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THE URGENCY OF ASSET CONFISCATION WITHOUT CRIMINAL PROSECUTION IN CORRUPTION CRIMES AS RENEWAL OF INDONESIAN CRIMINAL LAW

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Abstract
The Urgency of Confiscation of Assets Without Criminal Prosecution of Corruption for a Country of Confiscation of Assets without Criminal Prosecution of Corruption can be Implemented in Indonesia. Research using normative legal research. Is a legal research method that combines a normative legal approach, namely statutory law and a conceptual approach'. The results of the study showed that (1) Mechanisms for appropriation of assets without prosecution for corruption. The process is more effective because it bypasses several legal principles and also by lowering the standard of proof in criminal cases, is considered to have the potential to face the principle of a fair trial (due process of law). as well as the right to own one's property (property rights). This is, for example, reflecting on the experience of lawsuits for judicial review of several articles in the TPPU Law, such as the matter of reverse proof and evidence of predicate crimes. Even though the Constitutional Court Decision has confirmed the constitutionality of the articles being tested, (2) The biggest challenge for introducing the in rem asset confiscation law in the Asset Confiscation Bill is how to explain this approach, which separates the relationship of assets proceeds of crime from the perpetrators of crimes. Even though it is not at all aimed at eliminating the criminal justice process, sometimes in rem deprivation will only be after the proceeds of crime without regard to who the perpetrators are.

Keywords: Asset Seizure; Criminal Prosecution; Criminal Acts of Corruption; Criminal Law Reform

INTRODUCTION

Corruption crime has been considered as"*exraordinary crime*" or extraordinary crimes that have penetrated into various aspects of human life and are very detrimental to the country's economy and hinder the course of development for the Indonesian state. Various efforts have been made by the Government of Indonesia.[1] Corruption in

[1] Doni Putra, "Korupsi Di Indonesia Perspektif Hukum Islam (Terapi Penyakit Korupsi Dengan Tazkiyatun Nafs)," *Islam Transformatif : Journal of Islamic Studies* 1, no. 2 (2018): 141–54, https://doi.org/http://dx.doi.org/10.30983/it.v1i2.423.

Indonesia has increased every year and is very difficult to eradicate. In 2012, *Indonesia Corruption Watch* (ICW) noted that the number of corruption suspects reached 597 people. Furthermore, from the latest data released by the KPK Until June 2022, there were a number of efforts to handle criminal acts that had been carried out, in the first semester of 2022, the KPK had conducted 66 investigations, 60 investigations, 71 prosecutions, 59 inkracht cases, and executed decisions on 51 criminal acts. corruption crime. Of the total investigation cases, the KPK has named 68 people as suspects from 61 investigation warrants (sprindik) published. if it is detailed the things that are going on in the first semester as many as 99 cases consisting of 63 cases*carry over* and 36 new cases with 61 published sprinks. Not only that, the KPK has carried out 52 searches and 941 seizures in the process of investigating the case.[2]

Sanctions in law related to criminal acts of corruption have not been able to reduce criminal acts of corruption. A new breakthrough and concrete action is urgently needed to overcome corruption.[3] Recently, there have been alternative ways discussed by law enforcement officials so that law enforcement officials use the impoverishment of corruptors. The discourse on the impoverishment of corruptors is increasingly widespread from 2012 to 2022. The case that has occurred is that a Jakarta Corruption Court judge sentenced Gaius Tambunan to six years in prison, a fine of Rp. 1,000,000,000.00 (one billion rupiah) and confiscated Gaius' assets, including the convict's luxury home in Kelapa Gading, North Jakarta. Gaius was proven guilty of corruption and money laundering when he was a tax inspector. This sentence is the fourth sentence that Gaius has received. Previously, Gaius was also sentenced for three other cases, namely passport forgery, tax evasion and bribery with a total sentence of 22 years. The Gaius case can be used as the initial momentum to impoverish corruption.

However, the inconsistency of law enforcement officials has created its own problems in the world of justice in Indonesia, this occurred in the corruption case with

[2] Issha Harruma,*Data on Corruption Cases in Indonesia for 2022*, Kompas, September 21, 2022. Retrieved*https://nasional.kompas.com/read/2022/09/21/01000051/data-case-korupsi-di-indonesia Tahun-2022*, accessed on (3/4/2022).

[3] Ulang Mangun Sosiawan, "Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi Di Indonesia," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 587–604, https://doi.org/http://dx.doi.org/10.30641/dejure.2020.V20.587-604.

the defendant Djoko S. Candra or the Edy Tansil corruption case. Both are difficult to criminally prosecute because their whereabouts are unknown even though it is known that the existence of the two could not be executed by the Indonesian government due to various diplomatic limitations. Even though the assets of Djoko S. Candra and Edy Tansil are still in Indonesia, both of them are even still benefiting from these assets. Even though in 2020 developments, Djoko S. Candra was arrested by the police after years of being able to escape to various countries and still controlling his business octopus in Indonesia, even though in 2008 Djoko S. Candra was sentenced to 2 years in prison. After that Djoko S. Candra submitted a PK, in the process Djoko S. Candra was proven to have bribed a number of names so that he was able to make fake KTPs. However, in the end, Djoko S. Candra was sentenced to 2.5 years in prison in the forged letter case and 4.5 years in prison in the bribery corruption case. In addition, Djoko S. Candra had to serve a corruption sentence of 2 years in prison in a corruption case*assignment* Balinese BANK. The Supreme Court also ordered that funds kept in an escrow account or Bank Bali amounting to Rp. 549 billion returned to the state.

