becomes very difficult and often ineffective. Therefore, strengthening regulations related to disclosing beneficial owners and proving ownership in the asset confiscation process needs to be a primary concern in the reform of the legal system in Indonesia.[9]

2. Research Methods

The research approach method used in this thesis is a pure legal approach (legal research) with a normative legal method. This research is normative legal because the focus of this study is on the legal aspects related to the application of asset confiscation against beneficial owners in money laundering cases.

The type of legal research conducted in a normative legal manner is normative legal where law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.[10] This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations.[11]

This research is based on a study of relevant laws and regulations, legal doctrines, and court decisions, particularly in the case of Ratu Atut Chosiyah. This study attempts to analyze how positive legal provisions in Indonesia regulate asset confiscation in money laundering crimes, and to what extent existing regulations can reach beneficial owners as parties who indirectly control assets.

3. Results and Discussion

3.1. Implementation of Asset Confiscation in the Case of Ratu Atut Chosiyah

The problem of asset confiscation through criminal mechanisms based on the Criminal Code and Criminal Procedure Code is considered to take a long time so that there are other options to ensnare the assets of perpetrators of Money Laundering Crimes, namely using civil mechanisms. Civil asset confiscation is carried out not against cases tried in criminal courts. The subject does not need to be proven to have committed a crime. so that if the money they get is suspected of coming from a crime, the state can seize their assets by suing for assets or filing an in rem lawsuit. According to Fletcher N. Baldwin, Jr., civil confiscation utilizes a

[9] UNODC dan Komisi Pemberantasan Korupsi RI (2020), *Buku Panduan Investigasi Mengenali Pemilik Manfaat (Beneficial Ownership) Dalam Kasus Tindak Pidana Korupsi* (Jakarta: Direktorat Pembinaan Kerja Antar Komisi dan Instansi KPK), 2.
[10] Amiruddin & Zainal Asikin (2012), *Introduction to Legal Research Methods*, Jakarta : Raja Grafindo Persada. p.118
[11] Soeryono Soekarto (1984), *introduction to legal research*. (Jakarta: UI Press), p. 20.

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reverse burden of proof and has the ability to seize immediately after a suspected connection between the crime and the assets.[12]

Fletcher N. Baldwin, Jr. stated that, because civil forfeiture utilizes a reverse burden of proof and has the ability to confiscate immediately upon the suspicion of a connection between the crime and the asset, the civil forfeiture model is very important to be implemented in Indonesia.[13] In addition, in civil confiscation, it is aimed at goods or money not the perpetrator of the crime or criminal, so that state assets can still be taken even though the perpetrator has died or has not been examined or decided by the panel of judges in his criminal case. It seems that this approach was then used, and is now known by another term, "asset confiscation without punishment" or "asset confiscation without punishment".[14]

In the Islamic government system, the concept of hisbah is known, namely the state's authority to supervise and take action against all forms of economic injustice and corrupt practices. Imam Al-Ghazali explained that hisbah aims to maintain public welfare and prevent the destruction of public property.[15] Therefore, the state has the authority to seize assets obtained through unjust means (mistreatment), even if the assets have been transferred to a third party or "legal puppet" as occurs in the case of beneficial owners.

Civil confiscation has been regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, namely in Article 67 and further regulated through Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling of Assets in Money Laundering Crimes or Other Crimes, related to technical handling. Assets that can be confiscated according to these provisions are only assets in the user's account at the financial service provider. It is not possible to confiscate other assets, including movable and immovable goods. This causes difficulties in handling TPPU cases because the assets owned by the suspect perpetrator of TPPU with DPO status can be transferred or used for movable or immovable property so that they are not included in the blocked account, including its contents. In addition to these provisions, there has not been a clear regulation found that can be used as a tool to seize goods or money from perpetrators of predicate crimes or money laundering.

If we trace the legal logic based on the provisions of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, the new court will determine confiscation without punishment as a follow-up reaction to the temporary suspension of PPATK transactions that were handed over to investigators, then the investigators did not find the perpetrator, but the assets were found. This means that according to Article 67 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes,

[12] Saputro, Heri Joko; Chandra, & Tofik Yanuar (2021). Urgensi Pemulihan Kerugian Keuangan Negara Melalui Tindakan Pemblokiran Dan Perampasan Asset Sebagai Strategi Penegakan Hukum Korupsi. *Mizan: Journal of Islamic Law*, p. 284

[13] Saputro & Heri Joko, p. 284

[14] Fuadi, Gumilang; Putri, Windy Virdinia; Raharjo, & Trisno (2024). Tinjauan Perampasan Aset dalam Tindak Pidana Pencucian Uang dari Perspektif Keadilan. *Jurnal Penegakan Hukum dan Keadilan*, p. 59.

[15] Al-Ghazali, Abu Hamid. (2005). *Ihya Ulumuddin*, Juz II. Beirut: Dar al-Kutub al-'Ilmiyyah.

