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Dynamics of Problem of Asset Forfeiture of Corruption Proceeds and the Concept of Its Law Enforcement

Ade Mahmud
Faculty of Law, Universitas Islam Bandung, Bandung, Indonesia
✉ Corresponding author: mahmudade.003@gmail.com

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Abstract
Forfeiture of assets from corruption crime has not shown significant results in terms of assets returned; in fact, the value of assets returned is smaller than state losses. This study aims to explain the dynamics of the problem of asset forfeiture due to corruption crimes and the concept of effective law enforcement to seize assets resulting from corruption. The specification of the research is descriptive with normative juridical research type, using a statutory and conceptual approach based on secondary data collected by documentation study technique, and analyzed qualitatively without applying formulas and numbers. The results of the study show that the state has difficulty seizing assets resulting from corruption crimes since the assets placed abroad have been transferred to other parties and the restitution has not been paid. The concept of effective law enforcement is to track assets, apply restitution without a subsidiary, which is preceded by blocking and forfeiting assets, and carry out executions through auctions, with the proceeds going to the state treasury.

Keywords:
Asset Forfeiture; Corruption, Law Enforcement.

A. INTRODUCTION

Efforts to forfeit assets resulting from crime are actually rooted in the most fundamental principle of justice, which requires perpetrators to not enjoy the benefits of their crimes (crime should not pay).[1] However, stolen asset recovery is very difficult to implement because, generally, the perpetrators have an extensive network to disguise their assets. All this time, asset forfeiture resulting from corruption crimes in criminal law has been using the criminal sanction of restitution through court decisions and has been running for quite a long time. Nevertheless, it has not shown significant results in restoring state losses since restitution can be subsidized or replaced with imprisonment when the convict does not pay it. As a result, state losses are not fully recovered or only partially recovered because most of the assets resulting from corruption are successfully concealed or transferred to

[1] Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non Convictioin Based Asset Forfeiture) Dalam RUU Perampasan Aset Di Indonesia," *INTEGRITAS* 3, No. 1 (6 Maret 2017): 115-130, https://doi.org/10.32697/integritas.v3i1.158, p. 120.

other parties and have not been frozen or forfeited by law enforcement officials during the investigation process.

Problems in recovering state losses emerge due to the relatively long time lag between the occurrence of corruption crimes and the commencement of investigations. It causes the perpetrators to have the flexibility to transfer, place, or divert the proceeds of their crimes to a place that is considered safe.[2] This condition must be addressed immediately by seizing assets from the hands of the perpetrators. This is crucial, as asset forfeiture aims to prevent it from being used to commit other criminal acts as well as being an indicator of the extent to which the objectives of punishment/conviction in the eradication of corruption have been achieved.[3]

Various efforts to deal with corruption continue to develop, starting with punishing the perpetrators with imprisonment to deter them, but unfortunately, this effort often fails because many perpetrators are sentenced to relatively lenient sentences. Gradually, this effort shifted from imprisonment to financial penalties.[4] The awareness of pursuing the assets of the proceeds of crime began to increase when the traffic of "illicit" money between countries suspected of being the proceeds of corruption spread, making it difficult for law enforcement to eradicate it because the perpetrators took advantage of technological advances and bank secrecy.

The disclosure of the link between assets and corruption crimes needs to focus on tracing "illicit" money or fund flows by tracking the flow of money through banking transactions, which can be an effective method of finding where assets are stored. This method is a concretization of the principle of "lifeblood of the crime", which means that money from a crime becomes the blood that supports the crime as well as a weak point to stop it.[5] Secondary data shows that the number of corruption crimes in Indonesia continues to increase, followed by the value of state losses, as shown in Figure 1 below:

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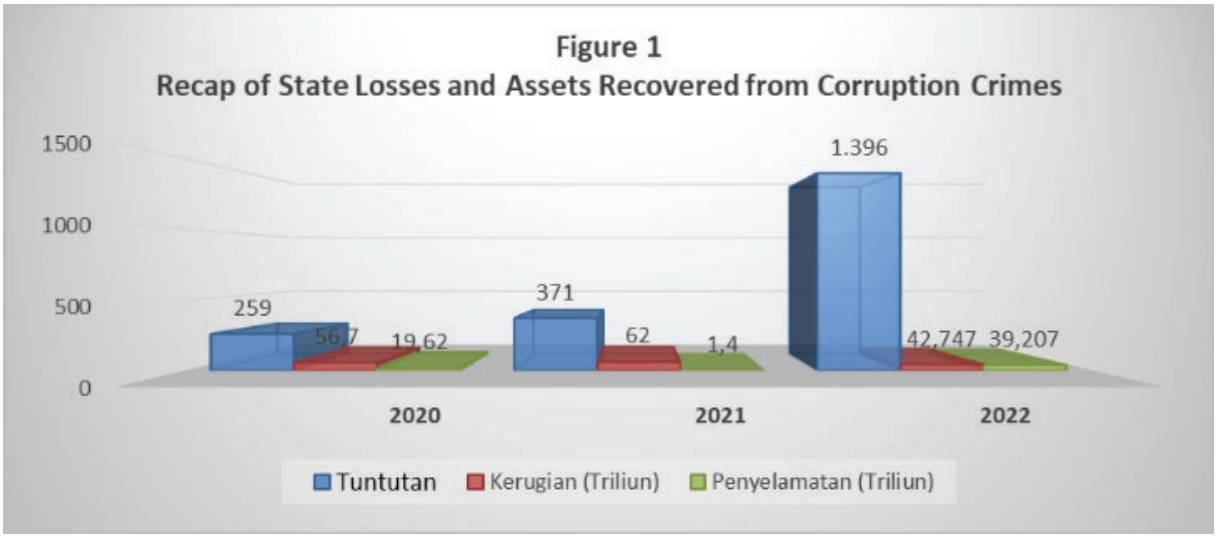
2 Rahma Noviyanti, Elwi Danil, and Yoserwan Yoserwan, "Penerapan Perma Nomor 5 Tahun 2014 Tentang Pidana Tambahan Uang Pengganti Dalam Tindak Pidana Korupsi," *Jurnal Wawasan Yuridika* 3, No. 1 (Maret 2019): 1-22, https://doi.org/10.25072/jwy.v3i1.236, p. 162.

