**Juridical Analysis of Corruption Crime Asset Confistion As an Effort to Return State Losses Using Non Penal Approach in Indonesia**

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| **KEYWORDS** | **ABSTRACT** |
| Confiscation of Assets, Corruption, Recovery of State Losses | In its development, corruption in Indonesia has increased from year to year, both in terms of the quality or amount of state financial losses and the quality of how it is carried out in a sophisticated and systematic manner, and has even penetrated across national borders. Therefore, handling corruption, especially in order to maximize the recovery of state losses, requires a comprehensive approach, as well as through international cooperation. This research found the fact that the asset confiscation mechanism using a non-penal approach is more effective and efficient. This argument is based on the fact that because there is no need to confirm the crime of corruption as long as the perpetrator's assets are suspected to be illegal assets of corruption, this shortens the time. Confiscation of property or assets using non-penal means is more efficient when compared to confiscation of property or assets through civil means in accordance with the provisions of the Corruption Eradication Law (PTPK) which is legal in Indonesia. Because if in a criminal case using civil law it is the same as placing the burden on the prosecutor to carry out proof, then it actually increases the number of things that might happen, namely reconvention lawsuits against the prosecutor as the plaintiff. The asset confiscation mechanism using a non-penal approach no longer focuses on chasing perpetrators but rather following the movement of money so that the number of corruption in Indonesia is expected to decrease. |
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**Introduction**

The importance of the issue of asset recovery for developing countries that experience losses due to criminal acts of corruption should receive serious attention because it will disrupt the stability and security of national and international society, and even weaken institutions, democratic values and justice and endanger sustainable development and law enforcement.

The government continues to strive to eliminate the crime of corruption, namely by implementing preventive measures to combat corruption. Initially, the law was passed regarding efforts to eradicate corruption crimes, namely Number 3 of 1971, until it was changed to Law Number 31 of 1999 *in conjunction with* Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (hereinafter referred to as the PTPK Law). Through Law Number 30 of 2002 concerning the establishment of the Corruption Eradication Commission (hereinafter referred to as the Corruption Eradication Commission Law), the government has also created a special institution to eradicate corruption.

Part of the progress of the PTPK Law and the Corruption Eradication Commission Law can be seen in the explanation of the PTPK Law which states that the eradication of corruption crimes must be resolved using extraordinary and special methods, taking into account that corruption crimes in Indonesia occur fundamentally and widely, causing losses to state funds, but also have ignoring the social and monetary freedom of the local area in general, so the eradication of corruption crimes must be resolved using unprecedented methods. Furthermore, special steps must be taken to eradicate this criminal act. (Fahrojih, 2016)

Indonesia tends to prioritize criminal channels in efforts to eradicate corruption. The state places more emphasis on punishing corruptors than returning state assets. However, in fact, punishing corruptors is not efficient enough to prevent, eradicate and mitigate corruption crimes. It is difficult to return property or government assets resulting from corruption because this criminal act is generally carried out in great secrecy and many parties are involved in great solidarity to cover up this act of corruption.

What must be the main priority of the international community in fighting corruption crimes is to confiscate assets without prior punishment. These priorities are part of the regulations regulated by UNCAC 2003, namely the United Nations Convention against Corruption. Expected to use their best efforts to confiscate assets related to crimes with impunity by States

UN member countries that oppose corruption.” *Foreclosure in Civil Foreclosure* recognizes the principle of *Non-Conviction Based (NCB). Foreclosure* is a civil tool used to seize assets/income without prosecution. not yet published. Political issues and human rights disputes are pros and cons, and they attract each other. Opponents argue that the confiscation of NCB assets violates the principle of presumption of innocence.” (Muntahar, Ablisar, & Bariah, 2021)

Article 38 B paragraph (2), Article 38 paragraph (5), and Article 38 paragraph (6) contain rules regarding unconstitutional confiscation of assets regulated in the PTPK Law. However, it turns out that there are still problems that have not been resolved by the rules above, for example if the perpetrator has not been or is not found, if he has run away, if the perpetrator or defendant is mentally ill, if there is no heir or the heir is not found as a civil litigation even though he really lost state funds, and if assets are not confiscated by the criminal justice system. (Bureni, 2016)