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the temporary suspension of transactions is mandatory which then has an impact on its derivative regulations stipulating that the minutes of the temporary suspension of transactions must be included in the case file in cases that use the legal instrument. Confiscating assets criminally, civilly, and administratively for money laundering has actually been regulated in positive Indonesian law. However, in its regulations and implementation there are still legal gaps that can be exploited by perpetrators of crimes. This results in the purpose of punishment which is not limited to the perpetrator in a repressive manner through the maximum threat of punishment, but also for the prevention of criminal acts through tracing and returning assets resulting from criminal acts has not been achieved. With the failure to achieve the purpose of punishment against money laundering, legal justice for the state and society as victims of money laundering crimes has not been realized.

Non-Conviction Based (NCB) Asset Forfeiture is a concept of returning state losses that first developed in common law countries, such as the United States. This concept aims to return state losses caused by criminal acts without first imposing criminal penalties on the perpetrators.[16] The category of assets that can be seized using the NCB asset forfeiture method are assets obtained directly or indirectly from criminal acts, including those that have been donated or converted into personal, other people's, or corporate assets. In principle, there are 2 forms of asset forfeiture, namely in personam forfeiture and in rem forfeiture. First, in personam forfeiture is an action directed at a person personally for his/her mistakes through available legal mechanisms or also known as forfeiture through criminal law mechanisms. This action must be carried out based on a criminal court decision. In this case, the prosecutor must prove that the assets seized are the result or means of a criminal act. Second, in rem forfeiture, also known as civil *forfeiture*, civil forfeiture, and NCB asset forfeiture. Essentially, a lawsuit is filed against an asset, not a person. This action is separate from criminal justice, but merely determines that an asset has been tainted by a crime.

Of the two types of asset confiscation models, there are the following similarities: first, it aims to prevent criminals from gaining profit from the proceeds of crime. Second, as an effort to create a deterrent effect on the perpetrators (preventive) so that the assets are not used for further criminal purposes.[17] The emergence of the concept of NCB asset forfeiture is motivated by a shift in the paradigm of law enforcement that is oriented towards catching the perpetrator (follow the suspect), changing to an orientation towards pursuing losses (follow the money). This is important because economic-motivated crimes, such as corruption or money laundering, can cause state losses. Current laws and regulations are considered not to comprehensively regulate NCB asset forfeiture as recommended by the UN and other international institutions.[18] NCB asset forfeiture is used when asset takeover cannot be carried out, because the asset owner has died, the criminal process has ended, the defendant

[16] Yunus Husein (2019), Penjelasan *Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi*, Pusat Studi Hukum dan Kebijakan & Pusat Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI, Jakarta, p. 6

[17] Theodore S. Greenberg (2009), *Stolen Asset Recovery, A Good Practices Guide for Non-Conviction Based Asset Forfeiture,* The World Bank & UNODC, Washington D.C., p. 18

[18] In Article 54 number 1 of the United Nations Convention against Corruption 2003 and Article 12 of the United Nations Convention against Transnational Organized Crimes.

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is free, criminal prosecution has taken place but asset takeover was unsuccessful because the asset was only recently discovered, the defendant is not in custody jurisdictional boundaries, the name of the asset owner is unknown, and there is insufficient evidence to initiate criminal charges.

In general, the provisions regarding the confiscation of assets without criminal prosecution are in line with international conventions or agreements as follows:

1. United Nations Convention Against Corruption 2003 (UNCAC)[19];

2. United Nations Convention Against Transnational Organized Crimes (UN-CATOC)[20];

3. International standards in the field of prevention and eradication of money laundering or the Financial Action Task Force (FATF).[21]

In principle, there are also many legal bases that can be used to carry out asset seizures in Indonesia. However, not all of these provisions regulate the seizure of assets without criminal penalties. In fact, these provisions are known by several different terminologies. However, in essence, they are provisions for the seizure of goods related to criminal acts, most of which must go through a judicial process, both civil and criminal. Several rules and provisions related to asset seizure in Indonesian legislation include:

1. Law Number 1 of 2023 concerning the Criminal Code (KUHP).[22]

2. Law No. 8 of 1981 concerning Criminal Procedure Law.[23]

3. Law No. 31 of 1999 concerning Criminal Acts of Corruption as amended by Law No. 20 of 2001.

[19] Article 54 number 1. letter (c) UNCAC 2003 firmly asks countries: "Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases"

[20] Article 12 of UN-CATOC states that Member States shall adopt similar measures within their domestic legal systems towards the greatest possible development as necessary to enable the confiscation of: (a) Proceeds of crime derived from offences covered by this Convention or property values associated with such proceeds; and (b) Property, equipment or other means used in or intended for use in an offence covered by this Convention.

