ASPECT OF JUSTICE IN THE APPLICATION OF "IMPOVERISHMENT" CONCEPT IN ASSET SEIZURE RESULTING FROM CORRUPTION OFFENSES

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Abstract

The main question and context of the discussion is whether the concept of impoverishment through asset confiscation in corruption cases in Indonesia fulfills the aspect of justice for defendants. This research will play a role in providing legal boundaries and certainty regarding the concept of impoverishment. This research used normative legal research. Normative legal research focuses on analyzing legal rules, principles, and doctrines to understand how the law should be, rather

than how it is practiced. This research showed that the concept of impoverishing perpetrators of corruption crimes is interpreted as the confiscation of wealth/assets belonging to perpetrators of corruption crimes, which are the proceeds of corruption, and carried out in accordance with applicable regulations. Asset confiscation from perpetrators of corruption crimes must be implemented with legal measures that do not disregard the sense of justice and without disregarding or respecting the rights of the defendants and the property rights of others unrelated to the corruption case being handled, so the execution in the form of asset confiscation that can provide a sense of justice as it is conducted in a civilized manner and based on humanitarian values. Confiscating the wealth of defendants in corruption cases must be carried out proportionally, and the confiscation of individuals suspected of committing criminal acts of corruption must be upheld and must not violate constitutional principles.

Keywords: *Impoverishment; Justice; Asset Seizure; Corruption*.

Introduction

Numerous initiatives to combat corruption in Indonesia have been vigorously undertaken, with strong backing from various sectors of society, both at the institutional level and individual level, supporting law enforcement agencies such as the Corruption Eradication Commission, the Prosecutor's Office, the Police, and the Anti-Corruption Court. Civil society elements, covering various organizations and groups, play an active role in advocating and monitoring anti-corruption measures in Indonesia. The examples of these are such as, Indonesian Corruption Watch (ICW), the Anti-Corruption Organization (*Organisasi Anti Korupsi*/OAK), Solidarity Movement Against Corruption (*Solidaritas Gerakan Anti Korupsi*/SORAK), Society for Anti-Corruption Solidarity (*Solidaritas Masyarakat Anti Korupsi*/SAMAK), People's Anti-Corruption Movement (*Gerakan Rakyat Anti Korupsi*/GERAK), People's Movement for State Assets Care (*Gerakan Masayarakat Peduli Harta Negara*/GEMPITA), Indonesian Transparency Society (*Masyarakat Transparansi Indonesia*/MTI), as well as many others, registered or unregistered, in addition to media support from both print media

focusing on corruption issues and social media platforms that actively highlight corruption issues in the country.

These attempts are aimed at eliminating corruption, which is deemed an extraordinary crime. The main reason why corruption is called an extraordinary crime is because of its great destructive power. Corruption is considered an extraordinary crime because it is systemic, complex, and planned by state officials. Systemic corruption occurs when all parties in a country can do it, from the lowest level to the highest position in the government. Corruption in various sectors has caused massive state losses. Data from Indonesia Corruption Watch (ICW) states that the potential losses in 252 corruption cases with 612 suspects in the first semester of 2022 reached more than Rp 33 trillion. This loss is not to mention the social costs of corruption, which must be even greater. In this case, of course, the community feels the impact the most. That is why countries with high corruption rates find it difficult to progress and alleviate poverty.[1]

Corrupt actions or behaviors clearly have negative outcomes on societal well-being; for instance, in the economic sphere, businesses become inefficient due to excessive expenses experienced in dealing with licensing issues, kickbacks, and extortion. On a broader scale, the nation's financial health suffers as a result of extensive corruption permeating various aspects of budget allocation by immoral individuals.[2] Corruption harms the investment climate and undermines the potential for macroeconomic stability in the affected country. This often leads to capital flight, hinders economic growth, obstructs efforts to reduce poverty, and exacerbates inequalities. The negative effects are enduring

[1] Anti-Corruption Education Center, This is why corruption is called an extraordinary crime, accessed at https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230209-ini-alasan-mengapa-korupsi-disebut-kejahatan-luar-biasa

[2] Mohammad Khairul Muqorobin and Barda Nawawi Arief, "Kebijakan Formulasi Pidana Mati dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi pada Masa Pandemi Corona Virus Disease 2019 (COVID-19) Berdasarkan Perspektif Pembaharuan Hukum Pidana", *Jurnal Pembangunan Hukum Indonesia*, vol. 2, no.3 (2020), pp. 387-398.

and become more severe the longer the corrupt regime remains in power.[3]

Corrupt practices obstruct the realization of the state's objectives as outlined in the preamble of the 1945 Constitution, including the advancement of public welfare and the intellectual growth of the nation. For those reasons, corruption undeniably contradicts the fifth principle of the state's foundation. Corruption has become deep-rooted in society as a means for individuals and their families or groups to enrich themselves at the expense of the state's finances and assets. The corruption of state assets not only harms the state narrowly but also adversely affects the state and its people as a whole. While some corrupt individuals are sentenced to fines, they often opt for imprisonment instead, resulting in the state not recovering its losses. The formal procedural approach through the current criminal procedural law has proven insufficient in restoring the state's losses caused by corruption. However, the losses incurred by the state due to corruption constitute assets that must be salvaged. Therefore, alternative methods are needed to protect these state assets, that is, through the recovery of assets from corrupt offenders.

