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The Importance of Regulating Non-Conviction Based Asset Forfeiture in Corruption Cases in Indonesia

Abstract
This research examines the importance of regulating Non-Conviction Based Asset Forfeiture (NCB) in corruption cases in Indonesia. NCB is a mechanism of asset forfeiture that allows the state to seize assets without a prior criminal conviction. The study argues that the regulation of NCB is necessary to ensure the effectiveness of asset recovery in corruption cases and to prevent abuse of power by law enforcement agencies. The research uses a qualitative approach and analyzes relevant laws and regulations, court decisions, and academic literature. The findings suggest that the current legal framework for NCB in Indonesia is inadequate, leading to the misuse of NCB by law enforcement agencies. The research recommends the enactment of a specific law on NCB in corruption cases that provides clear criteria and safeguards for the use of this mechanism.

Keywords: *Asset Forfeiture, Corruption Cases, Regulating Non-Conviction*

Abstrak
Penelitian ini membahas pentingnya mengatur Perampasan Aset Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture/NCB) dalam kasus korupsi di Indonesia. NCB adalah mekanisme perampasan aset yang memungkinkan negara untuk menyita aset tanpa adanya putusan pidana sebelumnya. Studi ini berpendapat bahwa pengaturan NCB diperlukan untuk menjamin efektivitas pemulihan aset dalam kasus korupsi dan mencegah penyalahgunaan kekuasaan oleh lembaga penegak hukum. Penelitian ini menggunakan pendekatan kualitatif dan menganalisis undang-undang dan peraturan terkait, keputusan pengadilan, dan literatur akademik. Temuan menunjukkan bahwa kerangka hukum saat ini untuk NCB di Indonesia tidak memadai, yang mengakibatkan penyalahgunaan NCB oleh lembaga penegak hukum. Penelitian ini merekomendasikan pengesahan undang-undang khusus tentang NCB dalam kasus korupsi yang memberikan kriteria dan pengaman yang jelas untuk penggunaan mekanisme ini.

Keywords: Kasus Korupsi, Pemidanaan, Pelelangan Aset, Pengaturan Permapasan Aset Tanpa

Introduction

The 1945 Constitution of the Republic of Indonesia (UUD Negara RI Tahun 1945) is the highest constitution in Indonesia, serving as the fundamental law for legislation in the country. Its purpose is outlined in the fourth paragraph of the preamble, which states that the goal of Indonesia is to establish a government that shall protect all the people of Indonesia and the entire homeland, to advance the welfare of the people, to educate the nation, and to participate in the establishment of a world order based on independence,

lasting peace and social justice." To achieve this goal, laws and regulations are created that govern the life of the nation, including a judicial system enshrined in the amended Article 24(1) of the Constitution that states "Judicial power shall be vested in an independent judiciary to uphold the law and justice.

However, the enforcement of the law in Indonesia has faced many obstacles and is still not fully maximized, particularly with the rise of increasingly sophisticated crimes in the digital age. Corruption is one form of crime that has both national and transnational ramifications and has a significant negative impact on society in various areas, including the economy, social welfare, government bureaucracy, politics and democracy, law enforcement, and the environment. Corruption is also detrimental to the state as it slows economic growth, decreases investment, increases poverty and income inequality, and reduces the happiness and welfare of the people.

According to Indonesia Corruption Watch (ICW), in 2019 there were 1,125 suspects and 1,019 cases of corruption that were tried. In 2020, there were 1,298 suspects and 1,218 cases, while in 2021, there were 1,404 suspects and 1,282 cases. These figures represent the number of cases tried at all levels of the judiciary, including appeals. Despite the pandemic, the number of corruption cases tried in 2021 rose significantly compared to previous years. Of the 1,404 defendants in corruption cases last year, only 12 were charged with money laundering, while the majority were charged with financial loss to the state or bribery. According to the ICW, this phenomenon indicates that law enforcement authorities have not yet used asset forfeiture as an approach to combatting corruption. Asset recovery, including through the Anti-Money Laundering Act, should be part of the strategy, in addition to imprisonment.

The current legal system for combating corruption in Indonesia is weak and has not yielded optimal results. Transparency International Indonesia (TII) revealed that Indonesia's Corruption Perception Index (CPI) in 2020 was 37, ranking 102nd out of 180 countries surveyed. Indonesia's score was down three points from the previous year, when it was ranked 85th with a score of 40.

