 ISSN: 2963-0584

THE URGENCY OF ESTABLISHING A LAW ON ASSET FORFEITURE FROM CORRUPTION IN INDONESIA

Arief Wardhana[1]; Hadi Purnomo[2]
Postgraduate Program, Langlangbuana University, Bandung[1,2]
Email : arief.wardhana@gmail.com

ARTICLE INFO

Article history:
Received : Feb 6, 2023
Accepted : Apr 20, 2023
Published : Aug 31, 2023

Keywords:
urgency,
asset forfeiture,
UNCAC

ABSTRACT

In Indonesia, crimes motivated by money are increasingly varied in both nature and consequences. The Indonesian government often encounters obstacles in its efforts to seize assets obtained through illegal activities. As a result, asset confiscation efforts are often ineffective. This essay aims to investigate the practice of confiscating property acquired through illegal activities in Indonesia and the urgent need for a law on property confiscation there. According to the report, there are two ways of asset forfeiture in the Indonesian legal system: criminal and civil. In Indonesia, asset forfeiture provisions have been regulated in several laws and regulations, including Criminal, both the Anti-Corruption Law and KUHAP. The existing rules, meanwhile, have not been able to provide a foundation for successful asset forfeiture initiatives. This is the reason why Indonesia needs a law on asset forfeiture. In addition to not having adequate protection, Indonesia's status as a country that has ratified the UNCAC emphasizes the need for an Asset Forfeiture Law. Non-punitive asset forfeiture is a process established by UNCAC and is seen as more effective in asset forfeiture efforts. Indonesia should amend its current UNCAC legal provisions to ratify the treaty.

I INTRODUCTION

Financially motivated crimes, which were conventional in nature, have become more complex over time. The economic purpose behind crimes such as corruption, money laundering and drug trafficking make them more complex than ordinary economic crimes in terms of how they are carried out. The evolution of the means used to commit crimes, such as how easy it is to escape with the proceeds of crime without having to travel abroad and in a short period of time using computers and internet networks, demonstrates the complexity of these crimes. The deprivation of property obtained through criminal acts is not a new development in Indonesian law.

In addition to being covered in the Criminal Code, regulations governing the confiscation of property obtained through criminal offenses are also covered in various other criminal law laws spread throughout the Act. Article 18(a) of Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption (Corruption Law), Law No. 35 of 2009 on Narcotics, and Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes all state this.
In reality, it is quite difficult for law enforcement officials to confiscate property that has been controlled by criminals but is the proceeds of crime. The obstacles faced when trying to confiscate the proceeds of crime are many, including the unavailability of means to confiscate the proceeds of crime, the absence of adequate international cooperation, the ignorance of law enforcement officials regarding the mechanism for confiscating the proceeds of crime, and the length of time required before the proceeds of crime can be confiscated by the state, namely after obtaining a court decision that has permanent legal force.

The trend in international law shows that measures to reduce the level of crime include the seizure and confiscation of the proceeds of crime as well as the instruments of crime. Given the importance of confiscation of proceeds of crime in case resolution, asset confiscation is also regulated in a separate chapter of the United Nations Convention Against Corruption (UNCAC),

 ISSN: 2963-0584

Chapter V. Through Law No. 7/2006 on the Ratification of the UN Convention Against Corruption, Indonesia ratified UNCAC. Indonesia is now a party to UNCAC as a result of this ratification. Indonesia needs to have the same legal authority to take the necessary steps to confiscate unlawfully obtained and transported assets, containing articles governing the confiscation of property obtained from criminal offenses. These conventions include the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the United Nations Convention on Transnational Organized Crime/UNTOC (2002), and a number of clauses of the United Nations Counter-Terrorism Convention.

Asset forfeiture initiatives in a country undoubtedly require political support from the legislature, executive, and courts of law. Such laws cover asset management, asset delivery, asset tracing, and the use and management of surrendered assets. Legal documents relating to international cooperative relations should also be prepared. A law that explicitly regulates the confiscation of assets from crimes in the Indonesian legal system can help implement this political will. The enactment of the Draft Law on Confiscation of Proceeds of Crime into the National Legislation Program from 2009 to 2014 shows that proposals to enact laws regulating the confiscation of proceeds of crime are underway. The Asset Forfeiture Bill was proposed in 2012 and, although included in the National Legislative Program, was not discussed during the five-year period.