The general public demands sanctions against corrupt offenders not only through imprisonment but also through efforts to recover the financial losses to the state (asset recovery) from the ill-gotten wealth amassed or corrupted by these individuals. This would serve to restore the state's financial losses resulting from corrupt practices.[4] Asset recovery from the proceeds of corruption serves the following objectives:[5] Recovering state assets taken by corrupt individuals;

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[3] UNODC and The World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (Washington: World Bank, 2007), p. 9. As quoted by Theodore S. Greenberg, Larrisa Gray, Delphine Schants, Michael Latham, and Caroline Fardner, *Stolen Asset Recovery* (The International Bank for Reconstruction and Development / The World Bank, 2009), p. 13.

[4] Muhyi Mohas, Belardo Prasetya Mega Jaya, Mohamad Fasyehhudin, and Arizon Mega Jaya, "The Indonesian Government's Strategy in Arrest and Confiscation of Criminal Corruption (Corruptor) Assets Abroad", *Jurnal Dinamika Hukum*, vol. 21, no. 3 (2022), pp. 432-445.

[5] Mahrus Ali, *Teori dan Praktik Hukum Pidana Korupsi*, (Yogyakarta: UII Press, 2013), p. 84, as cited by oleh Arizon Mega Jaya, "Implementasi Permpasan Harta Kekayaan Pelaku Tindak Pidana Korupsi", *Jurnal Cepalo*, vol. 1, no. 1 (2017), pp. 21-30.

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stopping these individuals from utilizing the stolen assets to carry out other illegal activities, such as money laundering; and applying penalties to those who plan to commit acts of corruption.

The recovery of state financial losses is typically conducted through the mechanism of seizure and subsequent court determination for the confiscation of assets belonging to defendants acquired from acts of corruption, based on judicial rulings outlined in court verdicts. This process involves a legal procedure where the state authorities identify and seize assets obtained through illicit means, such as embezzlement or bribery. For instance, in high-profile corruption cases, authorities may freeze bank accounts, confiscate luxury properties, and seize expensive vehicles owned by the accused individuals.

However, recently, the idea of impoverishing corrupt individuals has come up, wherein they are sentenced with the obligation to reimburse a certain amount of the state's losses. This approach aims to hold corrupt individuals personally accountable for the financial harm they have caused to the state. In some cases, corrupt officials or individuals involved in fraudulent schemes are required to pay back a specific sum of money equivalent to the losses incurred by the state due to their illegal activities. This not only serves as a form of punishment but also as a means of restoring some of the misappropriated funds back to the state's coffers.[6]

Some argue that efforts to impoverish corrupt individuals are actually already possible under existing regulations. For instance, Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering provides a solid legal framework for targeting the financial gains of corrupt practices. This law empowers authorities to trace, freeze, and confiscate assets acquired through illegal means. Additionally, Article 18 of Law Number 31 of 1999 on the Eradication of Corruption

[6] Gabriella M. Sangkilang and Michael Barama, "Tinjauan Yuridis Pengelolaan Barang Rampasan Dan Asset Recovery Tindak Pidana Korupsi "Pemecah Ombak" Di Likupang Dua Sulut (Studi Kasus Putusan Nomor 15/Pid.Sus- Tpk/2021/Pn.Mnd) 1", *Lex Privatum,* vol. 9, no. 4 (2023), pp. 1-12.

complements these efforts by allowing for supplementary penalties on individuals found guilty of corruption.[7]

Furthermore, the ongoing development of a draft law on confiscating criminal assets signifies a commitment to strengthening the existing mechanisms for combating corruption. This new legislation aims to streamline the process of seizing assets derived from criminal activities, making it more efficient and effective. By enhancing the legal mechanisms for asset recovery, authorities can further deter individuals from engaging in corrupt practices. The synergy between existing laws and proposed legislation demonstrates a comprehensive approach to tackling corruption and sending a clear message that ill-gotten gains will not go unpunished. In conclusion, the legal framework in place, coupled with upcoming developments, provides a robust foundation for combating corruption and holding perpetrators accountable for their actions.

The aspiration of the public to seize the wealth (assets) of defendants acquired from acts of corruption stems from societal outrage or emotional response, with some even advocating for the impoverishment of perpetrators. In other words, those found guilty of corruption in court should be impoverished by confiscating "all" of their wealth. This stance has generated both support and opposition because asset seizure should target only the proceeds of corruption, ensuring that the principles of justice are upheld. Confiscating all assets without distinguishing between those obtained through corruption and legitimate means would disregard the principle of fairness, often resulting in undue hardship for defendants and their families, thus contradicting humanitarian values and lacking civility.

