Ratio Legis Journal
ISSN 2830-4624
published by
Master of Law, Faculty of Law
Universitas Islam Sultan Agung

The Urgency of Implementing Asset Confiscation Without Punishment in Indonesia: a Comparative Study with Australia

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Abstract. *This study aims to identify the urgency of adopting asset forfeiture regulations in Indonesia and to analyze the legal formulations related to asset forfeiture regulations without criminal prosecution in Indonesia. Considering the current state losses due to corruption, asset forfeiture is an applicable solution to mitigate the impact of corruption in Indonesia. Therefore, this study will discuss the urgency of implementing asset forfeiture. This study employs normative research methods with legislative, conceptual, and comparative approaches. The legislative approach is conducted by analyzing various provisions of laws and regulations, both national and international, in the form of international agreements ratified by Indonesia. The conceptual approach is conducted by theoretically examining the concepts of corruption eradication and asset confiscation. The final approach used is a comparative approach, comparing the implementation of asset confiscation with countries that have already implemented it, namely Australia. This study found several things, including: first, that the urgency in implementing asset confiscation in Indonesia is due to legal and sociological urgency. The legal urgency is based on Indonesia's commitment to ratify the international UNCAC regulations that regulate asset confiscation. In addition, the current corruption enforcement standards have proven unable to eradicate corruption comprehensively and leave many loopholes that can be exploited by corruptors to cover their corruption. Furthermore, the sociological urgency related to asset confiscation is because the damage caused by corruption has a significant impact on society because the distribution of justice and development becomes unequal. Furthermore, the second finding is that major changes are needed in the Asset Confiscation Bill, such as including provisions on reverse burden of proof in the process of proving assets confiscated by the State, amending provisions that can change the minimum value of asset confiscation from government regulations to laws or equivalent, and* *making asset confiscation a priority crime before pursuing the predicate crime.*

Keywords: *Asset Forfeiture; Reversed Burden of Proof; UNCAC.*

1. Introduction

Corruption has become a major problem in our country, impacting state finances and the social and economic rights of the people. Corruption hinders our national progress and development, making it difficult to build a just and thriving society. The true victims of corruption are the state and its people, as these corrupt acts disrupt financial stability and economic well-being. Corruption makes our country a victim, suffering the consequences of these selfish actions. Although corruptors are supposed to pay fines, regulations often allow for these fines to be replaced with prison sentences; this demonstrates that recovering state losses due to corruption is neither simple nor easy.[1]

The high number of corruption cases and significant state losses have a negative impact on the stability of state finances and the integrity of the government. Law enforcement agencies are unable to recover assets optimally due to the lack of effective mechanisms to address current urgency. If not addressed, this could have a long-term impact on the decline in the welfare of the Indonesian people.

Indonesia has had provisions related to the prosecution of corruption crimes since 1999. However, to date, these regulations cannot be considered effective due to the high level of corruption in Indonesia and the lack of optimization in the recovery or restoration of corrupted assets. According to data from Indonesia Corruption Watch (ICW), the potential state loss in 2023 is approximately IDR 28.4 trillion, down from IDR 42.7 trillion in 2022. However, only approximately IDR 3.8 trillion has been recovered. This empirical fact shows that corruption cases in Indonesia threaten social, economic, and political stability, and pose a serious threat to the achievement of a just and prosperous society.[2]These data indicate a significant leakage of state assets that cannot be restored due to the absence of regulations related to asset return or ideal asset restoration.

Therefore, simply imprisoning corruptors will not be effective in reducing corruption unless accompanied by efforts to forcibly confiscate and return assets obtained through corruption. The principle behind asset confiscation is rooted in

[1]Setiadi, Wicipto. "Corruption in Indonesia." Indonesian Legislation Journal 15, no. 3 (2018): 249-262.
[2]Aprilla, Wanda, Mardalena Wulandari, and Arie Elcaputera. "Improving Government Transparency and Accountability Through Digital Technology and Public Participation in Corruption Eradication Efforts." Execution: Journal of Law and Public Administration 2, no. 4 (2024): 321-334.

fundamental justice, which states that crimes should not benefit the perpetrator. Allowing corruptors to reclaim their ill-gotten gains would allow them or those close to them to enjoy or reinvest those assets, potentially even committing other crimes for profit.

