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Analysis of Legal Policy on Confiscation of Corruption Criminal Asset Perpetrators Based on Justice Values

Ahmad Salim[1)] & Andri Winjaya Laksana[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: ahmadsalim.std@unissula.ac.id
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstract. *The implementation of asset confiscation has been carried out in many corruption cases, but the amount of assets confiscated tends not to be appropriate or commensurate with the amount of state financial losses that have been corrupted. The purpose of this study is to review and analyze the legal policy of asset confiscation of perpetrators of corruption based on the value of justice, review and analyze the legal policy of asset confiscation of perpetrators of corruption in the future. This legal research is a normative legal research, namely research that has an object of study on legal rules or regulations. Normative legal research examines legal rules or regulations as a system building related to a legal event. The legal policy of asset confiscation of perpetrators of corruption in Indonesia currently still faces normative and implementation obstacles, such as its optional nature and dependence on final decisions. Although Law No. 31 of 1999 junto Law No. 20 of 2001 has regulated asset confiscation, its implementation has not been optimal and does not provide a strong deterrent effect. Therefore, a more progressive and responsive legal reform is urgently needed. One urgent strategic step is the ratification of the Asset Confiscation Bill which regulates the non-conviction based asset forfeiture mechanism. In addition, reverse proof of unreasonable wealth needs to be implemented as an effort to narrow the room for corruptors to maneuver. Reform also needs to involve strengthening international cooperation to accelerate the repatriation of assets resulting from cross-border corruption. With this reform, the legal system for asset confiscation in Indonesia will be fairer, more effective, and able to recover state losses in full.*

Keywords: *Aset; Confiscation; Corruption; Justice.*

1. Introduction

The Republic of Indonesia is a country of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is also a democratic country that upholds the philosophy of the people, by the people, and for the people. Therefore, this country must guarantee that all its citizens receive equal treatment under the law and guarantee all the rights of Indonesian citizens to be given justice in the application of their laws. The law has an important role in community life, not only in Indonesia but in all countries in the world have laws that they apply each, both written and those that arise based on the culture of everyday life. Not all violations of the law or criminal acts are reprehensible acts, for example when driving a four-wheeled vehicle but not wearing a seat belt. Therefore, from the perspective of the general public, the law is present not only to provide punishment to the community, but the law is present to provide public order in community life.[1]

Corruption is like a vicious circle that has almost entered the economic system, political system, and law enforcement system. The more massive the campaign to fight corruption, the more corruption cases are revealed that ensnare officials, both officials in the regions and government levels.[2]The country, in this case the Indonesian government, has tried to provide maximum handling for the problem of corruption through the legal instruments created, namely laws, but as is commonly known, the wider community still considers the state to need a panacea to cure the disease of Indonesian society called corruption.

Furthermore, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the Law on the Eradication of Criminal Acts of Corruption), was enacted based on the consideration that criminal acts of corruption that have occurred widely, have not only harmed state finances, but have also constituted a violation of the social and economic rights of the community at large, so that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner.[3]

In addition, changes to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption need to be made to avoid diverse legal

[1]Sri Endah Wahyuningsih, The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of Belief in the Almighty God, Journal of Legal Reform, Volume I No.1 January-April 2014, pp.19-23

[2]Dimas Arya Aziza, "Implementation of Position Offenses in Article 3 and Article 11 of Law Number 3 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption," Binamulia Hukum 7, no. 2 (2018): p. 169

[3]Fiter, Douglas Jhon, Alpi Sahari, and Adi Mansar. "Implementation of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Study of the Deli Serdang District Attorney's Office)." Iuris Studia: Journal of Legal Studies 5, No. 2 (2024): pp. 198-208.

interpretations and provide protection for the social and economic rights of the community, as well as fair treatment in eradicating criminal acts of corruption.

Extraordinary efforts to eradicate criminal acts of corruption as referred to in the basis for the consideration of the birth of the Eradication of Criminal Acts of Corruption, among other things, are realized through the formulation of provisions regulating the types of criminal sanctions that are not found in other criminal laws.[4]The criminal sanctions referred to are additional criminal sanctions in the form of confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption.