[21] Recommendation No. 3 FATF states "Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law"

[22] Asset confiscation in the Criminal Code is known in Article 66 with the term confiscation of certain goods. In that context, asset confiscation is a form of additional punishment that can be imposed on perpetrators of criminal acts.

[23] Confiscation of assets according to this law can be interpreted as confiscation as regulated in Article 1 number 16 of the Criminal Procedure Code or confiscated for the benefit of the state as regulated in Article 194 paragraph

4. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU).[24]

5. Law Number 10 of 1995 concerning Customs as amended by Law Number 17 of 2006.

6. Law Number 35 of 2009 concerning Narcotics.

7. Law Number 32 of 2014 concerning Maritime Affairs.

8. Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009.

These provisions are only some examples of regulations related to the confiscation of assets resulting from criminal acts, apart from that there are still many regulations related to the confiscation of assets according to the categorization of criminal acts, especially criminal acts motivated by economic gain. Of these, regulations that explicitly regulate the instrument for confiscating assets without criminal penalties are only found in a few regulations, such as in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (TPPU). The ratification of NCB asset forfeiture in the a quo law which is based on UNCAC 2003 which has been ratified through Law No. 7 of 2006. Article 54 paragraph (1) letter c UNCAC requires all state parties to consider taking actions deemed necessary so that the confiscation of assets resulting from corruption is possible without criminal proceedings in cases that cannot be prosecuted, for example on the grounds of death, escape, and others. These provisions are then emphasized in Article 67 paragraph (2) of Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Crimes (TPPU). However, technically the regulation is not very complete, so that the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling of Assets in Money Laundering Crimes or Other Crimes was issued to fill the legal gap.

The existence of a legal vacuum related to the mechanism for confiscation of assets in Article 67 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering (TPPU) results in the absence of legal certainty, as in the theory of legal certainty that Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty will lose its meaning because it can no longer be used as a guideline for behavior for everyone. Certainty itself is referred to as one of the objectives of law. So with the alpha of the arrangement of the mechanism related to confiscation of assets, it can be stated that Article 67 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering (TPPU) does not yet have legal certainty. More comprehensively, confiscation of assets without criminalization has in principle been formulated in the Bill Asset Confiscation.[25]

[24] Article 67 paragraph (2) of the TPPU Law: In the event that the alleged perpetrator of the crime is not found within 30 (thirty) days, the investigator may submit an application to the district court to decide that the assets are state assets or returned to the entitled party.

[25] Article 1 number 3 of the Criminal Asset Confiscation Bill: Criminal Asset Confiscation, hereinafter referred to as Asset Confiscation, is a legal action taken by the state to confiscate Criminal Assets based on a court decision that has permanent legal force without being based on the punishment of the perpetrator.

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However, until now the bill has not been passed in the Indonesian House of Representatives. The urgency of passing the bill is based on at least the following:

1. The construction of the criminal law system in Indonesia has not placed the confiscation and seizure of proceeds and instruments of crime as an important part of efforts to reduce the crime rate in Indonesia;

2. Efforts to return criminal assets abroad have become difficult to implement due to the absence of similar provisions, considering that Indonesia has not yet ratified the Asset Confiscation Bill as desired by the UNCAC;

3. The current laws and regulations are considered not to comprehensively and in detail regulate the confiscation of assets related to criminal acts, and still have many shortcomings (loopholes) when compared to the NCB Asset Forfeiture concept recommended by the UN and other international institutions.

Asset confiscation in criminal procedure law is included in the scope of additional criminal penalties according to Article 10 of the Criminal Code. The Criminal Code system basically does not recognize the ability to impose additional penalties independently without imposing the main penalty. Indonesia has actually regulated efforts return of state financial losses in Indonesian legislation, including in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the TPPU Law), and Supreme Court Regulation No. 1 of 2013 concerning Procedures for Application for Handling of Assets in Money Laundering Crimes (hereinafter referred to as PERMA Handling of Assets). In the TPPU Law itself, Article 67 accommodates the confiscation of assets without the need for criminal penalties. Based on the article above, the results of the examination by the PPATK on assets suspected of being the proceeds of crime are submitted to the court to be decided to be returned to the state. PPATK is an institution that is authorized to provide information processing and detect the existence of money laundering crimes as in Article 26 of the TPPU Law.

In the case of an application regulated in Article 67 paragraph (2) of the TPPU Law, the mechanism for submitting an application is further regulated in the PERMA on Asset Handling. Then if we look at the provisions in the PERMA on Asset Handling, in Article 1 itself it is explained that the scope of this regulation is an application for handling assets if the perpetrator of the crime as regulated in the TPPU Law is not found. In Article 8 of the PERMA on Asset Handling, it is explained that an application submitted to the District Court regarding the handling of assets will announced in advance for 30 (thirty) working days, in order to provide an opportunity for parties who feel entitled to the assets to file objections. Then, when there are no objections, investigators in this case are required to provide evidence regarding the assets which will then be decided by the Judge as state assets or returned to their owners. In article 14, if there is an objection, the party filing the objection submits evidence and/or evidence and the origin of the assets that support the objection and the decision on the application for assets.

