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State Financial Losses Recovery Through Asset Forfeiture

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Abstract

Indonesia, as a state governed by law (rechtstaat), guarantees the protection of its citizens' constitutional rights, including economic rights. However, the existence of corruption classified as an extraordinary crime has undermined the nation's economic foundations and deprived the people of their economic entitlements. Law enforcement against corruption must not only focus on punishing perpetrators but also prioritize the recovery of state losses through the mechanism of asset forfeiture derived from criminal acts. This study examines the urgency and dynamics of asset forfeiture within the framework of Indonesia's positive law, including the relevance of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, and the Indonesian Penal Code (KUHP) of 2023. Furthermore, it discusses the concept of non-conviction based asset forfeiture and the need for a specific Asset Forfeiture Law as a manifestation of the state's commitment to restoring state finances and upholding the rule of law. This research also analyzes the strategic role of the Prosecutor's Office in the asset recovery process, as well as institutional challenges and inter-agency coordination issues in its implementation.
Keywords: *Corruption, Asset Forfeiture, State Financial Recovery.*

Abstrak
Indonesia sebagai negara hukum (rechtstaat) menjamin perlindungan hak-hak konstitusional warga negaranya, termasuk hak ekonomi. Namun, keberadaan tindak pidana korupsi yang tergolong ke dalam kejahatan luar biasa (extraordinary crime) telah merusak sendi-sendi ekonomi negara dan merampas hak-hak ekonomi masyarakat. Penegakan hukum terhadap korupsi tidak hanya menitikberatkan pada pemidanaan pelaku, tetapi juga penting diarahkan pada pemulihan kerugian negara melalui mekanisme perampasan aset hasil tindak pidana. Penelitian ini mengkaji urgensi dan dinamika perampasan aset dalam kerangka hukum positif Indonesia, termasuk relevansi ketentuan dalam Undang-Undang Nomor 31 Tahun 1999 jo. Undang-Undang Nomor 20 Tahun 2001 serta Kitab Undang-Undang Hukum Pidana Nasional Tahun 2023. Lebih lanjut, dibahas pula konsep perampasan aset tanpa pemidanaan (*non-conviction based asset forfeiture*) serta urgensi pembentukan Undang-Undang Perampasan Aset sebagai bentuk komitmen negara dalam mengembalikan keuangan negara dan menegakkan supremasi hukum. Penelitian ini juga menganalisis peran strategis Kejaksaan dalam proses perampasan aset, serta tantangan kelembagaan dan koordinasi antar-penegak hukum dalam implementasinya.
Kata Kunci: *Korupsi, Perampasan Aset, Pemulihan Keuangan Negara.*

Introduction

Corruption constitutes a violation of the social and economic rights of the people and is therefore categorized as an *extraordinary crime*. Consequently, efforts to eradicate it cannot be carried out through ordinary means but must involve extraordinary law enforcement measures.[1] Corruption reflects a crisis of policy and the manifestation of weak public bureaucratic accountability. The number of corruption crimes in Indonesia continues to increase each year, not only in terms of the number of cases and the amount of state financial losses but also in the sophistication of their modus operandi. Corruption in Indonesia has evolved through three distinct stages: elitist, endemic, and systemic. In the elitist stage, corruption appears as a form of social pathology confined to the circles of public officials. In the endemic stage, corruption spreads like a plague, affecting broader layers of society. In the systemic stage, every individual within the system plays a role in fostering and sustaining corrupt practices.[2]

The rise in corruption cases has been recorded by Indonesia Corruption Watch (ICW). Data shows that in 2020, there was an increase of 200 corruption cases tried in the Corruption Court (*Pengadilan Tindak Pidana Korupsi*), the High Court, and the Supreme Court. Kurnia Ramadhana, a researcher at ICW, reported that a total of 1,218 cases were prosecuted in 2020, an increase from 1,019 cases in 2019. The number of defendants also rose, from 1,125 in 2019 to 1,298 in 2020. Corruption was most commonly committed by Civil Servants (*Aparatur Sipil Negara*), accounting for 321 cases, followed by private sector actors with 286 cases, and village officials with 320 cases.[3]

According to data from Indonesia Corruption Watch (ICW), state losses due to corruption in the first half of 2020 amounted to IDR 18.173 trillion, which increased significantly to IDR 26.83 trillion in the first half of 2021. This represents a striking increase of 47.6%, while the number of corruption prosecutions has, in contrast, shown fluctuations.[4] It is recorded that in the post-reform era, specifically from 2014 to early 2019, the Corruption Eradication Commission (KPK) successfully recovered state assets amounting to IDR 1.69 trillion.[5] However, this figure is relatively small when compared to data from Indonesia Corruption Watch (ICW), which indicates that state losses due to corruption reached IDR 238.14 trillion over a ten-year period, from 2013 to 2022.[6]

One form of extraordinary crime is corruption, which directly or indirectly causes financial losses to the state and adversely impacts society. This means that the victims of

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[1] Ermansjah Djaja, *Memberantas Korupsi Bersama KPK, Kajian Yuridis UU RI Nomor 30 Tahun 1999 Juncto UU RI Nomor 46 Tahun 2009*, (Jakarta: SInar Grafika, 2010), 28.