According to the discussion above, this research aimed to examine whether the concept of impoverishment through asset confiscation in corruption cases in Indonesia fulfills the aspect of justice for defendants. Additionally, it seeks to analyze how the application of asset confiscation in corruption cases in Indonesia serves to uphold the aspect of justice for defendants. This study utilized normative legal research, which views law as a structured system of norms. This system encompasses

[7] Agus Sugiarto, "Pidana Pemiskinan Koruptor Pada Tindak Pidana Korupsi Berdasarkan Undang-Undang Pemberantasan Tindak Pidana Korupsi", *Yustitia*, vol. 6, no. 1 (2020), pp. 68-78.

principles, standards, and regulations derived from legal provisions.[8] Soerjono Soekanto's benchmark in his discussion of normative legal research is from the nature and scope of legal discipline, where discipline is defined as a system of teachings about reality, which usually includes analytical discipline and prescriptive discipline, and legal discipline is usually included in the prescriptive discipline if the law is seen as covering only its normative aspects. However, still in the same writing, Soerjono Soekanto wants to prove and emphasize that legal discipline can usually also be interpreted as a system of teachings about law as norms and reality (behavior) or as something that is aspired to and as a living reality/law, even though the legal discipline has general and specific aspects.[9]

The key features of normative legal research in legal studies focus on the data sources, specifically secondary data. Normative legal research primarily relies on library research and legal materials to collect data. These sources include primary legal materials, secondary legal materials, and tertiary legal materials.[10] Primary legal materials consist of various international provisions, regulations, and statutory laws. Secondary legal materials include literature such as books, articles, journals, papers, and relevant data. Tertiary legal materials involve accessing internet resources related to research.[11] After data collection in legal research, the next crucial step is to clean, organize, and analyze the collected data. This involves ensuring the data's accuracy, consistency, and usability for drawing meaningful conclusions and addressing the research question.

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[8] Irianto, Syafruddin Kalo, Muhammad Hamdan, and Mohammad Ekaputra, "Eksekusi Barang Bukti Yang Dirampas Untuk Negara", *Locus Journal of Academic Literature Review,* vol. 1, no. 2 (2022), pp. 71-78.

[9] Soekanto, Soerjono, dan Sri Mamudji, 2001. *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, Jakarta: RajaGrafindo Persada. pp. 2-6.

[10] Jaya, B. P.M., Sidiq, A. P.P., Fasyehhudin, M., & Solapari, N. (2024). Republic of Indonesia Sovereign Right in the North Natuna Sea according to the United Nations Convention on the Law of the Sea 1982. *Australian Journal of Maritime & Ocean Affairs,* vol 16 No 1, (2024). pp. 127–140.

[11] Irawan, B., Firdaus, Jaya, B. P.M., dkk. (2024). State Responsibility and Strategy in Preventing and Protecting Indonesian Fisheries Crews Working on Foreign Fishing Vessels from Modern Slavery, *Australian Journal of Maritime and Ocean Affairs.* (2024), pp. 1-21.

The Concept of Impoverishment in the Confiscation of Assets Resulting from Corruption Offenses

The legal reform in the context of tackling corruption covers not only the reform of legislation but also enforcement and legal structures. The essence of regulating the eradication of corruption offenses actually revolves around two fundamental aspects: preventive and repressive measures. [12] Preventive measures are related to the regulation of combating corruption offenses, with the hope that society refrains from engaging in corrupt activities. Repressive measures involve imposing severe criminal sanctions on offenders while simultaneously striving to recover the maximum possible amount of state losses through asset confiscation.[13]

The Target of Asset Recovery from Corruption in the National Strategy for Combating Corruption (Presidential Regulation No. 55 of 2012) is:[14]

Target	2013	2015	2025
Percentage Target of Asset Recovery from Corruption	75%	90%	96%

Table 1. Percentage Target of Asset Recovery

Asset recovery in accordance with Law No.8 of 1981 on the Criminal Procedure Code (KUHAP) is carried out with a conviction-based mechanism. In addition, the application of asset management principles in the management of criminal assets is only possible for assets that have been declared confiscated. Assets that have been confiscated based on a court decision that has permanent legal force have met the criteria as state property, so that the asset management mechanism

[12] Ide Prima Hadiyanto, "Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi Ditinjau Dari Perspektif Kriminologi", *Fenomena*, vol. 20, no. 2 (2022), pp. 126-138.

[13] *Ibid.,* pp. 126–138.