The provisions regarding criminal sanctions for confiscation of assets obtained from criminal acts of corruption are contained in Article 18 of the Corruption Eradication Law, which in full outlines that:

Article 18

(1) In addition to additional penalties as referred to in the Criminal Code, additional penalties are: a. confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including the company owned by the convict where the corruption was committed, as well as goods replacing such goods; b. payment of compensation in an amount that is at most equal to the property obtained from the corruption. 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, which have been or may be given by the Government to the convict.

(2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum of 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.

(3) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then he shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence shall be determined in the court decision.

When viewed from a normative perspective, the provisions above raise considerable hopes for the eradication of corruption in a systemic and comprehensive manner, which is not only marked by the imposition of punishment on perpetrators of criminal acts for their actions in corrupting state funds, but also the hope for the rescue of state funds which is marked by the

[4]Ifrani, Ifrani. "Corruption as an extraordinary crime." Al-Adl 9, No. 3 (2018): pp. 319-336.

confiscation of assets obtained from corruption, so that they can then be used as much as possible for the interests of national development.

Thus, it can be said that normatively the provisions of Article 18 paragraph (1) letter a of the Corruption Eradication Law are expected to be an effective legal means for recovering state losses due to criminal acts of corruption.[5]

Furthermore, if it is linked to the objectives of the law, then the provisions of Article 18 paragraph (1) letter a of the Law on the Eradication of Criminal Acts of Corruption are the right means for achieving the objectives of enforcing the law, namely achieving the principle of benefit, where these provisions will be very useful for saving state money for the benefit of society in the broadest sense.

Although normatively it brings great hope, in terms of implementation, the provision seems to have not been fully realized. This can be seen, among other things, in the data on state losses due to corruption that have been successfully uncovered by law enforcement institutions, namely the Prosecutor's Office and the Corruption Eradication Commission (KPK).[6]Indonesian Corruption Watch (ICW) released that during that period, the amount of state losses due to corruption reached approximately Rp. 8.5 trillion. Of the state losses of that amount, what was successfully saved and returned to the state treasury was still very small, namely only around Rp. 1.2 trillion.

Based on both cases, it was found that there were difficulties in confiscating assets resulting from corruption. The mechanism of asset confiscation focuses on disclosing criminal acts, in which there are elements of finding the perpetrator and placing the perpetrator in prison and only positioning the confiscation of assets as an additional punishment has not been effective in eliminating the number of crimes.[7]The confiscation of assets is a form of effort to eradicate corruption in Indonesia, the provisions of which have been regulated in the Criminal Code concerning additional criminal penalties.

This research is very necessary because it provides a new breakthrough to eradicate corruption using the follow the money method, namely knowing and following the track record of wealth from corruption. The next stage is to seize wealth, namely the confiscation of assets known to be the result of a crime with the aim that the perpetrators of corruption cannot feel the results of the crime that has been committed. Commitment and cooperation in eradicating

[5]Pranoto, Agus, Abadi B. Darmo, and Iman Hidayat. "Legal Study on Confiscation of Corrupt Assets in Efforts to Eradicate Corruption According to Indonesian Criminal Law." Legalitas: Jurnal Hukum 10, No. 1 (2019): pp. 91-121.
[6]Mahmud, Ade. "The Urgency of Progressive Law Enforcement to Recover State Losses in Corruption Crimes." Legal Issues 49, No. 3 (2020): pp. 256-271.
[7]Marfuatul Latifah, "The Urgency of Establishing a Law on Confiscation of Assets Proceedings of Corruption in Indonesia", Jurnal Negara Hukum, Vol 6. No 1, June 2015, p. 24.

corruption can be observed, namely the existence of the UNCAC which was inaugurated in 2003 and Indonesia has also ratified this convention from Law Number 7 of 2006.5 In addition to the UNCAC related to Anti-Corruption 2003, Indonesia has established Mutual Legal Assistance with the enactment of Law No. 1 of 2006 concerning Mutual Assistance for Criminal Matters. This regulation is an instrument needed in terms of mutual assistance with other countries where state assets from corruption are suspected to be located.

2. Research methods

Methodis the process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge, so the research method can be interpreted as the process of principles and procedures for solving problems faced in carrying out research.[8] This legal research is a normative legal research, namely research that has an object of study on legal rules or regulations. Normative legal research examines legal rules or regulations as a system building related to a legal event. This research is conducted with the intention of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to law.[9]Normative legal research can also be interpreted as a technique or procedure of review based on several legal principles, legal rules, or legal principles related to the substance of general and specific laws and regulations. Normative legal research is a legal research conducted by analyzing and examining primary and secondary library materials.