The creation of a separate law governing the confiscation of assets obtained through criminal activity is currently being discussed as an indication that parliament supports asset confiscation efforts. Several ideas for an Asset Forfeiture Bill are among the many bills that will be reviewed as part of the National Legislation Program for 2014 to 2019. Several international conventions, including the UNCAC, which utilizes a non-punitive asset forfeiture mechanism, are referenced in this regard. The bill's new paradigm for the process of confiscating assets obtained through criminal acts. Of course, this is different from the rules for asset forfeiture and confiscation of assets resulting from criminal acts that are already in place in Indonesia. Because Indonesia's legal system now permits asset confiscation only when the law enforcement process has obtained a court decision with permanent legal force.

The need for the Asset Forfeiture Bill, according to Romli Atmasasmita, is based on the fact that law enforcement efforts, especially to eradicate corruption, have not produced meaningful results for the state treasury. Romli added that the current Indonesian legal framework has not been able to adequately regulate and accommodate actions related to the recovery of assets obtained through corruption and other types of financial and banking crimes in general. To completely eliminate money laundering in Indonesia, according to Mudzakkir, a legal expert at the Islamic University of Indonesia, the Asset Forfeiture Bill must be passed. In addition, the Asset Forfeiture Bill can be used to cover losses caused by criminal acts. Mudzakkir added that the Asset Forfeiture Bill must be written proportionally while still prioritizing justice.

Problem Formulation

As there are several steps to obtain a final court decision, the confiscation of assets resulting from illegal activities in Indonesia today often takes a long time. Due to the length of time required for the judicial process, it is feared that the confiscation of assets obtained through criminal acts cannot be carried out properly, thus giving the perpetrators more time to make efforts so that the assets are not controlled by the state and returned to the victims or the state treasury. This has led to the development of new ideas that are considered more successful in efforts to confiscate assets obtained through unlawful acts. A new idea, confiscation of assets without criminal prosecution, which aims to accelerate the process of confiscating assets from perpetrators of criminal acts, emerged as a result of this and is considered more effective in efforts to confiscate assets resulting from criminal acts through Confiscation of Assets. Bill. The proposed bill was even included in the 2009-2014 and 2014-2019 national legislation program lists. The Asset Forfeiture Bill has not been able to enter the discussion to be immediately passed even though it has existed for two periods.

Based on this, the problems discussed in this paper include:

1. What is Indonesia's current policy on confiscation of property acquired through illegal activities?
2. What Justifies the Establishment of the Indonesian Law of Forfeiture of Criminal Proceeds?

 ISSN: 2963-0584

Purpose of Writing

This essay intends to investigate:

1. The current practice of confiscating assets acquired through illegal activities in Indonesia.
2. The need for a Bill on Asset Forfeiture in the Indonesian criminal justice system.

FRAME OF MIND

Penal policy (Criminal Law Policy)

According to Marc Ancel, "modern criminal science" includes criminology, criminal law, and penal policy as its three main subfields. According to Marc Ancel, "penal policy" is both a science and an art, with the ultimate goal of improving the formulation of positive legal regulations and providing direction not only to lawmakers but also to the courts that apply the law and to administrators or executors of court decisions.

Based on the aforementioned views, criminal law policy is simply an attempt to make criminal laws and regulations fit the circumstances at a particular time. In order for laws and regulations to accurately reflect the situation of society, they are issued by bodies with the power to make regulations. This essay examines the need for reform of criminal law policy, particularly with regard to the forfeiture of assets obtained through illegal activities, and indicates the extent to which such changes have been implemented. A plan will be developed that can be implemented if it is realized that the laws governing asset forfeiture need to be changed. A plan of action will be decided upon that can be used to appropriately confiscate assets acquired through criminal activities using the Asset Forfeiture Bill. In addition, the best procedures for conducting asset forfeiture actions derived from criminal activities will be determined.