Impoverishment of corruptors has great potential to eradicate corruption in Indonesia. Humanely, no one wants to be poor. Of course corruptors who are used to living well and even tend to be luxurious will be afraid of living in poverty. The impoverishment of corruptors must be confirmed in a clear regulation so that it remains in the corridor of legal principles and does not lead to violations of human rights (HAM).[4] When a corruptor is impoverished, not only does he personally feel the effects, but his family also feels it.

This then gave rise to a new concept in the renewal of criminal law in Indonesia, especially corruption to have special provisions that allow confiscation of assets resulting from criminal acts through a mechanism known as *Non-Conviction Based* (NCB) *asset forfeiture* or confiscation of assets resulting from a crime with a mechanism without punishment. Indonesia-must have special provisions that allow confiscation of proceeds of crime through a mechanism known as *Non-Conviction Based* (NCB) *asset forfeiture* or

[4] Muhamad Iqbal Susanto, "Kedudukan Hukum People Power Dan Relevansinya Dengan Hak Kebebasan Berpendapat Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (2019): 225–37, https://doi.org/https://doi.org/10.24090/volksgeist.v2i2.2844.

confiscation of assets resulting from a crime with a mechanism without punishment.[5] Term *NCB asset forfeiture* not yet clearly recognized in Indonesian positive law, so there is no clear definition regarding the mechanism for confiscating assets resulting from a crime through civil lawsuits. However, the absence of such a definition does not imply a mechanism *NCB asset forfeiture* cannot be applied.

This mechanism allows confiscation of assets resulting from criminal acts*into reality* (against assets) not against corruptors. So that the decision of a criminal act that has legal force is still not the main requirement for confiscating assets. *NCB asset forfeiture* open wide opportunities to seize all assets that are suspected of being the result of a criminal act*(proceed of crimes)* and other assets that are reasonably suspected to be used or have been used as a means*(instrumentalities)* to commit a crime.[6] This mechanism can also be used as an alternative to obtain compensation or compensation for state losses.

Application *NCB asset forfeiture* is urgently needed because so far in practice in the field, asset confiscation in corruption cases has been carried out behind closed doors. Mechanism practice *NCB asset forfeiture* in Indonesia is expected to be able to produce a mechanism that provides stronger legal certainty in the matter of confiscating assets of corruption. As one of the countries that have ratified the UNCAC, until today Indonesia does not yet have specific regulations that comprehensively regulate the mechanism for confiscating assets without punishment. In practice in Indonesia, this mechanism has actually been applied to various criminal cases, for example money laundering and narcotics crimes. However, specifically on the issue of criminal acts of corruption, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 is considered by some legal experts to have not been successful in seizing assets resulting from corruption crimes.

The dissatisfaction of the international community, including Indonesia, with saving state finances that are disproportionate to the losses to state finances and the operational

[5] Tantimin Tantimin, "Penyitaan Hasil Korupsi Melalui Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 85–102, https://doi.org/https://doi.org/10.14710/jphi.v5i1.85-102.

[6] Devi Eka Verawati and Otto Yudianto, "Urgensi Perampasan Aset Tanpa Pemidanaan Dalam Tindak Pidana Korupsi Sebagai Upaya Pengembalian Kerugian Negara," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 2 (2022): 29–44, https://doi.org/https://doi.org/10.572349/civilia.v1i2.132.

costs incurred in rescuing state finances has prompted the birth of UNCAC 2003. Article 51 UNCAC 2003 shows the enthusiasm of the international community to pursue the assets of state parties that are in the hands of corruptors or other parties illegally by using confiscation of assets without punishment *(NCB asset forfeiture).* Therefore it is important to conduct an assessment of the problem of confiscation of assets without punishment in Indonesia based on Indonesian law and *United Nations Convention Against Corruption 2003.*

Advances in technology and information have created convenience for perpetrators of criminal acts, particularly with regard to concealment of proceeds of crime. This practice has grown in complexity in at least the last 10 years. The construction of criminal law built in Indonesia tends to aim at uncovering criminal acts, finding the perpetrators, and punishing them. This punishment is relatively limited to the imposition of "corporate criminal sanctions such as imprisonment, while confiscation and "confiscation of assets resulting from crime does not seem to be" an important part of the criminal law system in Indonesia. The modus operandi of to hide assets resulting from criminal acts has developed in a very varied way, and has even passed inter-state jurisdictions. Assets taken abroad, as illustrated in the case of Gaius Tambunan, cost the state Rp. 106,700,000.00 and USD 18,000,000, of that amount only Rp. 2,081,000,000.00 which was deposited into the state treasury and the rest has not been returned because it is suspected that it is still stored abroad. In fact, in other cases, the Attorney General's Office indicated that the assets of the suspect in the Jiwasraya case were stored in 10 countries. Indonesian criminal law, especially the criminal act of corruption, needs to be reformed in the encompassing law*NCB asset forfeiture* as a solution to saving state assets. Renewal of criminal law really needs to be done to free the country from colonial shackles, especially in terms of regulation more specifically in the suppression of criminal acts of corruption.