3. Results and Discussion

3.1. Legal Policy for Confiscation of Assets of Corruption Offenders Based on Justice Values

In general, corruption is caused by 3 (three) things. First, corruption by greed. Second, corruption by need. Third, corruption by chance. Corruption as an extraordinary crime has caused various serious, systematic, and massive impacts on national development strategies, including: the illegal transfer of state wealth into the hands of corruptors or irresponsible parties, the destruction of natural resources and their surroundings, the loss of ethics and morals of the next generation, human rights violations, declining quality at various levels of education due to lack of facilities and infrastructure, chaos and leaks in the use of state finances, reduced national morality and negative assessments by other countries, and can even lead to increased crime.

[8]Soerjono Soekanto, Introduction to Legal Research, (Jakarta: UI-Press, 1985), p. 6
[9]Mukti Fajar and Yulianto Achmad, Dualism of Normative and Empirical Legal Research, Fourth Edition, (Yogyakarta: Pustaka Pelajar 2017) p. 36

Ilham Gunawan stated that corruption can occur due to various factors, including the following: 1). the absence or weakness of leadership in key positions that can provide inspiration and influence behavior that tames corruption; 2). the weakness of religious and ethical teachings; 3). the effects of colonialism or the influence of a foreign government do not inspire the loyalty and obedience needed to stem corruption; 4). the lack and weakness of educational influence; 5). structural poverty; 6). weak legal sanctions; 7). the lack and limitation of an anti-corruption environment; 8). a soft government structure; 9). radical change, so that mental stability is disturbed. when a value system undergoes radical change, corruption appears as a traditional disease; 10). the condition of society, because corruption in a bureaucracy can reflect the state of society as a whole.[10]

Of the various law enforcement efforts that have been carried out by law enforcement officers (APH), there is a serious problem that exposing criminal acts of corruption (tipikor) by finding the perpetrators and then placing the perpetrators in prison, it turns out that it is not effective and optimal enough to reduce the number of corrupt crimes if this is not balanced with other efforts, namely optimal asset recovery by means of asset confiscation or asset seizure and added with additional penalties that lead to the impoverishment of corruptors.

The analysis was conducted to find weaknesses in the formulation of the provisions of Article 18 of the Corruption Eradication Law, which have the potential to cause the provisions of the Article in question to be ineffectively implemented. This is important to do because if the provisions of the Article cannot be implemented effectively, then there is no other door in the Corruption Eradication Law, which allows for the effective return of state losses due to corruption.

In Article 18 of the Corruption Eradication Law, there are several important provisions regarding criminal sanctions for confiscation of corruption assets. The provisions that need attention are as follows:

1) The position of criminal sanctions for confiscation of corruption assets as additional criminal sanctions;

2) Asset confiscation is carried out on property obtained by the suspect/defendant from criminal acts of corruption;

3) Asset confiscation is closely related to the return of state losses;

4) Confiscation of the convict's property is carried out if the convict does not pay the replacement money. The property is confiscated and auctioned to cover the replacement money;

[10]Surachmin et al., Corruption Strategies and Techniques, 2011, Sinar Grafika, Jakarta, p. 107

The current formulative policy for confiscation of assets resulting from corruption is contained in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law 20 of 2001. The Corruption Act stipulates that confiscation of assets can be pursued through two channels, namely through criminal law through a criminal court decision and through civil law, namely through a civil lawsuit (civil procedure).

The policy of confiscating assets through criminal law mechanisms is based on Law No. 31 of 1999 Article 28 paragraph (1) which states that in addition to additional penalties contained in the Criminal Code, additional penalties according to the Corruption Act are:

1. Confiscation used or obtained from criminal acts of corruption.

2. Payment of compensation in an amount that is at most equal to the assets obtained from the criminal act of corruption.

Based on this article, the act of confiscation of assets has been regulated and used as a sanction against perpetrators of corruption crimes, in terms of efforts to return the proceeds of the crime, specifically as an additional sanction or punishment.