[2] Abu Fida' Abdur Rafo; *Terapi Penyakit Korupsi dengan Tazkiyatun Nafs* (Penyucian Jiwa), (Jakarta: Republika, 2006), h. 21.

[3] Srihadriatmo Malau, "Pandemi Covid-19, ICW Catat Peningkatan Perkara dan Terdakwa Kasus Korupsi Sepanjang 2020" Tribunnews, 2021, https://www.tribunnews.com/nasional/2021/03/22/pandemi-covid-19-icw-catat-peningkatan-perkara-dan-terdakwa-kasus-korupsi-sepanjang-2020, diakses pada 15 Juli 2024.

[4] Indonesia Corruption Watch, "Resource Curse: Ketika Korupsi Mengubah Kekayaan Alam menjadi Kutukan," 25 September 2023, https://antikorupsi.org/id/resource-curse-ketika-korupsi-mengubah-kekayaan-alam-menjadi-kutukan#:~:text=Adapun%20laporan%20dari%20Indonesia%20Corruption,justru%20menciptakan%20banyak%20celah%20korupsi., diakses pada 15 Juli 2024.

[5] Dylan Aprialdo Rachman dan Diamanty Meiliana, Sejak 2014, "KPK Telah Pulihkan Aset Negara Sekitar Rp 1,69 Triliun," https://nasional.kompas.com/read/2019/03/05/18050831/sejak-2014-kpk-telah-pulihkan-aset-negara-sekitar-rp-169-triliun diakses pada 02 Juni 2024.

[6] Pusat Edukasi Anti Korupsi, "Korupsi dan Kerugian Keuangan Negara yang Ditimbulkannya" Komisi Pemberantasan Korupsi, 29 Februari 2024, https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20240229-korupsi-dan-kerugian-keuangan-negara-yang-ditimbulkannya¸ diakses 12 Juli 2024.

corruption are not only the state but also the people, as such crimes disrupt the country's finances and overall economic stability.[7] State assets embezzled through corruption do not only result in financial losses within a narrow scope but also broadly harm both the state and its citizens.[8] In several cases, convicted corruptors who are sentenced to pay fines choose instead to serve subsidiary imprisonment. In such circumstances, the state's financial losses remain unrecovered.

The return of stolen state assets is a crucial step in ensuring the progress of national development. This is because the recovery of stolen assets not only restores state property but also serves the purpose of upholding the rule of law. Thus, asset recovery, as part of the penal process, plays a role not only as a series of procedures but also as an effort in law enforcement through specific legal mechanisms. The process of recovering state losses through the forfeiture of the offender's assets does not automatically eliminate the punishment for the perpetrator. This is as stipulated in Article 4 of the Anti-Corruption Law.

Indonesia's efforts in substance regarding the management of asset forfeiture from criminal acts for the purpose of restoring state finances are evident in the draft of the Asset Forfeiture for Criminal Acts Bill, which has been developed since 2012, along with its Academic Paper by the National Legal Development Agency. On May 4, 2023, President Joko Widodo sent a Presidential Letter to the Indonesian Parliament (DPR RI) urging them to prioritize the discussion of the Asset Forfeiture for Criminal Acts Bill.[9]

Asset forfeiture has become a focus not only on the national scale but also globally. The United Nations Convention Against Corruption (UNCAC) encourages countries to implement asset forfeiture as a tool within their legal systems. Asset forfeiture is not only aimed at serving as a punishment for the offenders but also at returning the stolen assets to the affected state.[10] The optimization of the recovery of criminal assets is one of the key steps in the effort to combat Money Laundering and Corruption. Therefore, the efforts to recover assets hidden by offenders can be carried out effectively, while adhering to the principles of proportionality and justice.

In this regard, this study will analyze current policies in relation to the authority of the Prosecutor's Office as the implementing body responsible for managing and safeguarding state confiscated assets in order to recover state financial losses. The challenges faced in understanding the underlying causes of the increase in state losses and the low rate of recovery of state finances will also be explored. Ultimately, this research aims to identify an ideal policy for optimizing state asset recovery efforts through the forfeiture of criminal assets belonging to offenders.

Research Method

This study employs a normative juridical method with a descriptive-analytical nature, focusing primarily on the analysis of applicable legal norms, both those set forth in legislation and legal doctrine. The aim of this study is to examine the forfeiture of assets derived from

[7] Artidjo Alkostar, Kerugian Keuangan Negara dalam Perspektif Tindak Pidana Korupsi, *Varia Peradilan* No. 275, (2008), 34-35.