The words "policy" (in English) and "politiek" (in Dutch) are derived from each other. From these foreign expressions, "criminal law policy" is another name for the concept of criminal law politics. The words "penal policy", "criminal law policy", or "strafrechtspolitiek" are often used in foreign literature to refer to it, as well as other terminology from legal literature such as "strafrechtspolitiek". Understanding the meaning of the phrase "legal politics" can help clarify what criminal law policy or politics is. Here is what Sudarto refers to as the politics of law:

a. Efforts to achieve good regulations in accordance with the conditions and situation at a time.
b. State-issued laws that should be used to reflect society's values and achieve goals are established through official entities by state policy.

According to A. Mulder, "strafrecht politiek" is the policy line used to determine:

a. whether the existing criminal law policy needs to be changed or reformed;
b. what can be done to prevent the criminal offense; and
c. the process that must be followed to investigate, prosecute, try and commit a crime.

Asset Forfeiture

The term "object" is equated with asset in the Indonesian criminal justice system under KUHAP. Regarding confiscation, Article 39 states as such. In this article, confiscation is defined as a series of actions taken by investigators to confiscate and/or maintain control over tangible or intangible, movable or immovable objects to be used as evidence in investigation, prosecution, and trial. In addition, the word asset is not explicitly defined in the Draft Criminal Code both in terms of form and meaning. In Article 165 of the Draft Criminal Code, the word "goods" is the only one that matches the word "assets".

According to the article, "goods" are defined as tangible goods such as water and currency, intangible goods such as energy, gas, data, and computer programs, and services such as telephone and telecommunication services or computerized services. As an additional form of punishment, Article 10(b) of the KUHP regulates the confiscation of property. According to this provision, the confiscation of certain objects is carried out on the basis of a judge or court decision. According to the guidelines in the KUHP, only property belonging to the perpetrator that is intentionally used in the crime or obtained as a result of the crime is confiscated.

 ISSN: 2963-0584

If the seized goods are returned to the convicted person, this confiscation can be replaced by a prison sentence, which can last between 1 day and 6 months. The Asset Forfeiture Center (PPA) was established in 2014 by the Attorney General's Office. Through a joint effort, the Attorney General's Office of the Republic of Indonesia and the Kingdom of the Netherlands have established the PPA. The Netherlands has the best asset forfeiture agency worldwide, which is why it was chosen. The similarity of the legal systems in Indonesia and the Netherlands is another aspect that contributed to the establishment of the PPA through cooperation. The PPA was created as a continuation of the Special Task Force.

There are two categories of forfeiture on a global scale. Criminal forfeiture that is carried out in personam is against a specific person. The act is one of the components of the criminal sanction that gives the right to be executed in accordance with the criminal court decision. In this case, the prosecution must prove that the seized item is a product or tool of criminal activity. In addition, the public prosecutor must submit a request for asset confiscation along with the prosecution file.

The in rem forfeiture mechanism is the second type of asset forfeiture. The In rem forfeiture method is known by several names, including civil forfeiture, civil forfeiture, and Non-Conviction Based (NCB) Asset Forfeiture. The fundamental idea behind the use of In rem proceedings is to seize the assets of a lawsuit brought by a property, not by a person. This procedure, which is independent of the criminal court system, requires proof that a property has been tainted by criminal activity. In general, the standard of proof of a crime should be the preponderance of evidence. This reduces the need for action by the government. Additionally, if it is determined that there is enough evidence to establish the commission of a crime, the option to set a fine is still on the table. The owner of the goods is a third party entitled to defend the goods to be forfeited by the state for allegedly being the cause or instrument in a criminal offense because the lawsuit is not directed against a natural person but against a natural person.

The purpose of both of the aforementioned forfeitures, i.e. the deprivation of the consequences and means of the criminal act by the offender is the same. Both methods also share the idea that those who break the law should not be allowed to make money from their wrongdoing. The proceeds of their crimes should be confiscated and utilized to compensate victims, in this case the state as a victim of crime as well as individual victims. In addition, the confiscation of assets or tools of crime can have a deterrent effect on those who break the law, which is another similarity between the two asset forfeiture systems. Asset forfeiture would be a preventative measure from being used for additional criminal activities.

