Appropriation of Assets Corruption in Human Rights Perspective

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Abstract. This study aims to determine how law enforcement in cases of criminal acts of corruption is viewed from the perspective of human rights and to find out how the system of confiscation of assets by the state from the proceeds of criminal acts of corruption is viewed from the perspective of human rights. The research method used is normative juridical and by using a statutory approach. The results show that the seizure of assets by the state through a criminal law mechanism can be carried out if the court has handed down a decision that has permanent legal force, therefore it must be carried out carefully, because if the confiscation has nothing to do with the proceeds of a criminal act of corruption, it has the potential to violate human rights (HAM). Through this research, The author is of the view that the confiscation of assets in cases of criminal acts of corruption must be formulated from a theoretical, juridical, philosophical and practical perspective as a justification so that it can be applied both at the level of legislation and application policies. So that the potential for the seized assets will not exceed the amount of the corrupted assets.

Keyword: Asset Confiscation, Corruption, Human Rights

1. Introduction

The Indonesian state has a commitment to eradicating corruption, this can be seen from the existence of various laws and regulations related to corruption, the existence of institutions that are committed to the prosecution and prevention of corruption, the existence of various government efforts in creating good governance or corruption. good governance, the existence of criminal law reform, the existence of various forms of prevention of the occurrence of criminal acts of corruption, the existence of the National Strategy for the Eradication of Corruption (SNPK), the existence of various government policies in the context of law enforcement of criminal acts of corruption such as confiscation, refund of state losses, and others. However, at the level of implementation sometimes it does not match the expectations that arise from law enforcement officials. this is like the confiscation of assets by law enforcement that is not related to a crime. In fact, if you pay attention to the mechanism for confiscation of assets, it must go through the investigation process as referred to in Article 39 paragraph (1) of the Criminal Procedure Code. Whereas even though there are provisions that stipulate that if the goods confiscated by the Corruption Eradication Commission are considered by the suspect to be not at all related to the criminal act that is suspected or accused of him, the suspect has the right to file a pretrial effort as referred to in Articles 77 to 83 of the Criminal Procedure Code, in addition to it's reverse proof as in the procedural law. This has the potential to be very detrimental to the defendant, because his rights

are not protected. if it is concerned with the mechanism for confiscation of assets, it must go through the investigation process as referred to in Article 39 paragraph (1) of the Criminal Procedure Code. Whereas even though there are provisions that stipulate that if the goods confiscated by the Corruption Eradication Commission are considered by the suspect to be not at all related to the criminal act that is suspected or accused of him, the suspect has the right to file a pretrial effort as referred to in Articles 77 to 83 of the Criminal Procedure Code, in addition to it's reverse proof as in the procedural law. This has the potential to be very detrimental to the defendant, because his rights are not protected. if it is concerned with the mechanism for confiscation of assets, it must go through the investigation process as referred to in Article 39 paragraph (1) of the Criminal Procedure Code. Whereas even though there are provisions that stipulate that if the goods confiscated by the Corruption Eradication Commission are considered by the suspect to be not at all related to the criminal act that is suspected or accused of him, the suspect has the right to file a pretrial effort as referred to in Articles 77 to 83 of the Criminal Procedure Code, in addition to it's reverse proof as in the procedural law. This has the potential to be very detrimental to the defendant, because his rights are not protected. Whereas even though there are provisions that stipulate that if the goods confiscated by the Corruption Eradication Commission are considered by the suspect to be not at all related to the criminal act that is suspected or accused of him, the suspect has the right to file a pretrial effort as referred to in Articles 77 to 83 of the Criminal Procedure Code, in addition to it's reverse proof as in the procedural law. This has the potential to be very detrimental to the defendant, because his rights are not protected. Whereas even though there are provisions that stipulate that if the goods confiscated by the Corruption Eradication Commission are considered by the suspect to be not at all related to the criminal act that is suspected or accused of him, the suspect has the right to file a pretrial effort as referred to in Articles 77 to 83 of the Criminal Procedure Code, in addition to it's reverse proof as in the procedural law. This has the potential to be very detrimental to the defendant, because his rights are not protected.

