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Optimizing Asset Recovery in Corruption Cases: Evaluating Indonesia's Legal Framework and the Need for Non-Conviction Based Forfeiture

***Marlina Samosir[a], Raymundus Loin[a], Diana Farid[b], Hanira Hanafi[c], Anna Boumpa[d]**
[a] Universitas Panca Bhakti Pontianak, Indonesia
[b] Universitas Muhammadiyah Bandung, Indonesia
[c] Academy of Islamic Studies, University of Malaya, Malaysia
[d] Université Paris 1 Panthéon Sorbonne, France
*Corresponding author: jessichapasaribu1@gmail.com

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Abstract

Corruption is categorized as an extraordinary crime that causes great losses to state finances, so it is not enough to overcome it only through corporate criminalization, but must also be oriented towards asset recovery. This study aims to analyze the effectiveness of the asset forfeiture mechanism in corruption crimes based on laws and regulations in Indonesia and identify the urgency of legal reform to increase the optimization of asset returns. This research uses a normative legal method with a statute approach and a conceptual approach. The data used is secondary data consisting of primary legal materials in the form of laws and regulations, such as the Criminal Code, Law Number 31 of 1999 jo. Law Number 20 of 2001, as well as Law Number 1 of 2023, and secondary legal materials in the form of scientific literature and legal doctrine. Data analysis was carried out qualitatively by examining the conformity of legal norms with the principle of effectiveness in recovering state losses. The results of the study show that the asset forfeiture mechanism in Indonesia's positive law is still dominated by the conviction based forfeiture model which depends on the main criminal verdict. This condition creates various limitations, such as a high burden of proof, a long process, and a legal loophole for perpetrators to hide or transfer assets resulting from corruption. As a result, the effectiveness of recovering state losses has not been optimal. Thus, legal reform is needed through strengthening asset forfeiture regulations, including the development of a non-conviction based asset forfeiture mechanism, in order to increase the effectiveness of asset recovery and strengthen efforts to eradicate corruption in Indonesia.
***Keywords**: Asset Confiscation; Corruption; Asset Recovery.*

Abstrak

Tindak pidana korupsi dikategorikan sebagai extraordinary crime yang menimbulkan kerugian besar terhadap keuangan negara, sehingga penanggulangannya tidak cukup hanya melalui pemidanaan badan, tetapi juga harus berorientasi pada pemulihan kerugian negara (asset recovery). Penelitian ini bertujuan untuk menganalisis efektivitas mekanisme perampasan aset dalam tindak pidana korupsi berdasarkan peraturan perundang-undangan di Indonesia serta mengidentifikasi urgensi pembaharuan hukum guna meningkatkan optimalisasi pengembalian aset. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan (statute approach) dan pendekatan konseptual (conceptual approach). Data yang digunakan merupakan data sekunder yang terdiri atas bahan hukum primer berupa peraturan perundang-undangan, seperti KUHP, Undang-Undang Nomor 31 Tahun 1999 jo. Undang-Undang Nomor 20 Tahun 2001, serta Undang-Undang Nomor 1 Tahun 2023, dan bahan hukum

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sekunder berupa literatur ilmiah dan doktrin hukum. Analisis data dilakukan secara kualitatif dengan menelaah kesesuaian norma hukum dengan prinsip efektivitas dalam pengembalian kerugian negara. Hasil penelitian menunjukkan bahwa mekanisme perampasan aset dalam hukum positif Indonesia masih didominasi oleh model conviction based forfeiture yang bergantung pada putusan pidana pokok. Kondisi ini menimbulkan berbagai keterbatasan, seperti beban pembuktian yang tinggi, proses yang panjang, serta adanya celah hukum bagi pelaku untuk menyembunyikan atau mengalihkan aset hasil korupsi. Akibatnya, efektivitas pemulihan kerugian negara belum optimal. Dengan demikian, diperlukan pembaharuan hukum melalui penguatan regulasi perampasan aset, termasuk pengembangan mekanisme non-conviction based asset forfeiture, guna meningkatkan efektivitas asset recovery dan memperkuat upaya pemberantasan tindak pidana korupsi di Indonesia.