Asset confiscation through criminal mechanisms as described above has weaknesses, one of which is that the proceeds of criminal acts can generally only be confiscated if the perpetrator of the crime has been sentenced by the court with permanent legal force (inkracht). So if the court decision is not yet legally binding, then additional penalties in the form of confiscation of assets or replacement money cannot be executed.

The second weakness is that as with the general principle of additional punishment, the additional punishment contained in Law No. 31 of 1999 Article 18 paragraph (1) which is the basis for the confiscation of assets resulting from corruption, is optional, meaning it is not a requirement (imperative) to be imposed by the judge in his decision. According to Adami Chazawi, additional punishment is not a requirement (imperative) to be imposed. PAF Lamintang stated that regarding the decision whether or not it is necessary to impose an additional punishment, apart from imposing a principal punishment on a defendant, this is entirely left to the judge's consideration.

So in practice, the judge can impose the main sentence without imposing additional sentences in the form of confiscation of the convict's assets or in the form of replacement money. If this happens, one of the goals of eradicating corruption, namely returning state assets stolen by perpetrators of corruption, will certainly not be achieved. The state will still suffer losses and corruptors can still enjoy the proceeds of corruption. As a result, eradicating corruption like this will certainly not provide a deterrent effect for the perpetrators.

Confiscation of assets resulting from corruption, according to Article 19 paragraphs of Law No. 31 of 1999, stipulates that:

(1) a court decision regarding the confiscation of goods not belonging to the defendant shall not be imposed if the rights of third parties acting in good faith will be harmed.

(2) In the case of a court decision as referred to in paragraph (1) including the property of a third party who has good intentions, the third party may submit a letter of objection to the relevant court, within a maximum of 2 (two) months after the court decision is pronounced in a public hearing.

(3) Submission of a letter of objection as referred to in paragraph (2) does not change or stop the implementation of the court decision.

(4) In the circumstances referred to in paragraph (2), the judge shall request information from the public prosecutor and interested parties.

(5) The judge's decision regarding the letter of objection as referred to in paragraph (2) may be requested for cassation by the applicant or public prosecutor to the Supreme Court.

The provisions of Article 19 paragraphs are only explained in paragraph (3), that if the objection of the third party is accepted by the judge after the execution, then the state is obliged to compensate the third party for the value of the auction results for the goods. Law No. 31 of 1999 which regulates the provisions in Article 16 paragraphs and Article 19 paragraphs when revised or amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it turns out that the two articles were not changed by Law No. 20 of 2001.

The implementation of the confiscation of assets resulting from corruption in Indonesia has been practiced, but the most interesting and prominent is the effort of law enforcers to confiscate and/or seize the proceeds of corruption by the former President of the Republic of Indonesia, Soeharto in the context of his accountability to a number of foundations such as the Surat Perintah Sebelas Maret Foundation (Supersemar) which has provided many scholarships to both school and university students in Indonesia, and is considered to be one of the foundations that was misused as an object of criminal acts of corruption.

The Supersemar Foundation case had begun since the fall of the Soeharto regime, but was full of intrigue and very clear elements of politicization. Nasir Tamara (in Hamid Basyaib, et al. (ed.), stated that Attorney General Soedjono C. Atmonegoro after submitting a three-book-thick report to President Habibie who replaced Soeharto, concluded that "Soeharto was worthy of being a suspect" in

the corruption case. Five hours later, Soedjono was fired and replaced by AM Chatib.[11]

The case involving former President Soeharto including his children, the first is the Supersemar Foundation, and the second is the Goro Batara Sakti (GBS) case involving his son, Tommy Soeharto. In the Supersemar Foundation case, Soeharto was sued to pay material compensation of $ 400 million and Rp. 185.3 billion, as well as to replace immaterial losses of Rp. 10 trillion. When the case entered its final stage, precisely on January 27, 2008, Soeharto died so that legally his position was replaced by the heirs of Soeharto's six children. After taking a very long time, on March 23, 2008, the judge's verdict stated that Soeharto was not proven to have harmed state finances unlawfully.

The case of PT. Goro Batara Sakti with Tommy Soeharto as the defendant with a total lawsuit of Rp. 550.5 billion, filed by Perum Bulog. In response to the lawsuit, Tommy Soeharto filed a counter-lawsuit against Perum Bulog by requesting total compensation of Rp. 10 trillion. The lawsuit against Tommy finally failed, rejected by the Court. On the contrary, Perum Bulog was sentenced to pay material compensation of Rp. 5 billion.