The paradigm shift from "follow the suspect" to "follow the money" emphasizes asset recovery to maximize the return of stolen state assets while impoverishing the perpetrator, rather than just punishing the perpetrator in the hope of deterring others (Wiart, 2018). Following the suspect can lead to problems such as when the criminal suspect is not present or has fled, in which case the corrupt actor is processed through the criminal justice system and the assets are seized after a guilty verdict is reached. However, what if the owner is absent or has fled, even though it is clear that the money/assets are suspicious and known to come from criminal activity, according to PPATK analysis? One example of such a problem is Non-Conviction Based Asset Forfeiture, which is the seizure of assets without criminal charges.

The term "criminal" generally refers to "law," while "criminalization" refers to "punishment" (Zaini, 2019). Both have different meanings, where criminality in the context of corruption is an act that is prohibited because it violates human rights and is a serious human rights violation, as corruption can cause suffering for many people throughout Indonesia. Meanwhile, criminalization or punishment is embodied in the PTPK Law, which imposes imprisonment, fines, and additional penalties on perpetrators of corruption. The

application of these sanctions for corruption must first examine the criminal act committed, meaning that the act of corruption must meet the elements as stipulated in the PTPK Law.

The issue of recovering assets from corruption has become one of the fundamental problems in Indonesia, and it should be the main focus in eradicating corruption. The legal vacuum regarding the seizure of corrupt assets in the effort to recover assets in Indonesia, coupled with the weakness of existing legislation, particularly in efforts to recover corrupt assets, makes this issue so important and the regulations on the seizure of assets from corrupt acts should be implemented as soon as possible.

Widespread and systematic corruption is also a violation of social and economic rights, so corruption can no longer be classified as an ordinary crime but has become an extraordinary crime, which requires extraordinary measures to eradicate it. It is unfair for criminals to enjoy the proceeds of their crimes while the people who should benefit are living in various deficiencies because the state's ability to provide welfare is not fulfilled. Therefore, the law must create ways to make crime unprofitable (Sudarto, 2017).

Currently, corruption is becoming more prevalent in Indonesia, as stated by Nyoman Serikat Putra Jaya, who explains that it must be acknowledged that Indonesia still ranks as a vulnerable country throughout history in terms of corruption. It must also be acknowledged that corruption in Indonesia has become systemic and endemic, so its impact not only harms state finances but also violates social and economic rights of the wider community (Khobid and Gunarto, 2018).

Corruption is a form of theft of the welfare of the people in a country and should be considered a common enemy of humanity. In its development, corruption has transformed from year to year into a more sophisticated and modern form, so it is necessary to create new and effective ways to eradicate it.

According to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the Corruption Eradication Law), corruption is defined as "an illegal act with the intent of enriching oneself/others, either individuals or corporations, that may harm state finances/the state economy" (Husnul Abdi, 2021). The preamble to the Corruption Eradication Law states that corrupt acts are very detrimental to the state's finances or the national economy and hinder national development, thus they must be eradicated to realize a just and prosperous society based on Pancasila and the 1945 Constitution. Corruption, which has been rampant, not only harms state finances but also violates the social and economic rights of the community at large, making it a crime that requires extraordinary measures to be taken in its eradication.

The Corruption Eradication Law is a special law that specifically regulates its own procedural law for the enforcement of criminal acts of corruption that are generally distinguished from other special criminal offenses. This is because corruption is an extraordinary crime that must be prioritized over other criminal offenses (Nurdjana, 2009). Criminal acts of corruption are part of special criminal law because they have specific specifications that differ from general criminal law, such as deviations in their procedural law. Therefore, criminal acts of corruption are intended to directly or indirectly minimize leakage and deviations from the state's finances and economy. By anticipating these deviations as early and as thoroughly as possible, it is hoped that the economy and

development can proceed as intended, ultimately leading to an increase in development and general welfare (Lilik Mulyadi, 2007).

In Indonesia, the primary essence of combating corruption as mandated by the Corruption Eradication Law is to recover state financial losses (asset recovery) that have been corrupted and to deter perpetrators of corruption by imposing criminal penalties, including imprisonment and fines, as well as additional penalties as provided for in Article 18 of the Corruption Eradication Law. The additional penalties include paying compensation, seizure and confiscation of the assets of the perpetrators, or replacement with imprisonment. However, these efforts have not yet been fully implemented.

