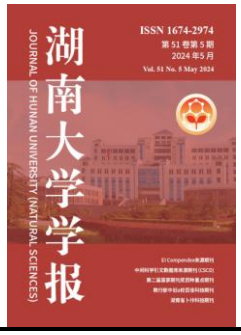

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Regulation of Asset Recovery in the Judicial System in Indonesia

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Abstract: This research determines the concept of regulating asset confiscation (asset recovery) in the Indonesian justice system. This study employs a normative legal research method to gather data from library sources to gain insight into the topic at hand. Confiscation of assets resulting from criminal acts in the legal system in Indonesia is regulated in the Criminal Code (KUHP) regarding additional penalties. Apart from being regulated in the Criminal Code, provisions regarding the confiscation of assets resulting from criminal acts are also regulated in the respective criminal law provisions, which are scattered in the laws that specifically regulate them. When referring to UNCAC itself, the stages of asset recovery consist of tracking assets, freezing or confiscating assets, confiscating assets, and returning or handing over assets. The recovery of stolen state assets, also known as stolen asset recovery, is crucial for the development of developing countries. This process not only restores state assets but also upholds the rule of law, ensuring that no one is above the law.

Keywords: regulation, asset recovery, judicial system.

印尼司法系统中资产追回的监管

摘要：本研究确定了印度尼西亚司法系统中规范资产没收（资产追回）的概念。本研究采用规范性法律研究方法，从图书馆资源中收集数据，以深入了解当前主题。印度尼西亚法律制度中，没收犯罪行为所得资产的规定由《刑法典》(KUHP)规定，并附加处罚。除了《刑法典》中的规定外，有关没收犯罪行为所得资产的规定也在相应的刑法条款中规定，这些条款分散在专门规范这些条款的法律中。就《联合国反腐败公约》本身而言，资产追回的阶段包括追踪资产、冻结或没收资产、没收资产以及返还或移交资产。追回被盗国有资产，也称为被盗资产追回，对发展中国家的发展至关重要。这一过程不仅恢复了国有资产，而且维护了法治，确保没有人凌驾于法律之上。

关键词：监管、资产追回、司法系统。

1. Introduction

The issue of law enforcement has been a longstanding concern in Indonesian society. To tackle this issue, numerous groups, particularly legal experts, concur that legal reform is necessary to enhance crime prevention in alignment with the principles of criminal law and material legal provisions outlined in the

Criminal Code (KUHP).

The development of effective criminal law regulations is inherently linked to the goal of crime prevention. Criminal law policy is a crucial component of the broader field of criminal justice. Put simply, within the realm of criminal justice, the politics surrounding criminal law align closely with the strategies and initiatives aimed at preventing criminal activity. Efforts to combat crime through criminal law are an integral component of law enforcement initiatives, particularly within the realm of criminal law enforcement. Politics and criminal law policy are essential elements of law enforcement policy [1]. Efforts to combat crime through the enforcement of criminal law are essential components of community protection initiatives. Criminal law policy and politics play a crucial role in shaping social policy.

Social policy can be defined as efforts aimed at promoting the well-being of society while ensuring the protection of the community. Viewed in a broad sense, criminal law policy can cover a wide scope of policies in the fields of material criminal law, formal criminal law, and criminal enforcement law [1]. Thus, crime prevention policy is comprehensive within the framework of providing protection to the community to achieve community welfare [1]. What is meant by comprehensiveness is, of course, not partial, meaning that crime prevention is not only oriented toward how to punish criminals, but also how to provide protection for victims, society, and the interests of the state as stated in the constitution (Article 28G paragraph (1) of the 1945 Constitution).

The protection, promotion, enforcement, and fulfillment of human rights as outlined in the constitution in Article 28I paragraph (4) is the responsibility of the state, especially all components of state power, both executive, legislative, and judicial. Provisions in the constitution as a written basic law must be implemented by legal products/legislative regulations below it. One of the tasks of the state in combating crime is to ensure that assets resulting from crime can be recovered or returned to the state to be used for the interests of the nation and state by tracing and confiscating these assets from criminals, including assets used as tools or means of committing crimes.