The failure of the civil lawsuits against the two cases above was actually expected from the start. Not only were the cases politically charged, but also for legal reasons. Procedurally, the failure was due to the civil lawsuit being pending, that is, it was filed after the criminal process was no longer possible. As a result, from the start the civil lawsuit had lost the momentum or the right opportunity to seize the corruptor's assets.

The Supersemar Foundation case apparently continued to the Judicial Review (PK) of the Supreme Court of the Republic of Indonesia which ruled at the PK hearing on July 8, 2015, the Deputy Chief Justice of the Supreme Court for Non-Judicial Affairs, Suwardi, together with members of the panel of judges, Soltony Mohdally and Mahdi Soroinda Nasution, granted the Attorney General's request, the Supersemar Foundation must pay compensation to the state amounting to Rp. 4.4 trillion.[12]

The Supersemar Foundation case is interesting as an example of the implementation of the confiscation of assets resulting from corruption in relation

[11]Nasir Tamara, Corruption in the Private Sector, (in Hamid Bayaib, et al. (ed.), Stealing People's Money. 16 Corruption Studies in Indonesia, Book 3, Foreign Aid, Private Sector, BUMN, Aksara Foundation, First Printing, Jakarta, 2002, p. 126

[12]"Chronology of the Supersemar Foundation Case", published in the Justice Forum Magazine, Edition Year XXIV, 17-23 August 2015, page 20

to the provisions of Article 38B paragraphs of Law No. 20 of 2001,[13]which states that:

(1) Any person who is accused of committing one of the criminal acts of corruption as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Articles 5 to 12 of this Law, is obliged to prove otherwise regarding his/her assets which have not been charged but are also suspected of originating from criminal acts of corruption.

(2) If the defendant cannot prove that the assets referred to in paragraph (1) were not obtained through a criminal act of corruption, the assets are deemed to have also been obtained through a criminal act of corruption and the judge has the authority to decide that all or part of the assets be confiscated for the state.

(3) The demand for confiscation of property as referred to in paragraph (2) is submitted by the public prosecutor when reading out the demands in the main case.

(4) Proof that the assets referred to in paragraph (1) do not originate from criminal acts of corruption may be submitted by the defendant when reading out his defense in the main case and may be repeated during the appeal memorandum and basic memorandum.

(5) The judge is obliged to open a special trial to examine the evidence submitted by the defendant as referred to in paragraph (4).

(6) If the defendant is acquitted or declared free from all legal charges in the main case, then the demand for confiscation of property as referred to in paragraph (1) and paragraph (2) must be rejected by the judge.

The provisions of Article 38B are explained that this provision is a reverse burden of proof which is specifically for the confiscation of property which is strongly suspected of also originating from a criminal act of corruption based on one of the charges as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Articles 5 to 12 of this Law as the main criminal act.

The consideration of whether all or part of the property is confiscated for the state is left to the judge with consideration of humanity and guarantee of life for the accused. The basis for the provision as referred to in paragraph (6) is a logical legal reason because the acquittal of the accused from all legal demands from

[13]Kurniawan, Iwan, and Riki Afrizal. "Civil Lawsuit by State Attorney as an Effort to Recover State Financial Losses Due to Corruption." Nagari Law Review 5, No. 1 (2021): pp. 103-115.

the main case means that the accused is the perpetrator of the crime of corruption in the case.

In relation to efforts to confiscate assets resulting from corruption, Article 38C of Law No. 20 of 2001 stipulates that if after the court decision has obtained permanent legal force, it is known that there are still assets belonging to the convict which are suspected or reasonably suspected of originating from criminal acts of corruption which have not been subject to confiscation for the state as referred to in Article 38B, then the state can file a civil lawsuit against the convict and/or his heirs.

The meaning of the provisions of Article 38C is understood in its explanation that the rationale for the provisions in this Article is to fulfill the sense of justice of the community towards perpetrators of corruption who hide assets that are suspected or reasonably suspected of originating from corruption. The assets are known after the court decision has permanent legal force. In this case, the state has the right to file a civil lawsuit against the convict and/or his heirs against assets obtained before the court decision has permanent legal force, whether the decision is based on the Law before the enactment of Law Number 31 of 1999 concerning the Eradication of Corruption or after the enactment of the Law.