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The concept of Non-Conviction Based Asset Forfeiture is needed to restore state losses to the maximum extent caused by criminal acts of corruption. However, on the other hand, the concept of Non-Conviction Based Asset Forfeiture as an effort to recover stolen assets is very vulnerable to injuring the property rights of third parties. In fact, Indonesia has adopted the concept of Non-Conviction Based Asset Forfeiture in Indonesian legislation, and has even initiated the Asset Confiscation Bill. Seeing the formulation of existing norms spread across Indonesian legislation, in reality Indonesia does not adopt the concept of Non-Conviction Based Asset Forfeiture which is applied in parallel with in personam asset confiscation, but rather is placed as ammunition if in personam asset confiscation cannot be carried out on tainted assets in the context of implementing *stolen asset recovery*. So it is felt necessary to have a criminal law policy that accommodates the concept of Non-Conviction Based Asset Forfeiture with the concept of asset confiscation that has been running in Indonesia can run side by side this is felt necessary when there is overlapping jurisdiction in a case that allows Non-Conviction Based Asset Forfeiture to be allowed to be carried out. So, the two options of criminal prosecution and Non-Conviction Based Asset Forfeiture can be carried out simultaneously.

The difficulty in eradicating corruption, including money laundering, is because our legal norms are still very dependent on the Criminal Procedure Code (KUHAP), the principle of which is the principle of acusatoir, namely the principle that places the suspect or defendant as the subject in the examination of criminal cases. The freedom to provide and obtain legal counsel that is regulated shows the adoption of the principle of acusatoir, which means that the difference between preliminary examination and trial examination has basically been eliminated. After the enactment of the Criminal Procedure Code, the rights of the suspect actually received more recognition. This is because whoever makes the accusation, namely the prosecutor, is the one who is obliged to prove the accusation.[26]

The provisions in Article 74 of the Law on Money Laundering Crimes state that "investigation of Money Laundering Crimes is carried out by originating criminal investigators", in the explanation of Article 74, what is meant by originating criminal investigators who are authorized to handle investigations of Money Laundering Crimes other than Police investigators and Prosecutor's investigators include KPK investigators, the National Police Agency investigators, and

National Narcotics Agency (BNN), as well as the Directorate General of Taxes and the Directorate General of Customs and Excise of the Ministry of Finance, where investigators of predicate crimes can conduct investigations into Money Laundering if they find sufficient preliminary evidence of Money Laundering when conducting investigations into predicate crimes in accordance with their authority.

Furthermore, Article 79 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering:

[26] Considerations of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

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(1) If the defendant has been legally and properly summoned and is not present at the court hearing without a valid reason, the case may be examined and decided without the defendant's presence.

(2) If the defendant is present at the next hearing before the verdict is rendered, the defendant must be examined and all witness statements and letters read in the previous hearing are considered to have been read in the current hearing.

(3) A verdict rendered without the presence of the accused is announced by the public prosecutor on the court notice board, local government office, or notified to his attorney.

(4) In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed the crime of Money Laundering, the judge, upon the demands of the public prosecutor, will decide to confiscate the assets that have been confiscated.

(5) The decision on confiscation as referred to in paragraph (4) cannot be appealed for legal action.

(6) Any interested person may submit an objection to the court that has issued the decision as referred to in paragraph (5) within 30 (thirty) days from the date of the announcement as referred to in paragraph (3).

Then the procedure for confiscation of Money Laundering cases, the Money Laundering Law does not specifically regulate the confiscation procedure in handling Money Laundering cases. This means that confiscation is carried out in accordance with the provisions of the law. However, if there are still assets that have not been confiscated, the Money Laundering Law gives the judge the authority to order the public prosecutor to confiscate assets, as formulated in Article 81 of the Money Laundering Crime Law, namely: "In the event that sufficient evidence is obtained that there are still Assets that have not been confiscated, the judge will order the public prosecutor to confiscate the Assets."

The Criminal Procedure Code (KUHAP) also regulates that the legal action of confiscation precedes the legal action of seizure. So that confiscation in the Indonesian criminal law system is a temporary action by investigators in placing objects under their control which in Article 1 number 16 regulates that confiscation is carried out for the sake of evidence. Then in Article 38 paragraph (1) of the Criminal Procedure Code that confiscation can only be carried out by investigators with a permit from the local District Court Chief Justice and paragraph (2) of it regulates that if it is not possible to obtain a permit first, investigators can only confiscate movable objects and immediately report to the local District Court Chief Justice.

In the Criminal Procedure Law applicable in Indonesia, confiscation of the proceeds of crime has been implemented. Article 39 Paragraph (1) Letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) states that "what can be confiscated are: objects or claims of the suspect or defendant which are wholly or partly suspected of being obtained from a

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criminal act or as a result of a criminal act". In the case of theft, for example, the object stolen as a result of crimes that can be confiscated if found by investigators during arrest, search and examination.