3 Desca Lidya Natalia, "Media Massa dan Pemberitaan Pemberaantasan Korupsi Di Indonesia," *Jurnal Antikorupsi Integritas* 05, No. 2 (Desember 2019): 57-73, https://doi.org/10.32697/integritas.v5i2.472, p. 59.

4 Refki Saputra, *op.cit.*, p. 117.

5 Selviria and Isma Nurillah, "Hak Konstitusional Sebagai Bagian Dari Hak Asasi Manusia Dalam Non Convention Based Asset Forfeiture," *Jurnal Simbur Cahaya* 27, No. 2 (Desember 2020): 41-55, http://dx.doi.org/10.28946/sc.v27i2.1037, p. 43.



Source: ICW Monitoring Results Report on Corruption Prosecution by the Attorney General's Office in 2022

Based on Figure 1 above, throughout 2020–2022, state financial losses due to corruption reached Rp161.447 trillion (one hundred sixty-one point four hundred forty-seven trillion rupiah), while what was successfully saved was only Rp60.227 trillion (sixty point two hundred twenty-seven trillion rupiah). This means that the money recovered is much smaller than the value of state losses. This data must be evaluated by the government and law enforcers because, although efforts to seize and return assets have been carried out, mathematically, the amount of money corrupted is still very high compared to the number of assets returned.

The data above illustrates that the performance of investigators in tracking and returning assets has not shown significant results, as there is a big gap between state losses and assets that have been successfully seized and returned. It should be an evaluation note for investigators, prosecutors, and judges from upstream to downstream by inventorying the problems that cause the failure of asset seizure because if such a condition continues to occur, it will further increase the burden on the state considering that the corruption cases continue to happen while the assets returned are very small.

In fact, there have been many provisions for forfeiting assets resulting from crime, but they have not yielded any results due to various factors; for example, the whereabouts of the assets were not found, the suspect died before the forfeit was carried out so that information regarding the assets was not fully uncovered, and there was no evidence to support the asset forfeiture actions. To improve this condition, there are at least two important things that need to be considered. First, the government and law enforcers need to diagnose the root causes of why state-

owned assets cannot be returned in full, where the parameters can be seen in court decisions showing a disproportion between assets lost due to corruption crimes and assets returned through court decisions. It requires an investigation into the problems, obstacles, and challenges in tracking, seizing, and returning these assets. Second, map the problems faced and determine law enforcement strategies, starting from the investigation, prosecution, and trial stages. It is important to study these two aspects in depth so that the government has an effective law enforcement format and is able to overcome various problems that hinder efforts to forfeit assets resulting from criminal acts of corruption.

It is very urgent for Indonesia to forfeit assets from the hands of corruptors so that they can be used to finance strategic government programs in order to create a prosperous society while enforcing the law against anyone who takes people's money illegally.[6] Based on the explanation above, efforts to find a concept of forfeiting assets resulting from corruption crimes are ideas that actually apply in criminal law enforcement to return assets commensurate with state losses. This study offers a concept of asset forfeiture law enforcement; thus, it aims to (1) determine the dynamics of the problems faced in asset forfeiture resulting from criminal acts of corruption and (2) find out the concept of effective law enforcement to forfeit assets resulting from criminal acts of corruption.

As a comparison, there are several previous studies related to the theme of asset forfeitures, such as Rahma Noviyanti, Elwi Danil, and Yoserwan's 2019 research on the Implementation of Supreme Court Regulation (Perma) Number 5 of 2014 concerning Additional Punishment of Money in Lieu (Restitution) of Corruption Crimes;[7] Agus Pranoto, Abadi B Darmo, and Iman Hidayat's research on the Juridical Study of Corruption Asset Forfeiture in Efforts to Eradicate Corruption according to Indonesian Criminal Law in 2018;[8] and Refki Saputra's research on the Challenges of Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia.[9] Despite having a similar theme of asset forfeiture, this research is different from

[6] Aliyth Prakarsa and Rena Yulia, "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi," *Jurnal Hukum PRIORIS* 6, No. 1 (15 Juni 2017): 31-45, h ps://doi.org/10.25105/prio.v6i1.1834, p. 38.

[7] Rahma Noviyanti, Elwi Danil, and Yoserwan Yoserwan, *op.cit.*, p. 2.

[8] Agus Pranoto, Abadi B Darmo, and Iman Hidayat, "Kajian Yuridis Mengenai Perampasan Aset Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Menurut Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 10, No. 1 (28 Desember 2019): 91-121, https://doi.org/10.33087/legalitas.v10i1.158, p. 91.

[9] Refki Saputra, *op.cit.*, p. 118.

the aforementioned studies because it has a novelty, namely offering an ideal law enforcement concept in the context of asset forfeiture from corruption that has not been studied by previous researchers. Thus, the novelty of this article can provide both theoretical and practical contributions.

B. RESEARCH METHODS

The specification of this research is descriptive, meaning that it describes facts and data that are analyzed with relevant theories. This type of research focuses on normative studies by examining library materials or secondary data. This research applies statutory and conceptual approaches. The data collection technique uses a document study (library research) that collects and verifies secondary data relating to the issue of asset forfeiture resulting from criminal acts of corruption. The analysis method applies a qualitative method by analyzing existing secondary data without using certain formulas and then drawing research conclusions deductively.

C. RESULTS AND DISCUSSIONS

1. Dynamics of Problems in Asset Forfeiture of Corruption Crimes

The issue of asset forfeiture has become a concern for the state in efforts to combat corruption since it involves social rights that should be enjoyed by the community.[10] Failure to return assets resulting from corruption contributes to hampering economic development because one of the causes of economic backwardness is corruption.[11]

Throughout 2022, the KPK successfully uncovered 36 cases with 150 suspects from various professions and institutions, ranging from regional heads to bureaucrats and businessmen. Through sting operations (OTT), various major cases were successfully uncovered, such as the case of the buying and selling of verdicts at the Supreme Court, which made a Supreme Court judge, a clerk, and a lawyer suspect. This sting operation method has made the credibility of law enforcers appreciated and gained high exposure from the public.[12] The latest sting operation revealed the corruption case of Juliani Batu Bara in the social assistance procurement fee case at the Ministry of Social Affairs, which occurred

[10] Diky Anandya and Lalola Ester, "Laporan Hasil Pemantauan Trend Penindakan Korupsi Tahun 2022 (Korupsi Lintas Trias Politika) Indonesia Coruption Watch," https://www.antikorupsi.org/id, accessed 5 July 2023.

