Law Development Journal
ISSN : 2747-2604
Volume 4 Issue 2, June 2022, (298-306)

The Forfeiture of the Convict's Assets Obtained from the Corruption Crime

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Abstract.
The practice of corruption in Indonesia occurs in almost every layer of the bureaucracy, both legislative, executive and judicial, and has even become entrenched and has also spread to the business world, making it very difficult to change it. That uncovering criminal acts of corruption, finding the perpetrators and placing the perpetrators of criminal acts in prison has not been effective in reducing the level of corruption crimes, especially if it is not accompanied by efforts to confiscate and confiscate the proceeds of corruption. This study was conducted to determine the implementation of the seizure of assets convicts of corruption in the criminal act of corruption Jiwasraya. This study uses an empirical juridical approach with descriptive analytical research specifications, types and sources of data, namely primary data by conducting interviews and secondary data by conducting library research. The results of the study indicate to determine the implementation of the seizure of assets convicts of corruption in the criminal act of corruption Jiwasraya. The inhibiting factor is that many goods resulting from corruption have been transferred to other parties as well as legal constraints, while efforts to overcome them are that clear rules are needed to carry out the seizure of assets belonging to the Jiwasraya corruption convicts, and cooperation with related parties is needed to facilitate the implementation of asset confiscation convicted of corruption.
Keywords: Assets; Convicts; Confiscation; Enforcement.

1. Introduction

The corruption crime in Indonesia can no longer be said to be an ordinary crime, but is a very extraordinary crime[1], so it requires eradication efforts in extraordinary ways. The confiscation of assets resulting from the criminal act of corruption is difficult to implement in practice because in general, corruption, both on a small and large scale, is carried out in very secretive, covert ways and involves many parties with strong solidarity to protect each other or cover up corruption through legal manipulation, legal engineering and apathetic behavior of state officials towards the interests of the people.[2]

Terminological confiscation comes from the word "robbery" which means to take / can be by force (by force).[3] According to Act No. 31 of 1999 as amended by Act No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Article 18 paragraph (1) states that confiscation is carried out against guilty persons who are handed over to the government, but only on goods that have been confiscated. While the notion of "asset" means something that has an exchange value, wealth that

1. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the third amendment.
[2] Mahendra, Oka. Kerjasama Bantuan Timbal Balik Dalam pengembalian Aset Hasil Korupsi, Makalah dalam Seminar Sinergi Pemberantasan Korupsi, Jakarta.
[3] Poerwadarminta, (1998), Kamus Besar Bahasa Indonesia, Jakarta, Balai Pustaka, p. 451.

can be controlled by property rights can be in the form of movable objects that are spent and cannot be spent, as well as immovable objects.[4]

The imposition of additional penalties in the form of confiscation of tangible or intangible movable assets or immovable goods used or obtained from criminal acts of corruption by the convict is a consequence of acts of corruption that have resulted in state financial losses or the state's economy, so as to restore state financial losses or the country's economy requires juridical means in the form of confiscation of the convict's assets.

It is not easy to determine an act as a criminal act and must first go through several in-depth study processes. In addition to the study of acts, the purpose of the criminal law itself must also be considered, the determination of undesirable acts, the comparison between the means and results and the capabilities of law enforcement.[5]

Based on the above background, the authors are interested in conducting research on how the implementation of the seizure of assets convicts of corruption in the criminal act of corruption Jiwasraya.

That this research is intended so that in the future the policy of formulating the criminal law of asset confiscation in the context of overcoming criminal acts as perpetrators of crimes in the future can be compiled from the results of a comparison of the Draft Law or Law on the Criminal Justice System in Indonesia with the Law on Courts Abroad.[6] As well as the existence of legal rules in the form of the Asset Confiscation Act.

2. Research Methods

In this study, the author uses an empirical juridical approach. Empirical juridical research includes research on legal identification (unwritten law) and research on legal effectiveness.[7] The research specification is descriptive analytical, which describes the applicable laws and regulations related to legal theories and positive law implementation practices regarding these issues. While the types and sources of data are primary data obtained directly from sources or respondents.[8]Primary data was obtained by conducting direct interviews with sources. In addition to primary data also uses secondary data obtained indirectly. Secondary data is obtained by conducting a literature study in the form of books, laws and regulations, and documents.

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[4] Subekti, (1994), *Pokok-pokok Hukum Perdata,* Cetakan 26, Jakarta: Intermasa, p. 60.

