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Asset Forfeiture (In Rem): Economic Crime and Asset Confiscation Bill

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Abstract:
The rampant economic crimes at this time are crucial aspects of the nation's life. It is because factually and potentially the form of financial crime causes losses to the economy of a country. Indications of criminal cases in the economic field are also increasingly difficult to eradicate because the modus operandi is more complicated and takes a long time, especially related to the return of lost state assets. Therefore, the idea of a draft law on assets confiscation resulting from criminal acts emerged. This legal product is considered to be a solid set of regulations in seizing the assets of economic crimes through more comprehensive procedures or procedures. Thus, through this article, we will discuss in more depth in terms of the history, objectives, and substance of the draft asset confiscation law. In addition, the research method to be used is the normative juridical method sourced from both primary and secondary data sources. So, in its output, the urgency of this bill can be proven both in terms of asset recovery to steps or strategies to recover state losses that have been caused. Thus, economic crimes in Indonesia will be completely eradicated.

Keywords: Asset Forfeiture, Economic Crime, Financial Sector, Eradicate, and Asset Confiscation Bill

1. Introduction

The legal sector in Indonesia is one of the crucial sectors that continues to receive attention with all its developments. It starts from regulatory reform, the emergence of community needs for progressive legal certainty, to the phenomenon of criminal acts that always occur (Nestor *et al.*, 2020, p. 102). One of the crimes that currently attracts the most attention is an economic crime, namely crimes that happen in the financial sector, including fraud, money laundering (TPPU), corruption, tax crimes, banking crimes, monopolies, and unfair business competition, to criminal acts related to the financing of terrorism(Sadino and Hidayati, 2017, pp. 13–23).

This form of economic crime does have a considerable impact on the stability of legal aspects in Indonesia. This impact also extends to the financial part of the state where economic offenses based on the analysis of the Financial Transaction Reports and Analysis Center (PPATK) can affect 20-40% of Gross Domestic Product (GDP) (Ridwan, 2018). It means that actual and potential economic crimes significantly impact the state's entire sectors, including welfare. This condition is further exacerbated by the increasing number of financial crime cases, even more so, especially in corruption cases. The number is high, as evidenced by Indonesia's Corruption Perception Index (CPI), which has reached 38. This figure has indeed increased 1 point from previous achievements, and this causes Indonesia to be ranked 96th out of 180 countries (International, 2021).

The increasing number of economic crime cases has illustrated the need to reform the legal system in Indonesia. The concepts of eradicating financial crimes in pursuing criminals, which have been a priority, are no longer relevant (Latifah, 2015, p. 24). It means that the point of criminal sanctions imposed on perpetrators is no longer

effective in creating a deterrent effect because the centrality that is the key to crime remains, namely assets recovery from criminal acts (Jati and Harmoniharefa, no date, pp. 133–150). The asset of a criminal act is all objects included in the categories of movable objects, immovable objects, tangible objects, and intangible objects that have economic value but are not natural because they are suspected to be the results of criminal acts (Indonesia, 2018).

Assets originating from these criminal acts are followed up for returning to the state, but the current problem is that asset recovery has not been carried out thoroughly. Many assets have not been entirely confiscated and returned to the state, for example, in the E-KTP corruption case in 2011-2012, which caused state losses of IDR 2.3 trillion; however, assets successfully confiscated in 2018 were only IDR 500 billion (Fadil, 2018). Also, assets resulting from economic crimes cannot be seized and returned to the state entirely related to criminals who have died, are permanently ill, fled, or whose whereabouts are still being sought (Husein, 2019). In addition, the perpetrators of criminal acts whom a judge has given a decision with binding legal force, it turns out that in the future, there are assets resulting from criminal acts that have not been confiscated (Muntahar, 2020).