[8] Mohammad Diky Andika Irawan & Siti Khodijah, "Kewenangan Badan Pengawas Keuangan dan Pembangunan (BPKP) dalam Menentukan Kerugian Keuangan negara pada Kasus Tipikor" *Rechtenstudent Journal,* Vol. 2 No. 3, (2023): 280.

[9] Presidential Letter (Surpres) Number: R-22/Pres/05/2023 concerning the Draft Law on Confiscation of Assets Related to Criminal Acts.

[10] Servas Pandur, *Testimoni Antasari Azhar untuk Hukum dan Keadilan*, (Jakarta: Laras Indra Semesta, 2011), 344.

corruption crimes within the Indonesian legal system and its relevance to the concept of non-conviction-based asset forfeiture. The data sources used include primary and secondary data, obtained through literature review, interviews, and observations, and analyzed qualitatively through a descriptive-analytical approach.

The approaches used in this study include the statute approach, the conceptual approach, and the comparative approach. The statute approach is used to examine the provisions in Law No. 31 of 1999 as amended by Law No. 20 of 2001 and the 2023 Penal Code. The conceptual approach refers to legal theory and the principles of asset recovery. The comparative approach is employed by comparing the asset forfeiture mechanism in Indonesia with the practice of civil forfeiture in the United States and asset freezing and seizure policies in the European Union, in order to gain a more comprehensive perspective on the effectiveness of asset recovery in a global context.

The Legal Framework for Auctioning Assets That Remain Unsold Due to Corruption Crimes

Referring to what has been described above, it can be interpreted that the formulation of the offense in the provisions of Article 2 and Article 3 of the Law on Corruption Crimes has undergone quite significant changes where the criminal act of Post-Constitutional Court Decision Number: 25/PUUXIV/2016 corruption must be able to be calculated with certainty and real value of state losses (actual loss), not the value of losses that are only based on suspicion, estimates and potential (potential loss).[11] Data indicates that the financial losses due to corruption in Indonesia from 2001 to 2015 amounted to IDR 203.9 trillion. However, a study conducted by the Economic Science Laboratory at Gadjah Mada University (UGM) revealed that the total fines and seized assets only amounted to IDR 21.26 trillion.[12] This figure reflects a significant imbalance between the country's financial losses and the amount of assets that have been successfully seized. It indicates that, in addition to penal efforts, asset forfeiture to recover the financial losses caused by corruption has not been carried out optimally.[13]

Efforts to establish the principle "corruption doesn't pay" have been made through various methods, both in the context of lawmaking and law enforcement in Indonesia. In Indonesian criminal law, efforts to "prevent" or "close the possibility" for offenders (including corrupt individuals) to enjoy the proceeds of their crimes have been implemented through a range of approaches.[14]

The mechanism for returning the proceeds of crime must be based on the proof process in court. In money laundering cases, the burden of proof system used is the reverse burden of proof, where the defendant is given the opportunity to prove that their wealth is not the result of criminal activity. Currently, although some criminals have been apprehended, the management and accountability of the returned state assets are often unclear, including the institution responsible for receiving these assets.[15]

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[11] Permata Bela Pertiwi & Muhammad Reyhan Daru Quthni, "Kerugian Keuangan Negara dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi perspektif Yuridis Normatif" *Rechtenstudent Journal,* Vol. 4 No. 2 (2023): 198.
[12] Sudarto, op.cit., 110.
[13] *Ibid.*
[14] Tri Raharjanto, "Perampasan Harta Terpidana Korupsi Dalam Perspektif Peradilan Tindak Pidana Korupsi di Indonesia", *Jurnal Politikologi*, Vo. 3, No. 1, (2015,): 107.
[15] Cepy Indra Gunawan, "Perampasan Barang Bukti Tindak Pidana Pencucian Uang Dalam Rangka Pengembalian Aset Negara", *Hangoluan Law Review*, Vol.1, (2022): 110

In the context of asset forfeiture, there are two main mechanisms: Non-Conviction Based (NCB) asset forfeiture and Criminal Forfeiture. Both have different approaches, especially regarding the lawsuit and the standard of proof in court. The main difference lies in the object of the lawsuit: NCB is a lawsuit against the asset itself (in rem), while Criminal Forfeiture is a lawsuit directed at the individual or person who committed the crime (in personam).[16] This difference has important consequences for the process of proving in court.

Criminal Forfeiture is a concept of asset forfeiture where the prosecutor must prove that the defendant has committed a crime that fulfills all the elements required by law. This includes proving personal culpability and the existence of criminal intent or mens rea of the defendant. Because it is of a criminal nature, the proof in Criminal Forfeiture must meet a strict standard of proof, namely beyond a reasonable doubt.[17] This means that the prosecutor must provide very strong evidence that the defendant was indeed involved in the criminal offense before their assets can be confiscated.