Kata Kunci: Perampasan Aset; Tindak Pidana Korupsi; *Asset Recovery*.

INTRODUCTION

Corruption is a form of crime that not only violates the criminal law, but also hurts moral values, public ethics, and a sense of justice in society. Corruption is essentially an unlawful act committed by a person or corporation with the aim of enriching oneself or certain parties through the abuse of authority, opportunity, or means attached to the position or position they hold. This kind of practice has a direct impact on the financial losses of the state and the national economy, and indirectly undermines public trust in state institutions and the government system as a whole[1].

In the Indonesian context, corruption has long been a deep-rooted structural problem that is difficult to eradicate. Various law enforcement efforts have been carried out from the early days of independence to the reform era, but corruption practices still continue to occur with increasingly complex patterns and modes. This shows that the eradication of corruption is not only a matter of criminal law enforcement, but also concerns political commitment, moral courage, and the seriousness of the government in building a fair and effective legal system.[2]

The eradication of corruption that has lasted quite a long time in Indonesia shows that this crime requires extra *ordinary measures* and strong political support from the country's rulers. Without serious *political will*, corruption eradication policies tend to stop at the normative and symbolic levels, without being able to touch the root of the problem substantially.[3] Therefore, corruption is often categorized as an *extraordinary crime* because of its systemic and destructive impact on the joints of the life of the nation and state.

One of the most real and detrimental impacts of corruption is the state's financial losses which can reach trillions of rupiah. These losses are not only statistics, but also have direct implications for the inhibition of national development, the reduction of the quality of public services, and the increase in social inequality and poverty.[4] Thus, corruption not only harms the state financially, but also deprives the people of their basic rights to obtain welfare and social justice.

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[1] Andi Hamzah, *Eradication of Corruption through National and International Criminal Law*, RajaGrafindo Persada, Jakarta, 2014.

[2] Romli Atmasasmita, Corruption, Good Governance, and the Anti-Corruption Commission in Indonesia, National Legal Development Agency, Jakarta, 2002.

[3] Muladi, "Corruption Mitigation in the Perspective of the Criminal Justice System," *Journal of Law*, Vol. 17 No. 3, 2010.

[4] Transparency International Indonesia, *Report on the Impact of Corruption on the National Economy*, Jakarta, 2020.

The development of today's corrupt practices shows that these crimes are no longer carried out simply and individually, but involve an organized, cross-sectoral, and even cross-country network. Modes of corruption are developing along with technological advances, economic globalization, and the openness of the international financial system. The flow of funds from corruption can be easily moved abroad through money laundering mechanisms, the use of shell companies, and the use of jurisdiction with a strict banking secrecy regime.[5] In this context, corruption can no longer be seen as a mere national legal problem, but has become a transnational phenomenon. The transnational character of corruption poses serious challenges for law enforcement officials, especially in efforts to track, freeze, and return assets resulting from crimes that are outside Indonesia's jurisdiction.[6] Without adequate legal instruments and effective international cooperation, efforts to recover state assets are likely to face significant obstacles.

So far, efforts to eradicate corruption in Indonesia tend to emphasize the criminal aspect of the perpetrators, while the aspect of *asset recovery* from crime is still ineffective. The modes of corruption are carried out not only on a national scale but also on an International/Transnational scale. Corruption is no longer a national problem, but has become a transnational phenomenon.[7] The mechanism for asset confiscation regulated in Article 10 of the Criminal Code Law No. 1 of 1946 and in Article 66 of Law No. 1 of 2023 and Article 18 of Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Corruption Crimes is an additional crime, and is more effective if asset confiscation is regulated in the Revision of the Law on the Eradication of Corruption than having to make a separate Asset Forfeiture Law. This causes asset confiscation to only be carried out if the defendant has been proven guilty and sentenced to the principal penalty. This limitation raises normative problems.