The discussion related to asset confiscation is not a new topic, previous research related to asset confiscation, among others:

1. Teuku Isra Muntahar, Madisa Ablisar, Chairul Bariah, in the 2021 legal review journal entitled confiscation of corrupt assets without punishment from a human rights perspective
2. Dessy Rochman Prasetyo, in a legal science journal in 2016 entitled confiscation and confiscation of assets resulting from corruption as an effort to impoverish corruptors
3. Ika Yuliana Susilawati, in the journal of law and justice studies in 2016 entitled confiscation of assets resulting from criminal acts of corruption abroad through mutual legal assistance.

The first study discusses the seizure of assets without punishment, in which the state has the authority to control assets whose owners are not clear. The second study discusses the return of state financial losses through confiscation of assets and confiscation of assets resulting from corruption and money laundering which, according to current laws and regulations, are deemed inadequate. The third study discusses the regulation of the confiscation of assets resulting from Corruption Crimes Abroad through the Mutual Legal Assistance Agreement of the Republic of Indonesia, both multilaterally and bilaterally. While the research conducted by the author is to find outhow law enforcement in cases of criminal acts of corruption is reviewed from the perspective of human rights and to find out how the system applied regarding the seizure of assets by the state in cases of criminal acts of corruption is reviewed from the perspective of human rights.

Through this research, it is hoped that it can contribute ideas regarding the determination of actions that have not been accommodated in the law related to the seizure of assets for criminal acts as well as those related to the legal system. So that law enforcers will be more responsible for their actions considering the legal consequences they will cause.

2. Method

This paper uses a normative legal research method because the focus of the study departs from norms, regulations, legal theory and therefore has the task of systematizing positive law, using the following approaches: legal approach, conceptual approach, and analytical approach. The technique of tracing

legal materials uses document study techniques, and research analysis uses qualitative analysis. This research method is descriptive with the type of normative juridical research, using a statutory approach and a conceptual approach.

3. Results and Discussion

3.1. Law Enforcement in Cases of Corruption Crimes Seen from a Human Rights Perspective

Law enforcement is the center of all legal "life activities" starting from legal planning, law formation, law enforcement and legal evaluation. Law enforcement is essentially an interaction between various human behaviors that represent different interests within the framework of rules that have been mutually agreed upon. Therefore, law enforcement cannot be considered solely as a process of applying the law as the legalists argue. However, the law enforcement process has a wider dimension than this opinion, because law enforcement involves the dimensions of human behavior. With this understanding, we can see that the legal problems that will always stand out are "law in action" problems, not "law in the books".[1]

According to Mardjono Reksodiputro, asset confiscation can be carried out in three ways, namely:[2]

1. Criminal confiscation. This confiscation is commonly known in the form of confiscation of certain goods and if it turns out that the goods are tools used by the defendant to commit a crime, then with a criminal decision that has permanent legal force, the goods are confiscated for the state.
2. Administrative seizure. This confiscation is contraban, namely the executive (government) is given the right by law to be able to immediately seize certain goods without going through a trial. For example customs and customs actions.
3. Civil confiscation. Civil confiscation was formerly known as confiscation of goods that are not owned by war, as well as confiscation of goods that are "orphaned" (weiskamer).

because there is an allegation that the assets are related to a crime, the assets must be considered as tainted or dirty property. With regard to the tainted assets, the government through the prosecutor as a state attorney (hereinafter abbreviated as JPN) must file a civil lawsuit in rem so that it can be declared by the court as a state asset. In line with Mardjono Reksodiputro's view, According to Alldridge, the confiscation of the proceeds of a crime is actually rooted in a very fundamental principle of justice, where a crime should not provide benefits to the perpetrator (crime should not pay). That is, a person should not take advantage of the illegal activities that he does. In Article 1 point 8 of the Draft Law on Asset Confiscation (hereinafter referred to as the Bill of Assets Confiscation), in rem confiscation is an act of the state taking over assets through a court decision in a civil case based on stronger evidence that the asset is suspected of originating from a crime. crime or used for criminal acts. Then, according to Yenti Garnasih, the most appropriate and simple way to carry out the NCB asset forfeiture mechanism is that initially the assets suspected of being the proceeds of crime are blocked and withdrawn from economic traffic, namely through confiscation requested by the court. Furthermore, the property is declared as tainted property by a court order. After being declared as tainted property, the court shall make announcements through media that can be accessed and known by the public for a sufficient period of time, which is approximately 30 (thirty) days. This period of time is considered sufficient for third parties to be able to know that the court will confiscate assets. If within that period of time there is a third party who objected to the act of confiscation, the third party may file a challenge to the court by bringing valid evidence to prove that he is the owner of the property by explaining how the property was acquired.[3]So that if this process is carried out by law enforcers, where fair and objective civil proceedings and opportunities are provided in court, then in line with the presumption of innocence and the right to property ownership, this shows that the state respects human rights. This means that the confiscation of assets resulting from corruption in the perspective of Human Rights is in line and not contradictory, as long as the assets are proven legally and convincingly based on court decisions that have permanent legal force. This is considering that normatively, assets tainted by corruption are the rights of every citizen (victim) in order to fulfill the principles of economic democracy (the 4th Precept