[11] Eddy O. S. Hiariej, "Korupsi Di Sektor Swasta Dan Tanggung Jawab Pidana Korporasi," *Masalah-Masalah Hukum* 49, No. 4 (29 Oktober 2020): 333-344, https://doi.org/10.14710/mmh.49.4.2020, p. 334.

[12] Rizky Oktavianto and Norin Mustika Rahadiri Abheseka, "Evaluasi Operasi Tangkap Tangan KPK," *Jurnal Antikorupsi Integritas* 05, No. 2 (30 Desember 2019): 117-131, https://doi.org/10.32697/integritas.v5i2.473, p. 119.

when people needed help in the midst of the COVID-19 outbreak. The latest corruption case occurred at the Ministry of Communication and Information Technology in the 4G Base Transceiver Station (BTS) infrastructure provision project by Johnny G Plate and several other defendants, which cost the state Rp8.32 trillion and the case is still ongoing in court. These various corruption cases have caused losses to the state, and many have been converted into various assets; thus, efforts to eradicate corruption should not only focus on arresting the perpetrators but also on forfeiting assets resulting from the corruption.

Asset forfeiture is a strategic effort as part of the sanctions that must be applied to perpetrators of criminal acts of corruption.[13] The assets seized can be in various forms, as long as they have a clear link to the corruption crime under investigation.[14] Therefore, it can be said that asset seizure is an official action of law enforcement through the court to take back assets legally from one party to another entitled party. Thus, the paradigm used is not only limited to pursuing perpetrators but also pursuing other assets and profits. Assets derived from crime must be immediately seized and returned to the state as the most entitled party so that they do not continue to be controlled by criminals.[15]

Asset forfeiture from criminals becomes the state's obligation based on the following reasons: (1) as a precaution to anticipate the perpetrator having control over assets obtained illegally to commit other crimes in the future; (2) moral reasons, which are based on the view that criminals are not entitled to property resulting from crime; (3) priority reasons that the state is entitled to priority to demand asset forfeiture to the perpetrator compared to other parties since the assets belong to the wider community; and (4) ownership reasons, in which the state as the owner of assets is obliged to take legal action to seize assets from the control of the perpetrator as a form of responsibility to the community.[16]

The problem of asset forfeiture following the disclosure of a corruption case scandal is a complicated dynamic that is not easy to overcome. Based on the data, there are several problems found in asset forfeiture:

[13] Ulang Mangun Sosiawan, "Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi Di Indonesia," *Jurnal Penelitian Hukum De Jure* 20, No. 4 (10 Desember 2020): 587-604, https://doi.org/10.30641/dejure.2020.V20.587-604, p. 595.

[14] *Ibid*.

[15] Refki Saputra, *op.cit.*, p. 121.

[16] Ade Mahmud, "Problematika Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Yudisial* 11, No. 3 (26 Desember 2018): 347-366, https://doi.org/10.29123/jy.v11i3.262, p. 351.

a. Assets of Corruption Proceeds Placed Abroad

The state has experienced the phenomenon of assets resulting from corruption being placed abroad, and it takes a long time and serious effort from the government to recover these assets. Some of the major corruption cases have been detrimental to the state, such as the case of Edy Tansil, who stole state money through the Bapindo's (Indonesian Development Bank) credit scheme and allegedly took his assets to China. Maria Lumowa, a defendant in the Bank Negara Indonesia (BNI) burglary case through a fictitious Letter of Credit (L/C), was arrested in Serbia after fleeing for 17 years. The state suffered a loss of Rp1.7 trillion in this case, and the results of the Bareskrim investigation showed that the suspect placed her assets in the Netherlands and Singapore, which had been split into various properties.

The government has made various efforts to repatriate assets taken abroad through international cooperation. Unfortunately, these efforts are often hampered by differences in legal systems, strict bank secrecy rules in the destination country, and resistance from third parties because assets have been transferred.[17] The difficulties in seizing assets placed abroad ultimately harm Indonesia as a victim country. For example, in the case of Bank Indonesia Liquidity Assistance (BLBI), based on data, Indonesia has lost no less than Rp164 trillion. Another case in the field of taxation involved the suspect, Gayus Tambunan, who traveled to several countries allegedly to store assets from his corruption. Adi Ashari once stated that "international cooperation is needed to obtain assets from corruption crimes," but the fact is that, until now, not many assets have been recovered.[18] The following table shows a number of cases where assets were placed abroad:

[17] Ridwan Arifin, Indah Sri Utari, and Herry Subondo, "Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia," *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, No. 1 (18 Agustus 2016): 105-137, https://doi.org/10.15294/ijcls.v1i1.10810, p. 107.

[18] *Ibid*.

Table 1
Placement of Corrupt Assets in Different Countries

No.	Name of Defendant	Case	Asset Description
1	Gayus Tambunan	Tax evasion	Assets of around Rp74 billion in gold, US dollars, and Singapore dollars
2	M. Nazarudin	Corruption of soods/Services procurement project	Approximately $5 million, EUR 2 million, and SGD 3 million were deposited in Singapore
3	Hendra Rahardja	BLBI case	Assets totaling AUD 493,647 in Australia (already handed over by Australia to Indonesia)
4	Robert Tantular	Bank Century bailout case	It was mentioned that Robert Tantular had fled Century Bank with assets worth more than Rp 6 trillion to Hong Kong
5	Djoko Tjandra	Bank Bali's cessie (transfer of receivables) case	Approximately Rp546 billion of its assets are placed in Papua New Guinea and Malaysia

Source: Kompas, September 2020 Edition

The data above illustrates a number of state-owned assets that have been concealed for years and are still enjoyed by corruptors, even though they are already in prison. This is also a portrait of law enforcement performance that has not succeeded in pursuing assets resulting from corruption; thus, it requires increased cooperation and commitment among relevant law enforcers.