[5] Gunarto, Gunarto, "Kebijakan Hukum Pidana Terhadap Tindak Pidana Penghinaan Atau Pencemaran Nama Baik Melalui Internet di Indonesia Sebagai Cybercrime", Jurnal Daulat Hukum Unissula Vol 1, No 1 (2018), Fakultas Hukum UNISSULA. http://jurnal.unissula.ac.id/index.php/RH/search/authors/view?firstName=Gunarto&middleName=&lastName=Gunarto&affiliation=Fakultas%20Hukum%20UNISSULA%20Semarang&country=ID.

[6]Umar Ma'ruf, "Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Kejahatan Psikotropika Di Kepolisian Resor Magelang",Jurnal Daulat Hukum Unissula Vol 1, No 1 (2018), Fakultas Hukum UNISSULA. http://jurnal.unissula.ac.id/index.php/RH/search/authors/view?firstName=Umar&middleName=&lastName=Ma%E2%80%99ruf&affiliation=Fakultas%20Hukum%20UNISSULA%20Semarang&country=ID.

[7] Susanti, D.O., & Efendi, A., (2014), *Penelitian Hukum (Legal Research)* ,Sinar Grafika, Jakarta, p. 18.

[8] Narbuko, C & Achmadi, A., (2001), *Metodologi Penelitian,* Bumi Aksara, Jakarta, p. 81.

3. Results and Discussion

The popular crime of corruption is defined as the abuse of power for personal gain is basically a problem of social injustice.[9]Both in developing countries and in developed countries are increasingly frustrated and suffer from injustice and poverty caused by criminal acts of corruption, where perpetrators of criminal acts of corruption have placed assets resulting from criminal acts of corruption placed both domestically and abroad which are carried out in various ways. with a view to eliminating traces of the proceeds of a criminal act.

The return of assets resulting from criminal acts of corruption is a new thing in Indonesian law because it is motivated by the increasing number of criminal acts of corruption which are not matched by the return of assets resulting from criminal acts of corruption. The regulation on the return of state assets resulting from corruption crimes is not clear, especially with regard to the procedures for returning assets or the mechanism for returning assets, which means that there must be someone who has the authority to take over state assets resulting from corruption crimes, what assets can be confiscated to compensate the state for losses and Which institution is authorized to receive or store and manage state assets from the proceeds of criminal acts of corruption.

In the Jiwasraya corruption crime against one of the convicts An. BenTjok, who is considering his decision, that the defendant is proven guilty of committing a criminal act of corruption and money laundering which is the original crime of corruption and the defendant's property has been confiscated by investigators and used as evidence in court, that based on Article 39 Paragraph 1 of the Criminal Procedure Code states that objects that can be subject to confiscation are basically objects obtained from the proceeds of a crime, used to commit a crime and objects that have a direct relationship with the crime are confiscated for the state.

Based on the considerations of the criminal element, the defendant has been proven to have obtained property from the proceeds of a criminal act of corruption along with all the benefits, while the defendant is not entitled to enjoy the proceeds, so it is reasonable to confiscate all property and all the profits obtained by the defendant from the crime.

In an interview with Bima Suprayoga, as the Head of the Central Jakarta District Attorney and Yon Yuviarso, as the Head of the Special Crimes Section and Jefri Leo Chandra, as the Public Prosecutor at the Central Jakarta District Attorney as respondents explained related to the seizure of assets in the Jiwasraya case, especially the An. BenTjok, in the implementation of asset confiscation is carried out in collaboration with the Asset Recovery Center (PPA). Due to the assets owned by the convict An. BenTjok is spread throughout Indonesia so that it involves the Asset Recovery Center (PPA).[10]

That in the seizure of the assets of the convict An. BenTjok of the Central Jakarta District Attorney did:

[9] M. Yanuar, P., (2007), *Pengembalian Aset Hasil Korupsi*, Bandung : PT. Alumni, p.35.
[10] The results of interviews with BIMA SUPRAYOGA, as the Head of the Central Jakarta District Attorney and YON YUVIARSO, as the Head of the Special Crimes Section and JEFRI LEO CHANDRA, as the Public Prosecutor at the Central Jakarta District Attorney, on Friday, February 04, at 15.00 WIB.