ANALYSIS

Common practice of asset seizure in Indonesia

In the Indonesian legal system, asset forfeiture is a kind of additional punishment that requires the confiscation of certain items that were the target of the crime. It usually applies to any illegal activity that occurs under Indonesian criminal law with the aim to injure the person who is found guilty and whose guilt has been established by the final judgment of the court so that he or she cannot benefit from the crime. As a result of the existence of additional punishment, the main punishment is always followed by an additional punishment, meaning that a further punishment can only be imposed together with the first punishment. Assets acquired through criminal activity can only be confiscated if the merits of the case are assessed and the defendant is found guilty, the court can order that the items acquired through the proceeds of crime be confiscated by the state and destroyed. organize auctions for items acquired through illegal activity.

According to Indonesian criminal law as it stands, only a court order that has permanent legal force can be used to confiscate certain goods. Therefore, the next step called confiscation can be carried out throughout the legal process of a criminal offense. Confiscation is an attempt by the investigator to confiscate and keep something unlawfully.Benda (property) which is used as evidence in the criminal justice system at the stages of investigation, prosecution, and trial. This is a temporary thing that can only be handled with the approval of the chairman of the local district court, although in an emergency it can be confiscated first, then report the confiscation to the chairman of the local district court for approval. Article 39 of the Criminal Procedure Code further

 ISSN: 2963-0584

regulates confiscation. The article regulates the circulation of goods that can be confiscated. Namely, goods or bills belonging to the suspect or defendant that are suspected of being obtained in whole or in part from a criminal offense or are part of the proceeds. Objects that have been used directly to commit a crime or to prepare a crime, that have been used to frustrate the investigation of a crime, that have been made with the intention of committing a crime, or that have another connection with the crime.

According to the Criminal Procedure Code, only items that are directly related to a criminal offense can be confiscated by investigators; items that have nothing to do with the commission of a crime cannot be taken. Investigators have the right to confiscate items and tools that are logically suspected of being used to commit a criminal offense, if a person is caught red-handed committing such an act. When the investigation and prosecution are completed, the seized items can be given to the person most entitled to receive them. If the event is not prosecuted due to insufficient evidence and it is determined that no criminal offense was committed, then the seized items may also be returned. If a case is terminated in the public interest or closed for legal reasons, then in other circumstances the seized goods may be returned. Seized goods are returned to the person or party named in the judge's decision after the case is resolved, unless the judge decides that the goods are taken for the state and will be destroyed, destroyed, or auctioned to raise money for the state treasury, or taken for the state and will be used as evidence in another case.

This method makes it difficult to confiscate assets obtained through criminal acts because only items that are clearly related to the criminal act can be confiscated. This is a challenge for law enforcement officers who confiscate or seize assets because it takes time to determine which items are directly related to criminal acts and which are not, even though the nature of confiscation and seizure of assets requires speed so that the assets do not change hands.

As it can take months or even years for a case to result in a binding court decision when using the current method under KUHAP, the practice of confiscating proceeds of crime is very time-consuming. Given the amount of time required, the defendant can more easily hide the assets obtained and used in the commission of the crime, allowing the original confiscation of assets which includes the confiscation of proceeds of crime to prevent the offender from enjoying money that is not legally his or her own to be ineffective because the offender has already made efforts to escape the assets.

If the item was used or obtained through illicit activity. When a judge has made a decision in a case, the seized item is returned to the person or party against whom the decision was made, unless the judge decides that the item is taken for the state and will be destroyed, destroyed, or auctioned to raise money for the state treasury, or will be used as evidence in another case.

As only items that may be directly related to the crime are eligible for confiscation, the use of this approach makes it difficult to confiscate assets obtained through criminal activity. This poses a challenge for law enforcement officials conducting asset confiscation or forfeiture because it takes time to determine which items are directly related to the crime and which are not, whereas the nature of asset confiscation and forfeiture demands speed so that the assets can be carried out and do not change hands.