Based on the research results, it is found that asset forfeiture efforts are a series of works in which each effort is related to each other and cannot be separated. That is why asset forfeiture efforts require cooperation between Interpol Indonesia's NCB (National Central Bureau), the Ministry of Law and Human Rights, the Attorney General's Office, the KPK (Corruption Eradication Commission), and the Ministry of Foreign Affairs. The performance of all these institutions will determine the final outcome. Although the problem of identifying the whereabouts of assets is often an obstacle, it has been considered part of the dynamics of law enforcement. Obstacles in tracing assets are influenced by the course of law enforcement, namely different law enforcement elements,

facilities and infrastructure, culture, and legal systems.

One of the factors affecting law enforcement is constraints on facilities, in addition to constraints on law enforcement and community factors.

b. Imposition of Criminal Sanctions for Unpaid Restitution

The state seeks to recover state losses due to corruption with the instrument of restitution sanctions that have been regulated in Article 18 paragraph (1) letter b of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption.

The position of restitution is quite important to recovering state losses; thus, in determining these losses, law enforcers must cooperate with BPK (the Audit Board of Indonesia) and BPKP (Finance and Development Supervisory Agency) to calculate the exact amount of restitution money as regulated in Article 18 paragraph (1) letter b, which stipulates that "payment of restitution in the maximum amount of which is equal to the assets obtained from the criminal act of corruption".[19]

So far, in trial practice, there are still different corruption cases that are sentenced to restitution, but the defendant does not pay it in full. Take an example of the decision No. 7/Pid.Sus-TPK/2016/PN Pdg, under the defendant's name of Endang Kusrianto. The prosecutor charged him with Article 2 paragraph (1) jo. Article 18 of Law No. 31 Year 1999 jo. Law No. 20 of 2001, and he must pay restitution of Rp9,519,622,800, but the defendant only paid Rp1,344,756,011. Another example is decision No. 30/Pid. Sus-TPK/2019/PN Mdn which punished the defendant Mulyono to return the state's money by paying restitution of Rp23,534,400,202, but the defendant did not pay up and chose to replace it with imprisonment for 4 years.[20]

The above decision can represent the phenomenon of asset forfeiture implementation, which is not easy to implement. Although restitution has long been applied, its execution is still suboptimal. According to data from BPKP, the settlement rate for restitution is only around 31.38% of the total restitution decided by the court.[21] Although Supreme Court Regulation No. 5/2014 on Additional Punishment of Money in Lieu (Restitution) has been issued and was originally expected to be

[19] Christine Juliana Sinaga, "Kajian Terhadap Pidana Penjara Sebagai Subsidair Pidana Tambahan Pembayaran Uang Pengganti Dalam Tindak Pidana Korupsi," *Jurnal Wawasan Yuridika* 1, No. 2 (30 September 2017): 191-208, https://doi.org/10.25072/jwy.v1i2.134, p. 194.

[20] Rahma Noviyanti, Elwi Danil, and Yoserwan Yoserwan, *op.cit.*, p. 10.

[21] Nur Syarifah, "Mengupas Permasalahan Pidana Tambahan Pembayaran Uang Pengganti Dalam Perkara Korupsi," December 8, 2015, https://leip.or.id/mengupas-permasalahan-pidana-tambahan-pembayaran-uang-pengganti-dalam-perkara-korupsi/#_ftn1, accessed 5 July 2023.

a solution, the reality is that the value of state losses is still far higher than the restitution paid.

Apart from the practice of subsidizing restitution with imprisonment, another problem in the implementation of restitution is when the defendant loses his chance to enjoy the proceeds of his corruption because the ownership status of the assets has been transferred to other parties who are trusted to manage the assets. However, those other parties who receive the transfer of assets cannot be subject to prosecution, as stated in Article 5 of the Regulation on Restitution:

> "In the case that the asset obtained from a criminal act of corruption is not enjoyed by the defendant and has been transferred to another party, restitution can still be imposed on the defendant as long as the other party is not prosecuted, both for the crime of corruption and money laundering."

In practice, this rule created a problem because, on the one hand, the court must continue to impose restitution on defendants who have never enjoyed assets from corruption, but on the other hand, this Perma regulation does not allow judges to impose restitution on other parties who received or enjoyed the assets. The prohibition of judges imposing restitution on parties who were not prosecuted from the start is understandable since it can violate the human rights of a citizen in the criminal justice system. However, such a condition is a reflection of injustice because it seems as if the state allows certain parties to enjoy the proceeds of corruption and remain untouched by the law.

c. Transfer of Assets from Corruption Proceeds to Other Parties

The transfer of assets resulting from corruption is often done to obscure their origins so that their whereabouts are not known by law enforcement or appear as legitimate assets. Corruption proceeds are manipulated by using various title transfer transactions to disguise the origin of the assets. In practice, there are various ways used by the perpetrators to obscure the origin of corruption proceeds, for example, through grants, buying and selling, exchanging, and others. In general, the practice of buying and selling tends to be more widely used, although it does not rule out the possibility of other civil practices.[22]

Take, for example, the corruption case of Akil Mochtar, the former Chief Justice of the Constitutional Court, who was proven to have placed a number of funds resulting from corruption into

[22] Krisdianto, "Implikasi Hukum Penyitaan Aset Hasil Tindak Pidana Korupsi Yang Hak Kepemilikannya Telah Dilalihkan Kepada Pihak Ketiga," *Jurnal Katalogis* 3, No. 12 (Desember 2015): 188-200, http://jurnal.untad.ac.id/jurnal/index.php/Katalogis/article/view/6496/5183, p. 189.

various accounts belonging to third parties. Funds totaling Rp51.774 billion, among others, were placed in the CV Ratu account managed by his wife, as well as the purchase of a number of assets in the form of land and buildings in Pontianak City whose ownership documents were made under the name of Aris Aditya, who is none other than Akil's own son. In addition, Akil entrusted money to be managed worth Rp35 billion to Efendy Muhtar, who is none other than his close friend. [23]