In its legal efforts to combat corruption, the government has also ratified international conventions related to corruption. This is demonstrated by the enactment of Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption (UNCAC), a serious manifestation of the government's commitment to eradicating corruption. This convention contains various provisions, including those related to asset confiscation. This asset confiscation is used to optimize the recovery of state losses so that all losses caused by corruption can be restored by the state. This way, losses resulting from corruption can be restored to become capital for development or for specific budget items. Through the UNCAC, member countries are encouraged to adopt non-conviction-based asset forfeiture (NCB) to address differences in legal systems and recover assets obtained from corruption in all jurisdictions.

This convention stipulates provisions related to asset recovery, starting with Article 51 of the UNCAC, which also reflects the international community's strong determination to pursue state assets illegally transferred to corrupt individuals or other parties. Article 51 is written in full as follows:

“The return of assets subject to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.”

This article emphasizes the importance of asset confiscation without waiting for a criminal conviction, demonstrating a global commitment to eradicating corruption and recovering state losses. This provision encourages participating countries to cooperate effectively to ensure that assets obtained illicitly through corruption are returned to their countries of origin without relying solely on conventional criminal proceedings, which are often time-consuming and fraught with challenges.[3]

As a state party to the UNCAC, Indonesia currently lacks a comprehensive regulatory framework governing the non-criminal asset confiscation scheme. In practice, this mechanism has been applied to various criminal cases, such as money laundering and narcotics offenses. However, specifically in corruption cases, Law No. 31 of 1999 concerning Corruption, as amended by Law No. 20 of 2001, is deemed insufficient to effectively recover state losses through criminal or civil asset confiscation.

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[3]Priyatno, Dwidja. "Non Conviction Based (NCB) Asset Forfeiture for Recovering the Corruption Proceeds in Indonesia." Journal of Advanced Research in Law and Economics (JARLE) 9, no. 31 (2018): 219-233.

With these asset recovery regulations, corruption eradication efforts in Indonesia will be optimized, not merely superficial, but concrete, with tangible impacts felt throughout Indonesia. This is because, to date, corruption enforcement in Indonesia has been ephemeral and has had no concrete impact on public welfare. To date, there has been no mechanism for asset recovery or asset confiscation that can be used to recover corrupt assets from corruptors.

Although extrajudicial asset confiscation originates from the common law system, it can also be applied in countries with civil law systems. Article 54(1)(c) of the UNCAC urges all participating countries, both common law and civil law, to consider implementing the confiscation of assets obtained from corruption even in the absence of a criminal conviction. This provision emphasizes that countries must take the necessary steps to enable asset confiscation if criminal prosecution is not possible. For example, in cases where the perpetrator dies, absconds, or cannot be located, asset confiscation can still be carried out. This is crucial because, in many cases, corruptors use various means to avoid prosecution, such as fleeing to another country or hiding their assets in a foreign jurisdiction. The UNCAC encourages civil law countries to adapt their legal frameworks to adopt non-criminal asset confiscation mechanisms.

In several other countries, provisions regarding asset forfeiture without criminal prosecution have already been implemented. This implementation even predates the UNCAC. For example, Antigua and Barbuda introduced the Money Laundering (Prevention) Act in 1996; the United States Congress enacted the Civil Asset Forfeiture Reform Act in 2000; and Australia, Colombia, and the United Kingdom introduced the NCBC legislation in 2002. All of these laws contain provisions related to asset forfeiture without criminal prosecution.[4]

In fact, the concept of confiscation without conviction has become a highly debated topic in the European Union. The 2014 European Union Directive addresses the concept of confiscation of assets without conviction. Confiscation is defined as the final seizure of property ordered by a court “in connection with” a criminal offence; and such confiscation is independent of a conviction. Indeed, the 2014 European Union Directive explicitly provides for confiscation of assets without conviction in carefully defined circumstances:[5]

“[w]here [post-conviction confiscation] is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offense which is liable to

[4]Davis, Pablo J. "To return the funds at all: global anticorruption, forfeiture, and legal frameworks for asset return." U. Mem. L. Rev. 47 (2016): 291.