METHOD

The research method used in this study is normative legal research, which is legal research conducted by examining literature (library research) or secondary data as a basis

for research by conducting a search of the regulations and literature relating to the problem under study.

RESULT AND DISCUSSION

1. Asset Confiscation Legal Policy in the Asset Confiscation Draft Law Without Criminal Prosecution

Based on Article 10 of Law no. 12 of 2011 concerning the Formation of Legislation, ratification of international agreements is only carried out by law. According to the elucidation of Law no. 12 of 2011, Article 10 reads "What is meant by "certain international agreements" are international agreements that have broad and fundamental consequences for people's lives related to the burden on state finances and/or these agreements require changes or the establishment of laws with the approval of the DPR". UU no. 7 of 2006 is a law of ratification and a form of formal approval by the DPR, not a law of transformation in our national legal system. Ratification of the 2003 UNCAC convention is embodied in law, which begins and ends the legislative process in Indonesia. Implementation in the form of ratification or ratification laws is still going through a process of harmonization with the old regulations, namely Law no. 20 of 2001 concerning the Eradication of Corruption Crimes related to objects of international treaties which have been contained in part or in whole in the provisions of the laws and regulations in force in Indonesia.

The existence of this harmonization process will give birth to an amendment law, if the object of the international agreement has not been regulated at all in the applicable national law.[7] Then, the process of drafting a new law will be carried out. Apart from the subject matter, UNCAC 2003 has differences from Law no. 20 of 2001 regarding objects, evidence, and processes for returning assets that have never even been regulated in other national laws, such as criminal law or civil law as explained in the previous chapter.[8] So

[7] Bayu Jati Jatmika, "Asas Hukum Sebagai Pengobat Hukum; Implikasi Penerapan Omnibus Law," *JAAKFE UNTAN (Jurnal Audit Dan Akuntansi Fakultas Ekonomi Universitas Tanjungpura)* 9, no. 1 (2020): 71–83, https://doi.org/http://dx.doi.org/10.26418/jaakfe.v9i1.41145.

[8] Abdul Manan, "Pembaharuan Hukum Dalam Tindak Pidana Korupsi Pasca Ratifikasi Konvensi Anti Korupsi Tahun 2003," *Maleo Law Journal* 2, no. 2 (2018): 195–221, https://jurnal.unismuhpalu.ac.id/index.php/MLJ/article/view/774.

that a new law is needed that regulates the object of study contained in the 2003 UNCAC convention.

The relationship between national law and international law can be analyzed using monism theory and dualism theory. Monism theory explains that national law and international law are a binding entity. International law applies within the scope of national law without a transformation process.[9] Meanwhile, the theory of dualism is a theory that separates national law from international law. According to this theory, national law and international law are two intrinsically different legal systems.

This theory states that it is necessary to change international law into the form of national law (transformation) so that the principles of international law issues can be applied to become national law.[10] The justification of NCB asset forfeiture or asset confiscation without punishment can be seen from the theory of justice put forward by Michael Levi, including: First, the reason for prevention (prophylactic), this aims to prevent the occurrence of other crimes in the future and to ensure that assets originating from criminal acts are not controlled by the perpetrators, in this case asset confiscation can be justified. Second, the reason for propriety, namely the existence of assets that were acquired illegally or originating from a crime, the perpetrator does not have the right to own these assets. perpetrator as a result of the crime committed. Fourth, the reason for ownership (proprietary) in this case the state is a party with an interest in owning these assets because these assets were not obtained by the perpetrator.

The 2003 UNCAC convention also provides arrangements if there are problems, namely assets that cannot be confiscated because they have been taken abroad.[11] Article 46 UNCAC 2003 paragraph (1) which states that mutual legal assistance is the nature of the existence of international cooperation in asset recovery. UNCAC 2003 provides a way out for victim countries who are carrying out asset recovery actions, UNCAC 2003 obliges

[9] Tristam Pascal Moeliono et al., "Hukum Internasional, Hukum Nasional, Dan Indonesia" (Bandung: Unpar Press, 2018).
[10] Hamsir Hamsir, "Fenomena Pemahaman Dan Penerapan Hakikat Makna Kata Kejahatan Dan Pelanggaran Dalam Perkembangan Hukum," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, 2020, 167–78, https://doi.org/https://doi.org/10.24252/al-risalah.v19i2.12707.
[11] Abdul Rahman A Zamakhsyari Baharuddin, "Impeachment Perspektif Ketatanegaraan Indonesia Dan Ketatanegaraan Islam," *Al-Risalah* 19, no. 1 (2019): 35–56, https://doi.org/https://doi.org/10.24252/al-risalah.v19i1.9689.

all participating countries to provide legal assistance (mutual) to victim countries in need. This assistance provides a breakthrough for the victim country to be able to break through conventional boundaries which have been an obstacle to acts of confiscation of assets.[12] Such as the criminal problem of additional compensation money regulated in the UUPTPK. This punishment cannot be carried out optimally when the perpetrator prefers imprisonment compared to monetary compensation. Perpetrators can hide their assets overseas to make it appear as if they have no assets.