In a decision by the Corruption Court, the defendant will be subject to a primary sentence of imprisonment and a fine, as well as an additional penalty of paying compensation for state financial losses, up to the maximum amount equal to the property obtained from the corrupt act as provided for in Article 18 of the Corruption Eradication Law. However, most perpetrators of corruption do not pay compensation for the state's financial losses but instead choose to serve a substitute penalty (imprisonment in lieu of compensation) because they believe that the gains from the corrupt act outweigh the risk of punishment they will face. In fact, some corrupt individuals are ready to be imprisoned, as long as they have estimated that their families can still run their businesses while they are serving their sentence.

Indonesia, as a member of the United Nations (UN), ratified the United Nations Convention Against Corruption (UNCAC) in 2003 through Law No. 7 of 2006, which sets out the obligation of member states, in accordance with their national laws, to consider taking measures to combat corruption. One significant breakthrough of UNCAC 2003 is Non-Conviction Based Asset Forfeiture (NCB Asset Forfeiture), which enables asset recovery without a criminal conviction. This concept is expected to accelerate the recovery of losses incurred due to corruption in Indonesia.

Currently, corruption eradication in Indonesia is focused on three main issues: prevention, enforcement, and asset recovery. Asset recovery, in particular, is seen as a positive development in restoring the financial losses of the state. Sometimes, the belief of corrupt individuals does not change their status at all, that they remain rich and have no change in their social status.

Non-conviction based (NCB) asset forfeiture has been formulated in the UNCAC 2003, which is the first international agreement aimed at combating corruption, and it explicitly states that the return of assets resulting from corruption must be treated as a new form of legal instrument. As a first step in criminal law reform, Indonesia must move quickly to align legal instruments that are very helpful in recovering assets acquired through corruption after ratifying UNCAC 2003 through Law No. 7 of 2006. Every country must examine asset seizures without first obtaining a criminal conviction based on their respective national laws, as stated in Article 54, paragraph 1, letter c of the UNCAC 2003.

Asset forfeiture, also known as asset recovery, is "the forced taking of assets or property by the state that is believed to have a close connection to a criminal act." The purpose of asset forfeiture includes preventing the perpetrator from benefiting from their crime, cancelling funds obtained to protect victims, impeding further crimes through blocking, ensuring assets will not continue to be used for criminal purposes, and prevention.

Asset forfeiture was first introduced in common law countries, such as the United States. There are three methods of asset forfeiture in common law countries, namely: Criminal forfeiture, Administrative forfeiture, and Civil forfeiture. Criminal forfeiture is the seizure of assets that purely use criminal law, which was formerly known as the confiscation of unclaimed property due to war. Administrative forfeiture is the seizure of assets by the state without involving the judiciary. In contrast, civil forfeiture is the seizure of assets by filing a lawsuit against the assets owned by the perpetrator of a criminal act, so that the assets can be seized even if the criminal proceedings against the perpetrator are not yet finished. Civil forfeiture uses the theory of reverse burden of proof, allowing for faster asset seizure after alleged links between assets and criminal acts have been found.

The UNCAC Convention of 2003 is more effective in preventing and combating organized and transnational corruption. It uses the follow-the-money method to trace wealth obtained from criminal activity and return it to the state. NCB asset forfeiture is a mechanism mentioned in Article 54(1)(c) of UNCAC 2003 that allows for the confiscation of wealth acquired through a crime without a criminal conviction. Indonesia has ratified UNCAC 2003, but there is a legal vacuum regarding NCB asset forfeiture. Indonesian Asset Recovery Law requires a criminal trial of corrupt actors before asset forfeiture can be carried out. NCB asset forfeiture can speed up the process of recovering state losses. Assets acquired directly or indirectly from criminal activity, assets suspected of being intended for committing criminal acts, and assets that cannot prove their legal source of acquisition can be confiscated using the NCB asset forfeiture mechanism. Indonesia plans to create an Asset Forfeiture Law to provide legal certainty in resolving corruption cases and to deter corrupt actors. However, the draft bill has not been passed into law.

Asset forfeiture resulting from criminal acts in the Indonesian legal system has been regulated in several criminal provisions. One of these provisions is Article 10 of the Criminal Code (KUHP) regarding additional penalties, namely the confiscation of certain items. However, since corruption is a special crime, a special law that regulates corruption is used in its implementation. Article 10 of the KUHP does not specifically mention that the confiscation of certain items is the result of corruption crimes. Moreover, it does not mention whether the confiscation of assets resulting from corruption crimes must be preceded by a criminal process against the corruptor before the confiscation can be carried out or whether it can be done without waiting for a criminal process as stated in the NCB Asset forfeiture regulation. Therefore, Article 10 of the KUHP does not specifically regulate asset forfeiture without criminal proceedings (NCB asset forfeiture) as a solution to speed up the efforts of state financial loss recovery based on social justice for all Indonesian society.