The principle of balanced probability of principles was explained by a legal expert named Oliver Stolpe. With this principle, the owner of the property must be placed in a very high balanced probability so that he cannot be punished just because he cannot prove the legality of his property. On the other hand, the confiscated property is placed in a lower balanced probability so that if the confiscated property cannot be proven to be legal, the court can confiscate it for the state. Regarding the rules on the management of assets resulting from TPPU, it is currently guided by the Supreme Court Regulation (Perma) No. 1 of 2013 concerning Procedures for Settlement of Applications for Handling of Assets in Money Laundering Crimes or Other Crimes serves as a guideline for proceedings related to the seizure of assets as stated in Article 67 of Law No. 8 of 2010. Namely, the assets of the reporting party consisting of 16 financial service providers as regulated in Article 17 of Law No. 8 of 2010 can be regulated and immediately seized to be deposited with the State.[27]

The purpose of using a lower standard of proof is to overcome the difficulty of proving things that are may only be known by the accused. The prosecutor must be able to prove convincingly the fact of the crime and the amount of the proceeds of the crime. However, evidence to identify which part is the proceeds of the crime is another matter. The transfer of the proceeds of the crime by the suspect can be done as a manipulation of assets when it is beyond the control and supervision of others. Such hidden actions can be very easy to do with the increasing sophistication of commercial transactions and the ability to make orders to transfer rights to goods via computer or electronically on a national or international scale. The accused has a correlative burden to prove that the balance of probability that the goods examined were not purchased from the proceeds of crime.[28]

In Articles 32, 33, 34 and Article 38 of Law Number 31

In 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption requires public prosecutors to prove the existence of state losses. Meanwhile, the approach to Prevention and Eradication of Criminal Acts of Money Laundering through the follow the money strategy which is considered more advanced than the conventional criminal approach is still less than satisfactory because basically still carried out after the court decision is rendered (post-conviction forfeiture).

There are three legal gradations to determine whether the actions of the management are representative of corporate actions. First, crimes for corporation. Second, crimes against corporation. Third, criminal corporations. Basically, crimes for corporation are what are called corporate crimes. In this case, it can be said that corporate crimes are clearly committed for

[27] Abdul Rosyad, *perampasan-aset-cukup-putusan-hakim-pengadilan-negeri*, http:// www.hukumonline. com/berita/ baca/lt51a366 c135a9a/. accessed on 30 April 2025.
[28] Ramelan. et. Al (2008), *Panduan untuk Jaksa Penuntut Umum Indonesia dalam Penanganan Harta Hasil Perolehan Kejahatan*, Indonesia-Australia Legal Development facility, Jakarta, p. 57.

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the corporation, and not against. Corporate crimes are committed for the benefit of the corporation, not the other way around. Meanwhile, crimes against corporation are crimes committed by the management of the corporation itself (employees crime). In this case, the corporation is the victim and the management is the perpetrator. While a criminal corporation is a corporation that is deliberately formed to commit crimes. Another vocabulary is that the corporation is only used as a "mask" to smooth the real face of the corporation as the perpetrator of the crime.[29]

The criminalization of corporations with criminal threats is one of the efforts to avoid criminal action against the employees of the corporation itself. However, on the other hand, this corporate criminal liability is based on the doctrine of respondeat superior, a doctrine that states that corporations themselves cannot make mistakes. In this case, only corporate agents can committing a mistake, namely those who act for and on behalf of the corporation.[30]

Legal action to determine a corporation as a subject of criminal law does not mean eliminating criminal liability committed by its management, but is a form of expansion of criminal liability so that both corporate management and the corporation itself can be held criminally liable together but not within the framework of the doctrine of participation (deelneming). On the other hand, in the case of a parent company with a subsidiary, or a legal relationship between a consortium/KSO in activities that have criminal implications, the quality of the legal relationship between two or more legal entities can be qualified in the doctrine of participation as those who carry out or participate in carrying out among fellow corporations as subjects of criminal law.[31]

If the corporate administrators do not act for and on behalf of the corporation, then the criminal responsibility is only imposed on the corporate administrators themselves. Then if the corporate administrators (including beneficial owners) act for and on behalf of the corporation (together with the corporation), then the responsibility can be imposed on the corporation and the corporate management itself.

A corporation cannot be held criminally liable if the corporation's directing mind and will commits a crime against its own corporation and the corporation in question has prosecuted the actions of its directing mind and will. This requirement also indicates that the criminal acts committed by the parties (including the corporation's controlling personnel) are only attributed to the corporation if its actions provide benefits or advantages to the corporation.