In practice, not a few corruption perpetrators have been sentenced to prison, but the assets resulting from crimes have not been successfully confiscated or returned optimally to the state. As a result, the state continues to bear losses, while the perpetrators or related parties can still enjoy the results of corruption hidden through various means. This condition creates a paradox in law enforcement, where substantive justice for the state and society has not been fully realized.[8]

Normatively, the mechanism for asset forfeiture in Indonesian criminal law is regulated in several laws and regulations. Article 10 of the Criminal Code (KUHP) Law No. 1 of 1946 regulates the confiscation of certain goods as an additional crime. Similar provisions are also accommodated in Article 66 of Law No. 1 of 2023 concerning the new Criminal Code, which still places asset forfeiture as part of an additional crime.[9] In addition, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption specifically regulates asset confiscation in Article 18. However, the arrangement requires that asset forfeiture can only be carried out after the defendant is found guilty and sentenced to the principal penalty by the court.[10]

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[5] UNODC, *United Nations Convention Against Corruption*, United Nations, New York, 2004.

[6] Barda Nawawi Arief, *Bunga Potpourri Criminal Law Policy*, Kencana, Jakarta, 2016.

[7] Melani, "The Problematic Principle of Double Criminality in Relation to Cooperation in the Prevention and Eradication of Transnational Crimes", Journal of Legal Litigation, Vol. 6 No. June 2005, p. 169; Marsono, "Corruption Eradication in Indonesia: From the Perspective of Law Enforcement", Development Management, No. 58/II/ Year XVI, 2007, pp.58-61; Sugiyanto E Kusuma, "The relationship between Money Laundering and banking", Journal of Finance and Banking, Vol. 11 No. 1

[8] Eddy O.S. Hiariej, *Theory and the Law of Proof*, Erlangga, Jakarta, 2012.

[9] Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2015.

[10] Lilik Mulyadi, *Corruption in Indonesia*, Alumni, Bandung, 2018.

This kind of legal construction poses serious limitations in asset recovery efforts. In many cases, corrupt perpetrators die, flee, or deliberately obscure the origin of their wealth, making the criminal proving process difficult. As a result, assets resulting from corruption cannot be confiscated even though there are factual strong indications that the assets originate from criminal acts.[11]

The attachment of asset confiscation to criminal judgments with permanent legal force (inkracht van gewijsde) raises serious normative problems. This system opens loopholes for corrupt actors to avoid asset confiscation through various legal and non-legal strategies, such as prolonging the judicial process, exploiting evidentiary weaknesses, or transferring assets to third parties. [12]From a substantive justice perspective, these conditions are contrary to the primary purpose of criminal law, which is to protect the public interest and recover state losses. Therefore, more progressive and responsive legal reforms are needed to the dynamics of modern corruption crimes. One of the ideas that emerged was the strengthening of the mechanism of *non-conviction based asset forfeiture* as it has been implemented in various countries.[13]

Asset recovery is a strategic instrument in the eradication of corruption crimes because it is oriented towards recovering state losses and preventing similar crimes in the future. With the confiscation of the proceeds of crime, corrupt perpetrators no longer get economic benefits from their actions, so that the main motive of corruption can be significantly suppressed.[14] The urgency of legal reform in order to optimize asset recovery is increasingly important considering the transnational and organized nature of corruption. Progressive legal instruments are needed so that the state has broader and more flexible authority to track, freeze, and confiscate assets proceeds of crime, both at home and abroad.[15]

Based on the description above, it can be emphasized that corruption is an extraordinary crime that has a multidimensional impact on the country's financial stability, public trust, and national development. The law enforcement approach that has so far tended to focus on criminalizing perpetrators has not been able to fully guarantee optimal recovery of state losses. This condition shows that there are limitations in the applicable legal system, especially in the mechanism of asset confiscation that is not effective, both in terms of regulation, institutional, and implementation. Therefore, strengthening and updating the asset recovery mechanism is an urgent need within the framework of criminal law reform that is oriented towards the comprehensive recovery of state losses.

In line with this, this research is focused on examining two main problems, namely the effectiveness of the current asset forfeiture mechanism in ensuring the recovery of state assets, and the urgency of legal reform in order to optimize asset recovery through more progressive legal instruments. This study is expected to be able to make a conceptual and practical contribution in formulating a legal policy model that is more responsive to the dynamics of corruption crimes, while strengthening the asset recovery system as an integral part of efforts to eradicate corruption in Indonesia.

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[11] Indriyanto Seno Adji, *Corruption and Law Enforcement*, Diadit Media, Jakarta, 2009.