The transfer of assets resulting from corruption crimes to third parties is a complicated problem, as public prosecutors cannot prosecute third parties to return these assets through a criminal route but have to use a civil law route. If law enforcers take a civil route, it takes a long time due to various factors, such as the Corruption Eradication Law, which does not provide a priority scale for corruption cases to go to trial immediately. This is different from criminal courts that get priority in trials. Obstacles also arise in the conventional evidentiary process, in which whoever sues must prove, as well as lawsuits from third parties as a form of resistance when assets will be executed.[24]

The transfer of assets not only uses third parties to accommodate the proceeds of corruption but also utilizes banking institutions by transferring and placing assets in fictitious company accounts to disguise themselves as if they are the result of an official and legitimate business. The practice of transferring assets using third parties and banking institutions is possible because there is a long time span between the criminal act of corruption and the start of the pre-investigation and investigation. During this time, the perpetrators freely transfer assets to obscure their proceeds of corruption, so that when the authorities detect them, the assets have been fragmented: some are in the form of land, buildings, vehicles, and even shares. If this is the case, law enforcers will have difficulty recognizing the origin of these assets.

The multiple dynamics of asset forfeiture issues above reinforce the theory that corruption is part of a white-collar crime that is carried out secretly (hidden crime) in routine and normal activities, has a modus operandi that continues to develop, and has an expanding dimension of responsibility. The cause of this corruption crime is

[23] NOV, "Akil Sembunyikan Uang Di Perusahaan Hingga Di Balik Dinding," *Hukum Online.Com*, February 21, 2014, https://www.hukumonline.com/berita/a/akil-sembunyikan-uang-di-perusahaan-hingga-di-balik-dinding-lt530742b9b75d0/, accessed 5 July 2023.

[24] Firdaus Arifin, "Problematika Hukum Pengembalian Aset Tindak Pidana Korupsi Pelaku Dan Ahli Warisanya," *Jurnal Pagaruyuang* 3, No. 1 (Juli 2019): 64-85, https://jurnal.umsb.ac.id/index.php/pagaruyuang, p. 68.

generally greed, which is supported by the skill of disguising the origin of the proceeds of crime so that it is not easy to find, making it difficult to eradicate.[25] Hazel Croall argues that corruption is most likely to occur when there is a conspiracy between unscrupulous government decision-makers, and it will be increasingly difficult to eradicate if the act is not detected early on.[26]

2. Concept of Law Enforcement of Asset Forfeiture of Corruption Proceeds

Law enforcement efforts to overcome the problem of corruption, according to Barda Nawawi Arief, must be carried out continuously and sustainably (sustainable development) along with the progress of society from generation to generation. Furthermore, law enforcement cannot only be done through a repressive approach but also needs to be implemented integrally to prevent corruption from continuing since it will further damage the moral, social, and cultural values of Indonesian society.[27]

Thus far, law enforcement to eradicate corruption tends to be carried out by imposing criminal sanctions (a repressive approach). In the theory of punishment, as revealed by Immanuel Kant, the rationality is that every evil act must be subject to punishment, and the state has a clear right based on the law to punish corruptors with appropriate sanctions. This punishment aims to protect the interests of the state and society and is a form of learning for potential offenders not to commit similar acts.[28] The approach to eradicating corruption would not be enough only by imposing punishment on the perpetrators but also by pursuing and forfeiting their assets resulting from criminal acts of corruption because these assets are the purpose of corruptors committing corruption, so it is crucial to make those assets the main target of imposing criminal sanctions.

The criminal act of corruption as an economic crime does not directly affect the victim (indirect victim), as the victims 'disperse'. However, victims will suffer greatly because they do not receive the rights they should earn due to the corrupt actions of the perpetrators,[29] for example,

[25] Firman Firdausi and Asih Widi Lestari, "Eksistensi White Collar Crime Di Indonesia Kajian Kriminologi Menemukan Upaya Preventif," *Jurnal Reformasi* 6, No. 1 (2016): 85-97, https://doi.org/10.33366/rfr.v6i1.680, p. 92.

[26] Hazel Croall, *in ibid.*

[27] Barda Nawawi Arief, *in ibid.*

[28] Armunanto Hutahaean and Erlyn Indarti, "Strategi Pemberantasan Korupsi Oleh Kepolisian Negara Republik Indonesia (Polri)," *Masalah-Masalah Hukum* 49, No. 3 (31 Juli 2020): 314–323, https://doi.org/10.14710/mmh.49.3.2020, p. 320.

[29] Warih Anjari, "Penerapan Pidana Mati Terhadap Terpidana Kasus Korupsi," *Masalah-Masalah Hukum* 49, No. 4 (29 Oktober 2020): 432-442, https://doi.org/10.14710/mmh.49.4.2020, p. 438.

in the case of bribery for the procurement of social assistance for people affected by COVID-19 that occurred at the Ministry of Social Affairs in 2020. In this illicit transaction, the Minister of Social Affairs set a bribe of Rp10,000 for each food package. In economic calculations, the Ministry of Social Affairs' partner suppliers will definitely reduce the items in the basic food packages as a substitute for the fee given to the Minister of Social Affairs, and as a result, the rights of the people receiving COVID-19 social assistance will also be reduced.

Another example is the corruption of the village fund budget in the Taliabu Islands in 2017, which caused a state loss of Rp4.2 billion. The North Maluku Police named the Head of Regional Treasury and Cash Management Division of Taliabu, Agusmaswaty Toib Koten, as a suspect, as he was proven to cut the village fund budget up to Rp45 million per village. The funds resulting from his corruption were placed in the account of CV Syafaat Perdana, which is none other than his own account.[30] In this case, the village community is the indirect victim, and their positions are scattered in various regions of Taliabu Regency.