This problem can be overcome by using in rem confiscation, which in the process can trace assets across countries due to international cooperation regulations contained in Article 46 UNCAC 2003 to seize assets abroad. On the other hand, asset forfeiture without penalty or NCB asset forfeiture using the in rem mechanism does not depend on the existence of the owner of the asset, so that the legal vacuum in the PTPK Law can be overcome with this mechanism. Thus the application for forfeiture in rem can be used if the criminal law mechanisms and civil lawsuits contained in the PTPK Law cannot be carried out, such as when additional criminal compensation money cannot be carried out because the assets are hidden by foreign actors and no heirs are found or heirs refuse to civil suit is filed.

Therefore, the most appropriate legal formulation policy is that Law no. 7/2006 can run in Indonesia, namely the promulgation of the Criminal Act of Asset Confiscation Bill which has adopted the NCB asset forfeiture is a good legal breakthrough to be a complement to asset confiscation regulated in the UUPTPK. This aims to maximize returns on state financial losses caused by corruption crimes. In addition, with the implementation of the 2003 UNCAC convention in laws and regulations in Indonesia, it is able to reconstruct international cooperation with other countries in an effort to recover assets taken abroad by corruptors.

Mudzakkir, a legal expert at the Islamic University of Indonesia, stated that the Asset Confiscation Bill needs to be passed because it is strategic enough to eradicate money laundering in Indonesia. In addition, the Asset Confiscation Bill is also useful for recovering losses arising from criminal acts committed by perpetrators. Mudzakkir

[12] Abdul Wahid, "Pemberlakuan Hukum Ekstradisi Bagi Pelaku Tindak Pidana Korupsi," *JURNAL USM LAW REVIEW* 6, no. 1 (2023): 34–51, https://doi.org/http://dx.doi.org/10.26623/julr.v6i1.5130.

further emphasized that the Asset Confiscation Bill must be prepared proportionally and still prioritize the elements of justice.[13]

2. The Urgency of Asset Confiscation Without Criminal Prosecution for the State of Indonesia.

Under the existing provisions in Indonesian criminal law, confiscation of certain goods can only be carried out by a court decision that has binding legal force. Thus, during the law enforcement process for a crime, another action can be taken, namely confiscation.[14] Confiscation is a forced attempt by investigators to take over and store objects (assets) for the purposes of proof in the law enforcement process both at the stages of investigation, prosecution and trial. This is temporary which can only be done with the permission of the head of the local district court, but in urgent circumstances a confiscation can be carried out first and then the confiscation that has occurred is reported to the chairman local district court for approval. Further provisions regarding confiscation are contained in Article 39 of the Criminal Procedure Code.

The article regulates the provisions of goods that can be subject to confiscation. These items are objects or bills of the suspect or defendant which are wholly or allegedly obtained from a crime or part of the proceeds from a crime; objects that have been used directly to commit a crime or to prepare it; objects used to obstruct the investigation of criminal acts; objects specifically made or intended to commit criminal acts; other objects that have a direct relationship with the crime committed. The Criminal Procedure Code also limits objects that can be confiscated, namely only objects that are directly related to criminal acts, objects that are not directly related to the occurrence of a criminal event cannot be confiscated by investigators. In the case of being caught red-handed, investigators can confiscate objects and tools that are reasonably suspected of having been used to commit a crime as evidence.[15] Confiscated objects can be returned to the most entitled person when the investigation and prosecution does not require said

[13] Bill on Asset Confiscation Eradicates TPPU", http://www. figurindonesia.com/cross news/artikel/413131/ruuperampasan-asset-berantas-tppu, accessed on 20 March 2015.
[14] Islamul Haq, Wahidin Wahidin, and Saidah Saidah, "Melampaui Batas (Noodewwr Exces) Dalam Membela Diri; Studi Perbandingan Antara Hukum Pidana Islam Dan Hukum Positif," *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 1 (June 21, 2020): 1–14, https://doi.org/10.24252/MH.V2I1.14295.
[15] Hamzah Hasan, "Implementasi Nilai-Nilai Kewajiban Asasi Manusia; Telaah Hukum Pidana Islam," *Mazahibuna: Jurnal Perbandingan Mazhab* 1, no. 2 (2019): 92–118, https://doi.org/10.24252/MH.V1I2.11650.

confiscated objects. In addition, confiscated goods can also be returned if the incident that occurred is not prosecuted because it is stated that there is insufficient evidence and is declared not a crime.

The existence of a subsidiary mechanism whose length does not exceed the threat of the principal criminal penalty in exchange for the amount of assets that must be paid to the state is certainly a very promising alternative for convicts, compared to having to return assets generated from criminal acts. In addition to rancor regulations contained in the Criminal Code and Criminal Procedure Code, in the current legal system in Indonesia there are provisions regarding confiscation of assets in the Corruption Act. Confiscation of assets resulting from criminal acts of corruption is an anticipatory step in saving and or preventing assets suspected of originating from corruption from moving places or changing hands. In general, the Corruption Law uses 2 mechanisms for confiscating assets, namely the criminal mechanism and the civil mechanism. The criminal mechanism is regulated in Article 18 paragraph (1) letter (a), in that provision the confiscation of assets in a corruption case is regulated in the same way as the generally accepted provisions for confiscating assets, namely the same as the provisions in the Criminal Procedure Code. In addition to the criminal mechanism, the Corruption Law also regulates the civil confiscation of assets mechanism in Article 32 paragraph (1). In this provision, when an investigator finds and is of the opinion that there is not enough evidence for a criminal act of corruption, but real state losses are found, the investigator can submit the case files as a result of the investigation to the state attorney's attorney or the agency that was disadvantaged to file a civil suit. In addition, acquittals in corruption cases also do not abolish the state's right to file claims for losses to state finances.