Confiscation of assets through criminal channels as regulated by the Criminal Procedure Code has encountered many obstacles. This is because according to the Criminal Procedure Code, an asset can only be confiscated if the Public Prosecutor can prove the defendant's guilt and that the asset in question is the proceeds or means of a crime (forfeiture really depends on whether the defendant is proven or not) and cannot be carried out if the defendant cannot appear in court (died, running away, their whereabouts unknown or permanently ill), even though these cases cost the country billions or even trillions of rupiah. For example, the case of Eddy Tansil was arrested in 1993 in the Golden Key Group corruption case, which cost the state IDR 1.3 trillion. While in prison, Eddy Tansil checked his heart health at Harapan Kita Hospital. Eddy should have been closely guarded by the officers during his examination. However, at one point, Eddy could leave prison without a police or guard escort. Eddy Tansil managed to escape and was detected in China in 2013. After 28 years, the whereabouts of Eddy Tansil, Sjamsul Nursalim, Lidya Mochtar, Bambang Sutrisno, and many other defendants remain unknown. These individuals are still at large, leaving their cases unresolved [2].

Thus, the current concept in crime prevention is only oriented toward the approach of criminalizing criminals (follow the suspect), even though there is already a money laundering "regime" and provisions in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crimes (hereinafter referred to as the Corruption Crimes Law) touches on the issue of confiscation of assets in circumstances where the defendant dies and so on. However, law enforcement is still oriented toward proving guilt or criminal responsibility for criminals. Proof in criminal law is more complicated because it seeks the material truth of an event with limited time and evidence to prove the relationship between guilt and assets resulting from crime so that much of the assets resulting from crime cannot be confiscated.

We are very aware that for crimes with an economic motive or crimes that have "economic" value, the proceeds of crime are "fresh blood" for the continuation of the crime itself. In this context, we often hear reports that even though the perpetrator of the crime has been sentenced to prison, the person concerned can still control the crime from inside prison. What is even more ironic is that prisons, which are predicted to be a place to train criminals to make people better, are actually used as a place to secure crime. In 2015, a notable case involved the drug kingpin Freddy Budiman, who managed to continue controlling drug distribution from within correctional institutions even as he awaited execution. Budiman exploited what he perceived as leniency in Indonesia's laws on drug abuse and distribution, believing that a sentence could be altered based on an inmate's behavior. Freddy confessed to being able to maintain communication with his network associates across different prisons, including Cipinang and Salemba prisons. He even managed to reach out to his contacts in the Netherlands by utilizing the telephone shop facilities at Nusakambangan prison. This enabled him to sustain his illegal operations and generate substantial profits [3].

Illegally obtained funds serve as the primary motivation for criminals driven by economic gain. They would rather stay behind prison bars as long as

they still own and control their money than be free but have no money. We can see another case that occurred in North Sumatra with the Defendant Adelin Lis who was involved in an illegal logging case where the Defendant Adelin Lis was sentenced to 10 years in prison and a fine of more than IDR 119 billion by the Supreme Court in 2008. In March 2006, Adelin Lis was declared fugitive by the North Sumatra Police. The owner of PT Mujur Timber Group and PT Keang Nam Development Indonesia is suspected of conducting illegal logging in the Mandailing Natal forest [4]. Adelin Lis was caught in Beijing, China, at the end of 2006, when she was about to renew her passport at the Indonesian Embassy in Beijing. However, as reported by Kompas Daily on November 7, 2007, the Medan District Court finally released Adelin Lis. Since then, Adelin Lis's whereabouts were no longer known until she was finally arrested by the Singaporean authorities on March 4, 2021, for forging a passport. The Attorney General ordered Adelin Li to promptly travel to Jakarta for immediate execution [4].