Discussion on the confiscation of assets resulting from corruption after a court decision has permanent legal force, but it is suspected or can be suspected that there are still assets resulting from corruption that are hidden, then the state has the authority to file a civil lawsuit, so that there are two forms of lawsuits in corruption cases, namely criminal lawsuits and civil lawsuits.

According to Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, legal efforts based on civil lawsuits can only be carried out after a criminal lawsuit has been filed. Based on the Supersemar Foundation and PT. Goro Batara Sakti cases at the district court level, there was hesitation and failure to formulate the charges so that at the district court level, both cases failed.[14]A more serious difficulty faced by state attorneys is related to the procedural requirements for filing a civil lawsuit, this is because the civil lawsuit is filed after the criminal process has declared insufficient evidence, or even acquitted.[15]Legally speaking, how can one possibly succeed in suing for the return of state funds in a case that has been declared as having insufficient evidence or in a case that has been acquitted? Thus, civil lawsuits for the return of state funds are increasingly complicated.

[14]Kurniawan, Iwan, and Riki Afrizal. "Civil Lawsuit by State Attorney as an Effort to Recover State Financial Losses Due to Corruption." Nagari Law Review 5, No. 1 (2021): pp. 103-115.
[15]"Supersemar Case", published on http://www.antikorupsi.org

This discussion found that the implementation of the confiscation of assets from corruption still requires other legal instruments in the form of laws and regulations, for example the Draft Law on the Confiscation of Assets from Corruption, the Draft Law on Reciprocal Agreements between Indonesia and other countries regarding the return of Assets from Corruption and Extradition.

Another case related to the seizure of assets resulting from corruption is the case of Adrian Waworuntu, where on September 13, 20015, the Supreme Court approved the verdict of the South Jakarta District Court which was handed down on March 30, 2005 and the High Court on July 18, 2005. Thus confirming that Adrian Herling Waworuntu was guilty of corruption charges. The Waworuntu case is related to the use of funds from PT. Bank BNI Kebayoran Baru branch and illegal transfers of illegal proceeds.

Discussions and problems in the confiscation of assets resulting from corruption are increasingly complicated if the suspect flees abroad and some or all of the proceeds of corruption have been fled abroad. Not a few suspects have fled abroad, some of whom have even become important investors in several countries and become foreign citizens as well.

Confiscation of assets resulting from corruption is a very important legal effort in order to return assets resulting from corruption to the state.[16]to be used for the interests of national and state development still faces various obstacles in its implementation. According to Muhammad Yunus, several aspects related to asset confiscation were formulated, namely that asset confiscation based on confiscation without criminal charges does not depend on proof of the guilt or innocence of the owner who controls the asset; asset confiscation based on confiscation without criminal charges does not eliminate the authority of the public prosecutor to prosecute the perpetrator of the crime, and vice versa; and asset confiscation based on confiscation without criminal charges provides an opportunity for the state to secure, manage, and maintain the value of assets so that they are not damaged or reduced, so that through the implementation of this asset confiscation policy without criminal charges, efforts to return state financial losses will be more effective.

The return and confiscation of assets resulting from corruption have been clearly regulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, and in the general explanation of Law No. 20 of 2001, it is explained, among other things, that this Law also regulates the state's right to file a civil lawsuit against the convict's hidden or concealed assets and which are only discovered after a court decision has permanent legal force. The hidden or concealed assets are

[16]Abdullah, Fathin, and Triono Eddy. "Confiscation of assets resulting from corruption without conviction (Non-conviction based asset forfeiture) based on Indonesian law and the United Nations Convention Against Corruption (UNCAC) 2003." Jurnal Ilmiah Advocacy 9, No. 1 (2021): pp. 19-30.

suspected or reasonably suspected of being the proceeds of corruption. The civil lawsuit is filed against the convict and/or the convict's heirs. To file the lawsuit, the state can appoint an attorney to represent the state.

The substance contained in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, raises fundamental questions regarding the concept of criminal responsibility, because the heirs of the convict will be closely related to the civil lawsuit, because in Criminal Law there is a principle or principle of individual responsibility, in the sense that whoever does and becomes the convict is the one who is responsible. In a concrete example, for example a convict's father forged a land sale and purchase deed and was proven and convicted, it does not mean that his wife or children are also held criminally responsible.