Law no. 7 of 2004 concerning Ratification of *UNCAC*, 2003 (UN Convention Against Corruption, 2003) has used a mechanism for confiscation of assets without punishment. According to UNCAC 2003, criminal and civil processes can be used to confiscate the assets of those who commit corruption offenses. The first stage of the process of expropriating assets through criminal means is aimed at finding evidence of ownership and storage locations of property related to crimes committed by tracing assets that are suspected to have been obtained illegally. Furthermore, do not allow transactions to transfer, change, dispose or hide assets or temporarily carry out burdens and are responsible as managers, custodians and supervisors of assets based on the decisions of other officials who have the authority, freeze and confiscate assets or assets in accordance with chapter I article 2 letter (f) UNCAC 2003. Lastly, according to UNCAC 2003 Chapter I Article 2 letter (g), revocation or expropriation of assets forever based on a court decision or other competent authority" refers to confiscation of assets. Fourth, transfer of assets to the injured nation. (Nasional, 2012)

According to Articles 53 to 57 UNCAC, direct return through court processes based on a negotiation *plea system or a plea* bargaining system and indirect return/recovery through the confiscation stage in accordance with a court decision can both be used to confiscate property those who commit crimes of corruption. The loss of state money is mentioned in Article 2 paragraph (1) of the PTPK Law as an important component of corruption, and the addition of these positions is mentioned in Article 3. In fact, from the previous PTPK Law to the latest PTPK Law it is stipulated that perpetrators of corruption crimes must be compensated for the loss of state money. in accordance with Article 20 of 2001 (*asset recovery*).

According to UNCAC in 2003, corruption crimes can pose a significant threat to the stability of public security both at the international and national levels. In democratic countries, corruption weakens the values of upholding justice and endangers the process of law enforcement and sustainable development. The interests of the people must be taken into consideration when fighting corruption, one of the important aspects of returning state finances. (Sugiyono, 2021)

The current criminal system in the bureaucracy is still not feasible and effective in handling corruption crimes, confiscation of wealth or assets without punishment is the right idea as a step to deal with mishandling of corruption, its implementation can also have an impact on the perpetrators because the perpetrators of corruption will not have the opportunity to taking or corruption continuously safely. The public prosecutor may have reason to believe that the owner of a suspicious asset or property has been damaged, and the defendant must demonstrate whether the property in his possession was obtained legally or illegally. Of course, this was done as an effort to recover the loss of state money caused by corruption crimes. The earlier money from corruption is secured, the less likely it is to be laundered or *money laundered*.

The lack or even non-fulfillment of society's sense of justice can be used as a measure of how dissatisfied the public is with the way corruption is handled in various countries, especially with the existing punishment mechanisms. In the same vein, despite the fact that various sanctions have been included in various laws and regulations, it is still believed that they do not adequately reflect justice for those seeking justice. “The amount of money lost to the state as a result of corruption crimes is not commensurate with the amount of money returned to the state as a result of corruption. In order to be as effective as possible, the state must recover its financial losses in accordance with the law. In principle, state rights must be restored for the benefit of the people." (Sugiyono, 2021)

In the context of Pancasila, the main consideration is a multi-dimensional approach, which is a determining factor in the impact of the criminal act it self. As a result, a corrupt person deserves to be punished as severely as possible. The purpose of punishment is applied as an effort to repair individual and social damage that causes criminal acts (*individual and social damages*). To achieve the goal of punishment, there are also things that must be done to maintain community integrity or solidarity *(to maintain social cohesion intact)*. (Soponyono, 2012)

Previously, it encouraged a number of ideas from various groups to make different efforts in addressing issues related to handling criminal acts in a country. The fact that wealth generated by corruption can be confiscated or confiscated and returned to the state after a court decision is a problem with the current development of the criminal justice system. This shows that this system is no longer considered effective in protecting human rights, and transparency for the public interest that is maintained is increasingly considered to be inadequate. The more complicated it is to return these assets or assets to the state, the more opportunities the corrupt have to get rid of them, the slower the process of securing wealth from corruption. This, in addition to the various ways corruptors defraud law enforcement, such as opening accounts in the names of drivers, assistants, maids and other trusted people, will make it even more difficult.

The confiscation of assets of those convicted of corruption is intended to save or prevent the transfer or loss of property which will later be determined by the court and then confiscated as a replacement for the loss of state money caused by corruption crimes, the above is an anticipatory action. In practice, confiscation of property or assets often occurs when a corrupt convict diverts assets so that the court decides that the property he owns is not enough to cover state losses. (Romansah, 2017)

To recover state losses, property resulting from corruption must be taken back by the state, in the form of property, assets, or fines that will be imposed on corrupt criminal actors. Securing assets resulting from corruption without punishment will be more effective in recovering state financial losses, this is what underlies the ratification of UNCAC, 2003. However, current efforts to eradicate corruption must focus on three main issues: asset recovery, repression and prevention. These three aspects emphasize the importance of the fact that efforts to prevent and punish corrupt individuals and actions that require them to be able to recover losses suffered by the state as a result of corruption crimes are efforts to eradicate corruption. Then, failure to return corrupt assets can reduce the severity and impact of sanctions against corrupt individuals.