In various cases, the proceeds of corruption are often converted into different properties in the form of land and buildings whose ownership is not only under the name of the perpetrator but also in the name of another person. In addition, the current mode of concealment of assets is increasingly difficult to detect, along with the increasingly sophisticated banking technology that can be utilized by perpetrators without being limited by time and space. Many people are pessimistic about efforts to forfeit assets derived from corruption, especially related to the imbalance between the amount of assets that have to be returned to the state and the assets that have been successfully returned and the high cost of pursuing the assets themselves. The issue of asset forfeiture is considered important in the conviction of corruption cases as well as a challenge for law enforcers to find effective juridical solutions so that the amount of assets returned is equal to the state losses.

Asset forfeiture has become a global issue that is of concern to many countries, especially those that are hunting for assets that have been taken to other countries. The government has ratified the international convention on anti-corruption based on Law No. 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption, which shows a commitment to eradicating corruption through

[30] Muhammad Zulherawan, "Tindak Kejahatan Korupsi White Collar Crime Model Trend Dan Penyebabnya" *Sisi Lain Realita Jurnal Kriminologi* 4, No. 1, (2019): 55-69, https://doi.org/10.25299/sisilainrealita.2019.vol4(1).4049, p. 61.

international cooperation. The placement of assets resulting from corruption crimes scattered in various countries will make it difficult for the Indonesian government to seize them, and without international cooperation with the country where the assets are stored, it is impossible for the forfeiture process to run effectively. Thus, a comprehensive law enforcement effort is needed in the sense that it does not only focus on assets in Indonesian jurisdiction but also those brought to other countries whose value is likely to be much greater.

In the Asset Forfeiture Bill, law enforcers can cooperate by submitting a request for blocking or forfeiting criminal assets to the authorized institution in the country where the assets are located. However, if the request is rejected, investigators can forfeit assets in Indonesia as a substitute whose value is equivalent to the value of assets located abroad. The bill has determined that assets that can be forfeited include (1) assets obtained from the proceeds of a criminal offense, (2) assets used to commit a criminal offense, (3) other legal assets belonging to the perpetrator of a criminal offense as a substitute for assets that have been declared forfeited by the state, and (4) findings of assets suspected of originating from a criminal offense. These various assets can be forfeited by law enforcers if they are proven to be closely related to the corruption crime being processed. The Asset Forfeiture Bill also expands the scope of forfeiture to assets that are not balanced with income, cannot be proven to have legal origins, and are suspected of being related to criminal offenses, for which they can legally be seized.

Such regulations in the Asset Forfeiture Bill show the government's awareness that criminal acts of corruption with the ultimate goal of obtaining economic benefits will disrupt the development of the national economy and reduce the government's performance in realizing public welfare, thus requiring special regulations regarding the forfeiture of criminal assets. In addition, the existing legal rules and mechanisms in several regulations on asset forfeiture are not yet adequate to support more equitable asset recovery efforts.

However, there are several conditions that are predicted to be obstacles and challenges in the implementation of the Asset Forfeiture Bill, including (1) assets resulting from corruption have been donated and/or converted into corporate assets in the form of shares so that they are mixed with other legal assets. As a result, the process of investigating and returning assets will take a long time and involve complicated procedures, as it deals with related parties who will definitely try to defend their assets through various legal measures; (2) rejection of requests for blocking or forfeiting assets placed abroad by authorized institutions in the country of asset placement. This will be detrimental to the state if most of the assets resulting from corruption are stored abroad; and (3) the potential for abuse of authority in

asset management and the costs borne by the state for storage, maintenance, and security of assets.

Law enforcers need to anticipate obstacles that may occur in the implementation of the Asset Forfeiture Bill so they will not hinder the process. Anticipatory actions that can be taken include collaborating with financial institutions and other private sectors that can be a repository for corruption assets; increasing the integrity and professionalism of law enforcers in the process of seizing, maintaining, and utilizing assets; and enhancing international and regional cooperation with countries that are allegedly a repository of assets so as to facilitate extra-territorial forfeiture mechanisms.

In positive law, efforts to forfeit assets can use three legal instruments. First, the application of criminal law by forfeiting assets in the form of movable and immovable objects, payment of restitution, and closure of all or part of the company owned by the perpetrator suspected of having a connection with the crime of corruption. Second, civil asset forfeiture can be carried out if, after a court decision with permanent legal force, assets are discovered to have a connection with corruption crimes and have not been forfeited. In this case, the prosecutor immediately filed a civil lawsuit against the assets. Third, administrative forfeiture of assets through state treasury claims by the head of the aggrieved agency or institution to state administrators who have harmed state finances by signing a statement of ability to return state losses. This administrative process is carried out without going through court proceedings.

Asset forfeiture regulations in national and international law are actually quite adequate; however, the government's efforts to recover stolen assets have recently been difficult to implement due to increasingly developing modus operandi.[31] Such conditions need to be studied from the perspective of the theory of asset recovery that is developing today in line with the high rate of corruption in its various modes. This theory emphasizes that the state victim of corruption must implement a law enforcement system to forfeit, revoke, and eliminate rights to assets resulting from crime through a series of existing legal mechanisms and processes.[32] This theory stems from the state's obligation to promote public welfare and social justice so that asset recovery leads to punishment to overcome the financial impact of corruption. This theory encourages the importance of law enforcement oriented

[31] Ade Mahmud, *Pengembalian Aset Tindak Pidana Korupsi Pendekatan Hukum Progresif* (Jakarta: Sinar Grafika, 2020), p. 83.
[32] *Ibid*.

towards asset forfeiture, which can be implemented through several stages as follows:

a. Asset Tracking and Identification Stage

Tracing assets is the initial stage of investigating the whereabouts of assets and searching for and collecting evidence that shows a connection between assets and corruption crimes. At this stage, investigators should coordinate with bank and non-bank financial institutions; examine parties suspected of being involved in concealing assets, such as close people of suspects or convicts whose names and identities are usually borrowed to disguise the origin of assets; and collaborate with law enforcement officials, especially from countries where assets are suspected of being concealed. After the tracking is carried out and casts a light on the existence, amount, and origin of assets, the investigator immediately identifies assets suspected of having a connection with the crime of corruption by collecting relevant evidence so that it becomes a strong basis for taking further legal action.