The level of deterrence and the ineffectiveness of recovering assets resulting from criminal acts is undoubtedly a problem that needs more extreme action. It is because Indonesia needs a legal umbrella capable of consolidating asset recovery in comprehensive legal legislation. On this basis, the government has long initiated a draft law, namely the Asset Confiscation Bill, to confiscate assets resulting from criminal acts. The purpose of the bill, of course, as one of the legal infrastructures to seize assets and, at the same time, eradicate economic crimes in Indonesia. Then, what exactly is the confiscation of an asset for criminal acts, especially financial crimes? What is the substance of the rules regulated in the Asset Confiscation Bill? And how can the mechanism of asset confiscation of criminal acts be implemented against economic crimes? Based on these questions, this article will discuss the draft law on the seizure of assets resulting from criminal acts, including its correlation with economic crimes. Thus, it will be known how important the Bill on Asset Confiscation proceeds from criminal acts is in dealing with the problems of financial crime in Indonesia.

2. Literature Review

a. Economic Crime

Economic crime is an act that normatively violates economic norms and creates a broad impact (Hamzah, 1983, pp. 25–42). The impacts range from personal financial losses to damaging the economic system in society. This crime also refers to acts that violate political and economic interests in economic democracy. (Pangaribuan, 2016, p. 33) It means the perpetrators of financial crimes have committed crimes whose intensity is significant, or the violations have exceeded ethical limits in the economic field (Muntahar, 2020, pp. 14–17). In addition, this violation also refers to acts that violate rights and obligations as a provider of legal regulations that substantially contain policies in the financial area to achieve national goals.

b. Asset Forfeiture

Asset forfeiture is a series of efforts made by the state in seizing assets originating from criminal acts in which the crime causes losses, especially financially (Fleming, 2005). State actions in taking assets can be done civilly or using criminal Law (Zaidan, 2016, pp. 232–245). The requirements for a country to be able to confiscate assets are (Sihite and Mustofa, 2021, pp. 15–38): First, there is a genuine political will to cut the chain of criminal acts (political will) (UNODC, 2017). Second, there needs to be an excellent legal system related to law enforcement, laws and regulations, transparency, and accountability. Third, the confiscation of assets must be strengthened by the role of institutions that together carry out the tracking and seizure of the assets themselves. Fourth, countries that want to take action to seize assets must also cooperate massively. So that assets hidden across national borders can be detected.

c. Law No. 7 of 2006 Concerning the Ratification of United Nations Convention Against Corruption, 2003

References regarding confiscating assets resulting from criminal acts are already in Chapter V of the United Nations Convention Against Corruption (UNCAC). Indonesia has ratified its national law in Law Number 7 of

2006 concerning Ratification of the United Nations Convention Against Corruption, 2003. Substantially the rules of Asset confiscation in this regulation includes asset recovery, including prevention and detection of the transfer of proceeds of crime (Indonesia, 2006). These actions are intended to direct the return of wealth, which is the mechanism for such recovery with international cooperation regulated in agreements and rules bilaterally and multilaterally (Leasure, 2016).

3. Method

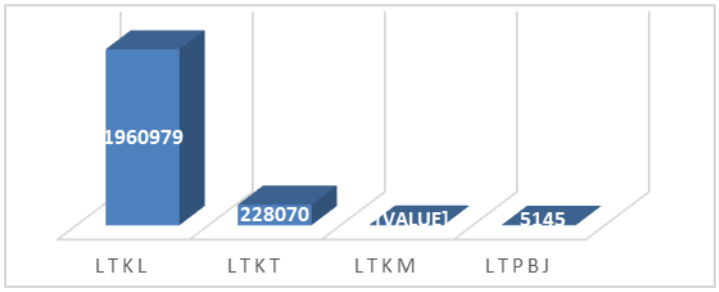
The research method used in this article is the normative juridical method, which is one of the methods in legal research carried out in the literature by examining the theory and conception of legal material (Muhaimin, 2020, p. 54). This article also uses a descriptive approach in which a comprehensive review of the bill on the confiscation of assets resulting from criminal acts will be studied comprehensively. The data sources used are primary and secondary in legislation, international conventions, scientific journals, books, seminars or workshops, and other relevant legal authorities. All of these data are then analyzed in-depth so that the urgency of the Asset Confiscation Bill can be seen in the context of eradicating economic crimes.