Another principle in Criminal Law relating to the confiscation of assets resulting from corruption is that when the accused and/or convict dies, the case is automatically stopped and considered closed. However, the responsibility of the heirs in corruption cases is questionable, whether it does not conflict with the law and human rights as constitutionally regulated in the 1945 Constitution of the Republic of Indonesia, which in Article 28G paragraph (1) states that "Everyone has the right to protection of themselves, their personal, family, honor, dignity, and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."[17]

Eradication of corruption has so far only used primary legal components in general, namely Law No. 31 of 1999 which was revised by Law No. 20 of 2001 concerning Corruption, and Law No. 8 of 2010 concerning Money Laundering (UU TPPU), which has not provided a deterrent effect on the perpetrators and has not been able to optimally serve as a preventive tool. Corruption as an extraordinary crime requires a legal breakthrough, one of which is by emphasizing that the imposition of criminal penalties in eradicating corruption prioritizes the return of state financial losses, in order to minimize greater losses.

3.2. Legal Policy for Confiscation of Assets of Corruption Offenders in the Future

Future confiscation of assets resulting from corruption in efforts to eradicate corruption needs to be improved. One way is to revise or add provisions regarding the confiscation of assets resulting from corruption by looking at international instruments and also the development of asset confiscation practices in various countries. The 2003 United Nations Convention Against Corruption (UNCAC 2003) which has been ratified by Indonesia has contained 36

[17]Hestaria, Helena, Made Sugi Hartono, and Muhamad Jodi Setianto. "Legal Review of the Implementation of the Restorative Justice Principle to Criminal Acts of Corruption in the Context of Saving State Finances." Jurnal Komunitas Yustisia 5, No. 3 (2022): pp. 112-128.

StAR guidelines or guidelines in asset confiscation that can be used as a reference in the renewal of criminal law regarding the confiscation of assets resulting from corruption in the future.[18]

One of the concrete efforts made by the government in this renewal effort was to issue the Asset Confiscation Bill in 2008.[19]The Asset Confiscation Bill contains a more complete and clear formulation regarding the mechanism of asset confiscation, namely explicitly dividing the mechanism of asset confiscation into two, namely criminal confiscation and confiscation in rem. In addition, the actions that must be taken in the confiscation of assets that have been included in the Asset Confiscation Bill have been completely regulated, namely Search, Search, Blocking, Confiscation, to Asset Eradication. However, the Asset Confiscation Bill still has the same weaknesses as those in Law No. 31 of 1999 concerning Corruption, namely that it has not regulated the crime of confiscation of assets as the main crime but as an additional crime.

The regulation of confiscation of assets obtained through corruption in South Korea has developed as part of the country's commitment to eradicating corruption systematically and effectively. Since the era of legal reform after democratization in 1987, South Korea has strengthened its legal apparatus through the enactment of the Act on the Regulation and Punishment of Criminal Proceeds Concealment in 1995. This law regulates the confiscation and confiscation of assets obtained through criminal acts, including corruption, and facilitates the process of tracing assets domestically and across countries.[20]

One important aspect of the South Korean asset forfeiture system is the implementation of the principle of non-conviction based asset forfeiture. This allows the state to seize and confiscate assets obtained from crime even without a criminal conviction, as long as there is sufficient evidence that the assets are related to criminal activity. This is an important strategy to deal with cases where the perpetrator has fled, died, or is difficult to prosecute, but the assets obtained from the crime can still be seized by the state.

South Korea also grants law enforcement agencies such as the Supreme Prosecutors' Office and the Korea Financial Intelligence Unit (KoFIU) broad powers to conduct asset investigations and prevent money laundering. In corruption cases, collaboration between prosecutors, police, and financial

[18]Laila, Umar. "Legal Review of the Return of State Losses in the Corruption Crime Investigation Process (Case Study of the North Luwu Police)." Journal I La Galigo 5, No. 1 (2022): pp. 53-63.
[19]Rodiyah, Ratih Damayanti, Tri Sulistiyono, and Asyaffa Rizqi Amandha. "Reformulation of the Legal System of Legislation Based on Justice That Prosperous in Preventing Corruption (Perspective of Carry Over Legal Politics in Law No. 15 of 2019)." Proceeding APHTN-HAN 2, No. 1 (2024): pp. 281-318.
[20]Dwiantari, Rinni. "Sentencing for Corruption Crimes Committed by Public Officials in Indonesia (A Criminological Review)." PAMPAS: Journal of Criminal Law 6, No. 1 (2025): pp. 405-417.

authorities is strengthened to ensure that the flow of corrupt funds can be stopped and returned to the state treasury. In addition, the court has the authority to freeze assets during the legal process to prevent perpetrators from transferring or hiding their wealth.