In addition to the circumstances above, there are several circumstances that make it possible to carry out a civil lawsuit in confiscating assets against corruption. The circumstances referred to are: When the defendant dies during the investigation;[16] When the accused dies during his examination at court;[17] When the court's decision on the case

[16] Article 33 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.
[17] Article 34 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

in question already has permanent legal force, and it is known that there are still assets of the convict who are suspected or reasonably suspected to have come from corruption and has not been subject to confiscation by the state because the convicted person cannot prove that the assets did not come from corruption.[18]

When the defendant dies before the court's decision is handed down. Confiscation of assets through a civil lawsuit with the circumstances mentioned above, can only be done when the state's financial loss has become evident. This lawsuit is filed by the state attorney's attorney or agency that has suffered losses against the convict or his heirs. In the case of confiscation of confiscated assets against a deceased defendant, an appeal cannot be filed.

The civil mechanism for expropriation is carried out in the context of trying to recover the assets used in committing corruption and or the results of corruption. The availability of a civil mechanism for the Corruption Law is based on the fact that the settlement of corruption cases in a criminal manner does not always succeed in recovering state losses. This is because there are special limitations in criminal law, namely assets are not separate objects in criminal law. The availability of a civil mechanism for confiscating assets resulting from corruption intends to maximize returns on state losses in order to fulfill people's sense of justice. Efforts to recover state losses that have been corrupted through civil confiscation of assets are directed at two sources, namely the proceeds of corruption which have become part of the assets of the accused or convict, and compensation for losses from the assets of the convict, the accused, the suspect even though the proceeds of corruption are not owned. In this case the corruption that is committed does not benefit the defendant, the party that benefits from the occurrence of corruption is intended to benefit other people or a corporation.[19]

Civil lawsuits in the context of confiscating assets resulting from corruption have a specific character, namely they can only be carried out when criminal measures are no longer possible to be used in an effort to recover state losses from the state treasury.

[18] Article 38C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes

[19] Eka Iskandar, "The Principle of Returning Assets Proceeds of Corruption (Part III)", https://gagasan Hukum.wordpress.com/2008/ 09/01/principle-pengembalian-asset-hasil-korupsi-bagian ii/, accessed on 15 March 2015

Circumstances in which a sentence cannot be used again include, among other things, insufficient evidence is found; the death of a suspect, defendant, convict; the accused was acquitted; there are allegations that there are proceeds of corruption that have not been confiscated for the state even though the court decision has permanent legal force. With the regulation of civil lawsuits for confiscation of assets in the Corruption Law in Articles 32, 33, 34, 38C, the Corruption Law can be concluded that without these regulations, the confiscation of assets resulting from corruption using civil mechanisms cannot be carried out. Confiscation of assets using the criminal mechanism in the Corruption Law and the Criminal Code and the Criminal Procedure Code basically has no fundamental difference, because both are waiting for a court decision that has binding legal force, takes a long time and is not optimal in efforts to recover state losses that have been corrupted. The availability of a civil mechanism for confiscating assets resulting from corruption can answer the shortcomings of the criminal mechanism, including being able to file a lawsuit even if the suspect, defendant or convict dies so that it can increase efforts to recover losses from the corrupted state.

However, on the other hand, the availability of civil mechanisms in efforts to confiscate assets resulting from corruption as contained in the Corruption Law is also not optimal because the civil process adheres to a formal proof system which in practice can be more difficult than material proof. Thus the application of asset confiscation based on Law Number 31 of 1999 concerning the Eradication of Criminal Acts Corruption as amended by Law Number 20 of 2001 has not been maximally successful in returning state financial losses, so an alternative legal policy is needed in an effort to recover state financial losses, including adopting provisions for confiscation of assets without criminal charges in accordance with the 2003 UN Anti-Corruption Convention by made several adjustments to the existing conditions in the legal system in Indonesia. According to Mulder, one of the dimensions in criminal law policy is how far the applicable criminal law policy needs to be changed/updated.

Based on the previous explanation, it appears that Indonesia already has its own provisions regarding the confiscation of assets in general contained in the Criminal Procedure Code, and the confiscation of assets in particular, as regulated for criminal acts

of corruption. However, the existing legal provisions are felt to be insufficient for efforts to confiscate assets resulting from criminal acts that are controlled by criminal offenders. Because it is not effective enough to confiscate assets resulting from criminal acts, so that the assets resulting from criminal acts that have been confiscated are not optimal.