- Conduct an inventory of goods of economic value by dividing the qualifications into movable goods such as cars, motorbikes and securities and immovable goods such as land and buildings.
- Then make a legal opinion for the seizure of the assets.
- Prepare the administration of the settlement of the confiscated goods to be submitted to the PB3R section (Proof and Loot Management) which will later be continued to the PPA unit (Asset Recovery Center) as PERJA No. 10 of 2019 concerning Amendments to the Attorney General's Regulation Number PER-002/A/JA/05/2017 concerning Auctions and Direct Sales of Confiscated Goods or State Confiscated Goods or Executed Confiscated Goods.[11]

Based on Article 18 Paragraph 1 letter a of Act No. 31 of 1999 concerning the Crime of Corruption, confiscation of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed, as well as from goods that replace goods the item.

That there are legal rules and mechanisms in the return of assets resulting from criminal acts, namely:

Rules of Law in Returning Assets Proceeds from Corruption Crimes

According to the book The World Bank 2009,[12]the application of the NCB Asset forfeiture concept has similarities and differences when applied in civil law and common law systems. The similarity between these two legal systems is that they both seek to pursue property and assets (in rem), without a sentencing decision and still require evidence of violation of the law. The difference lies in the standard of evidence required in the NCB asset forfeiture decision in the common law system by prioritizing a balance between the possibility or a larger amount of evidence.

In Article 39 of the Criminal Procedure Code limiting objects that can be confiscated, namely only objects that have a direct connection with a criminal act. In addition to the Criminal Procedure Code, other rules that regulate more specifically regarding the confiscation of assets as an additional crime are also regulated in Act No. 31 of 1999 as amended by Act No. 20 of 2001 concerning Eradication of Criminal Acts of Corruption, Regulation of the Supreme Court Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling Assets in the Crime of Money Laundering or Other Crimes, and Circular Letter of the Supreme Court Number 3 of 2013 concerning Instructions for Handling Cases: Procedures for Settlement of Applications for Assets in the Crime of Money Laundering and Other Crimes. Need to know, The Supreme Court Regulation Number 1 of 2013 is a regulation that fills the legal vacuum for the implementation of Article 67 of Act No. 8 of 2010 concerning the Eradication of the Crime of Money Laundering (UU TPPU) which regulates the procedural law for handling assets. The Supreme Court Regulation Number 1 of 2013 consists of three important parts, namely the scope, the application for assets, and the procedural law of asset confiscation. Meanwhile, the Supreme Court Circular No. 3 of 2013 confirms that in the event that the judge

[11] Ibid.

[12]Greenberg, T.S., Samuel, L.M., Grant, W & Gray, L, (2009), *Stolen Asset Recovery* : A Good Practices Guide For Non-Conviction Based Asset Forfeiture, Washington D.C : The World Bank & UNODC

decides that the assets requested for settlement are declared state assets, the decision must clearly state that the assets are to be confiscated for the state.

Mechanism of Returning State Assets Proceeds from Corruption Crimes

Through National Legal Instruments. The criminal justice system in Indonesia is based on the laws and regulations that govern it, and in the context of legal settlement of criminal acts of corruption, it is carried out based on the mechanism of the criminal justice system for criminal acts of corruption, as well as against asset confiscation as an effort to recover the proceeds of criminal acts of corruption and restore the country's economy. The mechanism is based on Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (UU Tipikor) and Act No. 46 of 2009 concerning Courts for Criminal Acts of Corruption. The mechanism for confiscation of assets is based on Article 18 letter (a) of the Anti-Corruption Law which states: Based on the article, the act of confiscation of assets has been regulated and used as a sanction against perpetrators of criminal acts of corruption as an effort to return the proceeds of the crime. Furthermore, the Anti-Corruption Law also places the act of confiscation of assets not only as a criminal sanction against the perpetrator, but also for goods that have been confiscated in the event that the defendant dies before a decision is handed down against him by obtaining strong enough evidence that the person concerned has committed a criminal act of corruption. According to the Anti-Corruption Law as regulated in Articles 32, 33, 34 and 38C, the judge on the demands of the public prosecutor determines the act of confiscation of goods that have been previously confiscated.[13]

Through International Legal Instruments. In line with the national instrument, namely positive law that applies in Indonesia, in this case the Corruption Law, there are also international legal instruments adopted to strengthen efforts to confiscate assets from criminal acts of corruption, such as UNCAC which was ratified by the Government of Indonesia as Act No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption on April 18, 2006. In addition, Indonesia has also regulated “mutual legal assistance” where one of the basic principles is the principle of reciprocity.