Another case that has captured the public's attention is the ASABRI case, which involves eight suspects: former Main Director of PT ASABRI from 2011 to March 2016 (Ret.) Major General Adam Rachmat Damiri, former Main Director of PT ASABRI from March 2016 to July 2020 (Ret.) Lt. Gen. Sonny Widjaja, former Finance Director of PT ASABRI from October 2008 to June 2014 Bachtiar Effendi, former Director of PT ASABRI from 2013 to 2014 and 2015 to 2019 Hari Setiono, Head of the Investment Division of PT ASABRI from July 2012 to January 2017 Ilham W. Siregar, President Director of PT Prima Network Lukman Purnomosidi, President Director of PT Hanson International Tbk Benny Tjokrosaputro, and Commissioner of PT Trada Alam Minera Heru Hidayat. The defendants Benny and Heru are also suspects in the corruption case at PT Asuransi Jiwasraya (Persero). The alleged corruption involves financial mismanagement of investment funds at PT ASABRI (Persero) from 2011 to 2019. The situation at the TNI and Polri pension fund management company mirrors what occurred at PT Asuransi Jiwasraya (Persero), where the crux of the issue was investment manipulation involving individuals who were not investment managers, specifically Benny Tjokrosaputro (BTS), alias Bentjok; and Heru Hidayat (HH). In the ASABRI case, the defendants include Benny Tjokrosaputro (BTS), alias Bentjok; Heru Hidayat (HH), and the Main Director of PT Prima Network, Lukman Purnomosidi (LP), who played a role in managing and controlling ASABRI's investment portfolio, consisting of shares and mutual funds, without utilizing proper analysis in fund placement.

The ASABRI case began with an agreement made by ASABRI management for 2011-2016 and 2016-2020. Funds were placed in shares owned by three parties: defendants Benny Tjokrosaputro (BTS), alias Bentjok; Heru Hidayat (HH), and Lukman Purnomosidi (LP), President Director of PT Prima Network. This agreement involved manipulating prices to artificially inflate the value of the shares. The aim is to show that ASABRI's investment portfolio performance is good. After these shares entered ASABRI's portfolio, they were transacted and controlled by these three people. Because, based on the agreement, the shares must appear liquid and have high value, even though the transactions carried out are only pseudo transactions and benefit Bentjok, Heru, and LP, which is detrimental to ASABRI. The suspects were charged with violating the Primair suspicion article, specifically Article 2 paragraph (1) in conjunction with Article 18 of the Corruption Crimes Law and Article 55 paragraph (1)1 of the Criminal Code. Their actions also include violating water subsidies, as outlined in Article 3 in conjunction with Article 18 of the Corruption Crimes Law and Article 55 paragraph (1)1 of the Criminal Code [19].

Similarly, the case involving PT Asuransi Jiwasraya (Persero) implicated six defendants in an alleged corruption scandal related to the mismanagement and misuse of investment funds within the company. The defendants, namely Heru Hidayat, Benny Tjokrosaputro, Joko Hartono Tirto, Hendrisman Rahim, Hary Prasetyo, and Syahmirwan, stand accused of self-enrichment at the expense of state finances, resulting in a staggering total loss of Rp. 16.807 trillion. This figure was revealed in an investigative audit report conducted by the BPK on March 9, 2020, shedding light on the financial mismanagement and investment practices at PT. Jiwasraya Insurance in 2008-2018. The Public Prosecutor (PU) of the Attorney General's Office, Bima Suprayoga, presented this information at the Corruption Crime Court (Tipikor), underscoring the severity of the situation and the impact on state finances. The trial featured six defendants: Hendrisman Rahim, the former CEO of PT Asuransi Jiwasraya (Persero) from 2008 to 2018; Hary Prasetyo, the Finance Director of Jiwasraya from January 2013 to 2018; Syahmirwan, the Head of the Investment and Finance Division of Jiwasraya from 2008 to 2014; Benny Tjokrosaputro, the CEO of PT Hanson International Tbk; Heru Hidayat, the President Commissioner of PT Trada Alam Minera Tbk; and Joko Hartono Tirto, the Director of PT Maxima Integra. In this case, as stated by the Public Prosecutor, there were seven acts committed by the six defendants: Heru Hidayat, Benny Tjokrosaputro, and Joko Hartono Tirto, who entered into an agreement with Hendrisman Rahim, Hary Prasetyo, and Syahmirwan to manage PT Asuransi's shares and mutual fund investments. Jiwasraya (AJS) is criticized for its lack of transparency and accountability. The Public Prosecutor raised concerns about the management of shares and mutual funds, stating that funding decisions were made without proper analysis based on objective and