In connection with the calculation and determination of the value of state financial losses in the Corruption Crime process, which forms the basis of the framework, three approaches can be seen. First, the calculation of state financial losses in Corruption Crimes by authorized agencies using an investigative examination approach. As explained in Article 32 of Law Number 31 of 1999, what is meant by a loss in state finances is a loss that can be calculated based on the findings of the authorized institution or the appointed accountant. Meanwhile, based on the decision of the Constitutional Court Number: 003/PUU-IV/2006 dated 24 July 2006 in the dictum weighing stated that state financial losses occur or do not occur must be carried out by experts in state finance, state economy and experts in analyzing the relationship between one's actions and the loss. Second, the determination of the value of state financial losses in the process of investigative examination at the competent authority according to formal authority is given by laws and regulations, calculation procedures are independent, objective and professional, presentation of the substance of the problem is appropriate. Third, the determination of state financial losses in the trial process of Corruption Crimes by trial judges.

After fulfilling these requirements, the State Attorney's Prosecutor can file a civil lawsuit with the District Court directed against the suspect/former suspect or the accused or convicted person or the heirs of the suspect or defendant or convict. The stages in the confiscation of assets resulting from corruption are as follows: 1) Reading of the lawsuit. 2) Defendant's answer. 3) Plaintiff's response. 4) Answer-answer stage 5) Conclusion 6) Decision 7) Appeal against the decision. 8) If it has legal force, it can still be executed and the results of the execution of the assets resulting from corruption are included in the State treasury. The legal basis for enforcing the mechanism for confiscating assets resulting from corruption using a non-conviction based asset forfeiture approach is regulated in Article 54 paragraph (1) letter c of the UNCAC which

requires all State Parties to consider taking the necessary actions so that confiscation of assets resulting from corruption is possible without due process. crime in cases where the offender cannot be prosecuted on the grounds of death, escape or the whereabouts of the perpetrator of the crime cannot be found.

This approach can be applied in countries with legal systems*common law* or*civil law*. Article 54 paragraph (1) letter (c) UNCAC requires all State Parties to consider the confiscation of assets resulting from criminal acts without going through punishment. In this respect UNCAC does not focus on one existing legal tradition nor does it suggest that fundamental differences could hinder its implementation. With this, UNCAC proposes confiscation of non-criminal assets as a tool for all jurisdictions of State Parties to consider in carrying out the eradication of criminal acts of corruption, as a tool that goes beyond differences between legal systems. The importance of the existence of the Law on Confiscation of Assets can be seen from several factors, namely the position of Indonesia as a UNCAC ratifying country; development factors for the types of criminal acts that cause economic losses; and the available mechanical factors are inadequate.

3. Mechanisms for Implementing Asset Confiscation Without Corruption Criminal Prosecution in Other Countries

Application of confiscation of assets without punishment *(NCB Asset Forfeiture)* In general, courts in the Philippines may be required to go through civil procedures in rem to determine the origin of a property or asset for assets resulting from criminal acts of corruption. If based on civil law it is determined that the assets were obtained from the proceeds of crime, then the court can issue an order for confiscation of assets. The Philippines also enforces laws for the defense of third parties who have rights or interests in these assets. Application of NCB *Asset Forfeiture* in seizing assets resulting from corruption in the Philippines, three conditions must be met. First, the money or funds must be frozen by the Court of Appeal. This provision is different from ordinary civil lawsuits which allow adjudication to be carried out at a court of first instance. Second, the value obtained from the criminal act of corruption must be reported as a covered transaction, amounting to a minimum of US$ 9,200. This provision has several impacts. If a financial institution fails to submit a report even in a clear and definite case of

corruption, the requirements to file an NCB Asset Forfeiture cannot be met. Third, if NCB Asset Forfeiture is applied in a money laundering case, it must be reported to an intermediary financial institution.

When *Anti Money Laundering Commission* (AMLC) Philippines succeeded in the NCB case*Asset Forfeiture,* then AMLC will motivate money launderers to choose other forms of assets such as gold bars, jewelery and other things that are not needed*financial intermediary*. Because in the Philippines only money can be the subject of NCB*Asset Forfeiture*. To freeze assets for a maximum of 20 (twenty) days, AMLC can submit a unilateral motion, but must be able to show indications that the assets are "related" to predicate crimes. Rules regarding implementation procedures*Non Conviction Based Asset Forfeitur*e in the Philippines set in *Rules of Procedure in Cases of Civil Forfeiture* year 2005. Following the enforcement of the assets, AMLC acting through the Attorney General will file a written complaint containing the names of the defendants (respondents), related assets and the basis for the confiscation of assets. The respondent has a grace period of 15 (fifteen) days to submit an objection and if it exceeds this deadline, a unilateral decision will be made by the court. From the initial filing of charges, the judges must make a decision within 30 (thirty) days. Third parties who wish to make a claim can file it and it will be processed in the next judicial process