4. Results and Discussion

a. Economic Crime and Asset Forfeiture

Economic crime is one of the aspects regulated in the Economic Criminal Law. Moch Anwar believes that the Economic Criminal Law is a set of regulations in the economic field that contains the substance of obligations or obligations and prohibitions that are threatened by punishment (Setiadi and Yulia, 2010, p. 32). The threat of penalty referred to in a narrow sense refers to economic crimes, which are regulated in Emergency Law Number 7 of 1955 (Indonesia, 1955). Through this Law, financial crimes are only explained in a narrow sense, but according to Edmund W. Kitch, there are three characteristics of economic crimes (Jaya, 2013, p. 12). First, the elements of the modus operandi in financial crimes are relatively more complicated to detect. Second, related to legal subjects as perpetrators of criminal acts usually involve big business people. Third, preventive and repressive efforts against economic crimes must be carried out specifically by law enforcement officers.

The characteristics of specific economic crimes can also be seen in the main elements that distinguish financial crimes from other criminal acts, including aspects of acts committed related to economic activities and have a legal basis; the act violates statutory regulations and even has implications. Against losses to individuals, communities, and corporations (Setiadi and Yulia, 2010, p. 37). The losses currently incurred from economic crimes are substantial, mainly when referring to criminal acts of corruption, as evidenced by statistical data on the performance of prosecution of corruption cases where, throughout 2021, the Corruption Eradication Commission (KPK) has recorded there are 131 cases ((KPK), 2021). In addition, there are also cases of gratification within the same period, which has accumulated as many as 2,300 reports. In the Money Laundering (TPPU) sector, total receipts of reports up to November 2021 were 2,201,332, and 7,129 were included in the Suspicious Financial Transaction Reports (LTKM), of which 30.5% of them were indications of criminal acts of fraud (Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), 2021). Then, there are 678 court decisions where the maximum prison sentence is life imprisonment and a maximum fine of IDR 32 billion.



Description:
LTKL: Fund Transfer Report from/to Overseas
LTKT: Cash Financial Transaction Report
LTKM: Suspicious Financial Transaction Report
LTPBJ: Goods and Services Provider Transaction Report

The rise of economic crime in Indonesia today is indeed one thing that encourages efforts to eradicate financial corruption to continue to be optimized. One of them is the return of non-criminal assets, which is the state's effort to recover assets suspected of originating from a crime or criminal act (Sihite and Mustofa, 2021, p. 21). Many countries already know about recovery of support because this mechanism is already in Chapter V of UNCAC (Indonesia, 2006); it is also evidenced by the success of various countries in returning stolen assets to the state treasury. However, it is different when viewed from the time for asset recovery. For example, in the Philippines, asset recovery was carried out in the past 17 years, Nigeria was able to recover assets in 5-6 years, and Peru was able to recover assets in 2-3 years (Governance, 2009).

Talking about the return of assets from criminal acts, it is known that there are two return mechanisms, namely through the means of civil Law, called civil-based forfeiture or non-conviction-based forfeiture (NCB), and criminal Law means criminal-based forfeiture (CB). The difference between the two facilities is that in CB, the object of confiscation is An individual (in persona), while in NCB, the object of seizure is aimed at things (in rem) (Manthovani and Jatna, 2012, p. 74). Then, there are also differences in the submission of indictments where, CB, the request of the charge is carried out simultaneously between the imposition of sanctions by the judge and the submission of accusations by the public prosecutor (Husodo, 2010, p. 20). This is different from the NCB because, in this facility, the request for charges can be made before, after, or during the criminal justice process (Greenberg *et al.*, 2009, p. 13). Then, the difference parameter can also be seen related to proof of error; namely, in CB, the proof is based on proving the perpetrator's guilt of a crime; however, in NCB, it is possible to prove fault with reverse evidence (Sudarto, 2017, p. 111).