professional data. Instead, these decisions were treated as mere formalities. Furthermore, it was revealed that Hendrisman, Hary, and Syahmirwan exceeded the maximum allowable investment in BJBR, PPRO, and SMBR shares, as outlined in the investment guidelines. The Public Prosecutor also accused the defendants of engaging in purchase and sale transactions with the intention of manipulating prices, resulting in no investment profits and a failure to meet liquidity needs for operational activities. Additionally, it came to light that the defendants controlled 13 investment managers to create special mutual fund products for PT AJS, allowing them to influence the management of financial instruments underlying the mutual funds. Despite this, the defendants continued to engage in transactions that did not yield profits or support the company's operational activities. Lastly, the defendants were found to have received money, shares, and facilities from Heru Hidayat and Benny Tjokrosaputro through Joko Hartono Tirto in exchange for their cooperation in managing PT AJS stock and mutual fund investments from 2008 to 2018. These allegations were made by Prosecutor Bima. From 2008 to 2018, Hendrisman, Hary, and Syahmirwan utilized funds from PT AJS products, including non-saving plan products, saving plan products, and corporate premiums. The total value of these investments amounted to approximately Rp. 91,105,314,846,726.70, which were allocated toward investing in shares, mutual funds, and medium-term notes (MTN). Between 2008 and 2018, Hendrisman, Hary, and Syahmirwan agreed to hand over the management of PT AJS stock and mutual fund investments to Heru Hidayat and Benny Tjokrosaputro through Joko Hartono Tirto, so that share buying and selling was carried out based on Joko Hartono's information, instructions, and direction to Lusiana or Agustin Widhiastuti to make purchases with certain parties that have been arranged by Heru and Benny Tjokrosaputro. In managing investment portfolios for PT AJS shares and mutual funds, Hendrisman, Hary, and Syahmirwan selected an investment manager who specialized in managing PT AJS funds. The responsibility of managing and overseeing the shares was entrusted to Heru Hidayat and Benny Tjokrosaputro. This ensured that the chosen investment manager is not privy to the specific names, quality, and quantity of shares held within the mutual fund [5].

The shares purchased included Heru Hidayat's IIKP, TRUB, BKDP, ENRG, BNBR, TRAM, and PLAS shares, which were acquired directly through brokers PT HD Capital and PT Dhanawibawa Sekuritas. These brokers were appointed by Joko Hartono Tirto through the negotiation market at Bank Mandiri (Bank Custodian) on behalf of PT AJS. Unfortunately, this transaction was conducted without the necessary professional studies or analyses as outlined in the NIKP. As a result of this action, Hendrisman Rahim received a profit of Rp. 5,525,480,680.00 from Heru Hidayat and Benny Tjokrosaputro via Joko Hartono Tirto. This profit included Rp. 875,810,680.00 in cash and 1,013,000 PCAR shares valued at Rp. 4,590 per share on January 24, 2019, totaling Rp. 4,649,670,000.00. Additionally, Syahmirwan received Rp. 4,803,200,000 from Heru Hidayat and Benny Tjokrosaputro via Joko Hartono Tirto. This amount consisted of Rp. 3,800,000,000 in cash and 220,000 PCAR shares valued at Rp. 4,560.00 per share on February 26, 2019, totaling Rp. 1,003,200,000.00. Furthermore, there were other benefits received, including a golf package in Bangkok for five individuals, valued at a total of Rp. 100,000,000. Each package included round-trip transportation from Jakarta to Bangkok, accommodation for three days and two nights, meals, and a golfing package. Additionally, there were facilities provided in the form of rafting on the Kulonprogo River in Magelang, Yogyakarta, from PT Pool Advista Asset Management in 2017, valued at Rp. 70,000,000.00. The event was attended by approximately seven individuals from the PT AJS Investment Division. In 2014, the division was provided with the opportunity to enjoy a trip to Lombok courtesy of PT Poll Advista Asset Management. This included round-trip tickets from Jakarta to Lombok, transportation, accommodation, meals for 3 days and 2 nights, and the chance to play golf and enjoy karaoke in Lombok. Furthermore, in late 2017, the division once again received an offer from PT Pool Advista Asset Management for a karaoke trip to Lombok. This time, the trip also included a stay at the Novotel Lombok Hotel for 3 days and 2 nights, with Joko Hartono Tirto in attendance. Lastly, the division was provided with an opportunity to travel to Hong Kong by PT Pool Advista Asset Management. This trip involved financing activities for 3 days and 2 nights, with transportation tickets and accommodation arranged through Aero Travel. Hary Prasetyo was initially reported to have received Rp. 2,446,290,077.00 from Heru Hidayat and Benny Tjokrosaputro through Joko Hartono Tirto, which were deposited into a securities account under Hary's name at PT Lotus Andalas Sekuritas (now PT Lautandhana Sekuritas). Subsequently, he received a 2009 Toyota Harrier valued at Rp. 550,000,000.00, followed by a 2009 Mercedes Benz E Class car worth Rp. 950,000,000.00. Additionally, he was provided with travel tickets for himself and his wife Rahma Libriyanti to attend a Coldplay concert in Melbourne, Australia, by PT Trimegas Sekuritas, amounting to Rp. 65,827,000.00. Furthermore, he received payment for tax consultant services from Joko Hartono Tirto in the amount of Rp. 46,000,000.00. The defendants were charged with violating various articles of Law No. 31 of 1999, as amended by Law No. 20 of 2001, which pertains to the Eradication of Corruption Crimes. Specifically, they were accused of violating Article 2