In addition to national instruments, South Korea actively cooperates internationally in cross-border asset seizure. The country is a party to various international conventions such as the United Nations Convention Against Corruption (UNCAC) and the Financial Action Task Force (FATF). South Korea actively participates in reciprocal cooperation mechanisms and international legal assistance in tracking and repatriating assets from corruption crimes stored abroad.[21]

Overall, South Korea's approach to asset forfeiture of corruption emphasizes the integration of law enforcement, international cooperation, and ongoing regulatory reform. The country has demonstrated that strengthening institutions, transparency of the financial system, and eliminating legal barriers to asset forfeiture are key to reducing corruption and returning state assets seized by corruptors. This approach could serve as a model for other countries, including Indonesia, in building a more effective asset forfeiture system that is responsive to global challenges.

The regulation of corruption-related asset forfeiture in Australia is regulated through a comprehensive and progressive legal system. One of the main legal umbrellas is the Proceeds of Crime Act 2002 (POCA), which applies at the federal level and regulates the process of identifying, freezing, seizing and confiscating assets suspected of originating from criminal activity, including corruption. The main purpose of this law is to ensure that criminals cannot benefit from the proceeds of their crimes, and to prevent the reinvestment of illegal funds into the legitimate economic system.[22]

Australia also actively cooperates internationally in cross-border asset recovery. The country is a member of various international conventions such as the United Nations Convention Against Corruption (UNCAC) and is a member of the Financial Action Task Force (FATF). With mutual legal assistance agreements and recognition of the principles of extraterritorial jurisdiction, Australia contributes to global efforts to combat money laundering and recover assets from corruption outside the jurisdiction of the country of origin.

Thailand also engages in international cooperation to strengthen cross-border asset recovery, especially in the context of high-impact corruption. The country is

[21]Ibid
[22]Putra, Diky Anandya Kharystya, and Vidya Prahassacitta. "A review of the criminalization of illicit enrichment in corruption crimes in Indonesia: a comparative study with Australia." Indonesia Criminal Law Review 1, No. 1 (2021): p. 4.

an active participant in the United Nations Convention Against Corruption (UNCAC) and has signed a number of mutual legal assistance agreements with other countries. These commitments broaden Thailand's jurisdictional reach in tracing and retrieving criminal assets hidden abroad.[23]

Ultimately, reform of Indonesia's asset forfeiture law must be accompanied by institutional reform and strong political commitment. The examples of South Korea, Australia, and Thailand show that progressive regulation, reversal of proof, cross-agency cooperation, and international instruments are important foundations for creating an asset forfeiture system that is not only reactive, but also proactive and oriented towards substantial justice. By adopting best practices from other countries and adapting them to the national legal context, Indonesia can build a more responsive system in eradicating corruption at its roots through economic channels.

4. Conclusion

The legal policy of confiscation of assets of perpetrators of corruption based on the value of justice, the legal policy of confiscation of assets of perpetrators of corruption in Indonesia currently still faces various normative and implementative challenges, ranging from provisions that are optional, attachment to inkracht decisions, to the weak effectiveness of returning state assets. Although Law No. 31 of 1999 junto Law No. 20 of 2001 has contained the legal basis for confiscation of assets, its implementation is often not optimal and does not provide a deterrent effect on perpetrators. Therefore, a more progressive and responsive legal update is needed, such as the ratification of the Asset Confiscation Bill that accommodates the non-conviction based confiscation mechanism, as well as strengthening international cooperation in the context of returning cross-border assets. Thus, law enforcement in eradicating corruption can be more just, effective, and oriented towards recovering state losses as part of protecting public rights.

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[23]Mulyati, Nani. "CORRUPTION CRIMINAL ACTS COMMITTED BY THE PRIVATE SECTOR IN ASEAN COUNTRIES." Unes Journal of Swara Justisia 7, No. 2 (2023): pp. 722-738.

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