Based on UNCAC, the seizure of assets of perpetrators of criminal acts of corruption can be carried out through criminal and civil channels. The process of confiscation of the perpetrator's assets through criminal means through 4 (four) stages, namely:

- Asset tracking with the aim of identifying proof of ownership, location of property storage related to the offense committed;
- Freezing or confiscation of assets in accordance with Chapter I Article 2 letter (f) UNCAC in the form of a temporary prohibition on transferring, converting, disposition or transferring wealth or temporarily bear the burden and responsibility for managing and maintaining and supervising assets based on court decisions or decisions from other competent authorities;

[13] Act No. 31 of 1999 and Article 38 C of Act No. 20 of 2001 concerning Criminal Acts of Corruption.

- Confiscation of assets pursuant to Chapter I Article 2 letter g of UNCAC 2003 is defined as the permanent revocation of wealth based on a court order or other competent authority;
- Return and handover of assets to the victim country.

Furthermore, according to UNCAC, the confiscation of the assets of perpetrators of corruption can be carried out through direct returns through a court process based on a "negotiation plea" or "plea bargaining system" system, and through indirect returns, namely through a confiscation process based on a court decision (Article 53 –57 UNCAC). Based on the UNCAC starting point, it can be seen that UNCAC has provided a basis for reference to member states based on Article 54 paragraph (1) letter (c) UNCAC, which requires all member states to consider the confiscation of proceeds of crime without being punished.

Mechanism of Returning Assets Proceeds from Corruption Crimes Using the Bill on Asset Confiscation

The asset confiscation bill describes that the criminal act of confiscation of assets, hereinafter referred to as asset confiscation, as contained in Article 1 point 3 of the asset confiscation bill is (the asset confiscation bill) so that the state is forced to confiscate the assets of a criminal act based on a court decision without being based on punishment of the perpetrator. Efforts to confiscate assets from the proceeds of criminal acts of corruption when these assets flow abroad will of course create difficulties in tracing, forfeiting during the trial process or confiscating after a decision has permanent legal force. The NCB asset forfeiture mechanism or better known as asset forfeiture without punishment has been discussed in detail in the Academic Paper on the Draft Law on the Confiscation of Assets for Criminal Acts written by Dr. Ramelan, SH, MH, including the following.[14]

- Asset tracking in the mechanism for confiscation of assets for criminal acts: The authority to conduct searches in the context of confiscation of assets for criminal acts (in rem) is given to investigators or public prosecutors. In carrying out the search, investigators or public prosecutors are authorized to request documents from any person, corporation, or government agency.
- The authority of investigators or public prosecutors to block and confiscate assets that are objects that can be confiscated:
  - In the event that a strong suspicion is obtained regarding the origin or existence of the assets of a criminal act based on the results of the search, the investigator or public prosecutor may order the blocking to the authorized institution.
  - Blocking can be followed by confiscation. The authorized institution is obliged to carry out the blocking immediately after the blocking order is received.
  - The order of the investigator or public prosecutor as referred to in paragraph (1) must be made in writing by clearly stating: (a) the name and position of the investigator or public prosecutor; (b) the form, type, or other information regarding the assets to be blocked; (c) reasons for blocking; and (d) where the asset is located.

[14]Ramelan, (2012), Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana, Jakarta: Badan Pembinaan Hukum Nasional

- The blocking is carried out within a maximum period of 30 (thirty) days from the receipt of the blocking order and can be extended for another 30 (thirty) days.
- The third party who controls the blocked asset can file an objection.
- Investigators, public prosecutors who order blocking, and institutions that carry out asset blocking in good faith cannot be prosecuted criminally or civilly.
- During the blocking period, the assets of the crime cannot be transferred to other parties.
- The act of confiscation by the investigator or public prosecutor is carried out in accordance with the provisions of the legislation.
- This provision also provides an obligation to investigators or public prosecutors to hand over the assets of a criminal offense along with its supporting documents to the institution that manages the assets of a criminal offense.