NCB asset forfeiture has a civil nature, meaning that the prosecutor does not need to prove that the asset owner is personally guilty or directly involved in the criminal act. The main focus of NCB is on the asset itself and its connection to the crime. The prosecutor only needs to show probable cause, which is a reasonable suspicion that the asset in question is linked to a criminal offense, such as proceeds from a crime or an asset used in committing the crime.

The next step after the asset is identified is to block and seize the asset. This aims to prevent the transfer or disappearance of the asset before the legal process is completed. The blocking and seizure of assets by the investigator must be based on sufficient evidence and in accordance with the applicable legal procedures.[18] Article 13 of the Asset Forfeiture Bill regulates asset blocking based on a direct order from the Investigator after obtaining a blocking authorization from the District Court. The blocking is carried out for a maximum period of 30 days and may be extended once, with authorization from the District Court, for a maximum of 30 days. Meanwhile, when carrying out asset seizure, the investigator must show a seizure order issued by their direct superior.[19] This is to ensure a legal procedure with certainty, while still prioritizing human rights protection. The investigation conducted by the Investigator, the prosecution carried out by the Public Prosecutor, and the court proceedings are not isolated tasks; rather, they are interrelated and integrated duties among the three law enforcement agencies in handling a criminal offense. The Public Prosecutor, in their position, plays a vital role as a bridge between investigation, prosecution, and judicial proceedings.[20]

The management of forfeited property is currently carried out based on two main approaches: from the perspective of law enforcement and the management of state-owned property. In the context of law enforcement, the handling of forfeited property is part of the execution function aimed at enforcing court decisions. This execution function is vested in the prosecutor as the public prosecutor, who is mandated by law to carry out prosecution and implement court rulings, including those related to forfeited property. The authority of the prosecutor in this regard is specifically regulated in Articles 273, paragraphs 3 and 4 of Law No.

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[16] PPATK, Naskah Akademis Undang-undang Perampasan Aset, 37

[17] Lilik Mulyadi, "Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia Dihubungkan Dengan Konvensi Perserikatan Bangsabangsa Anti Korupsi 2003", 9.

[18] Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

[19] Asset Forfeiture Bill.

[20] Badan Pendidikan dan Pelatihan Kejaksaan Republik Indonesia, *Modul Pra Penuntutan, Diklat Pembentukan Jaksa*, (Jakarta: Kejaksaan Republik Indonesia, 2012), 1.

8 of 1981 concerning the Indonesian Criminal Procedure Code (KUHAP). Under these provisions, the prosecutor is granted the authority to take control, sell, and deposit the proceeds from the sale of forfeited property into the state treasury through an auction house within a specific period.[21]

Forfeited property, within the framework of State Property Management (BMN), falls under the category of BMN as regulated in Article 1, paragraph 10 of Law No. 1 of 2004 concerning State Treasury, as well as Article 2, paragraph 1 letter (b) and paragraph 2 letter (d) of Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property. As BMN, the management of forfeited property must adhere to the principles and provisions of BMN management. This management is carried out by Property Managers, Property Users, and Authorized Property Users, with further regulations on the mechanisms and authorities related to the management of forfeited property. In this case, the Minister of Finance, as the Property Manager, issued Minister of Finance Regulation (PMK) No. 03/PMK.06/2011 concerning the Management of State Property Derived from State Forfeiture and Gratuity Property. This regulation was subsequently revised in PMK No. 8/PMK.06/2018 and the most recent revision, PMK No. 145/PMK.06/2021.[22] The regulation governs the authority of various related parties in the management of forfeited property, including the Minister of Finance, the Chairman of the Corruption Eradication Commission (KPK), the Attorney General, and the Military Prosecutor. This regulation is intended to accommodate the executive function of these institutions, particularly in managing forfeited property. Therefore, the Chairman of the KPK, the Attorney General, and the Military Prosecutor are appointed as the Property Managers of Forfeited Assets, while the Minister of Finance acts as the Property Manager of Forfeited Assets.