[5]Lelieur, Juliette. "Freezing and confiscating criminal assets in the European Union." Eur. Cream. L. Rev. 5 (2015): 279.

give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial."

However, according to Hendrik and Hafiz, there are very positive impacts if the regulation on asset forfeiture without criminal penalties is implemented in Indonesia, such as increased fiscal resources, GDP growth, reduced dependence on debt, and increased government efficiency. These benefits underscore the importance of strengthening law enforcement mechanisms and ensuring transparent and fair reinvestment of recovered assets. Asset forfeiture laws also contribute to financial stability by curbing financial crime, strengthening fiscal discipline, and increasing state revenues. These impacts are amplified when recovered assets are efficiently reinvested in productive sectors, promoting sustainable economic growth and equitable development.[6]

With the adoption of provisions on asset forfeiture without criminal prosecution in various countries, Indonesia should also follow suit. Before proceeding, let's discuss the reasons why Indonesia should comply with these provisions on asset forfeiture without criminal prosecution, including:

1. There is no criminal law mechanism regarding the confiscation of assets when the perpetrator of corruption dies or flees;

2. The length of the procedural process in criminal law to provide evidence for criminal acts of corruption;

3. Corruption losses that cannot currently be fully restored;

4. Implementing the provisions stipulated in the UNCAC and ratified by Indonesia.

Asset confiscation without criminal prosecution can certainly be a solution amidst the numerous corruption cases that result in significant state losses that cannot be optimally recovered. Asset confiscation is a procedural solution to prevent state losses from becoming obscured and unclear. This, of course, prevents the seizure of corrupted assets due to procedural reasons.

The current legal vacuum regarding asset confiscation without transfer can only be addressed by revising the regulations and incorporating provisions for asset confiscation without criminal prosecution. This revision can be achieved through comparisons with countries that have successfully implemented asset confiscation without criminal prosecution. Reflecting on and learning from successful countries will contribute to the success of this program.

[6]Hendrik & Hafiz, Economic and Financial Impacts of Asset Forfeiture Laws in Indonesia", Global Journal of Economic and Finance Research Vol. 1, No. 6. 2024.

Therefore, in this study, the author uses Australia as a practical comparison in implementing asset confiscation without conviction. There are several reasons why the author chose Australia as a comparison in this study, including:

1. Australia has unique provisions for asset forfeiture without conviction. One of the reasons this provision is unique is that in Australia, no preliminary evidence is required to confiscate assets.

2. Australia has an excellent corruption index and has succeeded in becoming a low-corruption country.

Using Australia as a benchmark in this research process will establish Australia as a model for asset forfeiture without criminal prosecution. Therefore, to address the challenges of the times and improve the enforcement of corruption in Indonesia, this study will attempt to outline the urgency of implementing the asset forfeiture provisions contained in the UNCAC into the Indonesian legal framework. Furthermore, this study will further examine the mechanisms implemented by Australia as a country to be compared and used as a model for adopting asset forfeiture mechanisms without criminal prosecution.

2. Research Methods

This research uses normative juridical legal research.[7]or also known as doctrinal legal research. In this paper, the researcher focuses on the urgency of implementing asset confiscation without criminal prosecution in Indonesia. In this research, the author will also examine and deepen the study through legal materials related to the research. This way, emerging issues can be addressed through analysis of the relevant legal materials.

3. Results and Discussion

3.1. Urgency of Asset Confiscation

Current asset confiscation or seizure mechanisms cannot cover all unexplained wealth held by suspected perpetrators of corruption or other crimes used for illegal personal enrichment. Currently, the only possible mechanism is the seizure of assets proven to have been seized or become evidence during the judicial process. Without a judicial process and without the imposition of these assets as evidence, the state cannot seize or confiscate assets owned by suspected perpetrators. This method allows perpetrators to easily conceal their assets and protect them from being confiscated or seized during the judicial process. This, of course, provides an opportunity for perpetrators to continue enriching themselves even though they are facing legal consequences.