Because it can take months or even years for a case to reach a binding court decision, the process of confiscating the proceeds of crime using the tools available under KUHAP takes a very long time. The length of time required makes it easier for the defendant to hide the assets obtained and used in the criminal offense, thus hindering the achievement of the initial purpose of confiscating assets, which is to confiscate the proceeds of crime to prevent the perpetrator from enjoying assets that are not his right, because the perpetrator has made efforts to escape the assets.

The Code's illegal procedures for confiscating property, as described earlier, rely on the disclosure of illegal activities. The aforementioned property confiscation mechanism of the Criminal Procedure Code emphasizes the reporting of crimes, where there is a component of finding the perpetrator and imprisoning him/her, and only places property confiscation as an additional punishment - which in reality has not been effective enough to reduce the crime rate. By allowing criminals to maintain control over the proceeds of their crimes and even commit the same crimes again using more sophisticated methods of operation, law enforcement allows them to commit crimes with an economic component while ignoring the need to confiscate their assets. Efforts to

 ISSN: 2963-0584

confiscate ill-gotten wealth will lose their effectiveness if there is a secondary mechanism (substitute) for the obligation to repay the wealth. Since the majority of prisoners prefer to admit that they cannot return the property acquired as a result of the crime they committed, hoping that their inability will be compensated by bodily detention. In contrast to the obligation to return property obtained through criminal acts, it is certainly very promising for convicts with the existence of a subsidiary mechanism whose period does not exceed the main punishment in exchange for a certain amount of property to be paid to the convict. In addition to what is regulated in the Criminal Code, the Corruption Law in the current Indonesian legal system has rules that deal with asset forfeiture in addition to those found in the Criminal Code and Criminal Procedure Code. Confiscation of assets resulting from corruption is a proactive measure to save and/or prevent assets suspected of being the proceeds of corruption from transferring or changing hands. In general, the Anti-Corruption Law applies both criminal and civil proceedings for asset forfeiture.

The criminal mechanism is regulated in Article 18 paragraph (1) letter (a) which regulates how the confiscation of assets in corruption cases is handled. This is the same as the rules of the Criminal Procedure Code regarding the confiscation of assets handled in general. The procedure for civil confiscation of assets is regulated in Article 32 paragraph 1 of the Anti-Corruption Law in addition to the criminal system. According to this article, investigators can hand over the case file of the investigation to the district attorney or the aggrieved body, if they determine that there is not enough evidence to prove the existence of a corruption crime, but real state losses have occurred.

In addition, the state's ability to file claims for its financial losses is not eliminated by acquittal in corruption proceedings. Civil cases for confiscation of assets against corruption can be brought in several situations other than those mentioned above. The circumstances are as follows: If the defendant dies while the investigation is in progress; If the defendant dies while being examined by the court; If the court decision on the case in question has permanent legal force, it is known that the convicted suspect still has assets that are known to have originated from corruption or are suspected of being the proceeds of corruption but have not been subject to confiscation because the convicted person cannot prove that they have shown that the assets are not the proceeds of corruption. If the defendant dies before the judge issues his/her verdict.

Based on the aforementioned criteria, only if there is clear damage to public finances can property be confiscated through civil cases. The lawyer of the state attorney or the organization that suffered the loss has filed this litigation against the convict or his heirs. Appeals cannot be filed in cases involving the seizure of assets from deceased defendants.

Civil methods for confiscation are used in the context of attempts to reclaim assets used in corrupt activities or their products. Since recovering state losses in corruption situations through criminal settlements is not always successful, the Anti-Corruption Law has a civil option. This is due to certain restrictions in criminal law which state that property is not something that can be separated by law. To meet the public's sense of justice, the civil process of confiscating assets resulting from corruption aims to maximize the recovery of state losses.