[12] Yenti Garnasih, *Asset Recovery in Corruption*, Ghalia Indonesia, Jakarta, 2016.

[13] Peter Alldridge, Money Laundering Law, Hart Publishing, Oxford, 2003.

[14] BPHN, *Academic Manuscript of the Asset Forfeiture Bill*, Ministry of Law and Human Rights of the Republic of Indonesia, Jakarta, 2019.

[15] UNCAC Review Mechanism Report on Indonesia, United Nations, 2018.

RESEARCH METHODS

This research uses a normative juridical method, which is legal research that focuses on the study of legal norms contained in laws and regulations, court decisions, and relevant legal doctrines. This method views law as a normative system that is composed of interrelated principles, rules, and rules. To strengthen the analysis, this study uses a statutory approach and a conceptual approach. The legislative approach is used to examine various regulations related to the issue being studied, while the conceptual approach is used to examine legal concepts, theories, and principles that develop in the academic literature.

The data sources in this study consist of secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations and court decisions relevant to the object of study. Secondary legal materials are in the form of books, scientific journals, research results, and opinions of legal experts related to research topics. The tertiary legal materials include legal dictionaries, encyclopedias, and other sources that support the understanding of legal terms and concepts. Data collection is carried out through library research by tracing and inventorying various legal sources systematically.

The data analysis technique was carried out qualitatively using the descriptive-analytical analysis method. The data that has been collected is classified and compiled systematically, then analyzed by interpreting the applicable legal norms and relating them to relevant concepts and theories. The analysis process is carried out through deductive reasoning, which is drawing conclusions from general provisions to the specific problem being studied. Thus, this research is expected to be able to produce comprehensive, logical, and systematic legal arguments in accordance with the rules of scientific research.

RESULTS AND DISCUSSION

The effectiveness of the current asset forfeiture mechanism in ensuring the recovery of state assets

Corruption is a very serious problem for Indonesia, so it is not surprising that this crime is categorized as an *extraordinary crime*.[16] The asset forfeiture mechanism that applies in Indonesia is generally *conviction-based* (based on criminality). This means that asset confiscation can only be carried out after there is a court decision with permanent legal force (*Inkracht*) that declares the defendant guilty of the Crime of Corruption, juridically, this limitation creates dependence on the Principal Crime, so if the perpetrator dies, escapes, or cannot be found before the court process is completed, then the confiscation of assets cannot be carried out because there is no principal criminal verdict.

One of the crucial aspects in the eradication of corruption is the mechanism for confiscation of assets from crime as a means of asset recovery. Normatively, the main purpose of criminalization in corruption crimes is not only repressive through corporal punishment, but also restorative through the return of assets that have been confiscated from state finances. Thus, the effectiveness of the asset forfeiture mechanism is an important indicator in assessing the success of corruption criminal law policies in Indonesia.[17]

In practice, the asset forfeiture mechanism that applies in Indonesia until now is still dominated by the conviction-based asset forfeiture approach, which is asset forfeiture

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[16] Bayuaji, Rihantoro. Legal Principles of Confiscation of Corrupt Assets in the Perspective of Money Laundering Crimes (Surabaya: Laksbang Justisia, 2017), 9.

[17] Andi Hamzah, *Eradication of Corruption through National and International Criminal Law*, Jakarta: RajaGrafindo Persada, 2016, p. 87.

that can only be carried out after a court decision that has permanent legal force (inkracht van gewijsde) and states that the defendant is legally and convincingly proven to have committed a criminal act of corruption. [18]This approach is juridically based on the principle of due process of law and the principle of the presumption of innocence, which are the main pillars in the modern criminal justice system. However, the dependence of asset confiscation on the existence of the principal criminal verdict actually raises serious problems in the context of the effectiveness of state asset recovery. Empirically, not a few corruption cases are stopped or cannot be continued until the stage of a court decision because the perpetrator dies, escapes, or cannot be found before the judicial process is completed. In such conditions, the state loses the legal basis to confiscate assets, even though there are factual strong indications that the assets come from the proceeds of corruption.[19]