[14] STRANAS PPK (Perpres No. 55 Tahun 2012) as cited by oleh Yunus Husein, *Pengembalian Aset Hasil Tindak Pidana (Asset Recovery) dan Corporate Criminal Liability*, (Jakarta: STHI JENTERA, 2017).

follows the state property management mechanism. Although the implementation of the State Property (BMN) management function of the confiscated goods is carried out along with the implementation of the prosecutor's executive function, it is at the judge's decision. To achieve optimal results, a breakthrough is needed in the context of recovering criminal assets. The breakthrough is made in terms of simplification or acceleration of the process and in terms of asset management.[15]

Asset recovery is an emerging and innovative strategy in combating crime through civil litigation. Focusing on the financial gains derived from criminal activities holds significant potential to impact crimes that are primarily motivated by profit.[16] For example, in cases of money laundering where illicit funds are disguised as legitimate income, asset recovery efforts can trace and seize these assets, disrupting criminal networks and preventing further illegal activities. Additionally, asset recovery can target assets acquired through bribery and corruption, such as luxury properties or offshore accounts. Recovering the proceeds of corruption, known as asset recovery, can greatly influence development.[17] In countries where corruption is rampant, the return of stolen assets can provide much-needed resources for infrastructure projects, healthcare, and education. This not only benefits the economy but also improves the quality of life for citizens. Moreover, asset recovery sends a strong message that crime does not pay and deters potential wrongdoers from engaging in corrupt practices. By dismantling the financial incentives behind criminal activities, asset recovery contributes to a safer and more just society.

The process of seizing and recovering assets obtained through corruption serves as an effective strategy in the fight against corruption.

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[15] Ministry of Finance of the Republic of Indonesia, *Pengelolaan Barang Rampasan dan Pemulihan Aset Tindak Pidana,* can be accessed at https://www.djkn.kemenkeu.go.id/kpknl-palu/baca-artikel/14505/Pengelolaan-Barang-Rampasan-dan-Pemulihan-Aset-Tindak-Pidana.html

[16] Willie Hofmeyr, "The effective use of asset recovery", *Commonwealth Law Bulletin*, vol. 39, no. 1 (2013), pp. 59-63.

[17] Larissa Gray, Kjetil Hansen, and Pranvera Recica-Kirkbride Linnea Mills, *Few and Far The Hard Facts on Stolen Asset Recovery*, (International Bank for Reconstruction and Development / The World Bank and the OECD, 2014), p. 6.

Organizations focused on enhancing development effectiveness should consider employing asset recovery as a tool against corruption. Furthermore, asset recovery acts as a deterrent by demonstrating that corrupt officials risk losing their illicit profits. Ultimately, this practice can lead to enhanced international collaboration and strengthen the capabilities of law enforcement and financial management authorities.[18]

According to research by Willie Hofmey, the Head of the Asset Forfeiture Unit at the National Prosecuting Authority of South Africa, in his work "The Effective Use of Asset Recovery," the researcher emphasizes that asset forfeiture plays a crucial role in combating organized crime and corruption. He notes that it is an essential instrument in addressing the significant rise in profit-driven crime, particularly in newly democratized countries where governmental structures may be fragile.[19] Recovering obtained by corrupt leaders and their affiliates can offer extra resources to developing nations.

Asset forfeiture, as highlighted by Hofmey, serves as a powerful tool in dismantling criminal networks and disrupting illicit activities. For instance, in countries like Nigeria and Brazil, asset recovery efforts have led to the seizure of luxury properties, expensive vehicles, and offshore accounts linked to corrupt politicians and criminal syndicates. By depriving these individuals of their ill-gotten gains, law enforcement agencies can weaken their influence and deter others from engaging in similar unlawful behaviors.

Moreover, asset forfeiture not only aids in punishing wrongdoers but also in compensating victims of corruption and fraud. In cases where public funds have been misappropriated for personal gain, returning these assets to the state's coffers can help fund social welfare programs, infrastructure development, and poverty alleviation initiatives. This redistribution of wealth from the corrupt back to the public can foster greater trust in government institutions and promote transparency and accountability.

As previously explained, the concept of impoverishment has emerged in asset confiscation. Impoverishing corrupt individuals is a punishment concept aimed at making corrupt actors impoverished due

[18] Larissa Gray, Kjetil Hansen, and Pranvera Recica-Kirkbride Linnea Mills, *Few and Far The Hard...*, p. 1.

[19] Willie Hofmeyr, "The effective use...", *Op.Cit* p. 63.

to the confiscation of assets and property they own. This concept demonstrates the determination of law enforcement in combating corruption by imposing heavy sanctions on corrupt individuals. Research indicates that impoverishing corrupt individuals as ius constituendum, or as an extraordinary form of punishment, is justified because corrupt actors are considered unworthy of receiving ordinary sanctions such as imprisonment. Impoverishing corrupt individuals is seen as an extreme measure due to the significant negative impact of corruption on society and development.