paragraph (1), Article 3 Jo. Article 18 paragraph (1) letter b, paragraph (2), and paragraph (3) of the aforementioned law. Additionally, they were charged with violating Article 55 paragraph (1) 1st of the Criminal Code. These charges stemmed from allegations that the defendants abused their authority, opportunities, or facilities available to them in their positions, resulting in harm to the state's finances and economy. The potential consequences for these actions include a maximum prison sentence of 20 years and a maximum fine of Rp. 1 billion. Furthermore, the defendants Benny Tjokorosaputro and Heru Hidayat also faced charges of money laundering (TPPU) [5].

Based on the numerous examples provided, most criminal acts are driven by economic motives. The most efficient method to combat such crimes is the confiscation of the proceeds and tools used in the criminal activities. This approach is more effective than relying on corporal punishment, which lacks consistency and fails to serve as a deterrent for potential offenders. By depriving criminals of their ill-gotten gains, we can significantly reduce the likelihood of them repeating their unlawful actions.

Research by Indonesia Corruption Watch (ICW) on the implementation and regulation of illicit enrichment in Indonesia reveals that out of the 193 countries worldwide, 44 have legal frameworks addressing illicit enrichment. Among these countries, India, Guyana, Sierra Leone, and China have specifically legislated on illicit enrichment, defining it as the unlawful accumulation of wealth. While the concept remains consistent across these nations, variations exist in how they define and measure significant increases in assets to determine illicit enrichment.

Confiscation of the proceeds and instruments of criminal acts, in addition to reducing or eliminating the economic motives of criminals, can also have the effect of breaking the chain of crime and can increase the public's sense of trust in the law enforcement process for assets that are "taken/confiscated/controlled" by criminals so that they can be returned by them. state to be used for the benefit of the people.

The researchers were inspired to investigate this issue by the prevalence of criminals continuing to commit crimes while serving prison sentences, as reported in the news. The necessity for comprehensive structuring and regulation of law enforcement through the NCB mechanism is crucial in rational efforts to prevent and eradicate crime and provide protection to the community, particularly crime victims and the state. This is expected to enhance the effectiveness of justice, certainty, and utility in law enforcement.

Based on the background above, researchers can formulate the main problem: What is the concept of regulating asset confiscation (asset recovery) in the justice system in Indonesia?

