



The Role of The Prosecutor's Office in Asset Seizure

Adi Sulistiyono¹, Isharyanto², Fadhil Purnama Adi³

¹Sebelas Maret University, Central Java, Surakarta, adi_sumo@yahoo.co.id

²Sebelas Maret University, Central Java, Surakarta, isharyanto_fh@staff.uns.ac.id

³Sebelas Maret University, Central Java, Surakarta, fadhil@staff.uns.ac.id

Abstract: The seizure of assets resulting from criminal acts will be easier for law enforcement officials to carry out if the Draft Law on Asset Forfeiture is passed. Assets that are seized are not only related to corruption crimes but also general crimes that carry a prison sentence of 4 years or more. The amount of assets seized is also at least IDR 100 million. This paper will explore the urgency of the Asset Forfeiture Bill in terms of the politics of legislation and then be limited to discussions on the direction of law enforcement that is considered responsive, especially regarding institutions that have authority in implementing the law. This paper is a type of doctrinal research that the data collection technique used is a literature technique, while the analysis in this study is after all legal materials are collected both from primary legal materials and secondary legal materials then clarified. Without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built. And if impunity is not demolished, all efforts to bring an end to corruption are in vain. Integrity, transparency, and the fight against corruption have to be part of the culture.

Keywords: Integrity, transparency, corruption

INTRODUCTION

The Asset Forfeiture Bill has been initiated since 2003 and was included in the list of Prolegnas during the 2nd period of President SBY's administration. It was only after 20 years of such strong public pressure that the passage of the House of Representatives into law. As many as 82.2 percent of respondents to the Kompas poll voiced the discussion and promulgation of the Criminal Assets Forfeiture Bill. Of the 82.2 percent of respondents, as many as 35.5 percent of respondents even considered the Asset Forfeiture Bill very urgent to be enacted. The amount of public pressure from the results of the Kompas poll on April 4-6, 2023 shows that this is one of the most crucial issues today. Especially when the lavish lifestyle of several officials is revealed in public spaces. Unfortunately, the president's letter regarding the Criminal Assets Forfeiture Bill cannot be sent to the DPR because of incomplete paragraphs from several leaders of ministries and

state institutions. (Team Second Finance, 2023)(Arrijal Rachman, 2023)(Agency Legislation, 2023)(Crown Plan Compass, 2023).

Several domestic scholars' writings have also pressed the urgency of this bill. Fernando, Pujiyono, and Rochaeti have explained the harmonization of this draft law on human rights issues. Easter, Ramadhana, and Anandya have also mentioned in the study the seizure of bail in handling corruption crimes. Latifah previously concluded that factors influencing the development of criminal acts urgently need effective asset forfeiture mechanisms so that justice can be served.(Zico Junius Fernando et al., 2022)(Lalola Easter et al., 2022).

Several international publications have also recorded the urgency of asset seizure as one of the innovative solutions in the fight against corruption. Drawing on South Africa's experience, Hofmeyr said asset seizures were a relatively new and innovative way to fight corruption through civil litigation. This innovation is in line with Hansen's findings on the involvement of private actors and especially in cross-border business activities that view anti-corruption as part of risk management Taking the case in Australia, Vasta has provided a convincing argument that asset seizure is the best effort in corruption prevention and rule(Willie Hofmeyr, 2013)(Hans Krause Hansen, 2011) of law enforcement. Nevertheless, in one of its recent publications, the World Bank acknowledged that:(Sal Vasta, 2013).

Recovery of stolen property is complicated. This involves coordination and cooperation with internal affairs agencies and ministries in different jurisdictions with different legal systems and procedures. Exceptional investigative techniques and skills are required to "track the flow of money" across national borders and the ability to act quickly to avoid asset deterioration. To be effective, authorities need to be able to initiate and conduct legal proceedings in domestic and foreign courts and provide evidence or intelligence data to relevant authorities. jurisdiction in other jurisdictions during the investigation, or both. All available legal options should be considered, whether criminal forfeiture, non-controversial confiscation, civil action, or other alternatives. This process can be overwhelming for even the most experienced practitioner. This is especially difficult for those working in the context of failed states, rampant corruption, or limited resources.(Jean-Pierre Brunet al., 2021)