The concept of penalizing corruption offenders through impoverishment was initially proposed by Prof. Mahfud MD and Achmad Santosa, a member of the anti-mafia legal task force. This impoverishment concept highlights the stark irony in efforts to combat corruption, which continue to encounter significant obstacles, including collusion and corrupt practices within the anti-corruption framework itself. Corrupt individuals often retain or can leverage assets obtained through their illegal activities to secure more lenient sentences or to enjoy lavish amenities in prisons, allowing them to enter and exit freely. A notable instance is the conspiracy involving Gayus Tambunan, who worked with officials at the Mobile Brigade Detention Center (*Rutan Mako Brimob*) to move about without restrictions.[20]

This idea was similarly expressed by Anies Baswedan, who emphasized that the penalty of asset confiscation leading to impoverishment should be enforced without delay. According to Anies, the penalty that corrupt individuals dread the most is experiencing poverty. Currently, there are no legal measures in place to address the financial losses caused by corrupt perpetrators, which enables those who misappropriate public funds to operate without concern.[21] Anies Baswedan states that the fear of imprisonment does not intimidate corrupt perpetrators, particularly when the sentences are short. He

[20] Edie Toet Hendratno, "Kebijakan Pemberian Remisi Bagi Koruptor, Suatu Telaah Kritis Dari Perspektif Sosiologi Hukum", *Jurnal Hukum & Pembangunan*, vol. 44, no. 4 (2014), pp. 518-542.

[21] Dian Anditya Mutiara, "Cara Berantas Korupsi Kata Anies Baswedan dengan Memiskinkan Para Koruptor", *Tribunenews.com* (26 Nov 2023), https://wartakota.tribunnews.com/2023/11/26/cara-berantas-korupsi-kata-anies-baswedan-dengan-memiskinkan-para-koruptor, accessed 10 Apr 2024.

argues that they are not discouraged because, once they complete their sentences and return home, they can continue to enjoy the lavish benefits associated with their corruption. However, he suggests that if all their assets were seized, corruptors might reconsider their involvement in corrupt activities.

Member of the Indonesian House of Representatives Commission III, Didik Mukrianto, suggested that the deterrent effect on inmates of Corruption Offenses (Corruption Convicts) could be implemented progressively, one of which is through the deliberation of the Draft Law on Asset Confiscation in Corruption Offenses. Therefore, he believes that with the existence of this draft law, the anti-corruption system can be strengthened, if the sanctions imposed on corruptors so far have not provided a deterrent effect. Moreover, more progressive actions are required to strengthen it, one of which is through the establishment of the Asset Confiscation Law.

Didik noted that the implementation of the Asset Confiscation Law could discourage corrupt individuals and prevent them from committing similar offenses in the future. By impoverishing corruptors through the seizure of assets acquired through illegal activities and enhancing the fight against corruption using available legal tools, it is possible to deter such behavior effectively. Indonesia Corruption Watch (ICW) argues that a more effective deterrent against corruption would involve a combination of penalties, such as life imprisonment, along with measures to impoverish corruptors. This discussion is linked to the calls for the death penalty for former Minister of Maritime Affairs and Fisheries Edhy Prabowo, who was involved in a bribery case concerning lobster seed export permits, and former Minister of Social Affairs Juliari Peter Batubara, who faced bribery allegations related to social assistance procurement. Indonesia Corruption Watch (ICW) believes that a combination of severe punishments, including life imprisonment and financial penalties aimed at restoring state funds or applying the Anti-Money Laundering Law, would be a more fitting approach to deter corrupt practices.[22]

[22] Fathur Rochman, "ICW nilai pemiskinan koruptor lebih beri efek jera", *Antaranews.com* (9 Mar 2020), http://www.Antaranews.com, accessed 10 Apr 2024.

The process of seizing assets obtained through corruption is outlined in Law No. 31 of 1999 on the Eradication of Corruption, which was later revised by Law No. 20 of 2001. According to Article 18 point a, the confiscation of tangible or intangible movable goods or immovable goods used for or obtained from the crime of corruption, including the convict's owned company where the crime of corruption was committed, as well as from the goods that replace the goods; point b stated that the payment of compensation which amounts to the amount of property obtained from the crime of corruption;

This law, specifically Article 18, details the imposition of additional penalties, including the requirement to pay compensation and the confiscation of assets if the convicted individual fails to meet the compensation payment set by the court.[23] In practice, this means that individuals found guilty of corruption not only face legal consequences such as fines or imprisonment but also risk losing any assets gained through illicit means. For instance, if a government official is convicted of embezzlement and found to have purchased luxury properties using stolen funds, those properties can be confiscated as part of the asset recovery process.