2. Research Methods

This study employs a normative legal research method, which involves searching for data through library sources to gain a deeper understanding of the topic at hand. This normative legal research focuses on analyzing legal norms derived from statutory regulations, judicial decisions, expert opinions, international conventions, and the proposed legal framework (draft law).

3. Discussion

3.1. Concept of Regulation of Asset Confiscation (Asset Recovery) in the Indonesian Judicial System

Asset confiscation resulting from criminal activities is a new practice within the legal system of Indonesia. Various criminal provisions govern the seizure of proceeds and tools used in committing a crime. These provisions are outlined in the Criminal Code (KUHP) as additional penalties. Additionally, laws pertaining to asset confiscation stemming from criminal acts are also addressed in specific legislation scattered throughout various laws. For instance, Article 18(a) of Law Number 20 of 2001, which amends Law Number 31 of 1999 on the Eradication of Corruption Crimes (Tipikor Law), Law Number 35 of 2009 on Narcotics, and Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes contain provisions related to asset confiscation [6]. Furthermore, procedural guidelines for handling asset recovery in cases of money laundering or other crimes are outlined in Perma No. 1 of 2013 and Republic of Indonesia Prosecutor's Regulation Number 7 of 2020. Perma No. 1 of 2013 and Republic of Indonesia Prosecutor's Regulation Number 7 of 2020 primarily serve as procedural laws, distinct from the laws mentioned above [7].

Law enforcement is an effort to create order, security, and tranquillity in society, especially taking action after a violation of the law [8]. Law enforcement and recovery of criminal assets are two sides of the same coin that cannot be separated in eradicating criminal acts, especially corruption. White collar crime perpetrators rely on careful planning and calculation to carry out their illegal activities. Therefore, effectively managing and securing the proceeds of their crimes is essential. A person will dare to commit corruption if the results obtained from corruption will be higher than the risk of punishment (penalty) faced. Quite a few corrupt individuals are ready to face imprisonment if they believe that their families will continue to live comfortably off the proceeds of their crimes.

In the global arena, legal advancements underscore the significance of confiscating the proceeds and instruments of criminal activities as a crucial component in combating crime. The confiscation of assets is specifically addressed in Chapter V of the United Nations Convention against Corruption (UNCAC), highlighting its pivotal role in resolving

criminal cases. Indonesia has ratified the UNCAC through Law Number 7 of 2006 concerning the Ratification of the UNCAC. With this ratification, Indonesia is a party to the UNCAC. Indonesia should have the same legal standing in taking the necessary actions to confiscate assets obtained illegally and taken abroad. Apart from the UNCAC, many other UN conventions also contain provisions regarding the confiscation of assets resulting from criminal acts. These conventions include the United Nations Convention against Illicit Traffic in Narcotic Drugs and Phychotropic Substances (1988), the United Nations Convention on Transnational Organized Crime (UNTOC) (2002), and various provisions in the United Nations Counter-Terrorism Convention [6].

When discussing the UNCAC, the process of asset recovery involves tracking, freezing or confiscating, and ultimately returning or handing over assets. In Indonesia, the legal framework for asset recovery can be found in Prosecutor's Regulation Number 7 of 2020, which amends Attorney General's Regulation Number Per 027/A/JA/10/2014 regarding Guidelines for Asset Recovery. This regulation outlines five key stages of asset recovery: searching, securing, maintaining, confiscating, and returning assets.

To facilitate asset recovery, particularly in cases involving assets obtained through corrupt criminal activities and stored abroad, the UNCAC offers avenues for international cooperation through mutual legal assistance. This cooperation is essential for effectively recovering assets obtained through corruption. Indonesia, recognizing the importance of international collaboration in asset recovery, has taken proactive steps to engage with other countries in this endeavor. As a member of the ASEAN, Indonesia has become a signatory to the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT). Romli Atmasasmita highlights the efficacy of MLA in expediting the judicial process and facilitating the recovery of assets linked to corrupt practices. In addition to Indonesia's participation in the multilateral MLAT agreement, the country has also established bilateral agreements with various nations concerning MLA. Notably, Indonesia has ratified agreements with Switzerland through Law No. 5 of 2020 and with Vietnam through Law No. 13 of 2015 [9].