The authority granted to the Property Managers of Forfeited Assets includes the administration, security, and submission of proposals for the management of forfeited assets. Meanwhile, the Property Manager (Minister of Finance) has the authority to make decisions and sign approval letters regarding the proposed management of forfeited property submitted by the Property Managers of Forfeited Assets. Under PMK No. 145/PMK.06/2021, the management of forfeited property is treated as assets under the control of the Property Managers. Therefore, the management mechanism for forfeited assets is similar to that of the management of BMN by Property Users. The management of forfeited property is carried out based on proposals from the Property Managers, which are then approved by the Property Manager. The Property Managers are responsible for the administration, security, and management of the forfeited assets and also have an additional executive function, which allows them to take executive actions such as auction sales of forfeited property without requiring the approval of the Property Manager.[23]

The management of state confiscated property through the execution auction mechanism is regulated under Article 45 of the Indonesian Criminal Procedure Code (KUHAP), which governs the execution auction procedures for seized or forfeited state property. The process of this execution auction begins with the submission of an auction request by the seller to the Head

[21] Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP)

[22] Regulation of the Minister of Finance (PMK) Number 03/PMK.06/2011 on Management of State Property Originating from State Confiscated Goods and Gratification Goods.

[23] Surya Hadi Purnama. "Pengelolaan Barang Rampasan dan Pemulihan Aset Tindak Pidana" 17 Desember 2021. https://www.djkn.kemenkeu.go.id/kpknl-palu/baca-artikel/14505/Pengelolaan-Barang-Rampasan-dan-Pemulihan-Aset-Tindak-Pidana.html, diakses pada 12 Desember 2024.

of the State Property and Auction Service Office (KPKNL), along with complete auction documentation. The auction organizer can be from the KPKNL or a registered auction official, or it may involve an auction house that works with functional auction officials.

If the auction is successfully carried out, an auction fee will be charged. The auction fee for immovable property is 2% of the auction principal, while for movable property, the auction fee is 2.5% of the auction principal. Additionally, the buyer will also be charged an auction fee, with a rate of 2% for immovable property and 3% for movable property. Thus, this execution auction mechanism not only regulates the technical and administrative process of the auction but also includes provisions regarding the obligation to pay the auction fee, which aims to support the recovery of state assets and generate non-tax state revenue (PNBP).

The enactment of the Indonesian Attorney General Regulation Number 7 of 2020, which amends the previous Regulation of the Attorney General Number 10 of 2019 concerning the Auction and Direct Sale of Seized or Forfeited State Property or Execution Seized Property, introduces new provisions regarding the procedures for the sale of seized and forfeited state assets.[24] Article 24 paragraph (1) stipulates that seized items or evidence that are not claimed by their owners and/or forfeited state property with an estimated value not exceeding Rp35,000,000.00 may be sold directly by the Asset Recovery Center or the District Attorney's Office without going through the National Auction Office. This direct sale, as explained in paragraph (2), is carried out based on a decree from the Head of the District Attorney's Office and can only be done for seized or forfeited items whose valuation has been conducted by the KPKNL (State Assets and Auction Office) or other authorized parties in accordance with applicable regulations. Paragraph (3) emphasizes that the direct sale process must be carried out by the Asset Recovery Prosecutor designated by the Head of the Asset Recovery and Management Office at the District Attorney's Office, in the presence of two witnesses: the Head of the General Criminal or Special Criminal Section handling the seized and/or forfeited state property, and a representative from the relevant institution. In the case of seized or forfeited property in the form of motor vehicles, paragraph (4) regulates that the decree from the Head of the District Attorney's Office, the minutes of the sale, and the valuation results from the KPKNL will replace the auction minutes required for the vehicle registration process at the local police station.[25]

Article 1, number 18 of the Minister of Finance Regulation (PMK) Number 145/PMK.06/2021 regulates that the management of state assets forfeited to the state refers to a series of activities carried out by the Attorney General's Office, the Corruption Eradication Commission (KPK), and/or the Military Prosecutor's Office to resolve the status or allocation of state forfeited property. According to Article 14 of PMK 145/2021, the management of forfeited property is primarily done through an auction mechanism facilitated by the State Assets and Auction Office (KPKNL). However, exceptions are made for certain types of property. Forfeited property without valid ownership documents and with a fair market value of up to Rp35,000,000.00 can be sold through direct sale, in accordance with the applicable regulations within the Attorney General's Office. Additionally, forfeited shares of companies can also be traded directly through a stockbroker. Therefore, these two types of property are excluded from the obligation to be sold through an auction at KPKNL.

[24] Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 on the Second Amendment to Regulation of the Attorney General Number Per-027/a/ja/10/2014 concerning Guidelines for Asset Recovery.
[25] Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 concerning Auction and Direct Sale of Confiscated Objects or State Confiscated Goods or Execution Confiscated Objects.