The idea of implementing asset confiscation without punishment emerged as an effort to show the public's desire to support efforts to take over state assets. This is intended as law enforcement to reduce corruption in Indonesia, where this action results in losses that hinder national development and have a negative impact on the welfare of society. In this case, the urgency of taking over assets without punishment for corruption crimes in an effort to recover state losses will be discussed.

The first research comparison discusses confiscation of assets without punishment by looking at it from an economic perspective (Hafid, 2021), the similarity with this research is that it discusses economics. The second comparison discusses confiscation of assets without punishment based on UNCAC 2003 and focuses on the comparison of confiscation of assets according to regulations in Indonesia and UNCAC 2003. (Abdullah & Eddy, 2021) The third comparison, namely the previous article, discusses the implementation of confiscation of assets or assets for additional penalties for eradicating corruption crimes in Indonesia according to criminal law. (Pranoto, Darmo, & Hidayat, 2019) The novelty in this research from previous research is that the focus of the first research is the urgency of implementing the mechanism for confiscation of wealth or assets without punishment in Indonesian legislation, This research focuses on the urgency of returning state losses using the idea of confiscation of assets without punishment.

**Research Methods**

This research uses a normative legal approach, namely a method for finding and seeking legal supremacy, principles and doctrine as a solution to legal problems. case analysis using primary data from library sources. The materials used are primary and secondary materials from the literature that researchers have collected.

**Results and Discussions**

The following definition of corruption is regulated in the PTPK Law, namely "Any person who, with the intention of benefiting himself, another person, or a business, abuses the authority, opportunity or means available to him as a result of his position or position which has the potential to harm economy of the state or country”.

The term "corruption" is defined as "bad acts" in the KBBI as "embezzlement of money", "acceptance of bribes", and so on. Meanwhile, the word "corruption" is defined in the general Indonesian dictionary as "bad acts" for example taking money/assets for bribes or embezzling them. Meanwhile, Sudarto claims that the word "corruption", which means damage, is the origin of the term "corruption." The term "corruption" can also be used to describe bad things that have happened or been done. Financial dishonesty is often caused by corruption. (Hamzah, 2005)

In an effort to return the proceeds of crime, the act of taking over assets has been regulated and used as a sanction against corrupt individuals based on this article. In addition, the PTPK Law makes the act of taking over assets a criminal offense not only for the perpetrator but also for confiscated property in the event of the defendant's death before the verdict is passed. Because the PTPK Law requires a judge to decide on the action of taking over confiscated goods in response to demands from the public prosecutor, the PTPK Law also makes the act of taking over assets a criminal offense for goods that have been previously confiscated.

The PTPK Law contains additional penalties related to ownership of wealth assets controlled by perpetrators of corruption crimes in addition to the provisions previously mentioned. Criminal law policy is basically applied to a formulative policy that allows the confiscation of assets of corruption criminals through two channels of resolution, namely criminally through a court decision and civilly, namely a civil lawsuit/ civil procedure .

In accordance with current Indonesian positive law, namely the PTPK Law, followed by international legal principles, it has also been taken to support efforts to confiscate wealth or assets from corruption. One of these instruments is the United Nations Convention against Corruption (UNCAC). In addition, Indonesia has regulated mutual legal assistance, with the principle of reciprocity as one of the basic principles. In the United States, assets forfeited as a result of criminal activity have long been recovered through criminal forfeiture and NCB asset forfeiture. Initially, NCB asset confiscation was used on a domestic scale, in some countries applying extra territoriality using the filing of civil lawsuits as a way to confiscate or expropriate domestic property or assets resulting from crime. "The PTPK Law is a form of lex specialis because the articles in the Criminal Code regulate the qualifications for corruption." (Waluyo, 2019)

This means that other laws that also regulate things similar to the PTPK Law will be ignored while the PTPK Law regulates these matters. The PTPK Law also includes specific minimum criminal penalties which the Criminal Code does not regulate, which is interesting. Apart from the lightest and most specific criminal dangers, the PTPK Law can also impose maximum or heaviest penalties. If the conditions outlined in Article 2 paragraph (2) are met, criminal acts of corruption can result in the imposition of the death penalty.