Collecting evidence that shows the link between assets and corruption crimes is not a simple task. It requires cooperation and synergy between related parties, both individuals and agencies or institutions, to open the widest possible opportunities for investigators to obtain such evidence. Investigators, for example, must ask banks to open customer confidentiality to obtain a recap of fund flow transactions within a certain period of time. It will not be too difficult if the transfer of funds is still within the jurisdiction of national law, but if the funds are transferred to an overseas bank, then the investigator must confirm the veracity and authenticity of the transaction by asking the recipient bank abroad to disclose customer data by following the provisions of positive law that exist and apply in that country.

The results of tracking and identifying these assets should at least produce two important things: 1) finding the place, amount, and form of assets stored by the perpetrator; and 2) discovering documents or letters that reveal the complete and clear identity of assets that show the relationship between the origin of assets and corruption crimes. These two findings are crucial and determine the next legal process. If these two things are discovered, then the investigator must immediately carry out the following actions:

1) Blocking assets in the form of money deposited in banks;
2) Forfeit the assets, both movable and immovable; and
3) If assets in the form of money or objects are located abroad, the investigators coordinate with the government through the Ministry of Foreign Affairs to submit a request for foreign assistance through diplomatic channels or formal channels by the Ministry of Law and Human Rights through mutual legal assistance (MLA).

It is worth noting that tracking and identification efforts must begin since the initial investigation process, meaning that investigators must focus on two things: first, seeking information about the truth that a corruption crime has occurred; second, tracing the whereabouts of assets suspected of being related to a corruption crime, so that when the case is escalated from initial investigation to investigation, law enforcers not only determine who the suspects are but also specify what assets will be blocked and forfeited. Thus, it can be said that this tracking and identification stage is the entry point for uncovering corruption cases as well as knowing how much state loss is incurred, and it can even be an opportunity to reveal the possibility of money laundering.

b. Legal Determination Stage

At this stage, law enforcers choose what legal instruments to apply to seize assets that have been previously blocked and forfeited. In this phase, law enforcers need to consider legal instruments that support and most effectively provide a deterrent effect for the perpetrator. The author considers that criminal law instruments can be an option to be used to return assets originating from the proceeds of corruption, both at home and abroad. Some considerations for the application of criminal law are as follows: (a) criminal law has clear and complete legal instruments to forfeit assets by applying various provisions in UNCAC, the Law on Mutual Legal Assistance in Criminal Cases, and the Law on the Eradication of Criminal Acts of Corruption through additional criminal instruments of restitution; (b) practical considerations, where criminal law has been commonly used to forfeit assets from the proceeds of crime which can be seen in law enforcement practices; (c) criminal law as public law places the position of the prosecutor higher than the perpetrator as a citizen, but still paying attention to the human rights of the perpetrator; and (d) the imposition of criminal sanctions in the form of imprisonment and asset forfeiture has the aim of providing deterrence for the perpetrator to realize his mistakes and not repeat the act (special deterrence) as well as preventing the public from committing corruption (general deterrence).

The application of criminal law in forfeiting assets can use the instrument of restitution sanctions, which stipulate that the state losses returned must be equal to the proceeds obtained from corruption crimes. As previously stated, restitution is often subsidized by imprisonment if the defendant does not pay it. This situation can be anticipated if law enforcers have blocked and forfeited assets at the tracing stage so that the defendant cannot avoid the obligation to pay restitution. Even if it is not paid, the judge will order the public prosecutor to auction off assets that have been blocked and forfeited, and the proceeds will be used to pay off the restitution to cover state losses.

Criminal law enforcement on forfeiting assets from corruption provides an opportunity for the defendant to prove that the assets he owns are not the proceeds of crime. This provision is contained in Article 37, paragraph (3) of the Law concerning the Eradication of Criminal Acts of Corruption:

> "The defendant is obliged to provide information about all his assets, the assets of his wife and children, and the assets of any person or corporation suspected of having a connection with the case in question."

If the defendant is unable to show evidence regarding the acquisition of wealth disproportionate to his income or the source of the increase in his wealth, then the testimony can be used to strengthen the evidence that the defendant has committed a criminal act of corruption.

This rule shows a deviation from the provisions of the procedural law in the Criminal Procedure Code, which stipulates that the prosecutor is the party charged with the burden of proving evidence. Under this rule, the defendant gets the opportunity to prove his innocence. Even if the defendant is able to show evidence of his innocence, it does not mean that he is not proven to have committed corruption, as the public prosecutor is also obliged and has the opportunity to prove his charges. The provisions of this article show that the Law on the Criminal Acts of Corruption adheres to a limited reverse proof system because the prosecutor is still obliged to prove his charges. The reverse proof system in corruption cases makes judges examine cases based on the principle of presumption of guilt, and then it is the defendant who must prove his innocence.

This reverse proof system aims to uncover the whereabouts of hidden assets, which places a person's right to wealth at the lowest level but at the same time places the defendant's right to freedom at a lofty level that should not be violated. The concretization of this system is that it requires law enforcers and defendants, or their legal counsel, to prove each other before a judge.[33]

As long as the perpetrator is unable to prove the origin of his assets, it should be presumed that the assets originated from the crime of corruption and should remain under the status of forfeited goods as collateral for payment of restitution if the defendant does not pay it. In this phase, the judge must be careful when making a decision based on the facts and evidence presented at trial, so as to produce a correct decision that does not contain errors.[34]

[33] Claudia Aprilia Samurine, "Implementasi Sistem Pebuktian Terbalik Dalam Tindak Pidana Korupsi Di Indonesia," *Jurnal Lex Crimen* VIII, No. 3 (3 Maret 2019): 168-176, https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25645, p. 174.

[34] Ridwan Ridwan, "Pemanfaatan Hasil Rekam Sidang Korupsi Untuk Menghasilkan Putusan Berkeadilan," *Kanun Jurnal Ilmu Hukum* 22, No. 1 (4 Mei, 2020): 149-162, https://doi.org/10.24815/kanun.v22i1.14621, p. 151.