As one of the countries that has ratified the UNCAC Convention with Law No. 7 of 2006, Indonesia has not yet had a specific regulation that comprehensively regulates the mechanism of asset forfeiture without criminal proceedings. However, this mechanism has actually been applied in several regulations in Indonesia, for example, in the Anti-Money Laundering (AML) and Narcotics Crimes Acts. In particular, in corruption crimes, the PTPK Act is considered by several legal experts to have not succeeded in maximally confiscating the assets resulting from corruption crimes.

Writing a dissertation on the urgency of asset forfeiture without criminal proceedings uses philosophical, sociological, and legal approaches. In the philosophical approach,

punishment cannot simply be aimed at revenge for punishing criminal actors. In the retributive theory, criminal actors are only punished for their wrongdoing. This retributive legal theory, in principle, is that whoever commits a crime must receive punishment, whoever steals money deserves to be punished, and whoever corrupts, the return of corrupt money cannot immediately erase the punishment for their crime. Based on this perspective, combating corruption not only emphasizes the repressive aspect but deliberately builds a prevention system that includes rules regarding asset recovery and international cooperation in addition to gratification issues.

Based on a sociological approach, corruption practices have actually seized the political and economic rights of the people, which ultimately sidelines the interests and welfare of the public. Basically, fulfilling economic, social, and cultural rights, guaranteeing civil and political rights, is a constitutional responsibility of the state. When corruption disrupts the state's responsibility in fulfilling economic, social, and cultural rights, as well as guaranteeing individual freedoms, there is a distribution injustice of existing resources. State revenues, which should be used for the welfare of the people, including economic, social, and cultural fulfillment, are delayed in their distribution due to corruption practices. Indonesia's attitude towards eradicating corruption must not be separated from the international world's attitude against corruption. The UNCAC 2003 is a legal product that confirms the position of world countries in combating corruption. This convention requires the standardization of rules, institutional strategies, and intense public participation in combating corruption.

Based on a juridical approach, Indonesia's positive law has recognized rules for combating corruption since 1957. The Criminal Code has categorized some acts such as embezzlement and crimes committed by state officials. However, the rule that explicitly declares corruption as a crime began with Military Rule Number Prt/PM/06/1957, issued by the Chief of Staff of the Army as the Military Ruler throughout the Indonesian Army on April 9, 1957 (Junaedi, 2020).

In 1960, Law Number 24/Prp/1960 concerning the Investigation, Prosecution, and Examination of Corruption Crimes was established. Then, in 1971, Law Number 3 of 1971 concerning the Eradication of Corruption Crimes was issued. In 1999, after the reform movement in Indonesia, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was enacted, which was later amended and added to by Law Number 20 of 2001. The last two laws mentioned are still in effect today. Unfortunately, the anti-corruption laws are considered inadequate to cope with the development of the times and have several weaknesses, so the efforts to combat corruption are ineffective in catching corruptors.

In 2003, Indonesia signed the United Nations Convention Against Corruption (UNCAC), and the Convention was ratified through Law Number 7 of 2006. As one of the state parties, Indonesia has an obligation to adjust and implement the UNCAC 2003 norms in Indonesian positive law. The changing political and social conditions and the relatively fundamental changes in legal paradigms in the UNCAC 2003 cannot be accommodated in the old laws in Indonesia. Additionally, the spirit of international legal norm standardization in combating corruption, as contained in the UNCAC 2003, is one of the background arguments for the need for a new anti-corruption law that accommodates asset confiscation without criminalization.

This study covers three aspects that become the State of the Art (SoTA) or the latest and most up-to-date knowledge in the field of law, which will provide an explanation of the differences between previous research and the research to be conducted. The three aspects are: based on a juridical aspect, the legal vacuum in regulating asset confiscation without criminalization; based on the second aspect, the sociological aspect, the state as a representation of society is the party that suffers due to corruption crimes. And based on the third aspect, the philosophical aspect, consisting of ontological aspects, containing the essence of asset confiscation without criminalization, epistemological aspects, that asset confiscation only goes through a criminal process first, and axiological aspects, that asset confiscation without criminalization is based on social justice.