Furthermore, Article 15 of PMK 145/2021 stipulates that if the management of state forfeited property is not carried out through an auction, or if the property does not sell at auction, the management of the property may proceed through other means. The management of state forfeited property can be carried out using several mechanisms: (1) Determination of Usage Status (PSP), where forfeited property needed to carry out the main duties and functions of government may be used by the relevant Ministry/Agency; (2) Transfer of Ownership, which occurs if the forfeited property is required for social, religious, cultural, educational, or humanitarian activities that are non-commercial, and it can be transferred through a donation to foundations, local governments, or other authorized entities; (3) Utilization, which aims to optimize the use of state forfeited property without changing its status as state property, with objectives such as increasing state revenue, preventing the misuse of forfeited property, and considering public interests; (4) Destruction, which is done for forfeited property that no longer has economic value, is dangerous to the public, disrupts trade order, or is prohibited from circulation under the law, and must be destroyed in accordance with applicable regulations; and (5) Deletion, which occurs when the forfeited property is no longer under the management of the property custodian, whether because it has been sold, its usage status has been determined, it has been donated, or it has been destroyed, thus removing it from the list of state forfeited property.[26]

The mechanism for managing forfeited property is carried out based on proposals submitted by the Property Custodian and approval decisions from the Property Manager. There are two types of forfeited property management: management with and without the execution function. Management with an execution function is performed on forfeited property that fails to be sold through an auction, while management without an execution function is applied to forfeited property needed for the interests of the state, regional government duties, or property other than land and buildings that meet certain criteria.

The management of forfeited property includes several actions: determining the usage status, transfer of ownership, utilization, destruction, and deletion. The determination of usage status is carried out for property needed for state interests, while the transfer of ownership can be in the form of a donation to local governments to support the performance of regional government duties and functions. Utilization of forfeited property aims to optimize its economic value, prevent misuse by other parties, and serve public interests. Destruction is carried out on forfeited property that has no economic value, is hazardous to the environment, or is in an unsuitable condition. Deletion is performed when forfeited property is no longer under the control of the Property Custodian.Thus, the management of forfeited property is a process that involves the authority of various parties, with the goal of optimizing the use of forfeited property for both state interests and public interests, in accordance with the applicable legal provisions.[27]

However, in practice, there are often deviations from this procedure, such as embezzlement of seized property by law enforcement officers who do not follow the auction procedures or even fail to conduct an auction altogether. As a result, the seized property is at

[26] Deni Arif Hidayat, "Pengurusan dan Pengelolaan Barang Rampasan Negara" Kementrian Keuangan Republik Indonesia, 11 Septemner 2023, https://www.djkn.kemenkeu.go.id/kanwil-jatim/baca-artikel/16424/Pengurusan-dan-Pengelolaan-Barang-Rampasan-Negara.html#:~:text=Pengurusan%20barang%20rampasan%20melalui%20mekanisme,rangka%20tugas%20dan%20fungsi%20pemerintahan., diakses pada 12 Desember 2024.

[27] *Ibid.*

risk of damage or depreciation, leading to uncertainty in the management of evidence and state forfeited property. This highlights the challenges in implementing this policy, which requires tighter supervision and enforcement of procedures to prevent misuse and ensure transparency in the management of forfeited property.[28]

Asset forfeiture is a legal step focused on restoring state finances through the enforcement of justice by seizing assets obtained from illegal activities. In criminal law principles, asset forfeiture serves as a sanction for offenders while ensuring the removal of economic benefits derived from criminal activities. Thus, asset forfeiture helps deter crime by reducing the benefits gained from illegal actions. This principle aligns with the notion that crimes should not provide benefits to the perpetrators and supports efforts to compensate crime victims through the return of unlawfully obtained assets. Asset forfeiture as a measure to nullify criminal activities is still in the development phase in Indonesia. The Asset Forfeiture Bill is expected to provide a stronger legal foundation and a more effective mechanism for its implementation.[29]

Policy Formulation for Regulating Unsellable Confiscated Assets from Corruption Crimes

The management of assets derived from corruption crimes plays a strategic role in supporting efforts to combat corruption, particularly in recovering the financial losses of the state. One of the main challenges in this process is the existence of assets that do not sell, either due to a lack of interest from potential buyers or because the assets have depreciated in value. This condition has the potential to hinder the effectiveness of asset recovery, which is why it is necessary to establish appropriate and targeted policies to ensure that the forfeiture and auction processes are carried out optimally and provide maximum benefits to the state.[30]

Assets that fail to sell at auction often become an additional burden for the government due to maintenance costs and the continuous risk of depreciation. For example, properties that are damaged or vehicles that are not utilized require substantial operational budgets. On the other hand, conducting repeated auctions can harm the government's image and credibility in asset management. Therefore, adaptive policies are needed, such as mechanisms for revaluation or alternative utilization of assets, to reduce the potential for further losses.[31] In the context of corruption crimes, state losses often arise from the misuse of state assets or finances by certain individuals. As part of the recovery efforts, the legal system in Indonesia regulates the auction mechanism for seized or confiscated goods that have obtained permanent legal force through court rulings. This process not only serves as a means of recovering state finances but also acts as a sanction against those involved in corruption crimes, as well as a manifestation of the government's commitment to uphold the law and justice.[32]

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[28] Elrica Debora Mosai, dkk. "Prosedur Pelaksanaan Lelang Barang Sitaan Kejaksaan Pasca Putusan Hakim yang Mempunyai Kekuatan Hukum Tetap" *UNSRAT*, (2022) 3-4.