Some people argue that the minimum and specific bond regulations in the PTPK Law can place limits on the freedom of judges. This is because the judge cannot impose a sentence less than a specific minimum sentence if it has been determined that the defendant committed a criminal act. For example, in the event that evidence is found that the defendant committed a crime of corruption in line with the provisions of Article 2 paragraph (1), the guidelines regarding the minimum criminal threat in Article 2 paragraph (1), namely 4 (four) years in prison, must still be used by the judge even though The defendant had a number of mitigating circumstances.

According to Zimring and Hawkins, the use of the term "deterrence" is more limited to the use of punishment in situations where the threat of punishment causes the person to experience fear and protect themselves so that a crime is not committed. However, the "net deterrent effect" of this threat can also be a threat to society as a whole to discourage committing crime. (Waluyo, 2019)

In the KPK's handling operations, there were still individuals who were caught. Although the arrest of these parties by the Corruption Eradication Commission does not necessarily indicate that corruption has not been eradicated in Indonesia, it does show that the entrapment of using special minimum penalties and being threatened with additional penalties has failed to deter individuals from carrying out corruption crimes.

Furthermore, this indicates that there are errors in law enforcement among perpetrators of corruption crimes. Corruption crimes should continue to decline if the PTPK Law is implemented properly. The increase in the total number of problems or cases handled by the Corruption Eradication Commission shows that law enforcement is still not running well and correctly.

Non-Penal Asset Confiscation

The regulations currently in force in Indonesia, apart from additional penalties in line with the provisions of Article 10 of the Criminal Code, confiscation of wealth in Indonesia is limited if the perpetrator of the crime has been legally declared and convinced of being guilty of committing a criminal act in accordance with an inkracht court decision . This means that the confiscation of assets is carried out after a criminal decision has been made. (Kuku, 2020)

Confiscation of certain items as a result of a criminal act is a separate crime in the Indonesian legal system, and is considered part of the category of asset confiscation. This generally applies to every crime that occurs under Indonesian criminal law with the intention of causing harm to a convict who has been declared guilty by a court decision who has committed a crime so that he cannot benefit from the proceeds of the crime.

Punishments or other (additional) penalties can only be imposed simultaneously with the main sentence in accordance with the result of the inability of the additional punishment to stand alone and always follow the underlying case. Assets from a crime can only be confiscated if the main case is seen and the defendant is found guilty. If the court decides that the goods obtained from the proceeds of crime must be confiscated by the state and destroyed, other actions can be taken to use the goods or assets for the benefit of the state, such as making a gift or auction.

The Criminal Procedure Code regulates subsidiary mechanisms for payment obligations. The asset expropriation mechanism, as previously mentioned, focuses on uncovering criminal acts and includes elements of finding and imprisoning perpetrators. Simply making asset forfeiture an additional criminal offense is not enough to reduce crime. In addition, efforts to confiscate assets resulting from criminal acts are less successful due to the existence of a subsidiary mechanism for the obligation to repay assets, as the majority of convicts would prefer to claim that they cannot return assets as a result of their crimes so that they can be punished with physical confinement instead . The return of property or assets produced by criminal acts is a form of compensation, the convict has a very promising alternative by the existence of additional/subsidiary criminal mechanisms whose duration does not exceed the threat of criminal punishment in exchange for the amount of assets that must be paid to the state. "In the event that losses are not returned to the state as a result of corruption crimes, this is unfair for Indonesia." (Bureni, 2016)

The system of taking assets in Indonesia by someone who commits a corruption crime can only be implemented if the person has committed a criminal act and has been legally declared guilty and is compliant with the court decision that has been handed down, or the sentence that has been imposed. “However, the implementation of criminal appropriation remains problematic. Namely, the perpetrator has the power to divert or escape with the proceeds of criminal acts or instruments abroad, even if the perpetrator flees, they cannot return to their country of origin, namely Indonesia. For example, the corruption crime case with the defendant Djoko S. Candra or even the most prominent corruption crime case in Indonesia's dark history is the Edy Tansil case." (Ardhana, Astuti, & Ahmad, 2022)

Both of them fled out of Indonesia, what was worse was that their whereabouts were detected but were difficult or could not be executed by public authorities due to different strategic or diplomatic obstacles. Despite the fact that the perpetrator's business assets are still in Indonesia and the corruptors still make profits from their movable assets, namely their business ventures are in Indonesia and the Indonesian government cannot reach them.