Place perpetrators of corruption in prison *(follow the suspect)* it turns out that it is not effective to reduce the level of corruption if it is not accompanied by efforts to seize the proceeds of the corruption crime. Allowing the perpetrators of corruption to continue to control the proceeds of the crime provides an opportunity for the perpetrators of criminal acts or other people who have links with the perpetrators of criminal acts to enjoy the proceeds of crime and reuse the proceeds of crime, or even develop criminal acts that have been committed. In addition, the confiscation of assets in force in Indonesia so far can only be carried out if the perpetrator of the crime has been legally and convincingly proven guilty of committing a crime based on a court decision that has permanent legal force (inckracht) or in other words the confiscation of assets is carried out with a criminal decision. , however, confiscation with a criminal verdict experiences difficulties in practice in the field of Non-Conviction Based (NCB) asset forfeiture or

confiscation of assets resulting from a crime with a mechanism without sentencing. This mechanism allows confiscation of assets resulting from criminal acts in rem (against assets) not against corruptors.[20] Forfeiture of Assets Without Penalty (NCB Asset Forfeiture), which is also referred to as "Civil Forfeiture", Forfeiture of In Rem, or Confiscation of Objects in some jurisdictions is an act against the asset itself and not against an individual. This is an act separate from any criminal justice process and requires evidence that the property was contaminated. In general, an unlawful act must be applied on the basis of a standard of evidence of a balance of probabilities.

Because his actions were not against an individual defendant, but against property, the owner of the property is a third party who has the right to defend said property.[21] The emergence of the NCB asset forfeiture concept was motivated by a shift in the paradigm of law enforcement from initially being oriented or prioritizing perpetrators (follow the suspect) to being oriented towards money or losses (follow the money). This is important because criminal acts such as corruption or money laundering cause financial losses to the state and therefore the proceeds of these crimes must be returned to the state immediately, and on the other hand, there are often conditions where the perpetrators cannot be prosecuted beforehand. before.[22] The judge's decision on the in rem lawsuit does not depend on the criminal verdict, because once again what needs to be ensured in the in rem lawsuit is whether or not the existence of assets in a person is legal and not whether or not someone is guilty of committing a criminal act of corruption.[23]

NCB asset forfeiture (seizure of assets without sentencing) opens wide opportunities to confiscate all assets that are allegedly the result of criminal acts (proceed

[20] Dwidja Priyatno, "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): 219–33, https://www.ceeol.com/search/article-detail?id=695055.

[21] Muhammad Fuad Azwar R, M. Said Karim, and Haeranah, "The Concept of Non-Conviction Based Asset Forfeiture As a Legal Policy in Assets Criminal Action of Corruption," *LEGAL BRIEF* 11, no. 5 (2022): 2613–22, https://doi.org/https://doi.org/10.35335/legal.v11i5.515.

[22] Lulu Mufidah, "NON-CONVICTION BASED ASSET FORFEITURE SEBAGAI UPAYA PENGEMBALIAN KERUGIAN NEGARA AKIBAT TINDAK PIDANA KORUPSI," *Kertha Semaya: Journal Ilmu Hukum* 9, no. 2 (2021): 235–49.

[23] Wayan Santoso, "The Rights of Victims of Illegal Investment Crimes Against Confiscated Goods," *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 8, no. 2 (2022): 355–76, https://doi.org/https://doi.org/10.15294/ulj.v8i2.56587.

of crimes) and other assets that are reasonably suspected to be used or have been used as instruments (instrumentalities) to commit crimes. This mechanism can also be used as an alternative to obtain compensation or compensation for state losses.[24] Therefore, even though assets that were discovered at a later date and are not included in the list of assets that can be confiscated or confiscated based on a criminal decision inkracht the mechanism for confiscating criminal assets can still be confiscated and confiscated through the NCB Asset Forfeiture mechanism. Indonesia as a state party to UNCAC is required to implement 36 key guidelines (stolen asset recovery guidelines/StAR) UNCAC 2003. Of the 36 key guidelines, 24 of them are related to laws and regulations.

NCB Asset Forfeiture is regulated in the 2003 United Nations Against Corruption (UNCAC) convention which has also been ratified by Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption. Explanation of NCB Asset Forfeiture at UNCAC is explained in Article 54 paragraph (1) letter c UNCAC 2003 which explains as follows:"*...confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases*". Based on that article, UNCAC 2003 stipulates the obligation of participating countries in accordance with their respective national laws, to take measures to allow the appropriation of assets obtained through or involved in the commission of a crime without a criminal conviction in cases where the perpetrator cannot be prosecuted for criminal reasons. death, escape, illness, or absence. As a note, even though the confiscation of assets resulting from corruption has been committed, it does not necessarily erase the criminal act.[25]

The model of pursuing illegal profits was then formalized in the provisions of the United Nations Covenant Against Corruption (UNCAC) of 2003. In addition to stipulating several provisions regarding cooperation in dealing with criminal acts of corruption in the world, UNCAC also mandates member countries to seek the

[24] Lilik Mulyadi, "Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia Dihubungkan Dengan Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi 2003," *Jurnal Hukum Dan Peradilan* 4, no. 1 (2015): 101–32, https://doi.org/http://dx.doi.org/10.25216/jhp.4.1.2015.101-132.
[25] Titien Herawati Utara and M Taruno, "Reconstruction Of Mechanism for Returning Assets of Corruption at The Center for Asset Recovery of The Prosecutor of The Republic of Indonesia.," *Review of International Geographical Education Online* 11, no. 4 (2021).

confiscation of assets resulting from crime. Article 54 paragraph (1) letter c of the UNCAC which requires all State Parties to consider taking the necessary measures so that the confiscation of assets resulting from corruption is possible without criminal proceedings in cases where the violator cannot be prosecuted on the grounds of death, escape or not being found or in other cases. In this case, UNCAC's focus is not only on one legal tradition, because the fundamental differences that exist in each legal tradition will hinder the implementation of the convention. It is therefore proposed that each State Party use confiscation without criminal charges (Non-Conviction Based-NCB) as a tool or means – capable of going beyond differences in legal systems – to seize assets resulting from corruption in all jurisdictions (Ramelan et al, 2012). Indonesia as a state party to UNCAC as formalized in Law no. 7 of 2006, while taking into account national sovereignty, it is obligatory to take steps to implement the provisions of the convention.