During the investigation, the seized property must be secured by a temporary measure so as not to be lost, misplaced, or damaged. In some civil law jurisdictions, the authority to order the seizure or forfeiture of property usually rests with the prosecutor, investigative judge, or law enforcement officer. In other civil jurisdictions, judicial authorization is required to obtain such

provisional measures. In common law jurisdictions, orders for detention or forfeiture often require court authorization, with some exceptions in certain forfeiture cases.(Jean-Pierre Brun et al., 2021)

LITERATURE

For each handling of money laundering cases, to maximize the tracking and recovery of assets, it is necessary to return to the context of each form of asset forfeiture system, which must be applied to the circumstances that occur in the handling of the case. The existence of Asset Forfeiture in the Anti-Money Laundering regime is important because the law enforcement paradigm uses a follow-the-money approach (tracing the flow of funds related to crime or other illegal acts). In this paradigm, it is understood that money/assets are the lifeblood of the crime, as well as the weak point of the crime chain. (Yunus Husein, 2007) In the technical handling of cases in the anti-money laundering regime itself, several asset forfeiture models can be used, which are adjusted to the conditions at the time of handling the case. The asset forfeiture models consist of (a) criminal forfeiture; (b) civil forfeiture; and (c) administrative forfeiture:

- a. Administrative Forfeiture is an action by state administrative officials or parties authorized to take over assets suspected of being unlawful assets, which based on the provisions of laws and regulations can be seized without criminal charges or civil lawsuits (non-judicial).
- b. Criminal Forfeiture is part of the punishment for criminal offenses, which is usually said that criminal forfeiture is a personal action against the defendant, not an in rem action against the property involved in the offense.
- c. Civil Forfeiture is a model of asset forfeiture that is carried out on cases that are not criminal cases. In civil forfeiture, the subject party does not need to be proven to have committed a criminal offense, if it is suspected that the money proceeds from the crime, it can already be confiscated by the State by filing a lawsuit either in civil (legal action) or against property or an in rem lawsuit to the Court, both of which do not require proof that a person has committed a criminal offense.

METHOD

This paper will explore the urgency of the Asset Forfeiture Bill in terms of the politics of legislation and then be limited to discussions on the direction of law enforcement that is considered responsive, especially regarding institutions that have authority in implementing the law. This

paper is a type of doctrinal research with a concept approach, a statutory approach, and a comparative approach so that the data collection technique used in this thesis is a literature technique, while the analysis in this study is after all legal materials are collected both from primary legal materials and secondary legal materials then clarified. qualitative according to the problem.

DISCUSSION

Seeing the Complexity of Asset Recovery Practices in Foreign Countries

This paper tries to see the practice of asset seizure in the context of recovery due to criminal acts in 3 (three) countries, namely Peru, Nigeria, and Zambia. It shows various roads, jurisdictional involvement, and variations in ways of asset recovery (repatriation).

1. Peru Case

Vladimiro Montesinos, personal adviser to Peruvian President Alberto Fujimori (1990–2000) and head of Peru's intelligence service, was arrested in connection with various illegal activities: bribery, embezzlement of public funds, arms and drug trafficking, and human rights violations. Montesinos has been charged, tried, and convicted of several crimes. Since 1990, Montesinos has accepted bribes, among other things, related to the arms trade in at least 32 transactions (each worth 18% of the purchase price) as well as commissions for the purchase of three aircraft. for the Peruvian Air Force. Montesinos also hid this illegal property in Switzerland, the Cayman Islands, Luxembourg, Peru, and the United States. (Michael Levi et al., 2007)