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[7]Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana Publisher, 2007, p. 35

This problem is certainly very profitable for the perpetrators and extremely detrimental to the state. On the other hand, this loophole appears to be a game-changer for the state and also empowers perpetrators to commit crimes. This is because, of course, the primary goal of any crime is self-enrichment. Therefore, this is a crucial issue for the state to address and a valuable loophole for perpetrators to continue exploiting state resources through unlawful means.[8]

At first glance, this appears to be a legal vacuum. However, if law enforcement were effective, asset confiscation would be unnecessary, as confiscation could effectively recoup state losses. The procedural hurdle is inherent in this process, as prosecutors must prove various factors related to the assets that require confiscation. This burden of proof placed on the state complicates the process and places a risk on the state and the responsibility to prove and recover assets from the perpetrators. However, a comparison with Australia, which applies a reverse burden of proof to perpetrators, makes it easier for the state to recover assets without the need for a particularly difficult form of proof.

This difficulty in proving the case is understandable, as it's assumed that perpetrators will immediately conceal their illegally acquired assets from the first day of their crime. This makes it extremely difficult for prosecutors to locate and prove the whereabouts of the concealed assets. The assets may have already been transferred to another party or sold through other means. This practice is integral to money laundering, making it extremely difficult to trace.[9]

Therefore, confiscation of assets without criminal prosecution is an absolute must to resolve this issue. Certainly, the methods employed by countries that have previously implemented this practice can serve as lessons to be learned. For example, as implemented in Australia, there are various methods that can be applied to resolve this issue in Indonesia. This is particularly true regarding the burden of proof placed on the perpetrator. This mechanism will facilitate the state's recovery of any losses resulting from illegal acts.

Thus, there is an urgent need to create a law regarding asset confiscation to optimize the recovery of state losses. This urgency can be broadly categorized into several general points, including the following:

Legal Urgency

This legal urgency relates to anything that correlates with legal norms already regulated or ratified by Indonesia. Given the existence of previous regulations or the gratification of an international treaty, Indonesia is already obligated to carry

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[8] Setiadi, Wicipto. "Corruption in Indonesia." Indonesian Legislation Journal 15.3 (2018): 249-262.

[9] Kenneth, Nathanael. "The rise in corruption cases in Indonesia year after year." JLEB: Journal of Law, Education and Business 2.1 (2024): 335-340.

out this asset confiscation action. In general, Indonesia has ratified an international treaty known as the United Nations Convention Against Corruption (UNCAC).

The UNCAC was created due to international concern about the crime of corruption. Corruption is not only a problem in Indonesia, but in nearly every country worldwide. This makes it an extraordinary crime. Therefore, recognizing that corruption is no ordinary crime, countries around the world have joined a convention called the UNCAC. By signing the UNCAC, the international community recognizes corruption as an international crime.[10]

With this convention, corruption has become an internationalized crime, meaning it is fought jointly by the countries that signed the convention. This also means that countries will work together to combat corruption within their own countries or against perpetrators of corruption who have fled abroad. The internationalization of corruption is based on at least six impacts resulting from corruption. The first impact is that corruption will damage democracy; the second impact is that corruption is considered to damage the rule of law established by a country; the third impact is that corruption is considered to disrupt sustainable development; the fourth impact is that corruption is considered to damage the economic market; the fifth impact is that corruption is considered to damage the quality of life of the community; and the sixth impact is that corruption is a violation of human rights.[11]

These six impacts are what have made countries more serious about combating corruption collectively. Examining each of the impacts of corruption, one by one, reveals its significant and fundamental impact on national life. Therefore, corruption cannot be allowed to go unpunished, nor can it be dealt with in an extraordinary manner. Given its significant impact, criminal law enforcement must also be addressed aggressively. This is the basis for countries signing the UNCAC to combat corruption.