This condition reflects the structural limitations of the conviction-based forfeiture mechanism, where the confiscation of assets is entirely dependent on the existence and success of the criminal process against the perpetrator. As a result, the main goal of criminalizing corruption, namely the return of state losses, is reduced and not achieved optimally. From the perspective of substantive justice, this situation creates a legal paradox, as the state seems to be defeated by procedural circumstances, while the proceeds of the crime remain in the control of the perpetrator or other parties involved.[20]

Beyond *Reasonable Doubt* is the proof of the origin of assets subject to the standard of criminal proof (*beyond reasonable doubt*), which is much more difficult than the standard of civil proof (balance of probabilities). Criminals often place assets in a third party (*nominee*) which makes it difficult to prove a causal relationship between the assets and the Crime of Corruption. The confiscation of property resulting from criminal acts is the most effective way to eradicate criminal acts, especially those that are included in the category of serious crimes with economic motives such as corruption.[21]

In practice, proving the causal relationship between assets and corruption is not a simple matter. Corrupt perpetrators often use complex and systematic methods, including disguising the origin of assets through money laundering, moving assets abroad, or placing assets in the name of a third party (nominee). This strategy makes it difficult for law enforcement officials to trace and prove that certain assets are a direct result of corruption.[22]

The use of nominees, both individuals and legal entities, is one of the most significant obstacles in asset seizure efforts. In many cases, assets resulting from corruption are formally recorded in the name of another party that appears to be legally legitimate, making it difficult to prove beneficial ownership. In fact, without strong evidence of the relationship between the perpetrator and the asset, the seizure cannot be

[18] Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, Bandung: Alumni, 2010, p. 156.

[19] Eddy O.S. Hiariej, Principles of Criminal Law, Yogyakarta: Cahaya Atma Pustaka, 2016, p. 412.

[20] Barda Nawawi Arief, *Law Enforcement Issues and Criminal Law Policy*, Jakarta: Kencana, 2018, p. 214.

[21] Duncan, the son of Duncan. "Enforcement of criminal law of return of state financial losses through the confiscation of assets resulting from corruption crimes controlled by third parties." Indonesian Journal of Social Science 1, no. 2 (2020): p. 66

[22] Yunus Husein, *Anti-Money Laundering Regime in Indonesia*, Jakarta: RajaGrafindo Persada, 2014, p. 119.

carried out because it has the potential to violate the property rights of a third party that is protected by law.[23]

On the other hand, the asset forfeiture process that follows the flow of criminal cases is also known to be long and complex. Starting from the investigation stage, investigation, prosecution, to examination in court, the entire series of processes takes a short time. In this time frame, the perpetrator has a considerable opportunity to divert, hide, or eliminate the assets of the proceeds of the crime. This condition is further aggravated if the temporary confiscation mechanism is not carried out quickly and effectively from the initial stage of the investigation.[24]

The slow process of asset confiscation also has implications for the increased risk of money laundering. Assets that have not been confiscated have the potential to be diverted through various complex financial transactions, both domestically and cross-country. This shows that delays and procedural complexities in the asset forfeiture mechanism actually open up space for perpetrators to secure the proceeds of their crimes from the reach of the law.[25]

Conceptually, the confiscation of property resulting from criminal acts is one of the most effective instruments in eradicating economically motivated crimes, including corruption. This approach is in line with the principle *of crime should not pay,* which emphasizes that criminals should not enjoy the results of their actions. By confiscating assets from crime, the state not only provides a deterrent effect, but also cuts off economic incentives which are the main motivation for corruption.[26]

However, the effectiveness of the principle is highly dependent on the design and implementation of the asset forfeiture mechanism itself. In the Indonesian context, the normative limitations that are still inherent in the conviction-based forfeiture system cause the success rate of asset recovery to be relatively low compared to the amount of state losses due to corruption. Law enforcement data and practices show that the value of assets successfully seized and returned to the state treasury is often disproportionate to the value of the losses incurred.[27]

The low effectiveness of asset recovery has a direct impact on the failure to achieve the goal of comprehensive corruption punishment. Criminalization that only focuses on corporal punishment without being balanced with the return of state losses has the potential to lose its dimension of justice, especially for the community as the party most disadvantaged by corrupt practices. From the perspective of restorative justice, the recovery of state losses should be a top priority in handling corruption cases.[28]

Thus, it can be concluded that the current asset forfeiture mechanism still faces various juridical and practical obstacles that hinder the effectiveness of state asset recovery. Dependence on the principal criminal verdict, high burden of proof, complexity of the process, and the sophistication of the perpetrator's mode of hiding assets are the main factors that cause asset recovery to be not optimal. This condition demands a more

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[23] Indriyanto Seno Adji, *Corruption and Law Enforcement*, Jakarta: Diadit Media, 2019, p. 201.