At that time Swiss authorities offered two alternatives to asset recovery. First, use Peruvian courts to conduct criminal charges and convictions and utilize cooperation for asset freezes. Second, Switzerland was given the initiative to prosecute drug trafficking and money laundering, and the seized assets were returned to Peru by first "sharing" with the Swiss government. Peruvian authorities have also met with the Cayman Islands' financial intelligence units for help. After several months of financial analysis, Peru discovered that the assets were never sent to the Cayman Islands but instead remained in Peruvian banks. Back-to-back lending systems are used to simulate "transfers" to banks in the Cayman Islands and "returns" to Peruvian banks. When found, the money in the Peruvian bank was confiscated and confiscated. Meanwhile, following an FBI investigation (in cooperation with Peruvian authorities) into fraud, corruption, and money laundering involving Montesinos and his partner Victor Venero Garrido, \$20.2 million was lost

and frozen, while Garrido was arrested and his apartment confiscated. An additional \$30 million in the Montesinos fund held in the name of one person was also frozen. Unspecified foreclosure proceedings in Florida and California were used to recover the funds and all those properties were repatriated to Peru. The repatriation agreement between the United States and Peru provides transparency and compensation for victims and supports anti-corruption efforts. In Peru, over \$60 million in assets has been recovered by the Peruvian government through forfeiture and forfeiture of property, vehicles, vessels, and other property in approximately 180 criminal disputes involving more than 1,200 defendants. Ultimately, assets worth more than \$250 million were recovered from Switzerland, the United States, and local banks in Peru.

2. Zambia Case

Frederick Chiluba served as President of Zambia from 1991 to 2002. In 2002, a task force was established in Zambia to investigate allegations of corruption by the former president and his confidants since 1991. until 2001, to assess whether criminal proceedings are possible and to determine the best option for asset recovery.

There were some delays in the court process: one of the defendants fled, two of the three trials failed, and political interference was also an issue in the trial. The new president, Levy Mwanawasa, even considered offering Chiluba leniency if he returned 75% of the ill-gotten gains. As a result, the authorities decided to initiate a civil action in the UK in the hope of recovering some of the money laundering assets. Thus, in 2004, the Attorney General of Zambia, on behalf of the Republic of Zambia, brought a civil action in the United Kingdom against Chiluba and 19 of his associates.

Another claim concerns payments of approximately US\$20 million made by Zambia under alleged arms purchase agreements with Bulgaria to accounts in Belgium and Switzerland with funds located in London. ("BK Conspiracy"). The court after considering all the evidence proved that Chiluba and other defendants illegally embezzled public funds. Specifically, the defendants were found to have embezzled US\$25,754,316 in the Zamtrop conspiracy and US\$21,200,719 in the BK plot. The significance of the London court ruling is that it allows forfeiture of property found in the UK and the possibility of enforcement of this judgment in other jurisdictions that recognize and enforce court judgments. Older brother. However, there remain obstacles in the execution of the London court ruling in Zambia. Chiluba argued that domestic law has not provided details about the execution of foreign court rulings. As a result, court rulings fail to be enforced,

leading to evaluation instead of pursuing assets, it is necessary to consider other asset recovery mechanisms. (Katherine E. Ryder, 2011)(Katherine E. Ryder, 2011)

3. The case of Nigeria

In 1999 Diepreye Alamieyeseigha was elected Governor of Bayelsa State in Nigeria and was re-elected in 2003. In 2005, he was accused of corruption. Between 1999 and 2005, Alamieyeseigha amassed foreign assets, bank accounts, investments, and cash worth more than £10 million. Foreign assets are in his or her spouse's name, while some other assets are held by companies and trusts based in the Bahamas, Seychelles, South Africa, and the British Virgin Islands. Criminal proceedings in Nigeria and the UK include criminal asset custody orders and formal Mutual Legal Assistance (MLA) requests from Nigeria to the UK. Confiscation of criminal property has taken place in Nigerian court decisions. Civil lawsuits have been filed in the UK, including freeze requests against Cyprus and Denmark. Civil forfeiture proceedings have also been filed in South Africa and the United States. Thanks to effective cooperation with the authorities in South Africa, the United Kingdom, and the United States, as well as the choice and combination of different asset recovery mechanisms, Nigeria has recovered 17.7 million dollars through domestic and foreign litigation.