The retrieval of state assets, also referred to as asset recovery, is crucial in combating economically motivated crimes. The current legal remedies for in personam asset confiscation are inadequate and in need of reform. The international community is establishing a system to address the issue of asset forfeiture without identifying the perpetrators, known as in rem asset forfeiture. This mechanism treats the physical property as the defendant, separate from the punitive process. This non-conviction-based (NCB) approach is distinct from traditional asset confiscation methods that involve additional penalties [10].

In the asset confiscation bill, civil/in rem confiscation of assets can be carried out separately without relying on criminal/in personam confiscation of assets. Based on this, it is certainly different from the Corruption Law, which requires criminal confiscation of assets first, which takes a very long time. Of course, this will give corruptors the opportunity to hide assets that have not been confiscated or known to investigators, if the assets are confiscated criminally. It is no longer possible for civil confiscation of assets to be carried out by the prosecutor handing over the files to the state attorney for a civil lawsuit. Civil confiscation in the asset confiscation bill allows prosecutors to file a separate civil lawsuit to more effectively return assets without having to wait or depend on the criminal process [7].

The asset confiscation bill has been enacted to uphold this noble ideal; however, the implementation of asset confiscation through the in rem method is not without its challenges. Here are some potential obstacles that may arise when utilizing this approach [7]:

a. Assets: Legal Subjects in Court Proceedings

The basic difference between asset confiscation using the in rem and in personam methods lies in the subject matter. The concept of "in personam" refers to a lawsuit being directed toward an individual, while "in rem" involves a lawsuit being directed toward an asset. This distinction prompts the question of whether assets can be considered legal subjects. Legal subjects typically refer to individuals, namely humans and legal entities. This question can be addressed through the lens of fiction theory. While legal entities are not inherently recognized as legal subjects, fiction theory allows the conceptualization of legal entities as legal subjects, thereby establishing rights and obligations.

b. Principle of Ne Bis in Idem

Asset confiscation becomes an additional penalty following the commission of a primary crime. The primary punishment can be enforced only if there is a human perpetrator involved. This raises a significant legal concern. However, opposition to this practice is voiced by parties who reject the use of the in rem method. They argue that utilizing this method would violate the ne bis in idem principle as trying the asset would mean trying the perpetrator as well. The ne bis in idem assessment serves the purpose of preventing individuals from being prosecuted multiple times for the same action. This principle is to provide legal certainty, as outlined in Article 28D paragraph (1) of the Constitution of Indonesia. According to the NRI 1945, every individual is entitled to recognition, guarantees, protection, fair legal certainty, and equal treatment under the law.

c. Principle of the Presumption of Innocence

The principle of the presumption of innocence means that a person must not be considered guilty as long as there is no court decision stating so. This

principle has become part of human rights and is a basic principle of procedural justice in criminal law. Several parties have expressed concerns that the implementation of asset confiscation in rem violates the principle of the presumption of innocence. However, there is no need to question this further because the subject is assets that are connected to a criminal act, which may include the proceeds of a criminal act or something that is used as a tool to commit a criminal act.

d. Right to Protection of Property Rights

According to Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, every individual is entitled to personal protection, safeguarding of their family, preservation of honor, dignity, and protection of property under their control. Additionally, every person has the right to feel secure and be protected from the fear of committing wrongful actions. This right to security and protection is a fundamental human right. The protection of property rights is explicitly enshrined in the constitution. However, there are no provisions in this article regarding protection against unauthorized seizure of assets. The argument that asset confiscation in rem would contravene the constitution, particularly Article 28G paragraph (1), lacks justification.

Asset recovery is an action that can be carried out by the state in the form of confiscating the proceeds of criminal acts that have harmed the state in order to recover the state's losses. In carrying out asset recovery efforts, it must be understood that these efforts are carried out on the basis of the principles of social justice, namely "Give the state what is its right" and "Give the people what is their right" [18]. The concept of the rule of law embodies the principle of governance through legal frameworks, encompassing not only formal regulations but also the fundamental values of justice [11].