[24] Lilik Mulyadi, *Corruption in Indonesia*, Bandung: Alumni, 2018, p. 145.

[25] Sutan Remy Sjahdeini, *Money Laundering: Definition, History, Causative Factors and Impacts*, Jakarta: Pustaka Utama Grafiti, 2007, p. 64.

[26] UNCAC, *United Nations Convention Against Corruption*, New York: United Nations, 2004, Pasal 31.

[27] Corruption Eradication Commission, *KPK Annual Report*, Jakarta: KPK RI, 2022, p. 89.

[28] John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press, 2002, hlm. 55.

progressive evaluation and reform of legal policies that are oriented towards the maximum recovery of state losses.

The Urgency of Legal Reform In Order To Optimize *Asset Recovery* Through More Progressive Legal Instruments

The limitations of the *conviction-based asset forfeiture* mechanism as explained in the previous discussion show that Indonesia is at a crucial point that demands fundamental and progressive legal reform. The update is no longer solely cosmetic or sectoral, but must be directed at changing the paradigm of corruption criminal law enforcement which places asset recovery as the main and strategic goal. In this context, the urgency of legal reform cannot be separated from the empirical reality that state losses due to corruption continue to increase, while the rate of return on assets is still relatively low.[29] Normatively, the legal framework for asset forfeiture in Indonesia is currently still spread across various laws and regulations and has not yet formed a coherent and effective system. Asset forfeiture is regulated, among others, in Article 10 of the old Criminal Code (KUHP) as promulgated through Law Number 1 of 1946, Article 66 of Law Number 1 of 2023 concerning the National Criminal Code, and Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. However, all of these arrangements conceptually still place asset forfeiture as an additional crime, not as the main instrument for recovering state losses.[30]

The construction of asset forfeiture as an additional criminal carries significant juridical implications. First, asset confiscation is facultative and highly dependent on the success of proving the principal crime. Second, the confiscation of assets can only be imposed after the judge imposes a criminal sentence on the perpetrator, so that his existence is always in a subordinate position compared to imprisonment or fines. Third, practically, the position of asset forfeiture as an additional criminal often receives less serious attention in the prosecution and examination process in court.[31]

To address the normative weaknesses of *the conviction-based* mechanism, Indonesia has an urgent urgency to pass an Asset Forfeiture Law that accommodates the Asset Forfeiture mechanism. Normatively, the confiscation of assets regulated in Article 10 of the Criminal Code Law No. 1 of 1946 and in Article 66 of Law No. 1 of 2023 and Article 18 of Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Corruption Crimes is an additional criminal offense based on the principle that the assets themselves are the object of the case (*in rem*), not only the perpetrator (*in personam*). This legal basis makes it difficult for law enforcement to commit Asset Forfeiture because it is limited to additional criminal words, and there is no legal certainty itself to seize the assets of corruption convicts.

However, normative arrangements that place asset forfeiture as an additional crime actually limit the space for law enforcement officials. In many cases, even if there are factually suspected assets of corruption, confiscation cannot be carried out optimally because it is tied to the phrase "additional crime" and there is no adequate legal certainty regarding the mechanism of such confiscation. This shows that there is a gap between the ideal goal of restoring state assets and the reality of positive law implementation.[32]

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[29] Barda Nawawi Arief, *Criminal Law Policy: The Development of the Drafting of the New Criminal* Code, Jakarta: Kencana, 2017, p. 92.

[30] Andi Hamzah, *Corruption Criminal Law*, Jakarta: RajaGrafindo Persada, 2019, p. 134.