Meanwhile, the acquisition of assets seized in some countries can be used to finance law enforcement which requires a lot of funds. The United States has an asset forfeiture law called the "Civil Asset Forfeiture Reform Act" that allows authorities to seize assets allegedly used to commit criminal offenses. The seized assets can be used to finance law enforcement activities. Canada has an asset forfeiture law called the "Proceeds of Crime (Money Laundering) and Terrorist Financing Act" that allows authorities to seize assets allegedly used to commit criminal acts or terrorism. The seized assets can be used to finance law enforcement activities. Australia has an asset forfeiture law called the "Proceeds of Crime Act" that allows authorities to seize assets allegedly used to commit criminal offenses or corruption. The seized assets can be used to finance law enforcement activities. The UK has an asset forfeiture law called the "Proceeds of Crime Act" that allows authorities to seize assets allegedly used to commit criminal offenses. The seized assets can be used to finance law enforcement activities.

In addition, there are examples of interesting comparative study cases related to the implementation of asset seizures that violate human rights, namely the implementation of asset seizures in China.

China has several laws related to criminal asset forfeiture. One of the laws governing the seizure of criminal assets in China is the "Money Laundering Act" published in 2006. The law authorizes authorities to seize assets allegedly derived from criminal offenses, including corruption, narcotics, human trafficking, and other financial offenses. In addition, China also has laws on asset seizure related to certain crimes, such as the "Human Trafficking Act" and the "Narcotics Crime Act". The law gives authorities the authority to seize assets allegedly derived from related crimes. However, it is important to remember that the implementation of asset seizures in China is often criticized by human rights activists for a lack of transparency and accountability in the expropriation process. Several cases in China show that asset seizure processes in China can involve human rights abuses, including detention and the use of violence against the families of alleged perpetrators of crimes. Therefore, although the asset forfeiture law already exists in China, its implementation needs to be improved to ensure human rights are maintained.

4. Indonesian context

The provisions in the Criminal Code and Criminal Procedure Code as well as several other statutory provisions have regulated the possibility of confiscating and seizing the proceeds and instruments of criminal acts although the understanding is not entirely the same as the understanding of the results and instruments of criminal acts that are developing at this time. However, under these provisions, deprivation can only be exercised after the offender is legally and convincingly proven in court to have committed a criminal offense.

Various possibilities can hinder the completion of such enforcement mechanisms, such as the absence of discovery or death or other obstacles that result in criminal offenders not being able to undergo examination in court or not finding sufficient evidence to file charges in court and other causes. The paradigm fallacy related to money instead of corruption crimes is also contained in Article 18 of Law No. 31 of 1999 jo. Law No. 20 of 2001, where the seizure of property or wealth is only directed at convicts. Even though the mode of hiding assets resulting from corruption is usually by using relatives, close relatives, or confidants. (Molejatno, 2000)

Another problem that complicates efforts to maximize the return of money for corruption crimes to the state is that the Corruption Law has limited the amount of substitute money that can be imposed to be equal to the money obtained from corruption crimes or as much as can be proven in court. In addition to obstacles to the legal paradigm of eradicating Tipikor, efforts to return state

money are also hampered by the characteristics of corruption crimes whose proof is very detailed and takes a very long time. In the history of asset grabbing, corruption in Indonesia has not produced significant results.

The United Nations has adopted several conventions containing provisions on asset recovery and mutual legal assistance in the context of confiscation and confiscation of property and criminal instruments. These conventions include the United Nations Convention against Illicit Traffic in Drugs and Plant Substances (1988), and the United Nations Convention against Transnational Organized Crime/UNTOC. (2002), United Nations Conventions Against Terrorism and United Nations Convention against Corruption/UNCAC (2003 – ratified by Law No. 7 of 2006).

Member States that have signed and ratified the UNCAC, as victims of corrupt practices, are entitled to a refund of corrupt money that has been sent abroad. Article 53 of the UNCAC is intended to ensure that each Member State recognizes that the other State Party has similar legal status to pursue civil action and other direct means to recover stolen property, illegally purchased and remitted abroad. The challenge is the recognition of confiscation orders from foreign parties. Traditionally, extra-territorial elements such as confiscation orders have often been rejected because they imply the nationalization of private property. And historically, the proceeds of corruption have been closely associated with money laundering cases in certain jurisdictions where the proceeds of crime can be concealed.