The recovery of stolen state assets, also known as stolen asset recovery, is crucial for the development of developing countries. This process not only restores state assets but also upholds the rule of law, ensuring that no one is above accountability. The principle of asset recovery is explicitly regulated in the Anti-Corruption Convention. Article 51 of the Anti-Corruption Convention provides a legal framework for the recovery of state assets acquired through corrupt practices. This provision allows both civil actions, such as lawsuits, and criminal proceedings to be initiated to reclaim assets obtained through corruption [12].

Asset confiscation in the Indonesian legal system is outlined in Article 10(b) of the Criminal Code as an additional form of punishment. According to these provisions, confiscation is executed following a court decision or a judge's determination regarding specific items. This process is conducted in a limited manner, in accordance with the regulations set forth in the Criminal Code. Confiscation targets items owned by the convict that were acquired through criminal activities or intentionally utilized in the commission of a crime. In the event that the confiscated items are returned to the convict, the confiscation can be substituted with a period of imprisonment ranging from a minimum of 1 day to a maximum of 6 months.

The implementation of asset recovery has been delegated to each agency on the basis of its authority in the asset recovery process. In Indonesia, agencies that can take part in the process of handling criminal acts of corruption include the National Police of the Republic of Indonesia (Polri), the Prosecutor's Office of the Republic of Indonesia (Kejaksaan RI), and the Corruption Eradication Commission (KPK) [13]. These three institutions hold equal authority when it comes to conducting investigations, leading to a shared responsibility in the asset recovery process. This includes the asset confiscation stage, where all three entities can exercise their authority to recover assets.

Simply providing punishment is insufficient. Therefore, the confiscation of assets resulting from criminal activities can have a profound impact on potential perpetrators. The fear of having all profits seized by the state, without the need for a lengthy criminal justice process, serves as a powerful deterrent [14]. In cases of corruption, the prosecutor's office, acting as a representative of the state or government, has the authority to take legal action as necessary to recover funds. This may include mediation, negotiation, or filing a lawsuit in court [12].

The current criminal law policy is consistent with the confiscation of assets through criminal prosecution. Asset confiscation will only be carried out if the perpetrator is proven guilty. This policy is known as conviction-based asset forfeiture. Such confiscation of assets is often applied to cases of corruption and money laundering [15].

Although current legal norms only regulate asset confiscation through criminal prosecution, in practice, asset confiscation is not only carried out through criminal prosecution. For example, the confiscation of assets in corruption cases can also be carried out through civil procedures [16]. In this process, the prosecutor functions as a state attorney (JPN) who initiates a civil lawsuit targeting assets believed to be derived from criminal activities. The lawsuit is addressed to the suspect, convict, and/or the heirs of the suspect/convict [15]. The Prosecutor's Office carries out its functions in the field of civil and state administration, namely by observing developments that occur in society [17].

Asset recovery is the process of handling assets resulting from crime, which is carried out in an integrated manner at every stage of law enforcement, so that the value of these assets can be maintained and returned in full to crime victims, including to the state. Asset recovery also includes all preventive measures to ensure that the value of the asset does not decrease.

4. Conclusion

Confiscation of assets resulting from criminal acts in the legal system in Indonesia is regulated in the Criminal Code (KUHP) regarding additional penalties. Apart from being regulated in the Criminal Code, provisions regarding the confiscation of assets resulting from criminal acts are also regulated in the respective criminal law provisions, which are scattered in the Laws that specifically regulate them. In the international world, Indonesia has ratified the UNCAC through Law Number 7 of 2006 concerning the Ratification of the UNCAC. With this ratification, Indonesia is a party to the UNCAC. Indonesia should have the same legal standing in taking the necessary actions to confiscate assets obtained illegally and taken abroad. When referring to UNCAC itself, the stages of Asset Recovery consist of tracking assets, freezing or confiscating assets, confiscating assets, and returning or handing over assets. The recovery of stolen state assets, also known as stolen asset recovery, is crucial for the development of developing countries. This process not only restores state assets but also upholds the rule of law, ensuring that no one is above the law.

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