The imposition of restitution as a means to recover state losses is considered to reflect a sense of justice because, in addition to the perpetrators having to serve imprisonment, they must also return state losses through assets that have been blocked and forfeited. Imprisonment and restitution, if maximally applied, are believed to have a deterrent effect on the perpetrators. This is in line with the integrative theory of punishment that criminal sanctions are intended to provide a sense of deterrence and prevent people who have the potential to commit crimes from doing the same thing.

This legal determination stage is crucial in a series of asset forfeiture efforts, considering it is the next stage after the asset tracking and identification process conducted by the investigator. This means that assets found during the investigation stage will have their legal status determined: forfeit and return to the state or return to the rightful owner. This is highly dependent on the results of the evidence in the trial between the defendant and the public prosecutor. In this position, the judge will adhere to a negative evidentiary system (negatief wettelijk bewijs system), which requires a minimum of two valid pieces of evidence to establish his conviction. The public prosecutor, as the representative of the state, has the responsibility to convince the judge that the perpetrator has committed corruption and caused real and definite losses based on the results of the BPK or BPKP calculations. The judge's position at this stage is very strategic in determining whether asset forfeiture sanctions can be applied or not. However, in principle, the public expects the judge's decision to be in favor of the legal interests of the community as victims of corruption.

c. Asset Return Stage

The return of assets in law enforcement practice must be based on the principles of justice that provide a balanced portion between the rights of the perpetrator and the rights of the state. Both must be given the same place so that the spirit of asset forfeiture does not violate a person's human rights, but the state can still carry out its obligations to try to take back people's rights in the assets resulting from corruption.[35]

The criminal procedure law in cases of criminal acts applies a reverse proof system in order to provide protection for the rights of the suspect or defendant and also the community (state) so that asset returns can be conducted according to fair legal provisions. The reverse proof system is applied to guarantee legal protection of assets that are not related to the crime while ensuring that assets

[35] Dessy Rochman Prasetyo, "Penyitaan dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor," *DiH: Jurnal Ilmu Hukum* 12, No. 24 (1 Agustus, 2016): 149–163, https://doi.org/10.30996/dih.v12i24.2243, p. 157.

returned to the state treasury are the ones that belong to the people.

In the asset recovery stage, it is the duty of the prosecutor to execute assets proven to have originated from corruption crimes. In general, the KUHAP has determined the objects that may be forfeited as follows:

1) Objects that are wholly or partially suspected of being obtained from a criminal offense or as a result of a criminal offense;
2) Objects used directly in committing a criminal offense or in preparation for a criminal offense;
3) Objects used to obstruct the investigation of a criminal offense;
4) Objects specifically made to commit a criminal offense; and
5) Other objects that have a direct relationship with the criminal offense.

Based on these provisions, if the forfeited assets have been proven to be wholly or partly the result of corruption, the court must decide that the assets are forfeited to the state. This is in line with the substance of Article 273, paragraph (3) of the Criminal Procedure Code, which stipulates that:

> "If a court's decision also provides for the seizure of evidence materials for the state, with the exception mentioned in Article 46, the prosecutor shall entrust the goods to the state auction office in order to be sold by auction within three months, the proceeds of which shall be delivered to the state treasury for and on behalf of the prosecutor."

Based on this provision, the prosecutor is authorized to entrust the auction office to sell the assets that have been forfeited from the perpetrator, and the proceeds of the sale are deposited into the state treasury. In practice, this procedure is not easy to carry out because it takes a long time, so it is possible for these assets to decline in quality, making their selling value below the market price.[36] Such a condition is a reality that must be borne by the state when new assets are successfully returned after the judicial process, not to mention that the state should also bear the cost of maintaining assets until there is a judge's decision. Despite all these consequences, assets resulting from corruption in criminal law can only be handed over to the state if the judicial process has been completed, as asset recovery in corruption cases is an inseparable part of the justice system.[37]

The concept of law enforcement described above is largely determined by

[36] Maria Silvya E. Wangga, R. Bondan Agung Kardono, and Aditya Wirawan, "Penegakan Hukum Korupsi Politik," *Kanun Jurnal Ilmu Hukum* 21, No. 1 (27 Mei 2019): 39-60, https://doi.org/10.24815/kanun.v21i1.12862, p. 45.

[37] Yesmil Anwar and Adang, *Sistem Peradilan Pidana Konsep, Komponen & Pelaksanaannya Dalam Penegakan Hukum Di Indonesia* (Bandung: Widya Padjajaran, 2009), p. 33.

the quality and professionalism of law enforcement personnel with the ability to quickly track assets, the thoroughness of applying the law, and the accuracy of forfeiting assets, which are the keys to successful action. This is in line with Lawrence Friedman's legal system theory, which states that law as a system will succeed in overcoming community problems if it is supported by good legislation, the quality of law enforcement personnel in carrying out investigation techniques and solving various obstacles to case disclosure, and a culture of society that complies with regulations. The three components are cumulative; if one of them is bad, it will affect the results of law enforcement. Likewise, in the concept of law enforcement forfeiting assets of corruption, the position of investigators, prosecutors, and judges as part of the legal system plays an important role in returning assets in a significant amount (commensurate with state losses).

D. CONCLUSIONS

Efforts to forfeit assets resulting from corruption crimes, in practice, face various complicated dynamics of problems, including the placement of assets abroad that are protected by local legal procedures as part of the Banking Secrecy Act; assets returned with restitution that are not paid by the defendant or are only partially paid, resulting in a subsidiary of restitution with imprisonment that makes the state continue to suffer losses; and also assets that are transferred to other parties through sale and purchase agreements, grants, and other civil practices that make assets difficult to track and return. The concept of law enforcement to overcome the dynamics of asset forfeiture problems in corruption cases is applied in several phases: first, tracking and identifying the place, quantity, and form of assets and documents that show the connection between assets and corruption crimes to be forfeited; second, applying restitution with the case that if the defendant does not pay or only partially pay, then the assets are forfeited and seized to pay off the restitution so that there is no subsidiary with imprisonment; third, the prosecutor immediately executes assets proven in court as the proceeds of corruption through the state auction office, the proceeds of which are put into the state treasury. This step is believed to be a law enforcement concept that can make a significant contribution to restoring state losses as long as it is supported by the integrity and professionalism of law enforcers.

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