The civil mechanism for the return of assets is technical-legal. There are several challenges that state attorneys will face in conducting civil prosecutions. Among other things, the civil procedure law used is fully subject to the common law of civil procedure, to the principle of formal evidence. The burden of proof is on the applicant (prosecutor, who has to prove) the equality of the parties, the judge's duty to conciliate the parties, etc. While the Prosecutor (JPN) as the plaintiff has to provide corroborating evidence that there has been a loss of state. In particular, financial loss to the state resulting from or related to the actions of the suspect, defendant, or convicted person; the existence of property of the accused, defendants, or convicts that may be used to recover State property. Also, like most civil cases, it takes a long time for a court decision to become permanent law.

5. Map of Laws and Regulations

The Indonesian Corruption Elimination Act has provided a limited solution to the return of corrupt assets in the country through civil lawsuits as provided for in Article 32, Article 33, Article 34, and Section 38 of the Act. Act No. 20 of 2001, or under criminal law section 18 of Act No. 31 of 1999. The author's property is not intended to pay for surrogacy.

The return of state assets as a result of transnational corruption requires national and international legal instruments, therefore instruments through Mutual Legal Assistance (MLA) and International Conventions – such as UNCAC for example which Indonesia has ratified through Law Number 7 of 2006 – become a mandate that must be implemented by Indonesia despite the constraints of the National Law clauses, which are expected to be imperative.

The Asset Forfeiture Bill seems to be very responsive and progressive in containing a new mechanism whereby the confiscation or seizure of assets resulting from criminal acts and/or instruments used to commit such criminal acts can be confiscated or confiscated without having to be linked to the conviction of the suspect or defendant. This is related to the seizure of assets for the type of Unexplained wealth or Assets of Public Officials that are not balanced with their income or that are not balanced with the source of additional wealth and cannot be proven the origin of their legal acquisition, then these assets can be confiscated. In addition, there is also a mechanism known as the asset seizure system through civil lawsuit procedures against their objects or in rem forfeiture. The application of this system has proven to be quite capable of suppressing criminal acts that are economically motivated or involve large amounts of funds.

In rem, forfeiture arrangements allow recovery or return of assets resulting from criminal acts without a court decision in a criminal case or non-conviction-based (NCB) asset forfeiture. With this mechanism, there is a wide opportunity to seize all assets that are suspected to be proceeds of crimes, other assets that are reasonably suspected to be used or have been used as instrumentalities to commit criminal acts, as well as other assets obtained directly or indirectly from criminal acts including those that have been converted into other assets. This mechanism allows asset seizure without having to wait for a criminal verdict containing a statement of guilt and punishment for criminal offenders. The authority of In Rem seizure is owned by the Attorney General who can technically give special power to the State Attorney to apply for In Rem Expropriation to the Chairman of the District Court where the legal area of goods/assets is located to be handed over to the Asset Management Agency.

6. Appropriate Institutions

In the course of asset seizure, law enforcement agencies will be authorized to identify, detect, freeze, and confiscate the proceeds and instruments of criminal acts. Asset seizure is a series of processes or stages starting from the collection of information or intelligence, evidence, asset tracing, freezing and confiscation of assets, trial processes, implementing court determinations or decisions, to the handover of assets to the state.

In this regard, the establishment of the National Agency for Asset Forfeiture responsible to the President may be considered. This body, because of its position, the Attorney General should be proposed as Chairman and the Minister of Finance as Vice Chairman. It collaborates with the Center for Financial Transactions Analysis and Reporting, the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, the police, the Audit and Development Commission, the prosecutor's office, and the Anti-Corruption Commission. This agency is the coordinator and supervisor.

Administratively, this agency is authorized and responsible for the transfer of assets based on a court decision with permanent legal effect and the outcome of the proceedings of the NCB. To carry out information or intelligence gathering, evidence, property search, freezing and confiscation of assets, legal proceedings, and enforcement of court decisions or judgments may be filed. to the Prosecutor's Office or the Anti-Corruption Commission, so that it cannot interfere with the implementation of applicable procedural law. With the coordinating function, this agency wishes to develop and implement a roadmap to implement the law on property expropriation, with a reference document and a priority scale in the offenses requiring the act of property expropriation. produce.

CONCLUSION

Going forward, the passage of the Forfeiture Bill will have a significant impact on the prosecutor's office. The roles of the Attorney General and the prosecutor's office are very strategic in determining the effectiveness of foreclosure enforcement; The successful implementation of this very strategic mission has an impact on the national economy and will further strengthen public confidence in the Prosecutor's Office.