Confiscation of assets in force in Indonesia is based on a court decision in a criminal case which is carried out after a court decision has been made for a crime committed by a defendant, or what is known as*criminal forfeiture*. A new approach known as the Non Conviction Based (NCB) Asset Forfeiture regime or asset confiscation without criminal charges. The regime in question has developed in countries - countries*common law* and is the material / content in*United Nations Convention Against Corruption* (UNCAC) which has also been ratified by the Government of Indonesia with Law Number 7 of 2006.

In general, crimes must be determined on the balance of probabilities by standard of proof. This lightens the burden on the government to act. In addition, the possibility is still open to stipulating a fine if it is felt that there is sufficient evidence to support the occurrence of a crime. Because the lawsuit is not directed at individuals but is aimed at individuals, the property owner is a third party who has the right to defend property that will be confiscated by the state because it is believed to be the result or tool in a crime.[26]

Confiscation of assets resulting from criminal acts of corruption without conviction in Indonesia is regulated in Law Number 31 of 1999 as amended by Law

[26] Brenda Gartland, Asset Forfeiture: Rules and Procedures, Washington D.C.: Forfeiture Endangers Anerican Rights (FEAR), 2009, hal. 3.

Number 20 of 2001 concerning Eradication of Corruption Crimes.

First, in Article 32 of Law Number 31 of 1999 as has been amended by Law Number 20 of 2001 concerning Eradication of Act Corruption crime of appropriation of assets resulting from corruption through a civil lawsuit gives authority to investigators.

Second, Article 33 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, investigators can also submit case files as a result of investigations to the State Attorney or submit them to the agency that is disadvantaged to carry out a civil lawsuit. against his heirs if the suspect dies during the investigation while in fact there has been a loss of state finances.[27]

Third, based on Article 34 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, if the accused dies during an examination at a court hearing, while in fact there has been a loss of state finances, then the public prosecutor is given the authority to immediately submit a copy of the minutes of the hearing to the state Attorney General or submit it to the agency that is disadvantaged to file a civil suit against his heirs.[28]

In connection with the calculation and determination of the value of state financial losses in the Corruption Crime process, which forms the basis of the framework, three approaches can be seen. First, the calculation of state financial losses in Corruption Crimes by authorized agencies using an investigative examination approach. As explained in Article 32 of Law Number 31 of 1999, what is meant by a loss in state finances is a loss that can be calculated based on the findings of the authorized institution or the appointed accountant.

The legal basis for enforcing the mechanism for confiscating assets resulting from corruption with an approach without sentencing or *Non-Conviction based asset forfeiture* regulated in Article 54 paragraph (1) letter c UNCAC which requires all State Parties to consider taking necessary measures so that confiscation of assets resulting from corruption is possible without criminal proceedings in cases where violators cannot be

[27] Article 33 of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.
[28] Article 34 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption.

prosecuted on the grounds of death, escape or not found the perpetrators of the crime. This approach can be applied in countries with common law or civil law legal systems. Article 54 paragraph (1) letter (c) UNCAC requires all State Parties to consider the confiscation of assets resulting from criminal acts without going through punishment. In this respect UNCAC does not focus on one existing legal tradition nor does it suggest that fundamental differences could hinder its implementation. With this, UNCAC proposes confiscation of non-criminal assets as a tool for all jurisdictions of State Parties to consider in carrying out the eradication of criminal acts of corruption, as a tool that transcends differences between legal systems.

CONCLUSION

The current asset recovery mechanism in the legal system in Indonesia is still conventional, making it difficult to use it to carry out effective asset confiscation efforts. It is recommended that the DPR RI immediately conduct discussions on the Asset Confiscation Bill so that Indonesia's need for a more effective asset confiscation mechanism can be presented and used in an effort to confiscate assets resulting from criminal acts in Indonesia. Therefore, law enforcement policies that are developed in the future should not only focus on punishing criminal offenders, but also consider the advantages and disadvantages (economic analysis of law) asset recovery in law enforcement. Legal instruments that can be used, for example Law no. 8 of 2010 concerning TPPU and Supreme Court Regulation No. 01 of 2013. However, in order for the asset confiscation process to run more optimally, the Asset Confiscation Bill which contains the NCB asset forfeiture concept must be passed immediately. The urgency of establishing an asset confiscation law is an inadequate mechanism. It is hoped that an adequate mechanism for confiscating assets will use the mechanism contained in the UNCAC so that asset confiscation in Indonesia will run effectively. so that the Indonesian government must adjust the existing statutory provisions with the provisions in the convention because this is a consequence of the ratification. Apart from that, another aspect that reflects Indonesia's need for the formation of an Asset Confiscation Law is the development of types of criminal acts with economic motives.

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