Furthermore, the inclusion of Article 18 in the anti-corruption law serves as a deterrent to potential wrongdoers, as the prospect of losing ill-gotten gains acts as a strong disincentive. This provision underscores the government's commitment to combating corruption and sending a clear message that those who engage in corrupt practices will not only face punishment but also have their illicit gains taken away. Overall, the legal framework established by Law No. 31 of 1999 and its subsequent revisions aims not only to punish corrupt individuals but also to recover assets obtained through corruption, thereby reducing the incentive for engaging in such illegal activities. By combining punitive measures with asset confiscation, the law seeks to address the financial incentives that drive corruption and promote accountability and transparency in governance.

[23] Amanda Luthfia Romadhani, "Non-Conviction Based Asset Forfeiture Sebagai Formulasi Baru Upaya Pengembalian Aset Hasil Tindak Pidana Korupsi", *Recidive*, vol. 10, no. 1 (2021), pp. 59-66.

Asset confiscation actions in the legal system in Indonesia have also been regulated in Article 10 (b) of the Criminal Code (KUHP), as one form of additional punishment. Additional punishment creates different characteristics and consequences compared to the main punishment itself. According to PAF Lamintang and Theo Lamintang, the differences between the main punishment and additional punishment are:[24]

1) Additional punishment can only be imposed on a defendant along with a main punishment, meaning that additional punishment cannot be imposed separately, but must always be imposed together with a main punishment. There is an exception in Article 40 of the Criminal Code in which the judge may impose property forfeiture without the principal punishment in the criminal offense of a minor who is subject to a decision to be returned to his parents, guardian, or caregiver.
2) Additional punishment is facultative, so the judge is free to use or not use the option, meaning that it can be imposed, but not necessarily.

According to Article 10 (b) of the Criminal Code (KUHP), confiscation would be carried out based on court decisions or determinations by judges, against specific items. Confiscation is implemented restrictively in accordance with the provisions in the Criminal Code, items owned by the convicted person obtained from a crime or intentionally used in committing a crime. Confiscation can be replaced by imprisonment if the confiscated items are returned to the convicted person, with the duration of imprisonment being at least 1 day and at most 6 months. Article 39 of the Criminal Procedure Code (KUHP) concerning seizure mentions the noun as a counterpart of assets. This provision explains that seizure is a series of investigator actions to take over and/or store movable or immovable property,

[24] PAF Lamintang dan Theo Larnintang, Hukum Penitensier Indonesia, Edisi Kedua, Jakarta: Sinar Grafika, (2010), p. 83, See also Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia,* Cetakan Kedua (Edisi Revisi), Jakarta: Pradnya Paramita, (1993), p. 59.

tangible or intangible, for the purpose of evidence in investigation, prosecution, and trial.[25]

Furthermore, as outlined in Article 165 of the Preliminary Criminal Code, the term "commodities" encompasses tangible entities such as water and digital currency, alongside intangible entities including electricity, gas, data, and software programs, as well as services covering telephony, telecommunications, or computerization services.[26]

The Implementation of the Impoverishment Concept in the Confiscation of Assets Resulting from Corruption Offenses that Meets the Aspect of Justice

As discussed previously, the concept of impoverishing corruptors is a punishment aimed at taking the assets of corruptors until they fall into poverty. Therefore, the impoverishment of corruptors needs to be clarified, and the meaning of the idea ensured. In this matter, the author agrees with the confiscation of all assets resulting from corruption offenses to restore state losses. However, the idea of impoverishing corruptors will cause problems when the process of confiscating assets is carried out on all assets belonging to the defendant, including assets that are not the result of corruption crimes. The confiscation must be fair, proportional, and follow applicable regulations.

The confiscation of all assets, including assets that are not the result of a corruption crime, cannot be carried out because it is not regulated in the applicable laws and regulations, so it will be contrary to the principle.

All assets confiscated should be the proceeds of corruption offenses, not assets legitimately owned by the perpetrators (not the proceeds of corruption). This has been regulated in Article 18, point b,

[25] Marfuatul Latifah, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia (The Urgency Of Assets Recovery Act In Indonesia)", *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, vol. 6, no. 1 (2016), pp. 17-30.

[26] Xavier Nugraha, Ave Maria Frisa Katherina, Windy Agustin, and Alip Pamungkas, "Non-Conviction Based Asset Forfeiture Sebagai Formulasi Baru Upaya Stolen Asset Recovery Tindak Pidana Korupsi Indonesia", *Majalah Hukum Nasional*, vol. 49, no. 1 (2019), pp. 29-58.

Law No. 31 of 1999 on the Eradication of Corruption, which states that the payment of compensation amounts to the amount of property obtained from the crime of corruption. Therefore, asset confiscation is not interpreted to impoverish corruptors but to confiscate all assets resulting from corruption that have been drained from the state.

According to Adnan Buyung Nasution, the policy of impoverishment must be limited so as not to violate the principle of proportionate punishment for the offense committed, and also not violate the constitutional rights of citizens.[27] The implementation of impoverishment for perpetrators of corruption crimes constitutes a violation of Pancasila and the 1945 Constitution, which mandates fair and civilized humanity. The act of impoverishment/confiscation of assets not resulting from corruption offenses constitutes state oppression and injustice for perpetrators of corruption crimes, as they are punished beyond their deeds.