In practice, the implementation of asset seizure is very complex, requiring coordination and cooperation between agencies and ministries in many different jurisdictions with different

legal systems and procedures. together. The prosecutor's office must be able to prepare human resources capable of acting professionally, transparently, and responsibly, as special investigative techniques and skills are required to track cross-border cash flows. national boundaries and the ability to act quickly to avoid asset depletion. To ensure its effectiveness, the Public Prosecutor's Office must be able to conduct legal proceedings in courts abroad, to provide evidence or information to competent authorities in the regions. other legal proceedings during the investigation, or both. This is further complicated when corruption is widespread in all walks of life, while the resources of the Prosecutor's Office are very limited.

In addition, the seizure of assets for the type of assets of public officials that are not balanced with their income or that are not balanced with the source of their wealth addition and cannot be proven the origin of their legal acquisition, these assets can be confiscated; this requires strong legal politics from the Attorney General and professional prosecutorial officials to enforce these types of assets indiscriminately." Because the seizure of this type of asset almost involves en masse politicians, bureaucrats, members of parliament, and law enforcement officials. Regarding the establishment of the National Asset Forfeiture Agency, which is responsible to the President, the Attorney General should be proposed as Chairman and the Minister of Finance as Vice Chairman.

BIBLIOGRAPHY

- Arrijal Rachman. (2023, April 27). *Update Mahfud: Draf RUU Perampasan Aset Sudah di Meja Jokowi*. <https://www.cnbcindonesia.com/news/20230427135017-4-432740/Update-Mahfud-Draf-Ruu-Perampasan-Aset-Sudah-Di-Meja-Jokowi>.
- Badan Legislasi. (2023, April 2). *PR Serius Tunggu Draf Naskah RUU Perampasan Aset dari Pemerintah*. <https://www.dpr.go.id/berita/detail/id/43930/t/DPR+Serius+Tunggu+Draf+Naskah+RUU+Perampasan+Aset+dari+Pemerintah>.
- Hans Krause Hansen. (2011). Managing Corruption Risks. *Review of International Political Economy*, 18(2), 251–275.
- Jean-Pierre Brun dkk. (2021). *Asset Recovery Handbook: A Guide for Practitioners*. The World Bank.
- Katherine E. Ryder. (2011). *Making hay while the sun shines: Experiences with the Zambian Task Force on corruption*. U4 Practice Insight, Bergen,

- Lalola Easter, Kurnia Ramadhana, & Diky Anandya. (2022). *Urgensi Pengaturan Sita Jaminan dalam Penanganan Perkara Tindak Pidana Korupsi*.
- Michael Levi, Maria Dakolias, & Theodore S. Greenberg. (2007). *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, ed. oleh J. Edgardo Campos dan Sanjay Pradhan. World Bank.
- Molejatno. (2000). *Asas-Asas Hukum Pidana*. Liberty.
- Sal Vasta. (2013). Asset Recovery – a Practical Example from Queensland, Australia. *Commonwealth Law Bulletin*, 39(1), 33–36.
- Tajuk Rencana Kompas. (2023, April 12). *Mewujudkan RUU Perampasan Aset*. <https://www.kompas.id/baca/opini/2023/04/11/mewujudkan-ruu-perampasan-aset>.
- Tim Detik Finance. (2023, March 13). *Deretan Pejabat Negara Suka Pamer Harta Berujung Nelangsa*,. Deretan Pejabat Negara Suka Pamer Harta Berujung Nelangsa
- Willie Hofmeyr. (2013, March). *The Effective Use of Asset Recovery*. *Commonwealth Law Bulletin* 39, No. 1. <https://doi.org/10.1080/03050718.2012.751202>.
- Yunus Husein. (2007). *Bunga Rampai Anti Pencucian Uang*. Books Terrace and Library.
- Zico Junius Fernando, Pijiyono, & Nur Rochaeti. (2022). Perampasan Aset Pelaku Tindak Pidana dalam Perspektif Hak Asasi Manusia dan Prinsip Hukum Pidana. *Jurnal Legislasi Indonesia*, 19(1), 83–93.