The proceeds of corruption that have become the assets of the defendant or convicted person, and compensation for losses from the assets of the suspect, defendant, or convicted person are two sources that are targeted in efforts to recover state losses that have been corrupted through the confiscation of civil assets. The defendant in this case does not benefit from corruption; instead, the person who benefits from the wrongdoing benefits others.

When it comes to the confiscation of assets of corruption proceeds, civil cases have a unique character; they can only be used after all other options have been exhausted, including using criminal procedures to try and recoup state losses from public coffers. Insufficient evidence, the death of the suspect, accused, or convicted person, the acquittal of the accused, and the allegation that the proceeds of corruption have not been frozen for the state despite the court's decision having permanent legal force are some examples of situations where penalties can no longer be used. The Anti-Corruption Law can be interpreted to mean that without regulating civil proceedings for the forfeiture of assets in Articles 32, 33, 34, and 38C, the Anti-Corruption Law can be concluded that without these rules, civil proceedings cannot be used to confiscate assets obtained through corruption. Because both require waiting for a court decision with permanent legal force, take a long time, and are not ideal in efforts to recover state losses that have been corrupted, asset

 ISSN: 2963-0584

confiscation using criminal mechanisms in the Anti-Corruption Law, Criminal Code, and Criminal Procedure Code basically has no fundamental differences.

The shortcomings of the criminal system, such as the ability to file a lawsuit even if the suspect, defendant, or convict dies so as to increase efforts to recover state losses that have been corrupted, can be overcome by the availability of civil mechanisms for confiscation of wealth obtained through corruption. On the other hand, because civil procedural law is in accordance with a rigid formal evidentiary structure, the availability of civil proceedings in the confiscation of assets obtained through corruption as stipulated in the Anti-Corruption Law is also not ideal.

In reality, this can be more complicated than the actual evidence. Therefore, the implementation of asset forfeiture under Law No. 31/1999 on the Eradication of Corruption as amended by Law No. 20/2001 has not been effective in recovering state financial losses as it should. As a result, alternative legal policies are needed in an effort to recover state financial losses, including adopting the provisions of asset confiscation without criminal charges according to the 2003 UN Convention Against Corruption by making several changes.

The extent to which the relevant criminal law policy should be changed or updated is, according to Mulder, one element of criminal law policy. According to KUHAP, it appears that Indonesia has its own policy in dealing with wealth forfeiture in general and asset forfeiture in particular which is determined and controlled for corruption offenses. However, efforts to confiscate assets obtained through illicit activities and held by criminals are believed to not meet the current legal requirements. As the means used to confiscate the proceeds of illegal activities are not effective enough, the confiscated proceeds of criminal activities do not always yield the best results. In addition to criminal mechanisms, the Anti-Corruption Law also includes civil mechanisms; however, since it is part of the Anti-Corruption Law, the regulation on confiscation of assets through civil mechanisms is only limited to unlawful corrupt behavior. Asset forfeiture cannot be carried out through civil proceedings for other crimes including the economic component because there is no specific norm that limits it, except to use the civil process directly after the criminal prosecution Incracht. This shows, in the author's opinion, the need for legal policy adjustments.

Mulder's first dimension of criminal law policy suggests that the Indonesian legal system's current approach to wealth confiscation should be altered. This adjustment can be addressed by modifying Indonesia's asset confiscation system, which will maximize the effectiveness of efforts to confiscate assets derived from illegal activities. The modification of this technique is crucial as it is hoped that with efficient asset confiscation methods, the number of criminal acts can be reduced and losses caused by crimes can be reimbursed to the rightful parties.

This shift in approach should be an answer to the weaknesses in the current asset forfeiture laws in the Indonesian legal system, including the need for lengthy judicial proceedings, very strict confiscation procedures, the paradigm of only trying cases against perpetrators, and the availability of additional methods.

The Need for Indonesia to Enact an Asset Forfeiture Law

Various circumstances, including Indonesia's status as a state party to the UNCAC, the evolution of the types of crimes resulting in economic loss, and the inadequacy of existing mechanical variables, point to the importance of an Asset Forfeiture Law.