Based on this, it can be seen that the UNCAC has several objectives, including enhancing the prevention and eradication of corruption efficiently and effectively and establishing international cooperation in the technical law enforcement process between countries. This efficient and effective enforcement of criminal acts is indeed reflected in the contents of the UNCAC. This is because one of the issues raised is related to corruption law enforcement, which is very difficult to implement perfectly given the difficult and complex burden of proof. Efficient and effective here also means that the enforcement of corruption crimes is not time-consuming, so it does not distort the material truth in the case and certainly can

[10] Garnasih, Yenti. "New Paradigm in Anti-Corruption Regulation in Indonesia Linked to UNCAC 2003." PRIORIS Law Journal 2.3 (2009): 161-174.
[11] Background Paper Declaration of the 8th International Conference Against Corruption in Lima, Peru from 7 to 11 September 1997.

recover the maximum state losses. With such enforcement, state losses can be optimally recovered and the material truth of the facts on the ground can be conveyed properly.[12]

As a nation founded on religious values, the urgency of implementing asset confiscation must also be considered within the context of Islamic law. Analyzing it from an Islamic legal perspective, the urgency of asset confiscation has long been discussed by scholars. This is because corruption and embezzlement of publicly owned political parties has long been a common occurrence. Islamic law certainly regulates this, and the sanctions imposed on perpetrators of corruption are strict. In fact, Islamic law stipulates that asset confiscation is very strict. This is evident in the hadith narrated by An-Nasai in the book Al-Sariq, number 4872, which states: "Anyone who steals something from another person must replace it with double its value, and he must also be punished."[13]

The provisions in this hadith can be interpreted as showing that Islam has a very strict effect on perpetrators of corruption. This hadith clearly emphasizes a two-tiered punishment for perpetrators of corruption. The first emphasis is on restoring the victim's losses, which is done by replacing the stolen goods with twice the value of the stolen goods. After paying compensation, the second step is to impose punishment on the perpetrator to create a deterrent effect. From this perspective, Islam actually accommodates the confiscation of assets and goes beyond that. Islam prioritizes both restorative and retributive material measures.[14]

This is also explained by Imam Syafii and Imam Ahmad bin Hanbal, who stated that perpetrators of corruption are obligated to compensate for losses by returning the stolen assets and being punished. According to these two great imams, corruption violates two aspects simultaneously: the relationship with God and the relationship with humanity. The relationship with God is meant to be a forbidden crime, while the relationship with humanity is due to the violation of another's rights. Therefore, the punishments imposed under Islamic law on perpetrators of corruption are reasonable and just for the victims.[15]

Therefore, restitution for losses resulting from corruption is not merely a return of the corrupted funds, but also a commitment by the perpetrator to refrain from committing the crime again, subject to the punishment imposed. The relationship with God is also restored.

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[12]Anne Peters, "Corruption as a Violation of International Human Rights", The European Journal of International Law, Vol. 29, no. 4, 2018, p. 1262

[13]Al-Kavafi, M. Imdad, Ja'far Baehaqi, and Maskur Rosyid. "The Urgency of Asset Confiscation in Eradicating Corruption: From the Perspective of Islamic Criminal Law." USM LAW REVIEW JOURNAL 8.2 (2025): 952-977.

[14]Ibid.

[15]Ibid.

Regarding the urgent asset confiscation regulations in Indonesia, when viewed from an Islamic legal perspective, this is part of the primary objectives of Islamic law. These objectives include preserving religion, life, intellect, posterity, and property. Therefore, the urgency of implementing asset confiscation without surgery is a form of safeguarding and an instrument for upholding justice. All of this can only be achieved if the state enforces the law with integrity and consistency. Therefore, Indonesia, as a nation founded on religious values, also applies religious principles to asset confiscation. The restoration undertaken not only restores relationships between fellow human beings, but also between perpetrators and their God. With such an emphasis, corruption can be significantly reduced.[16]