Based on the concepts of asset recovery, Indonesia itself is already familiar with the term asset recovery. However, the implementation of asset recovery is still not adequate (Pakpahan, 2019, p. 371). It is caused by several factors, namely the not yet optimal asset recovery to confiscate assets resulting from criminal acts so that purchases that should belong to the state cannot be confiscated or confiscated for returning to the state (Eddy O, 2013, p. 2). In addition, Indonesia does not yet have strong regulations related to guidelines or procedures for seizing assets, especially in cases that make it challenging to track assets, for example, perpetrators who have died (Husein, 2019, p. 15). This condition also creates the need for legal certainty in the form of legal products that regulate the seizure of assets resulting from criminal acts, especially economic crimes, is needed. Therefore, in 2012, a bill for confiscating assets resulting from criminal acts was drafted. It hopes that the legislation can serve as a guide in seizing the assets of criminals to be managed by the state.

b. Asset Confiscation Bill

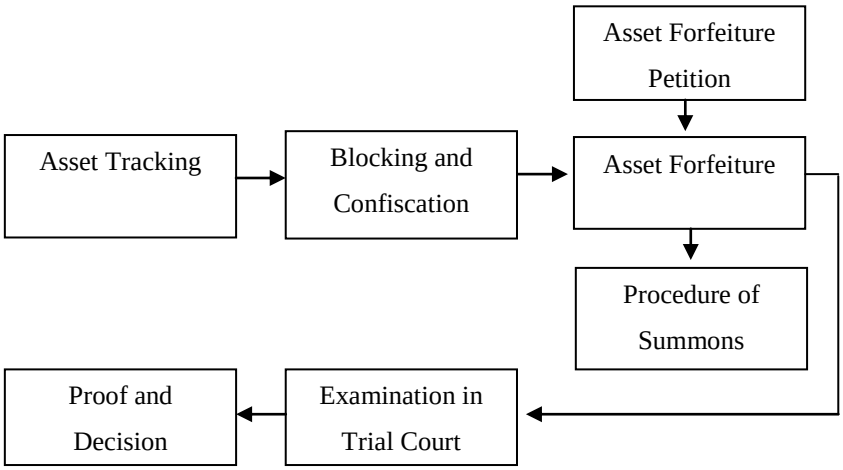
Efforts to reduce economic crime through the Asset Confiscation Bill is a breakthrough that is still being worked on to be ratified as soon as possible as a law. It is undeniable that this bill is one of the commitments of the presidential candidate pair Joko Widodo and Vice President Jusuf Kalla to eradicate economic crime as stated in point Nine Priorities for Development for the Next Five Years (NAWACITA), which reads, "To create a just system and law enforcement in law enforcement policies" (Soleman and Noer, 2017). Apart from being stated in the commitment, the development of this bill has also been included in the National Legislation Program (Prolegnas) three times, namely in the Prolegnas of 2010-2014, the Prolegnas of 2015-2019, and the Prolegnas of 2020-2024. However, the bill was not a priority bill in 2021, so this is one of the main issues why the Asset Confiscation Bill has not been ratified until now.

Conceptually, the confiscation of assets as regulated in this bill is an act of the state in seizing assets from a crime committed without a criminal court decision (in persona) (Manthovani and Jatna, 2012). This means that the seizure of assets against criminal acts, including economic crimes, will use the submission of an application by the public prosecutor to the local district court, where the district court is authorized to hear criminal cases (Husodo, 2010). The intended application is intended to conduct an examination and decision by a judge in a court session which, of course, the output of the judge's decision can confiscate the assets of the perpetrators of economic crimes. Assets that can be confiscated in this bill include assets that come directly or indirectly from criminal acts; this also includes those that have been granted or converted into assets by individuals, other

people, or corporations. The form of assets can be in the form of capital, income, or profits that are economic in nature and come from such wealth (Ramelan dan Tim Penyusun, 2012).