[29] Final Draft of the Draft Law on Confiscation of Assets Related to Criminal Acts, seen in https://jdih.ppatk.go.id/storage/dokumen_produk_hukum/Draft%20Final%20RUU%20Perampasan%20Aset%20.pdf.

[30] M. Gallant, Asset Recovery and the Role of Forfeiture in Combating Corruption, Cambridge University Press,2018.

[31] Zywicki, T., & Smith, J. (2020). Economic and Social Impact of Asset Recovery Programs. Journal of Financial Crime, 27(4), 812-829.

[32] https://www.djkn.kemenkeu.go.id/kpknl-lhokseumawe/baca-artikel/17008/Memahami-Arti-Dari-Kerugian-Negara.html diakses pada tanggal 04/10/2024 pukul 21 : 47

To ensure effective policy implementation, a strong regulatory foundation is needed regarding the management of unsold assets. The government must design specific rules that cover all stages of asset management, from asset identification, value and potential evaluation, to the appropriate utilization mechanisms. This regulation should also provide clear definitions of assets categorized as unsold and outline the management procedures by authorized parties to ensure legal certainty and prevent misuse. An initial step in the implementation process is to establish a transparent and accountable management mechanism.[33] To ensure transparency in the management of assets resulting from corruption crimes, it is crucial to develop a digital reporting system accessible to the public. This system should include comprehensive information about the type, location, estimated value, and utilization plans for the seized assets, including those that are unsold. This way, the public can monitor the process, and asset management will be conducted in accordance with the principles of good governance. Research by Liawan (2017) highlights that effective internal control systems are critical in asset management, as dysfunction in the system can affect financial reporting and overall asset management.[34]

The implementation of policies for managing assets resulting from corruption crimes requires the involvement of various stakeholders, including local governments, civil society organizations, and the private sector. This collaboration ensures that the policy can run effectively, with stakeholders providing input, supporting implementation, and overseeing the process to ensure alignment with its goals. Dalilah and Juwono (2020) emphasize the importance of public involvement in the oversight process, which can enhance integrity and accountability in the reporting of state officials' wealth (LHKPN).[35] For assets that take longer to sell, the government can implement a temporary utilization approach, such as leasing the assets to social organizations, SMEs, or other parties in need. This approach not only prevents assets from remaining idle but also generates interim income for the state. Fasini (2018) highlights that the recovery of assets resulting from corruption crimes is complex and multidisciplinary, and therefore, a flexible and adaptive approach is necessary to optimize the utilization of these assets.[36]

The management of unsold assets resulting from corruption crimes can be directed towards public interests as a key strategy. Assets such as land, buildings, or vehicles can be utilized for the construction of public facilities that benefit the community, such as hospitals, schools, or green spaces. With this approach, previously idle assets not only have economic value but also contribute to improving the quality of life for the public. For example, properties that do not sell on the market can be transformed into community service centers, such as integrated service offices. This aligns with the findings of Winandita (2016), who states that the recovery of assets from corruption crimes can be achieved by granting them to government agencies or social organizations to support their activities.[37]

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[33] Ponco Hartanto, et.al, "Corruption Policy Challenges in Combating Land Mafia: Esperiences from Several Countries" *Journal of Human Rights Culture and Legal System,* Vol. 4 No. 3 (2024): 645-646.

[34] Liawan, Y., "Pengelolaan Aset dalam Proses Hukum Pidana di Indonesia," *Jurnal Akuntansi dan Pemerintahan*, Vol. 5 No. 2 (2017): 50-55.

[35] Dalilah, N., & Juwono, A., "Peran Pengawasan Masyarakat terhadap Pengelolaan Harta Kekayaan Penyelenggara Negara," *Jurnal Integritas*, Vol. 12 No. 3 (2020): 125-130

[36] Fasini, R., "Reformasi Kebijakan Pemulihan Aset Hasil Tindak Pidana Korupsi," *Jurnal Hukum Ekonomi*, Vol. 22 No. 1 (2018): 75-80.