*Beneficial Owner*can be used as an instrument to commit a crime. From the perspective of criminal law itself, beneficial ownership can be held accountable by expanding what was done

[29] Muladi,Op.Cit, p. 20-24
[30] Amalia, R (2016), Pertanggungjawaban korporasi dalam tindak pidana pencucian uang menurut hukum Islam. *Jurnal Al Jinayah,* 2, December)., p.388-407

[31] Sudirman, L., & Feronica. (2011). Pembuktian pertanggungjawaban pidana lingkungan & korupsi korporasi di Indonesia & Singapura. *Jurnal Mimbar Hukum*, 23 (2), p.237-429

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and what was the intention. In Indonesian criminal law, there is an expansion of criminal responsibility which is often referred to as participation (deelneming). Moeljatno stated that what is meant by participation is if there is more than one person involved in a crime. According to him, not all people involved can be said to be participants in the meaning of Article 55-56 of the Criminal Code, because everyone has their own categories that must be fulfilled.[32]

That in principle, corporations can be held criminally responsible not only when committing criminal acts of corruption but also other criminal acts such as TPPU and Terrorism Funding and in relation to this, Beneficial Owners can also be brought to criminal responsibility if they are indeed considered to have participated in it according to the provisions of Article 55 of the Criminal Code, namely for those who:

1. Order to do

2. Participate in

3. Encourage to do/motivate to do

4. Also helping/helping to do it

Basically, these four forms of participation can be implemented to beneficial ownership. This has a similar concept and purpose to the initial formation of beneficial ownership in Indonesia and is fully recognized by policy makers in Indonesia. In terms of accountability for the occurrence of corporate crimes, criminal penalties can be imposed on the management and/or the management's power of attorney as well as on the corporation. However, Criminal liability of managers is limited as long as the manager has a functional position in the corporate organizational structure.

For example, in a limited liability company, if the Beneficial Owner is not a party registered as a shareholder of a company, but has the power to control the company in terms of, for example, making decisions, appointing and dismissing directors and commissioners, being able to enjoy dividend distribution and so on, then it can be ascertained that the person is the owner and actual beneficial owner of the company. In determining whether or not the Beneficial Owner in this category can be held accountable in the event of a loss or even a criminal act, of course, more in-depth evidence must be carried out regarding what is the basis for the criminal act.

Formally, if the nominee as legal owner protects the Beneficial Owner from all possible responsibilities that can be imposed on the beneficial owner, then the responsibility will stop at the nominee. However, if the nominee is not willing to bear all of these responsibilities, then the Beneficial Owner can be held accountable up to his personal assets. Meanwhile, in tax crimes, the KUP Law does not specifically regulate the determination of the Beneficial

[32] Moeljatno, *Delik-delik Percobaan dan Delik-delik Penyertaan*, (Jakarta: PT Bina Aksara, 1985), p. 63

Owner and his/her responsibility when a crime occurs in the taxation sector. However, when a tax crime occurs, for example, the taxpayer who do not submit a notification letter or taxpayers who submit an incorrect and/or incomplete notification letter, then the Beneficial Owner as the actual beneficiary of the action can be held accountable because based on Article 43 of the KUP Law, the criminal provisions in Article 39 and Article 39A also apply to representatives, proxies, employees of taxpayers, or other parties who order, participate in, encourage, or assist in committing criminal acts in the field of taxation.

The Beneficial Owner's responsibility for criminal acts of corporate administrators who can be held personally criminally responsible is for the actions of the Beneficial Owner who can materially prove that the actions are a form of participation in the actions of corporate administrators that violate criminal law, either in the form of ordering to do, participating in doing, encouraging to do, or helping to do. If it cannot be proven that there was participation, then criminal responsibility lies with the corporate administrators and/or the corporation itself.

3.2. Effectiveness of Asset Confiscation Implementation in Beneficial Owner Cases in the Ratu Atut Chosiyah Case

The application of asset forfeiture in the context of beneficial ownership faces serious challenges in Indonesia. The case which befell the family of the former Governor of Banten, Ratu Atut Chosiyah, is an important study in seeing the effectiveness of this legal instrument against corporate entities that are indirectly controlled through family relations and political loyalists.

a. Complex and Multi-Layered Beneficial Owner Structure

In the case of the Atut dynasty, a pattern of control of government projects was found by a network of companies that were not formally registered under Atut's name, but were controlled by her family and loyalists. A number of companies such as PT Sinar Ciomas Wahana Putra, PT Ginding Mas Wahana Nusa, and PT Buana Wardana Utama, are entities suspected of being controlled by indirect beneficial owners, namely Atut's family through nominees or confidants.

In this context, the identification of beneficial owners becomes crucial, given the nature of corruption crimes which are transactional and involve disguising the identity of ownership. According to the FATF (Financial Action Task Force), a beneficial owner is a natural person who ultimately owns or controls a legal entity, even though they are not formally registered as shareholders or directors.[33]

[33] Indonesia Corruption Watch. (2014). *Laporan Investigasi Dugaan Penguasaan Proyek oleh Dinasti Atut di Provinsi Banten dan Kementerian PU*. Jakarta: ICW.