The absence of legal regulations on non-conviction based asset forfeiture has led to various issues and difficulties in recovering state assets held by corrupt individuals or other parties, both domestically and internationally, which were obtained illegally. This research is expected to provide a solution to expedite the process of asset recovery, based on social justice for all Indonesian society.

The novelty of this research lies in both legal substance and legal structure. Legal substance refers to the output of the legal system, such as regulations and decisions used by both regulators and the regulated. In the context of this research, legal substance includes legislation related to non-conviction based asset forfeiture, which is currently lacking in Indonesia.

Legal structure refers to the institutionalization of legal entities, such as the court system in Indonesia, which consists of District Courts, High Courts, and the Supreme Court, as well as the integrated justice system that regulates criminal law enforcement. In the context of this research, legal structure pertains to the policy of non-conviction based asset forfeiture, which currently lies solely in the hands of law enforcement agencies due to the lack of specific regulations on this matter.

The current law on asset forfeiture in Indonesia requires the conviction of a corrupt individual before asset forfeiture can take place, leading to a lengthy process for the recovery of state assets. Therefore, the innovation in this research is related to the legal construction of non-conviction based asset forfeiture in corruption cases based on social justice.

Methods Research

The type of research used in this study is normative legal research. There are four approaches used in legal research, namely: the statute approach, the conceptual approach, the comparative approach, and the historical approach. This research will use primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia; the Civil Procedure Code (HIR/Herzein Inlandsch Reglement), listed in the State Gazette (Staatsblad) No. 16 of 1848. Law No. 1 of 1946 concerning Criminal Law Regulations or known as the Criminal Code (KUHP). Law No. 8 of 1981 concerning Criminal Procedure Law or known as the Criminal Procedure Code (KUHAP). Law No. 8 of 1999 concerning Consumer Protection. Law No. 31 of 1999 concerning Eradication of Corruption Criminal Acts. Law No. 39 of 1999 concerning Human Rights. Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999

concerning Eradication of Corruption Criminal Acts. Law No. 30 of 2002 concerning the Corruption Eradication Commission, which has been amended by Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission. Law No. 17 of 2003 concerning State Finances. Law No. 1 of 2004 concerning State Treasuries. Law No. 32 of 2009 concerning Environmental Protection and Management. Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Criminal Acts; Law No. 12 of 2011 concerning the Formation of Legislation which has been amended by Law No. 15 of 2019 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation. Perma No. 2 of 2022 concerning the Procedure for Settlement of Third Party Objections who acted in good faith against the Confiscation of Assets that are not the Property of the Defendant in Corruption Criminal Cases. Draft Law on Asset Forfeiture Without Criminal Prosecution.

Secondary legal materials include all forms of scholarly publications related to or discussing the law, such as textbooks/literature, academic manuscripts, scientific journals, research reports, and others, especially for this study, scientific publications that discuss non-conviction-based asset forfeiture (NCB). In addition, Fockema's law dictionary, the Oxford Dictionary, and Blacks law dictionary will also be used as tertiary legal materials.

The three legal materials used in this study are compiled for inventory and categorization purposes. Primary legal materials are collected, inventoried, and categorized based on hierarchy and year of enactment, while secondary legal materials are collected, inventoried, and categorized based on the legal issues to be examined. Secondary legal materials are collected through literature review and then inventoried with archive grouping according to the legal issues to be discussed.

Analysis is carried out through the stages of identification, processing and analysis, and searching for the common thread among the available legal materials (Marzuki & Mahmud, 2014). The theoretical foundation used is the Theory of Justice, the Theory of Evidence, and the Criminal Policy Theory, which will be the researcher's analytical tool.

Results and Discussion

Asset Confiscation Regulations Resulting from Corruption Criminal Convictions According to the Criminal Code and Criminal Procedure Code

Corruption is a serious problem in Indonesia that is deeply rooted in the nation and requires special regulations to eradicate. It involves acts of bribery, embezzlement, fraud, and other forms of corrupt behavior that cause direct and indirect losses to the state and its people. Corruption is a criminal offense that is prohibited by law and subject to punishment. The Anti-Corruption Law No. 31 of 1999 was revised into Law No. 20 of 2001 to prevent and eradicate corruption. The definition of corruption includes the misuse of power, opportunity, and means to enrich oneself, others, or corporations. The UN-ODACP Center of International Crime Prevention (CICP) identified ten forms of corrupt behavior. Criminal corruption by enriching oneself, others, or a corporation is based on Article 2, while criminal corruption by abusing power, opportunity, office, or position is based on Article 3. Corruption must be eradicated to realize a just and prosperous society.