The legal provisions for the examination of applications for confiscation of non-criminal assets in court are as follows:

- Investigation, pre-prosecution, examination in court as well as execution of decisions on asset confiscation are carried out in accordance with the provisions of laws and regulations.
- In the event that the district court accepts the application for confiscation of assets and is of the opinion that the case is within its jurisdiction, the chairman of the district court shall appoint a panel of judges or a single judge who will hear the case.
- The appointed judge orders the registrar to announce the application for confiscation of assets. Within 30 (thirty) working days after the announcement of the application for the seizure of the said asset, the judge shall determine the day of the trial and order the clerk of the district court to summon the public prosecutor/state attorney and/or the party who filed the opposition to appear in court.
- The public prosecutor submits an application for confiscation of assets along with arguments regarding the reasons why the assets must be confiscated and submits evidence regarding the origin and existence of assets that support the reasons for the seizure of assets. If necessary, the public prosecutor can present the assets to be confiscated or based on the judge's order, an examination of the assets of the criminal act is carried out at the location where the assets are located.
- In the event that there is resistance from a third party, the judge provides the opportunity for the third party to submit evidence regarding his objection.
- The judge considers all the arguments put forward by the public prosecutor and/or third parties before deciding whether to accept or reject the application for confiscation of assets.
- If there are parties who file an objection to the application for confiscation of assets, the clerk of the district court shall submit a summons to the party who filed the objection and notify the public prosecutor to come directly to the court session. The summons shall be submitted no later than 3 (three) days prior to the trial date through the residential address or at the parties' last residences.

- In the event that the parties are not at their place of residence or at the last place of residence, the summons shall be submitted through the head of the village or other names in the legal area where the parties live or the last place of residence.
- In the event that a party is detained in a state detention house, the summons shall be submitted through the official of the state detention house.
- In the event that the corporation becomes a party, the summons is sent to the management at the domicile of the corporation as stated in the articles of association of the corporation. One of the management of the corporation must appear before the court to represent the corporation. Summons received by the parties themselves or by other people or through other people, are carried out with a sign of acceptance.
- In determining the day of the trial, the chairman of the panel of judges must consider the distance between the residential address of the litigating party and the court where the trial is being held. The time lag between the summons of the litigating party and the trial period may not be less than 3 (three) working days, except in cases where it is very necessary and urgent to be examined and this is stated in the summons.

The asset confiscation bill has a breakthrough that is needed by law enforcers to strengthen the legal system where the seizure of criminal assets is carried out without a court decision in criminal cases (non conviction based forfeiture). The non conviction based forfeiture system has a wide opportunity to confiscate all assets suspected of being the result of a criminal act and other assets that are reasonably suspected of being instruments (instrumentalities) to commit criminal acts, especially those included in the category of serious crimes or transnational organized crime may be effective because confiscation through criminal prosecution is considered to take a very long process.

Through the Asset Confiscation Bill which has been initiated by the government, it is hoped that efforts to recover assets resulting from crimes can be made more effective. Some of the challenges that must be faced by the government are related to the issue of property rights and also a fair judicial process. Considering that the in rem confiscation approach has shifted the value of material truth about errors in criminal law to the need for formal truth on the origin of assets. In the implementation of the Asset Confiscation Bill later, the government must at least emphasize that the mechanism used does not at all prove someone's guilt, but only proves that an asset is the result of a crime.

4. Conclusion

Whereas in its implementation it is necessary to have a definite rule in the form of the Asset Confiscation Law. So that law enforcement officials in carrying out asset confiscation efforts have a legal umbrella in the rules because currently law enforcement officials only use article 18 of Act No. 31 of 1999, as stipulated in Article 18 paragraph (1) letter a of Act No. 31 of 1999, additional punishment is in the form of "confiscation of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption, including companies owned by the convict where the crime of corruption was committed, as well as from goods that replace goods the". Act No. 31 of 1999 places the confiscation of assets (tangible or

intangible movable goods or immovable goods) as an additional crime instead of placing it as a principal crime. The additional punishment referred to is the additional punishment specified in Article 10 letter b of the Criminal Code and Article 18 paragraph (1) of Act No. 31 of 1999.

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[2] Umar Ma'ruf, "Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Kejahatan Psikotropika Di Kepolisian Resor Magelang",Jurnal Daulat Hukum Unissula Vol 1, No 1 (2018), Fakultas Hukum UNISSULA. http://jurnal.unissula.ac.id/index.php /RH/search/authors/view?firstName=Umar&middleName=&lastName=Ma%E2%80%99ruf&affiliation=Fakultas%20Hukum%20UNISSULA%20Semarang&country=ID.

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Regulation:

[1] 1945 Constitution of the Republic of Indonesia.

[2] Act No. 31 of 1999 and Article 38 C of Act No. 20 of 2001 concerning Criminal Acts of Corruption.

[3] Act No. 8 of 1981 concerning Criminal Procedure Law.