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However, Indonesia faces challenges in enforcing this due to the limitations of the beneficial ownership registration system which is declarative in nature and has not been fully verified by independent authorities.

b. Asset Confiscation and the Challenges of Proving Covert Ownership

The Money Laundering Law (TPPU) in Indonesia has provided a legal basis for asset confiscation, both through criminal and civil mechanisms. However, its effectiveness in the context of beneficial ownership depends on proving the connection between the main perpetrator and the assets owned by a third party. In the case of the Atut dynasty, many assets and projects were won by companies that were not legally in Atut's name, making it difficult to prove in court.

According to Schott (2006), asset forfeiture will be effective if the state has the ability to prove that the assets seized is the result of a criminal act or is used to commit a crime, even though it is not directly in the hands of the perpetrator.[34] This is where the application of reverse burden of proof or non-conviction based forfeiture becomes important.

However, the application of the reversal of the burden of proof in Indonesia is still limited and is often faced with constitutionality tests related to the protection of property rights.

3.3. International Practices in Asset Confiscation in Cases Beneficial Owner

Asset confiscation in the context of organized crime and corruption using beneficial ownership as a disguise has become a global concern. Many countries have developed legal frameworks and international cooperation to address the practice of hiding wealth through fictitious legal entities and third-party accounts.

a. UNCAC and International Principles

The 2003 United Nations Convention against Corruption (UNCAC) was a milestone in setting international standards for asset forfeiture. Article 31 of UNCAC states that states must provide authority to confiscate assets originating from criminal acts of corruption, including if the assets have been transferred to a third party.[35]

"Each State Party shall take measures as may be necessary to enable the confiscation of property... including property into which such proceeds of crime have been transformed or converted."(UNCAC, Article 31)

An important principle in the UNCAC is non-conviction based forfeiture, namely the confiscation of assets without requiring a prior criminal verdict against the principal

[34] FATF. (2012). *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. Paris: FATF/OECD.
[35] United Nations. (2003). *United Nations Convention against Corruption (UNCAC)*.

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perpetrator, which is particularly relevant in the context of beneficial ownership, where the beneficial owner is not always the party directly committing the crime.

b. Financial Action Task Force (FATF) and Beneficial Owner Transparency

FATF, the international body that develops standards for preventing money laundering and terrorism financing, in Recommendation 24 and Guidance on Beneficial Ownership urges countries to have a registration system and transparent access to beneficial ownership information.[36] Countries such as the UK have implemented the Persons with Significant Control Register through the UK Companies Act 2006 which requires disclosure of individuals who control corporate entities. Similarly, the European Union has passed the Fifth Anti-Money Laundering Directive (5AMLD) which requires public access to beneficial owner information.

Countries such as the UK through Unexplained Wealth Orders (UWO) have successfully seized assets owned by beneficial owners without the need for criminal evidence, simply by showing a discrepancy between wealth and official sources of income.[37] Meanwhile, Indonesia does not yet have a similar mechanism that can be used effectively against elite corruption perpetrators with complex corporate networks.

Unexplained Wealth Orders (UWO) are a legal instrument implemented by the UK through the Proceeds of Crime Act 2002 (POCA), which was later strengthened by the Criminal Finances Act 2017. UWOs allow UK authorities, in this case, the National Crime Agency (NCA), to request individuals suspected of having wealth inconsistent with their official income to explain the origin of the wealth. If the individual fails to provide adequate explanation, the related assets may be seized, without the need for clear evidence of a crime.

The application of UWO has proven effective in dealing with assets held by beneficial owners involved in economic crimes, such as money laundering and corruption. For example, in cases involving oligarchs or individuals with wealth that seems inconsistent with their occupation or social status. This success has been achieved largely because the UWO mechanism allows for easier proof of discrepancies between assets held and reported income, without requiring direct proof of a specific crime.

Through this instrument, the UK has successfully combated abuses of the international banking system and global transactions that obscure the origins of wealth. It has become an effective tool in combating money laundering, as well as identifying and seizing assets derived from criminal activity, particularly those involving beneficial ownership, which are often hidden behind complex networks of foreign companies and individuals.