1. Ratification of UNCAC

The UNCAC has been ratified by Indonesia through Law No. 7/2006 on the forfeiture of proceeds and instrumentalities of interstate crime and the ratification of the 2003 UN Convention Against Corruption. As a result of its ratification, the Indonesian government is required to modify its current legislative laws to comply with the provisions of the convention so that Indonesia makes every effort to confiscate assets derived from unlawful acts, particularly the proceeds of corruption.

The UNCAC includes specific guidelines on how to confiscate property as a result of a crime using non-punitive asset forfeiture techniques. So it can be used as an example by states parties when conducting international cooperation in criminal and financial matters and when using technology between members to try to seize assets obtained through corruption offenses. All states parties are required, under UNCAC, to consider the confiscation of proceeds of crime without imposing a

 ISSN: 2963-0584

penalty (NCB). NCB is seen as a system that UNCAC does not consider to be different from the legal system of the state party in this respect.

Indonesia is required to comply with the rules of UNCAC in order to ratify it. When UNCAC is ratified, Indonesia must also amend its domestic laws to reflect it as an international convention to which Indonesia is a party. The Indonesian government has made efforts to implement UNCAC after ratifying it, one of which is with the Asset Forfeiture Bill. The reason is because Indonesia has modified the provisions of UNCAC as an international treaty as a result of the Asset Forfeiture Bill, which follows the NCB's In Rem criminal forfeiture method.

Although the provisions of the Draft Law on Asset Forfeiture allude to UNCAC recommendations on asset forfeiture, the information presented therein can be applied to any crime that has an economic motivation. This is due to the fact that stolen property is the weakest link in the chain of money-motivated theft, so efforts to lower crime rates should be successful if stolen property is confiscated.

To uphold justice, at least in terms of the recovery of losses caused by crime, the attack actually requires an efficient asset confiscation mechanism. The need for uniformity in a more efficient procedure for confiscating assets obtained through unlawful acts can be regulated by the Asset Forfeiture Law. With the passing of the Asset Forfeiture Law, the House of Representatives can demonstrate to the public that it has the political will to successfully carry out asset forfeiture efforts in the Indonesian legal system.

2. Creation of Various Types of Economic Motive Crimes

Over the past ten years, Indonesia has seen an increase in the complexity of economically motivated crimes. The ease with which criminals are now able to commit crimes due to advances in information technology has led to a change in the modus operandi used. The difficulty of law enforcement against these crimes is clearly compounded by the emergence of several new modus operandi in criminal activities. In addition, as a result of advances in information and communication technology, it is now easier for criminals to hide the proceeds of their crimes, making it possible to move assets derived from criminal activities across international borders.

This growth requires the creation of legislative laws that can address the problem of diversifying types of economic crime. So that law enforcement officials can crack down on economic crimes committed in traditional and sophisticated ways in accordance with current laws.

This trend coincides with the growth and diversification of criminal activities for which assets can be forfeited. The crimes include embezzlement, fraud, terrorism, arms and drug smuggling, forestry and fisheries, and human trafficking. They also include other crimes that have an economic component. These illegal activities of course have their own laws and rules, but to date, none of the provisions of these criminal offenses limit the confiscation of assets related to the settlement of criminal cases.

3. Weak mechanism

As stated in KUHAP and the Anti-Corruption Law, the method of finding the perpetrator and locking him up (following the suspect) used in Indonesian law enforcement for illegal crimes does not have a deterrent effect. As these mechanisms only focus on the detention of the perpetrator rather than asset forfeiture or asset confiscation, which is only done as a new offense, it has not been successful enough to reduce the crime rate. When doing so, taking the proceeds and tools of illegal activity away from the perpetrator will not only transfer many assets from the perpetrator to the victim, but will also deter future criminal activity.

In addition, the emergence of money-motivated criminal subgroups necessitates the creation of an adequate system that can be applied according to the circumstances at hand to effectively confiscate assets in Indonesia. This then became the impetus for the Indonesian government to promulgate legislation aimed at efficiently confiscating assets acquired through economic crimes. The development of legal tools capable of confiscating all assets arising from crime has emerged as one of the prioritized goals of the Indonesian government.