Bribery in criminal corruption has objective elements of giving or promising something to a civil servant or state official. The subjective element is to persuade civil servants or state officials to do or not do something in accordance with their duties.

In addition, in the Corruption Crime Law No. 20 of 2001, the imposed Criminal Sanctions are:

Principal Penalty

Found in Article 2, the penalty is cumulative, namely the principal penalty (imprisonment) and a fine. The maximum imprisonment sentence is life imprisonment or a maximum of 20 (twenty) years, and the minimum imprisonment is at least 4 years. The maximum fine is Rp.1,000,000,000.00 (one billion rupiahs), while the minimum is Rp.200,000,000,- (two hundred million rupiahs). Aggravating (Article 2 paragraph 2), the death penalty can be imposed if corruption as referred to in Article 2 paragraph 1 is committed in certain circumstances, meaning that if the crime is committed against funds intended for national disaster response, widespread social unrest, economic and monetary crises, and corruption.

Additional Penalty

Confiscation of movable or immovable property or property obtained from corruption, including the convicted party's company where the corruption was committed, as well as the price of the goods, which is governed by Article 18 paragraph 1 letter a. The court's decision regarding the confiscation of goods not belonging to the defendant.

The Act also establishes the Corruption Eradication Commission (KPK) as an independent body responsible for preventing and eradicating corruption. The KPK has the authority to investigate, prosecute, and adjudicate corruption cases, and can also request the assistance of other law enforcement agencies. The Act also provides protections for witnesses and whistleblowers who report corruption.

In addition to criminal sanctions, the Act also provides for administrative sanctions for public officials found guilty of corruption, such as dismissal from office, revocation of professional licenses, and forfeiture of pensions and benefits.

Overall, the Corruption Law in Indonesia reflects the government's commitment to combatting corruption and improving transparency and accountability in public institutions. However, enforcement of the law remains a challenge, and corruption continues to be a significant issue in Indonesia.

The formulation of corruption offenses as stated in the PTPK Law mentions at least two legal subjects of corruption offenses, namely individuals and corporations.

Legal Subject of Individuals

Individuals as legal subjects of corruption offenses in the PTPK Law are divided into two, namely individuals as legal subjects of corruption offenses mentioned in general and individuals as legal subjects of corruption offenses mentioned specifically in terms of their status or qualities. Individuals as general subjects of corruption offenses in the formulation of corruption offenses use the term "any person," as found in Article 2, Article 3, Article 5, Article 6, Article 21, and Article 22. Individuals as legal subjects of corruption offenses mentioned specifically in terms of their status or qualities mean that in the formulation of corruption offenses, it has been specifically mentioned what status or qualities of individuals are punishable as perpetrators of corruption offenses, for example, in the PTPK Law, the

term "state officials or state organizers" is used (found in Article 8, Article 9, Article 10, Article 11, Article 12 letters a, b, e, f, g, h, i), "expert building contractor" (found in Article 7 paragraph (1) letter a), "judge" (found in Article 12 letter c), "lawyer" (found in Article 12 letter d), and "witness" (found in Article 24).

State officials referred to in the PTPK Law are mentioned in Article 1 number 2, including: State officials as referred to in the Civil Service Law; State officials as referred to in the Criminal Code; Persons who receive salaries or wages from state or regional finances; Persons who receive salaries or wages from a corporation that receives assistance from state or regional finances; or Persons who receive salaries or wages from other corporations that use capital or facilities from the state or the public.

Regarding state organizers, in the explanation of Article 5 paragraph (2) of the PTPK Law, it is stated that state organizers referred to in this law are state organizers as referred to in Article 2 of Law No. 28 of 1999 concerning State Officials Who are Clean and Free from Corruption, Collusion, and Nepotism. State organizers mentioned in Article 2 of Law No. 28 of 1999 concerning State Officials Who are Clean and Free from Corruption include state officials in the highest state institutions; state officials in high state institutions; ministers; governors; judges; other state officials in accordance with applicable laws and regulations; and other officials who have strategic functions in relation to state organizers in accordance with applicable laws and regulations.