[36] Financial Action Task Force (FATF). (2023). *Guidance on Beneficial Ownership*.
[37] Transparency International UK. (2019). *At Your Service: Investigating How UK Businesses and Institutions Help Corrupt Individuals Launder Their Money and Reputations*. London: TI-UK

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UNODC also stressed the importance of cross-jurisdictional cooperation in the identification and repatriation of assets held through beneficial owners, especially those located abroad.[38] UNODC also emphasized the importance of transparency mechanisms that can help countries access information related to beneficial ownership in a more efficient manner. At the international level, organizations such as the Financial Action Task Force (FATF) also play an important role in encouraging countries to implement stricter regulations on beneficial ownership and money laundering. This includes the establishment of standards and guidelines for beneficial ownership disclosure and the use of mechanisms such as UWOs to facilitate the process of seizing assets from individuals involved in organized crime.[39]

Unlike the UK, Indonesia still faces many challenges in terms of transparency of corporate ownership and identification of beneficial owners. Indonesia has taken several steps to improve transparency through policies such as The Financial Transaction Reports and Analysis Center (PPATK), which is tasked with tracking suspicious financial transactions, and regulatory programs regarding disclosure of beneficial ownership. However, the implementation of mechanisms stronger provisions for asset seizure without criminal evidence, as implemented by the UK through UWOs, are not yet common practice in Indonesia.

One step that Indonesia can take is to increase cross-jurisdictional cooperation and strengthen coordination between law enforcement agencies, such as the Corruption Eradication Commission (KPK), the Attorney General's Office (AGO), and the Financial Transaction Reports and Analysis Center (PPATK). Indonesia needs to increase its capacity to track and identify beneficial ownership and introduce legal instruments that can address mismatches between assets and income more effectively, such as the UWO model implemented in the UK. A similar mechanism would be very useful in combating corruption and financial crimes, especially those involving public officials and large companies with very complex networks.[40]

4. Conclusion

The legal position of beneficial owners in money laundering crimes (TPPU) is very important because of their role in hiding the real owners of assets derived from illegal activities. Disclosure of beneficial owners is a crucial step in detecting and preventing money laundering practices involving corporate entities or complex financial structures. In the Indonesian legal system, although there have been efforts to strengthen transparency through Presidential Regulation No. 13 of 2018, the challenges in identifying and tracking beneficial owners are still great. Therefore, stricter implementation and supervision of the disclosure of beneficial owner identities are needed to support more effective money laundering prevention. In the corruption case involving Ratu Atut Chosiyah and her network, the application of asset

[38] United Nations Office on Drugs and Crime (UNODC). (2020). *Asset Recovery Handbook: A Guide for Practitioners (2nd ed.)*. Washington DC: StAR Initiative, World Bank Group

[39] Naylor, R. T. (2014). The Role of Financial Intelligence Units in Countering Financial Crimes. *The Journal of Financial Crime,* 21(3), 330-350.

[40] Budiarjo, D. (2020). Regulasi Beneficial Ownership di Indonesia: Analisis Perkembangan dan Tantangannya. *Jurnal Hukum Bisnis*, 28(2), 145-160.

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confiscation against beneficial owners is a significant legal challenge in Indonesia. The layered ownership structure and the use of nominees by Atut's family create difficulties in identifying parties who substantively control the assets resulting from corruption. Although the Law. Money Laundering Crime has enabled asset seizure, the process of proving hidden ownership by third parties is still hampered by the weakness of the beneficial ownership registration system which is declarative and has not been independently verified. This has resulted in many corporate entities owned by loyalists or Atut's family remaining outside the reach of the law. When formal criminal evidence is difficult to do, the state should be able to adopt a non-conviction based forfeiture approach as recommended by UNCAC and practiced in the UK through Unexplained Wealth Orders (UWO), to seize assets whose source of wealth cannot be reasonably explained by the related parties. The absence of this mechanism in Indonesia strengthens the gap in law enforcement against political elites with complex corporate networks.

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Regulation:

Article 1 number 3 of the Criminal Asset Confiscation Bill: Criminal Asset Confiscation, hereinafter referred to as Asset Confiscation, is a legal action taken by the state to confiscate Criminal Assets based on a court decision that has permanent legal force without being based on the punishment of the perpetrator.

Article 12 of UN-CATOC states that Member States shall adopt similar measures within their domestic legal systems towards the greatest possible development as necessary to enable the confiscation of: (a)

Article 54 number 1. letter (c) UNCAC 2003 firmly asks countries: "Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases"

Article 67 paragraph (2) of the TPPU Law: In the event that the alleged perpetrator of the crime is not found within 30 (thirty) days, the investigator may submit an application to the district court to decide that the assets are state assets or returned to the entitled party.

Asset confiscation in the Criminal Code is known in Article 66 with the term confiscation of certain goods. In that context, asset confiscation is a form of additional punishment that can be imposed on perpetrators of criminal acts.

Confiscation of assets according to this law can be interpreted as confiscation as regulated in Article 1 number 16 of the Criminal Procedure Code or confiscated for the benefit of the state as regulated in Article 194 paragraph

Considerations of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

In Article 54 number 1 of the United Nations Convention against Corruption 2003 and Article 12 of the United Nations Convention against Transnational Organized Crimes.

Proceeds of crime derived from offences covered by this Convention or property values associated with such proceeds; and (b) Property, equipment or other means used in or intended for use in an offence covered by this Convention.

Recommendation No. 3 FATF states "Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal

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conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law"