This rule is a component of Mulder's suggested criminal law policy, which calls for taking steps to stop crime from occurring. The activities to be undertaken in this document are interpreted

 ISSN: 2963-0584

as steps taken by the Indonesian government to make asset forfeiture a success in the country's legal system, namely by drafting an asset forfeiture law.

CONCLUSION

From the above justifications, it can be seen that the Indonesian legal system's basis for the confiscation of assets obtained from illegal activities is essentially its implementation. Only for successful asset confiscation efforts to be implemented in the future, the current criminal and civil systems need to be updated to implement effective asset confiscation activities within the Indonesian justice system.

Three things-ratification of UNCAC, changes in crime types, and an ineffective asset forfeiture system-explain how important it is for Indonesia to have a law on asset forfeiture. Indonesia's status as a ratifying country of UNCAC requires that as a result of ratification, the Indonesian government amend the applicable laws to conform to the obligations of the convention.
In addition, another aspect that reflects Indonesia's need for the establishment of an Asset Forfeiture Law is the development of economic motive crimes. Technological advances make it easier for perpetrators to carry out criminal acts and hide the proceeds of these criminal acts with easier methods. This must then be addressed with legal provisions that are in accordance with current and future circumstances so that asset forfeiture efforts can achieve maximum results.
The last factor of the urgency of establishing an asset forfeiture law is the inadequate mechanism. An adequate mechanism in asset forfeiture efforts is expected to use the mechanism contained in UNCAC so that asset forfeiture in Indonesia will run effectively.

In addition, the emergence of different criminal behaviors with financial justification confirms the need for Indonesia to create an Asset Forfeiture Law. Due to technological advances, it is now easier for criminals to commit crimes and hide the aftermath of such crimes. In order for asset forfeiture measures to have the greatest impact, this must be addressed by establishing legal provisions that take into account current and future circumstances.

Inadequate procedures are the final reason why it is urgent to create an asset confiscation law. In order for asset confiscation in Indonesia to work properly, it is hoped that an adequate method to do so is to use the UNCAC system.

SUGGESTION

Using existing asset recovery mechanisms in the Indonesian legal system to conduct efficient asset forfeiture activities is challenging as it is still a traditional system. It is recommended that the House of Representatives immediately begin debating the Asset Forfeiture Bill so that Indonesia's need for a more efficient asset forfeiture mechanism can be highlighted and utilized in Indonesia's asset forfeiture initiatives.

LITERATURE

Books :

Gartland, Brenda. Asset Forfeiture: Rules and Procedures. Washington D.C.: Forfeiture Endangers American Rights (FEAR), 2009.

Greenberg, Theodore S., Linda M. Samuel, Wingate Grand, and Larissa Gray, Stolen Asset Recovery. A Good Practices Guide for Non-Conviction Based Asset Forfeiture. Washington D.C.: The World Bank & UNODC, 2009.

Romantz, David Scoott. Civil Forfeiture and the Constitution: A Legislative Abrogation of Right and the Judicial Response: The Guilt of the Res, 28th Suffolk University Law Review, 1994.

Vettori, Barbara. Tough on Criminal Weakness Exploring the Practice of Proceeds from Crime Confiscation in the EU, Doordrecht: Springer, 2006.

Journal :

Hiariej, Eddy O.S., Return of Criminal Assets. Journal of Opinio Juris Volume 13 May-August 2013.

Website :

 ISSN: 2963-0584

Atmasasmita, Romli, "The Urgency of the Asset Return Bill". https://korup5170. wordpress.com/opiniartikel-pakar-hukum/ urgency-ruu-return-assets/, accessed March 30, 2015.

Iskandar, Eka, "Principles of Returning Corrupt Assets (Part III)". https:// gagasanhukum.wordpress.com/2008/09/01/principles-of-returning-corrupt-assets-part-ii/, accessed on March 15, 2015.

Reed, Terrance **G.,** "American Forfeiture Law: Property Owners Meet The Prosecutor". http://www.cato.org/pubs/pas/pa-179es. html, accessed March 15, 2015.