[31] Muladi, *Kapita Selekta of the Criminal Justice System*, Semarang: UNDIP Publishing Agency, 2015, p. 211.

[32] Eddy O.S. Hiariej, *Asset Recovery in Corruption*, Yogyakarta: Cahaya Atma Pustaka, 2020, p. 59.

Revision of Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, is more effective in the urgency of law reform in order to optimize *asset recovery* through more progressive legal instruments, and if separated, the Asset Forfeiture Law is only to multiply the Law but is not effective in Implementation to achieve the goal of restoring State Assets. This is even more effective if the asset forfeiture is regulated in the Criminal Code as a principal crime, especially in article 10 of the old Criminal Code, and the Public Prosecutor only needs to prove that the asset is suspected of coming from a crime. Furthermore, the burden of proof is shifted to the owner of the asset to prove that the asset was obtained legally (*the principle of unexplained wealth)* or unexplained wealth.

The placement of asset confiscation as a principal crime also has positive implications for the evidentiary aspect. In this model, the Public Prosecutor is no longer burdened with the obligation to prove perfectly the causal relationship between assets and corruption crimes with a standard beyond *reasonable doubt*. On the contrary, the prosecutor is enough to prove that the assets should be suspected of coming from the proceeds of crime. Furthermore, the burden of proof is transferred to the asset owner to prove that the property was obtained legally.[33]

This approach is known as the principle of unexplained wealth or wealth whose origin cannot be explained in a reasonable way. This principle has been applied in various countries as an effective instrument in the eradication of corruption and other economic crimes. Conceptually, this principle is not intended to ignore the principle of presumption of innocence, but rather to balance the interests of protecting the rights of individuals with the public interest in recovering state losses.[34]

From the perspective of substantive justice, the transfer of the burden of proof to the asset owner can actually be seen as a form of proportionate justice. A person who has a significant amount of wealth should be able to explain the source of his wealth acquisition rationally and accountably. If the owner of the asset fails to prove the validity of the origin of his property, then the state has the moral and legal legitimacy to seize the asset in the public interest.[35]

Thus, the urgency of legal reform in optimizing *asset recovery* does not only lie in the normative aspect, but also in the paradigm change in the enforcement of corruption criminal law. Progressive legal reform must be able to answer the practical challenges that have been hindering the recovery of state assets, while still upholding the principles of the rule of law and human rights. Without substantive and effectiveness-oriented reforms, the grand goal of eradicating corruption and restoring the country's finances will continue to face recurring structural obstacles.

CONCLUSION

The results of this study show that the mechanism of asset forfeiture in corruption crimes that still relies on the conviction-based asset forfeiture approach has not been able to guarantee optimal recovery of state losses. Reliance on criminal verdicts with legal force still raises various procedural obstacles, especially when the perpetrator dies, escapes, or cannot be processed to the criminal stage. In addition, the high standards of

[33] Indriyanto Seno Adji, *The Principle of Reverse Proof in Corruption Cases*, Jakarta: Diadit Media, 2017, p. 88.

[34] Jeremy Horder, *Ashworth's Principles of Criminal Law*, Oxford: Oxford University Press, 2019, hlm. 312.

[35] John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press, 2002, hlm. 73.

criminal proof and the complexity of the judicial process also slow down and limit the effectiveness of asset returns, so that the realization of asset recovery is still not proportional to the amount of state losses caused.

This condition confirms the existence of structural weaknesses in the legal framework for eradicating corruption that is not fully oriented towards the recovery of state assets. Therefore, a reorientation of legal policies is needed that places asset confiscation as the main instrument, not solely as a consequence of criminalizing the perpetrator. An asset-based approach (in rem forfeiture) is relevant to overcome these limitations, as it allows the state to continue to confiscate assets suspected of being criminally committed without relying entirely on criminal convictions.

Based on these findings, this study recommends legal reform through the revision of the Law on the Eradication of Corruption by accommodating an asset forfeiture mechanism based on in rem, strengthening the position of asset forfeiture as a principal crime, and adopting more proportionate evidentiary standards, including the application of the unexplained wealth principle. This reform is expected to increase the effectiveness of state loss returns while strengthening the orientation of substantive justice in eradicating corruption.