[37] Fasini, A. B. I. "Kendala Pengembalian Aset Hasil Tindak Pidana Korupsi Transnasional". *Jurnal BPPK: Badan Pendidikan dan Pelatihan Keuangan*, Vol. 11 No. 1 (2018).. https://doi.org/10.48108/jurnalbppk.v11i1.49

The policy of granting assets to government agencies or social organizations can also serve as an effective alternative. Assets that are unsellable in the market can be given to educational institutions, religious organizations, or social foundations to support their activities. For example, seized vehicles that do not sell can be donated to humanitarian organizations to assist with the distribution of aid. This grant model requires clear regulations to ensure that the process is transparent, accountable, and targeted, so that the assets are not misused. Karinda et al. (2020) emphasize the importance of evaluating the asset recovery policies for corruption offenders in order to optimize the recovery of state financial losses.[38] Furthermore, transforming assets into something more functional or economically valuable can also be a solution. Properties that are less attractive to the market can be renovated or repurposed to attract potential buyers. For example, an old building can be converted into a co-working space or a training center. This approach not only enhances the appeal of the asset but also creates new opportunities to generate income, either through leasing or selling after transformation. Sulaksono et al. (2019) discuss the legal protection in asset recovery for victims of money laundering crimes whose assets have been mixed with those of the offenders, which is relevant to efforts in transforming assets resulting from corruption crimes.[39]

Collaboration with the private sector can be another potential strategy in asset management. The government can partner with private companies to manage assets more professionally through schemes such as build-operate-transfer (BOT) or long-term leasing. For example, land that is unsold could be leased to a company for commercial activities, with the condition that a portion of the profits is allocated for public welfare. This collaboration allows for more efficient asset management without burdening the national budget. Fasini (2018) reveals that challenges in recovering assets resulting from transnational corruption crimes can be overcome through a more integrated mechanism and a strong coordination system between law enforcement agencies and asset management institutions. With these policy proposals, the management of unsold assets would not solely focus on asset disposal, but also on optimizing the benefits of these assets for public and economic interests. Every policy must be designed with legal, transparency, and accountability aspects in mind to ensure that assets resulting from corruption crimes are no longer a burden, but rather become a resource that contributes to national development. Haswandi (2017) emphasizes the importance of returning assets from corruption crimes committed by offenders and their heirs according to Indonesia's legal system in realizing a welfare state.[40]

The management of unsold assets resulting from corruption crimes can be directed towards public interests as one of the main strategies. Assets such as land, buildings, or vehicles can be utilized for the construction of public facilities that benefit the community, such as hospitals, schools, or green spaces. With this approach, assets that were previously idle not only have economic value but also contribute to improving the quality of life for the community. For

[38] Haswandi. "Pengembalian Aset Tindak Pidana Korupsi Pelaku dan Ahli Warisnya Menurut Sistem Hukum Indonesia" *Jurnal Hukum dan Peradilan*, Vol. 6 No.1 (2017)., 145-172. https://doi.org/10.25216/jhp.6.1.2017.145-172

[39] Sulaksono, S., Novianto, W. T., & Supanto. "Perlindungan Hukum dalam Pemulihan Aset bagi Korban Tindak Pidana Pencucian Uang yang Tercampur dengan Aset Pelaku". *Jurnal Hukum dan Pembangunan Ekonom*i, Vol. 6 No. 2 (2019), https://doi.org/10.23969/jhpe.v6i2.29202

[40] Winandita, S. "Kendala Kejaksaan dalam Pengembalian Aset Hasil Tindak Pidana Korupsi." *E-Journal Universitas Atma Jaya Yogyakarta*. (2016) https://e-journal.uajy.ac.id/11733/

example, properties that do not sell in the market can be converted into community service centers, such as integrated service offices.[41]

The management of assets resulting from corruption crimes that do not sell must be directed towards an adaptive, productive, and public interest-oriented approach. Through temporary utilization, grants to social institutions, asset transformation, and collaboration with the private sector, these assets can be optimized to provide tangible economic and social value. Policies that support these strategies should be designed with a focus on transparency, accountability, and legal certainty, so that asset management not only contributes to recovering state losses but also becomes an instrument of sustainable development that benefits society at large.

Conclusion

The auction of unsold assets due to corruption has a strong legal basis, namely based on the Corruption Crime Law and the Criminal Procedure Code (KUHAP) which regulates the forfeiture of state assets. The main purpose of the auction is to optimally restore state financial losses. In the event that the assets are not successfully sold, the re-auction process can be carried out in accordance with the provisions of the Regulation of the Minister of Finance, while still upholding the principles of transparency and accountability. This reflects the urgency of asset recovery as an integral part of efforts to eradicate corruption.

In the future, the formulation of regulations regarding unsold assets resulting from corruption needs to be designed comprehensively, emphasizing aspects of legal certainty, transparency, and efficiency. The regulations that are prepared must include a re-auction mechanism, temporary utilization, and the possibility of converting assets for the public interest. In addition, it is necessary to strengthen synergy between institutions such as the Corruption Eradication Commission, the Prosecutor's Office, and the Ministry of Finance so that the management of state assets can run optimally. Alignment of national regulations with international practices, such as those implemented in the United States and the European Union, is also important to promote the effectiveness of asset recovery and strengthen public confidence in the national legal system.

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