Therefore, to prevent errors in the application of the impoverishment concept, the author suggests that the impoverishment of perpetrators of corruption crimes be interpreted as the seizure of the wealth/assets of perpetrators of corruption crimes derived from corruption offenses. Furthermore, to confiscate these assets, the public prosecutor must first have a strong suspicion (probable cause) and belief that the suspect/defendant's assets were obtained unlawfully. Once the public prosecutor has sufficient evidence that the suspect/defendant's assets were obtained unlawfully or improperly, the public prosecutor can request a pure reverse burden of proof system in the trial process. This is in accordance with Article 37 and Article 37A, along with their explanations, as outlined in Law Number 21 of 2001, which amends Law Number 31 of 1999 regarding the Eradication of Corruption. However, based on Article 37A, paragraph (2) of this law, even if the defendant cannot establish the origin of their wealth, the Public Prosecutor remains responsible for proving the charges. This approach employs a limited and balanced reverse burden of proof system.[28] The Corruption Crime

[27] Temmy Hastian, "Pro Dan Kontra Sanksi Pemiskinan Bagi Pelaku Tindak Pidana Korupsi di Indonesia (Pro and Contra Improverishing Punishment to Corruptor in Indonesia)", *Jurnal Nestor Magister Hukum*, vol. 1, no. 1 (2017), pp. 1-18.

[28] Aldo Harjunanto, *Penerapan Sistem Pembalikan Beban Pembuktian Terhadap Perkara Tindak Pidana Korupsi*, (Yogyakarta: Universitas Islam Indonesia, 2018).

Eradication Law implements a limited and balanced reverse burden of proof, allowing the defendant to demonstrate their innocence by showing that they did not engage in corruption. Additionally, the defendant is required to disclose details about their own assets, as well as the assets of their spouse, children, and any individuals or corporations potentially connected to the case.[29]

During the trial process that employs the reverse burden of proof system, it is crucial to understand that the public prosecutor plays a pivotal role in presenting evidence that indicates financial transactions exceeding reasonable limits by an individual. This approach aims to ensure a fair and transparent legal procedure. For instance, in a recent case involving a high-profile corruption scandal, the public prosecutor meticulously presented bank statements, wire transfer records, and witness testimonies to demonstrate the suspect's involvement in illicit financial activities.

It is essential to note that the theory of balanced probability in asset confiscation is not intended to establish guilt and punish the suspect outright. Rather, it serves as a mechanism to evaluate the evidence and determine the legitimacy of financial transactions. To illustrate, in a landmark asset confiscation case, the court carefully assessed the evidence presented by both the prosecution and defense to reach a fair decision regarding the suspect's assets.

In cases involving corruption crimes, it is imperative to establish guilt based on the balance of standard probability of proof. This standard ensures that the legal process is conducted with integrity and adherence to established legal principles. For example, in a corruption investigation involving government officials, the burden of proof lies on the prosecution to demonstrate the illicit activities beyond a reasonable doubt.

Moreover, even if there is sufficient evidence to support the occurrence of corruption crimes, there is still the possibility of imposing fines as a form of punishment.[30] This serves as a deterrent to prevent

[29] Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa", *Al-Adl: Jurnal Hukum*, vol. 9, no. 3 (2018), pp. 319-336.

[30] Ahmad Arif Hidayat, *Perbandingan Perampasan Aset Tanpa Pemidanaan Dalam Tindak Pidana Korupsi Di Beberapa Negara*, (Makassar: Universitas Hasanuddin, 2023).

future misconduct and uphold the rule of law. In a recent corruption case settlement, the court imposed significant fines on the guilty parties to send a clear message about the consequences of engaging in corrupt practices.

This approach is similar to the regulations in several developed nations, such as France, where the responsibility of proof lies with the defendant, who must demonstrate that their income or acquisition of property is legitimate. Additionally, confiscation can be extended to any assets of the convicted individual if they are linked to a person convicted of a more severe offense, one that carries a penalty of five years or more. In essence, this serves as a form of sentence enhancement. Under these legal provisions, the defendant is tasked with proving that the assets in question were lawfully acquired, rather than the government needing to establish that they were obtained through illegal means.[31]

Although there are differences in the methods of proof, both of them aim to ensure that the assets to be confiscated are proven to be the proceeds of corruption crimes. Seizing and confiscating the proceeds and instruments of crime from perpetrators not only transfers a portion of the criminal's wealth to society but also increases the likelihood of achieving the common goal of justice and welfare for all members of society. Article 28D, paragraph 1 of the 1945 Constitution of the Republic of Indonesia declares that each individual is entitled to recognition, assurance, protection, and the guarantee of a fair and humane legal process, as well as equal treatment under the law.