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BIBLIOGRAPHY

Andi Hamzah. *Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional*. Jakarta: RajaGrafindo Persada, 2016.

———. *Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional*. Jakarta: RajaGrafindo Persada, 2014.

———. *Hukum Pidana Korupsi*. Jakarta: RajaGrafindo Persada, 2019.

Arief, Barda Nawawi. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana*. Jakarta: Kencana, 2018.

———. *Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta: Kencana, 2017.

———. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana, 2016.

Arief, Barda Nawawi, dan Muladi. *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni, 2010.

Atmasasmita, Romli. *Korupsi, Good Governance, dan Komisi Anti Korupsi di Indonesia*. Jakarta: Badan Pembinaan Hukum Nasional, 2002.

Bayuaji, Rihantoro. *Prinsip Hukum Perampasan Aset Koruptor dalam Perspektif Tindak Pidana Pencucian Uang*. Surabaya: Laksbang Justisia, 2017.

BPHN. *Naskah Akademik RUU Perampasan Aset*. Jakarta: Kementerian Hukum dan HAM RI, 2019.

Braithwaite, John. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press, 2002.

Dalimunthe, Juangga Saputra. "Penegakan Hukum Pidana Pengembalian Kerugian Keuangan Negara melalui Perampasan Aset Hasil Tindak Pidana Korupsi yang Dikuasai Pihak Ketiga." Jurnal Indonesia Sosial Sains 1, no. 2 (2020): 66–75.

Hiariej, Eddy O.S. Prinsip-Prinsip Hukum Pidana. Yogyakarta: Cahaya Atma Pustaka, 2016.

———. *Teori dan Hukum Pembuktian*. Jakarta: Erlangga, 2012.

———. *Asset Recovery dalam Tindak Pidana Korupsi*. Yogyakarta: Cahaya Atma Pustaka, 2020.

Horder, Jeremy. *Ashworth's Principles of Criminal Law*. Oxford: Oxford University Press, 2019.

Husein, Yunus. *Rezim Anti Pencucian Uang di Indonesia. Jakarta*: RajaGrafindo Persada, 2014.

Indriyanto Seno Adji. *Korupsi dan Penegakan Hukum*. Jakarta: Diadit Media, 2009.

———. *Prinsip Pembuktian Terbalik dalam Perkara Korupsi*. Jakarta: Diadit Media, 2017.

———. *Korupsi dan Penegakan Hukum*. Jakarta: Diadit Media, 2019.

Komisi Pemberantasan Korupsi. Laporan Tahunan KPK. Jakarta: KPK RI, 2022.

Kusuma, Sugiyanto E. "The Relationship Between Money Laundering and Banking." Jurnal Keuangan dan Perbankan 11, no. 1.

Lilik Mulyadi. *Tindak Pidana Korupsi di Indonesia*. Bandung: Alumni, 2018.

Marsono. "Pemberantasan Korupsi di Indonesia: Dari Perspektif Penegakan Hukum." Manajemen Pembangunan, no. 58/II (2007): 58–61.

Melani. "Problematik Prinsip Double Criminality dalam Hubungannya dengan Kerjasama Pencegahan dan Pemberantasan Kejahatan Transnasional." Jurnal Ilmu Hukum Litigasi 6 (Juni 2005): 169–180.

Moeljatno. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2015.

Muladi. *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro, 2015.

Peter Alldridge. *Money Laundering Law*. Oxford: Hart Publishing, 2003.

Soekanto, Soerjono, dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2001.

Sjahdeini, Sutan Remy. *Pencucian Uang: Pengertian, Sejarah, Faktor Penyebab dan Dampaknya*. Jakarta: Pustaka Utama Grafiti, 2007.

Transparency International Indonesia. Laporan Dampak Korupsi terhadap Perekonomian Nasional. Jakarta, 2020.

United Nations. *United Nations Convention Against Corruption*. New York: United Nations, 2004.

———. *UNCAC Review Mechanism Report on Indonesia*. New York: United Nations, 2018.

Yenti Garnasih. *Asset Recovery dalam Tindak Pidana Korupsi*. Jakarta: Ghalia Indonesia, 2016.