3.2. Formulation of Asset Confiscation Without Criminal Imprisonment

Unexplained Wealth in Australia

Conceptually, in the common law system, the application of asset forfeiture, whether through the court system or out of court, is both rooted in a legal provision called deodand, which in practice is known as the seizure of property to be given to God for causing someone's death. Although the doctrinal origins of deodand are unknown, it most likely emerged in the 11th century and remained in effect until it was abolished by Parliament in 1846. The word deodand comes from the Latin phrase deo dandum, meaning "to be given to God." Under deodand law, if a jury finds that an item caused someone's death, it is confiscated by the Crown. The Crown is then supposed to sell the item and use the proceeds to honor God. So, if someone is killed by a horse, the Crown can confiscate the horse, and if someone is killed by a falling stone, the Crown can confiscate the stone.[17]

Deodand law gradually developed a set of guiding principles that helped determine whether a movable object was deodanded and therefore subject to confiscation. However, these principles were quite unique. The most important principle was “omnia quae movent ad mortem sunt deodanda,” or “whatever moves toward death is deodanded.” In other words, if a movable object caused someone's death, it was deodanded. Practically speaking, deodands were supposed to be donated to charities. However, often, the Crown simply kept them, and eventually, the Crown began selling the right to collect deodands to others. In practice, deodands became a kind of tax on tragedy, an opportunity for the Crown to generate revenue by confiscating the property of criminals.[18]

[16]Faizal, Enceng Arif. "Asset Confiscation Without Criminal Punishment: An Islamic Legal Perspective." Majelis Journal 1 (2021): 79-105.
[17] Sutton, Teresa. "The deed and responsibility for death." The Journal of legal history 18.3 (1997): 44-55.
[18] Sutton, Teresa. "The nature of the early law of deodand." Cambrian L. Rev. 30 (1999): 9.

ISSN : 2830-4624

Historically, these confiscations were an attempt to benefit the kingdom by providing a cover for the seizure, as if it were for God. However, socio-culturally during that century, the kingdom was often considered a representative of God, or even God himself. This justified the kingdom's actions in confiscating these items in God's name. However, these items could ultimately be converted into profits for the kingdom to govern. With this practice, the juries gradually began to realize the rigor of the deodands, as many of the actions in the deodands were illogical and ultimately blamed solely on the object of death, making it difficult to obtain justice.[19]

Despite the various shortcomings and abuses of the deodands practice, it has continued to inspire various conditions and the formation of modern laws related to the confiscation of goods that currently exist in common law countries, especially countries that are members of the British Commonwealth such as Australia, including in this case deodands has inspired the birth of the practice of forced confiscation of assets without any judicial process for illogical assets belonging to state officials.

Deodands This is the inspiration behind the creation of unexplained wealth law in Australia, which aims to prevent crime, particularly organized crime, by reducing profits from illegal activities. Ultimately, losses resulting from illegal acts that lead to state financial losses are returned to the state treasury through this legal mechanism. In theory, the purpose of this law is indeed inspired by past deodand practices. The foundation for implementing unexplained wealth law in Australia was laid with the creation of The Proceeds of Crime Act 2002 ("POCA 2002"), a Commonwealth law that provides a way for Australia to recover assets of unexplained origin. The meaning of this origin is that assets are inversely proportional to income.

Before the enactment of POCA 2002, the applicable law was the Proceeds of Crime Act 1987 ("POCA 1987") and with the enactment of POCA 2002, the provisions of POCA 1987 were completely replaced. In POCA 1987, the practice of confiscation was known but not known unexplained wealth law and the confiscation practice contained in POCA 1987 was a conventional confiscation practice that allowed the freezing of assets during the criminal process to prevent the movement of assets that might be the object of confiscation and a valid confiscation order could only be issued after a sentence was handed down.[20]

The unexplained wealth provision in POCA 2002 was explicitly included with an amendment made in 2010. This provision was included because it was inspired by the Sherman Report and the Australian criminal investigation into actions that

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[19]Ibid.