Apart from being viewed from the conception point of view, of course, the most important thing from the drafting of this bill is the purpose of the regulation itself. First, of course, the asset confiscation bill is expected to be a guideline for law enforcement to return state assets produced by a criminal act, which in this case is an economic crime (Nations, 2017). Thus, state losses that are pretty large as a result of financial crimes can be recovered by confiscation of assets resulting from criminal acts whose entire procedure is regulated in a regulation. Second, the Asset Confiscation Bill can be a strategy to eradicate economic crimes both preventively and repressively (Bacarese, 2009). This is because if the assets that are the key to the prevalence of financial crimes are confiscated thoroughly and finally, it can create a deterrent effect not to commit the crime (Marbun and Laracaka, 2019, pp. 127–167). Third, the long-term asset confiscation bill is also a means of making international cooperation, namely in the process of tracking or searching for the whereabouts of assets where in practice, criminals hide assets resulting from crimes not only domestically but also abroad (Leasure, 2016, pp. 4–20).

c. Execution Flow of Asset Forfeiture in Asset Confiscation Bill



Scheme. The Substance of Asset Confiscation Bill (Tracking-Decision)

Based on the above scheme, the mechanism for confiscating assets against a criminal act, including an economic crime, starts from the first stage, namely the asset tracking stage. This initial stage will be carried out by investigators or public prosecutors who have been given the authority to request documents from related legal subjects (people and corporations or government institutions) to be traced (Ramelan dan Tim Penyusun, 2012). After the rules have searched the records in the asset tracking stage and succeeded in obtaining a definite suspicion regarding the existence of the assets from the crime, the second stage will be carried out, namely blocking, which can also be followed by confiscation. Through the role of institutions that are given the authority to stop and confiscate assets resulting from criminal acts, which are carried out on orders from investigators or public prosecutors, assets cannot be transferred to other parties (Ramelan dan Tim Penyusun, 2012).

The third stage is related to the essence of this bill, namely the act of confiscation of assets where it will be carried out against four targets, namely first, the perpetrator of the crime has died, fled, is permanently ill, or the whereabouts of the perpetrator is unknown. Second, all the demands given by the defendant have been removed, and, thirdly, the seizure of assets applies to criminals whose assets resulting from criminal acts cannot be tried (Europe, 2013). Fourth, the Asset Confiscation stage can also be carried out on a case that has been given a judge's decision with binding legal force. Still, after review, there are assets resulting from criminal acts that

have not been confiscated, or in other words, there are assets left to be seized (Ramelan dan Tim Penyusun, 2012).

The fourth stage is the application stage and the procedure for summoning where the application stage will be carried out by the public prosecutor or investigator who has gone through the confiscation and blocking steps and has completed all documents or filings which must later be given to the district court whose jurisdiction is the place where the assets are located. Concerning the application, of course, the public prosecutor must also submit a written application to the chairman of the court, which must be accompanied by the documents that have been prepared. If related to the application, there are parties who file an objection, and the clerk will submit a summons to the district court. Submission of summons is intended for parties who file complaints and the public prosecutor to appear in court.

The fifth stage is the trial conducted by the mechanism of the public prosecutor applying for confiscation of assets accompanied by arguments containing the reasons for the assets that are the object of the case to be confiscated (Porajow, 2013). In addition, in the trial, the public prosecutor must also prepare the evidence that explains the origin and whereabouts of assets where these components will support the Asset Confiscation stage. A third party can also submit evidence where the third party objected. After all the arguments and evidence presented in the trial, the judge will consider whether the application for confiscation of assets that have been submitted and tried can be accepted or rejected (Manthovani and Jatna, 2012).

The sixth stage is evidence and court decisions where, through the proof stage, third parties who object to the application for confiscation of assets must prove that the assets are not derived from a criminal act (Ramelan dan Tim Penyusun, 2012). Based on this evidence, the judge will decide on the condition that if a third party succeeds in proving that the assets requested are not from a criminal act, the assets will remain the property of the third party. Another provision is that if a third party is not present or fails to prove that the assets that are the object of the case are the result of a criminal act, then these assets will be confiscated by the state, of course with a court decision that has legal force and is read out in a trial open to the public (Ramelan dan Tim Penyusun, 2012).

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