Legal Subject of Corporations

Corporations as legal subjects of corruption offenses are mentioned in the formulation of Article 20 of the PTPK Law. Article 20 paragraph (1) states that: In the event that a corruption offense is committed by or on behalf of a corporation, then prosecution and imposition of penalties can be carried out against the corporation and/or its management. Article 20 paragraph (1) requires that if a corruption offense has been committed by a corporation, then prosecution and imposition of penalties are directed against the corporation itself or its management.

The explanation of Article 20 paragraph (1) states that: "Management" means the corporate organ that carries out the management of the relevant corporation in accordance with the articles of association, including those who in committing corruption. This includes government officials at the highest level of the state institution, state officials at the high level of the state institution, ministers, governors, judges, and other state officials in accordance with prevailing laws and regulations.

Corporate Legal Subject

Corporations as legal subjects of corruption crimes are mentioned in Article 20 of the Anti-Corruption Law. Article 20 paragraph (1) states that: In the case of corruption crimes committed by or on behalf of a corporation, prosecution and criminal sanctions may be imposed on the corporation and/or its management. Paragraph (1) of Article 20 requires that if a corruption crime has been committed by a corporation, prosecution and criminal sanctions should be directed at the corporation itself or its management.

The explanation of Article 20 paragraph (1) states that: "Management" refers to the corporate body that manages the corporation concerned in accordance with the articles of association, including those who have the authority and responsibility to take decisions in the corporation. The term "corporation" in the Anti-Corruption Law includes any form of

business entity or organization, whether domestic or foreign, including state-owned enterprises, foundations, associations, and so on. This means that any corporation or business entity can be held accountable for corruption crimes committed by or on behalf of the corporation.

In essence, conviction based asset forfeiture is a mechanism that enables the seizure of assets resulting from corrupt practices through criminal proceedings. The effectiveness of this mechanism depends on the prosecutor's ability to prove the defendant's guilt in court and that the assets are the proceeds of the alleged criminal activity. The legal basis for this mechanism is provided by Article 38B of the Anti-Corruption Law (UU Tipikor) and is in line with Article 39 and Article 46 of the Criminal Procedure Code (KUHAP) that limit what can be seized. If the assets seized are found to be the proceeds of corruption, they can be confiscated for the state's benefit.

According to Article 38B of UU Tipikor, if a defendant cannot prove that their property was not obtained through corrupt practices, the property will be considered the proceeds of corruption and can be seized by the court. This is similar to asset forfeiture under Article 39 of the Criminal Procedure Code. Asset forfeiture is considered an additional criminal penalty that can be enforced after the prosecutor has proven the defendant's guilt and obtained a legally binding verdict.

In the case of a defendant being acquitted, Article 38B(6) of UU Tipikor stipulates that the request for asset forfeiture made by the prosecutor will be rejected. This raises concerns about the fairness of the mechanism and the potential abuse of power by the prosecutor. Therefore, it is essential to ensure that the prosecution is conducted impartially and that the defendant's rights are respected throughout the proceedings.

Asset Confiscation Mechanism without Criminal Sanction for Corruption Crime According to the Law on Eradication of Corruption

The process of asset confiscation through criminal prosecution is challenging due to various problems, such as difficulty in finding sufficient evidence and the transfer of assets abroad. The alternative solution is through civil lawsuit mechanisms in accordance with articles in the Anti-Corruption Law. The investigator can submit the case files to the State Prosecutor to file a civil lawsuit to recover state losses, even if there is not enough evidence against the suspect of corruption. A civil lawsuit can be filed against the heirs of the suspect if the suspect dies during the investigation process. The civil lawsuit can be filed against the heirs of the accused if the accused dies during the prosecution or trial process. A civil lawsuit can be filed against the convicted person or their heirs, even if the criminal verdict has become final and binding, but there are still assets resulting from corrupt acts that have not been seized and returned to the state. The criminal justice system in Indonesia is based on the applicable laws and regulations, including the Corruption Eradication Law and Law No. 46 of 2009 on the Corruption Court. Asset forfeiture is based on Article 18(a) of the Corruption Eradication Law, which allows the seizure of movable or immovable property used or acquired from corrupt acts. The UNCAC 2003 also regulates asset seizure on corruption without criminalization. Corruption is a global problem and can occur in any institution, not just in the government bureaucracy or judiciary.