[20] Smith, Marcus, and Russell G. Smith. "Procedural impediments to effective unexplained wealth legislation in Australia." Trends and Issues in Crime and Criminal Justice 523 (2016): 1-9.

directly harm the State. Based on this amendment, several Australian states, such as New South Wales and Queensland, adopted the rules set out in POCA 2002, which were amended in 2010. With this new rule, the State has a greater opportunity to recover all State losses incurred by another party. Furthermore, under this legal framework, the burden of proof is placed on the defendant and uses a reverse burden of proof.[21]

This ensures that, in addition to avoiding conflict, the regulatory framework differs from one regulation to another, demonstrating the complexity of regulatory development at each level, which also determines the level of authority of a regulation. The higher the regulation, the more restrictive and restrictive its development. For example, drafting or revising a constitution is significantly more complex than regulations at lower levels. In Indonesia alone, amending the 1945 Constitution of the Republic of Indonesia requires a dedicated institution and team. Furthermore, approval of amendments to the 1945 Constitution is also highly restricted, as approval for amendments is determined specifically, including the submission process.

Compared to the amendments or formation of laws, which are lower in hierarchy than the 1945 Constitution of the Republic of Indonesia, the formation of the 1945 Constitution of the Republic of Indonesia appears very different and limited. The formation of laws or their amendments is not as complex as the amendments to the 1945 Constitution, although their formation is also more complex than the regulations below them, as is the formation of regulations below them. Therefore, changes to one regulation must be amended or revoked by an equivalent regulation. For example, changes to laws by laws, government regulations by government regulations, and so on.

Revocation and amendment of regulations at other hierarchical levels can be applied to higher-level regulations, such as laws revoking government regulations, and so on. In the Asset Confiscation Bill, changing the values contained in a law with government regulations is a shortcut that ignores existing norms and procedures. This is prone to creating conflicts between norms, potentially disrupting stability in law enforcement.

Therefore, the provisions for amendments to the Asset Forfeiture Bill should only be implemented through equivalent norms or through the normal legislative process. This way, in terms of regulatory norms, there will be no overstepping or cheating on the amendments to the Asset Forfeiture Bill, especially since the amendments concern the minimum threshold for asset forfeiture.

Furthermore, in addition to adding a reverse burden of proof clause and removing the provision for changing the threshold for asset confiscation through

[21] Clancy, Áine, and Liz Campbell. "The Principles and Practical Limits of Unexplained Wealth Orders." University of Western Australia Law Review, Forthcoming (2024).

government regulations, another necessary change is to make asset confiscation a prior process if there is another similar case concurrently involved. For example, if there is a corruption case but there is also a suspicion that the assets are obtained from criminal proceeds, the process should be carried out to resolve the asset confiscation first, before proceeding with the underlying crime, namely corruption.

Prioritizing asset confiscation cases over criminal prosecution is the ideal way to mitigate state losses. By shifting the mindset from criminal penalties focused on revenge to optimizing the benefits of recovering state funds, resolving asset confiscation becomes a priority. Therefore, asset confiscation becomes the primary sanction in corruption crimes, a strategic step in recovering state financial losses.

Therefore, the provisions governing the exclusion of asset confiscation cases from the primary crime if there is a case being tried concurrently with the primary crime must be revised to prioritize the resolution of asset confiscation cases. Only in this way can the primary focus be on recovering state losses caused by corruption be optimally restored.

4. Conclusion

1. The urgency of implementing asset confiscation in Indonesia stems from both legal and sociological urgency. The legal urgency stems from Indonesia's commitment to ratifying the international UNCAC, which regulates asset confiscation. Furthermore, existing corruption enforcement standards have proven ineffective in comprehensively eradicating corruption and leave numerous loopholes that corruptors can exploit to cover their tracks. Furthermore, the sociological urgency of asset confiscation stems from the significant damage caused by corruption, resulting in an unequal distribution of justice and development. 2. Major changes are needed in the Asset Forfeiture Bill, such as including provisions on the reverse burden of proof in the process of proving assets seized by the State, changing provisions of the rules that can change the minimum value of asset forfeiture from government regulations to laws or equivalent, and making asset forfeiture a priority crime before pursuing the underlying crime. This provision is based on Australia, which has implemented asset forfeiture in various states with different specific provisions in each country.

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