On the other hand, Article 28H (4) states that everyone has the right to private ownership, and such ownership rights shall not be arbitrarily taken over by anyone. In Article 28D, paragraph 1 of the 1945 Constitution, the recognition, guarantees, protection, and certainty of fair and civilized law also apply to defendants accused of corruption crimes, addressing how perpetrators of corruption crimes can obtain justice in the judgment to be rendered against them. Therefore, judgments against defendants in corruption cases must consider fair and civilized justice by not causing harm to the state while also not benefiting

[31] Peter Leasure, "Asset recovery in corruption cases", *Journal of Money Laundering Control*, vol. 19, no. 1 (2016), pp. 4-20.

Jurnal Hukum dan Peradilan Vol. 14, no. 2 (2025), pp. 377-400
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the state by confiscating assets that are not the proceeds of the crime committed.

The mechanism of asset confiscation without criminal charges, considered a breakthrough, has a crucial point when associated with human rights as stated in Article 28H, paragraph (4) of the 1945 Constitution, which declares "Everyone has the right to private ownership, and such private ownership shall not be arbitrarily taken over by anyone." Indonesia, as a state that upholds the rule of law, must also protect assets that are not the proceeds of corruption crimes and must not arbitrarily confiscate individuals' assets. Therefore, asset confiscation against individuals suspected of corruption crimes and money laundering must adhere to and not violate constitutional principles.

Confiscating the wealth of defendants in corruption cases must be done proportionally, meaning it should be carried out with careful consideration, only to the extent necessary to pay compensation to cover the financial losses of the state, thereby not harming the defendant, let alone harming other parties unrelated to the corruption case committed by the defendant. Ensuring that the confiscation of assets is in line with the damages caused by the corruption is crucial. For instance, if a public official embezzles funds from a government project, the confiscated assets should ideally match the amount stolen to provide fair compensation. This approach prevents excessive punishment that could lead to financial ruin for the defendant.

In the process of asset confiscation, collaboration is essential among multiple integrated agencies, including the Financial Transaction Reports and Analysis Centre, the Police, the Prosecutor's Office, the Corruption Eradication Commission, and the Ministry of Law and Human Rights. This also involves cooperation between individual agents and the use of Mutual Legal Assistance.[32] Besides, it requires asset management by institutions capable of carrying out integrated storage functions with management functions. The implementation of these functions should ideally be carried out under one roof to ensure a consistent process from receiving, storing, releasing, and managing assets.[33]

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[32] Yunus Husein, *Pengembalian Aset Hasil...*

[33] Direktorat Hukum PPATK, *Focus Group Discussion (FGD): Menakar Efektivitas Pusat Pemulihan Aset Dalam Melaksanakan Fungsi Pengelolaan Aset Berdasarkan Rancangan*

Conclusion

Referring to the discussion presented, the author would conclude that the concept of impoverishing perpetrators of corruption crimes is interpreted as the confiscation of wealth/assets belonging to perpetrators of corruption crimes, which are the proceeds of corruption, and carried out in accordance with applicable regulations. Asset confiscation from perpetrators of corruption crimes must be implemented with legal measures that do not disregard the sense of justice and without disregarding or respecting the rights of the defendants and the property rights of others unrelated to the corruption case being handled, so that the execution in the form of asset confiscation can provide a sense of justice as it is conducted in a civilized manner and based on humanitarian values. Confiscating the wealth of defendants in corruption cases must be carried out proportionally, and the confiscation of assets of individuals suspected of committing criminal acts of corruption must be upheld and must not violate constitutional principles.

Suggestion

The concept of impoverishing corruptors is a punishment aimed at taking the assets of corruptors until they fall into poverty. Therefore, the impoverishment of corruptors needs to be clarified, and the meaning of the idea needs to be ensured. In this matter, the author agrees with the confiscation of all assets resulting from corruption offenses to restore state losses. However, the idea of impoverishing corruptors will cause problems when the process of confiscating assets is carried out on all assets belonging to the defendant, including assets that are not the result of corruption crimes. The confiscation must be fair, proportional, and follow applicable regulations. The confiscation of all assets, including assets that are not the result of a corruption crime, cannot be carried out because it is not regulated in the applicable laws and regulations, so it will be contrary to the principle.

Undang- Undang Tentang Perampasan Aset Tindak Pidana, (Jakarta: Direktorat Hukum PPATK, 2018).

All assets confiscated should be the proceeds of corruption offenses, not assets legitimately owned by the perpetrators (not the proceeds of corruption). This has been regulated in Article 18, point b, Law No. 31 of 1999 on the Eradication of Corruption, which states that the payment of compensation amounts to the amount of property obtained from the crime of corruption. Therefore, asset confiscation is not interpreted to impoverish corruptors but to confiscate all assets resulting from corruption that have been drained from the state.

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