The Urgency of Regulating Non-Conviction Based Asset Forfeiture (NCB Asset Forfeiture)

The urgency of Non-Conviction Based (NCB) Asset Forfeiture is the method of seizing assets resulting from criminal activities instead of punishing the perpetrators. This method is based on the "taint doctrine," where a criminal act is considered to "taint" an asset used or resulting from the crime. Countries such as the United States, the United Kingdom, and Australia have long applied the concept of NCB asset forfeiture and have successfully taken over assets worth billions of dollars related to criminal activities. In contrast, Indonesia's weak legal system and lack of cooperation with other countries have hindered the implementation of asset forfeiture in corruption cases. Generally, the burden of proof in criminal cases lies with the government, but fines can still be imposed if there is enough evidence to support the crime. NCB asset forfeiture targets the property owner, who is a third party and has the right to defend their property. In conclusion, the theory of legal proof is the effort to prove something with relevant evidence to convince others, while the system of legal proof is a set of interrelated parts that support each other.

Social media has a significant impact on people's behavior, especially teenagers. Social media can be used for good, such as connecting with friends and family, but it can also be detrimental to mental health. Many studies have shown a correlation between social media use and increased anxiety, depression, and low self-esteem. Additionally, social media can promote unhealthy behaviors such as addiction, cyberbullying, and body shaming. It is important for individuals to be mindful of their social media use and to set boundaries to protect their mental health.

Social media can influence the behavior of teenagers, both positively and negatively. It can be beneficial for connecting with loved ones, but it can also harm mental health. Studies link social media use to higher levels of anxiety, depression, and low self-esteem. Furthermore, it can promote unhealthy behaviors such as addiction, cyberbullying, and body shaming. Therefore, individuals should monitor their social media use and establish limits to safeguard their mental wellbeing.

Based on the above phenomenon and concept explanation, it can be concluded that the urgency of regulating asset confiscation without actual criminal prosecution is actually the confiscation of assets resulting from criminal acts in the legal system of Indonesia, and it has a basis in its implementation. However, there is a need for updates to the existing mechanisms, both criminal and civil, so that effective asset confiscation efforts can be realized in the legal system of Indonesia. The importance of the existence of the Law on Asset Confiscation in Indonesia can be seen from three factors, namely the ratification of UNCAC 2003, the development of types of criminal acts, and inadequate asset confiscation mechanisms.

As a state that has ratified UNCAC 2003, the Indonesian government must adjust the existing legislation provisions with the provisions within the convention, as it is a consequence of such ratification. In addition, another aspect that reflects Indonesia's need for the establishment of an Asset Confiscation Law is due to the development of economic-motivated criminal acts. Technological advances have created ease for perpetrators to carry out criminal acts and conceal the proceeds of such acts using more straightforward methods.

This must be addressed with the appropriate legal provisions that can suit the current and future circumstances, so that asset confiscation efforts can achieve maximum results.

The final factor for the urgency of establishing an Asset Confiscation Law is the inadequate mechanisms. Adequate mechanisms for asset confiscation are expected to use the mechanisms within UNCAC 2003 so that asset confiscation in Indonesia can be carried out effectively.

Conclusion

Based on the discussion in the above section, several points can be concluded as follows: Non-Conviction Based (NCB) asset forfeiture is the seizure and confiscation of an asset through in rem claims or claims against the asset through civil proceedings. The NCB asset forfeiture mechanism emphasizes the confiscation of assets obtained from criminal activities in rem (property) rather than against the person (in personam). Thus, the requirement for a person to be lawfully and convincingly proven guilty in court is not necessary for asset forfeiture to take place. Through the in rem system of forfeiture, it is expected that the confiscation of criminal assets will be more effective, especially in cases where the suspect or accused has died, fled, is permanently ill, unknown or acquitted of all charges. In addition, asset forfeiture can also be carried out against assets where criminal proceedings cannot be conducted, or where criminal proceedings have been concluded but other criminal assets are discovered later. This mechanism is a solution or a judicial concept that can achieve the objective of asset recovery and confiscation of assets related to crimes, including corruption.

The legal construction of Non-Conviction Based (NCB) asset forfeiture in corruption cases based on social justice requires the urgent enactment of the Asset Forfeiture Bill in order to strengthen the legal system through asset forfeiture without court verdicts. The mechanism in this system can seize all suspected assets obtained from corrupt activities and other assets suspected of being used as tools for criminal activities, especially those involved in serious crimes.

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