In situations where criminal forfeiture is not possible, forfeiture of assets without conviction serves a number of legal purposes. When a suspect escapes and is never found, for example, these assets or assets can also be withheld from the deceased suspect. A suspect with this much power makes it impossible to carry out investigations or bring criminal cases. Even if there are third parties who have not been charged with a crime but are aware that the property is the proceeds of a crime, it is possible that the property is held by them. Even though the confiscation of the proceeds of criminal acts is not comparable or even does not exceed the property controlled by a third party, the confiscation of property or assets without punishment could be a solution to confiscate property controlled by a third party.

Foreign countries can use the method of expropriating assets without punishment to confiscate assets that are the result of criminal acts and that are located abroad. Assets outside Indonesia are the only ones that can be taken over using this method without being punished. Due to the United Nations Convention Against Corruption (hereinafter referred to as UNCAC), which stipulates that there are various countries working together to return assets resulting from corruption crimes by corrupt actors who died, fled, or were not found, as well as certain cases others, serves as the legal basis for this method.

Punishment in the NCB Asset Forfeiture scheme in the form of punishment that punishes the subject is set aside because the aim is to change the paradigm of "follow the suspect" to "follow the asset". There are two options in the formulation which should be contained in the provisions of the Law, namely whether criminal prosecution and the NCB Asset Forfeiture are carried out at the same time or whether the implementation of the NCB Asset Forfeiture will be permitted if criminal prosecution is not possible. In this case, if explained simply, several examples of conditions that support the implementation of NCB Asset Forfeiture include:

1. In the event that the perpetrator dies (Article 77 of the Criminal Code).
2. In the event of expiration of the guidelines (Article 78 of the Criminal Code), with the following explanation:
   1. If a criminal offense has a maximum penalty of imprisonment of up to three years, then the authority to prosecute is terminated after six years
   2. If a criminal offense has a maximum penalty of imprisonment of more than three years, then the authority to prosecute is terminated after twelve years
   3. If a criminal offense carries a legal threat of life imprisonment or the death penalty, the authority to prosecute is terminated after eighteen years
3. In the event that the suspect/defendant is seriously ill, runs away, or his whereabouts are not detected.
4. In the event that the suspect/defendant is acquitted of all charges but there is a strong suspicion that the assets or assets he owns are the proceeds of corruption crimes.
5. In the event that a court with permanent legal force has found the perpetrator guilty of a crime, however, the next day it turns out that there are assets from the crime that have not been confiscated. (Siburian & Wijaya, 2022)

There are two types of confiscation applied, namely Criminal Forfeiture (Criminal Forfeiture) and Confiscation of property or assets without punishment. The basic idea behind confiscation of assets without conviction is that it should be possible to trace and expropriate the property of people suspected of committing corruption crimes, even if the criminal was acquitted by court decision because the crime was not proven, died before the verdict became final, or escaped on the run . before the trial is over.

Because the process of securing assets takes a long time if you wait for the inkracht decision, there is no need to wait for the TPA to be proven to confiscate assets. This does not mean that the process of confiscation of assets without punishment is preferable to the judicial process; For example, before attempting coercion, summons, or search, sufficient initial evidence must exist. He believes that PPATK has had a significant impact on asset searches, especially for layering cash assets in banking

**Conclusion**

Preventive efforts have been made by the Indonesian State to regulate punishment for perpetrators of corruption crimes, namely by enacting the PTPK Law, however the criminal system in Indonesia is less effective in dealing with criminal acts of corruption. This is due to the long time involved in the process of proving and convicting a defendant. Corruption is a crime that is very detrimental to the State, to recover the state's losses, the assets resulting from corruption must be taken back by the state, in the form of property, assets, or fines that will be imposed on perpetrators of criminal acts of corruption. Securing assets resulting from corruption without punishment will be more effective in recovering state financial losses. Confiscation of wealth or assets without punishment for corruption crimes as an effort to recover state losses is an appropriate idea to immediately rescue state assets taken by corruptors before money laundering or money laundering is carried out . Confiscation of assets without punishment is intended as law enforcement to reduce corruption in Indonesia, where this action results in losses that hinder national development and have a negative impact on the welfare of society. Punishment in the asset confiscation scheme without punishment ( NCB Asset Forfeiture ) in the form of a type of punishment that is punitive to the subject is ruled out because the aim is to change the paradigm of " follow the suspect " to " follow the money ".

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