of Pancasila) and social justice (the 5th Precept of Pancasila), social protection, social welfare, and social benefits.

Until now, the State of Indonesia does not yet have a special law on asset confiscation and the case for confiscation of assets is only regulated in Article 38 paragraph (5), Article 38 paragraph (6) and Article 38 B paragraph (2) of Law Number 31 of 1999 in conjunction with Law No. Law Number 20 of 2001. However, it turns out that there are still problems that have not been touched by the regulation, namely in the event that the suspect is not found, the suspect runs away, the suspect or defendant goes crazy, there are no heirs or heirs are not found for a civil lawsuit to be filed, while State financial losses have been real, and in this case the assets are also not placed in criminal confiscation. Legal problems that have not been touched above cannot be resolved through a criminal process because the criminal process is an in-person process that is attached to the perpetrator.[4]

The substance contained in Law no. 31 of 1999 jo. Law No. 20 of 2001, raises a fundamental question, namely regarding the concept of criminal liability to the heirs, because the heirs of the convicted person can only be withdrawn if they will use a civil law instrument through a lawsuit. This is in line with the principles that apply in criminal law as long as it involves the principle of individual responsibility, in the sense of the word, whoever acts and becomes a convict, he is the one who is responsible. As a concrete example, for example a convict who has been proven and has been convicted for falsifying a land sale and purchase certificate, it does not mean that his wife or children can be held criminally responsible as well.[5]In the context of the rule of law, the nature of criminal law limits the human rights of the accused, and on the other hand protects the human rights of the victims, while the nature of civil law emphasizes whether or not a person is legal as a legal subject for their assets. Based on this, the author is of the view that it is necessary to establish a new norm governing the seizure of assets.

Furthermore, extraordinary efforts to eradicate corruption in line with the basic considerations for the birth of the Eradication of Corruption Crimes, it is necessary to reformulate the provisions governing the types of criminal sanctions that have not been regulated in other criminal laws. The criminal sanctions referred to are additional criminal sanctions in the form of confiscation of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption.[6]

That the confiscation of assets through the criminal mechanism as described above has weaknesses, namely, First that the proceeds of a criminal act can generally only be confiscated if the perpetrator of the crime has been handed down a decision that has permanent legal force. So that if the court's decision is not yet final and binding, then the additional crime of confiscation of assets cannot be executed. Second, that in accordance with the general principle of additional criminality, the additional penalties contained in Article 18 paragraph (1) of Law Number 31 of 1999 which are the basis for the seizure of assets resulting from corruption are facultative, meaning that they are not mandatory (imperative) to be imposed by judges. on the verdict.[7]

Thus, eradicating corruption will not provide a deterrent effect for the perpetrators. Therefore, corruption as an extraordinary crime cannot be handled in the usual way. Thus, a provision is needed regarding the seizure of assets resulting from criminal acts of corruption by looking at international instruments and the development of the practice of confiscation of assets in various countries. With regard to sanctions, that in order for law enforcement against criminal acts of corruption to truly be realized and able to achieve its goal, namely the achievement of recovering state losses, the role of criminal sanctions for confiscation of corrupt assets must be strengthened from additional criminal sanctions which were originally facultative.

3.2. The System for Confiscation of Assets by the State in Cases of Criminal Acts of Corruption Seen from the Perspective of Human Rights

The lack of success in eradicating corruption in Indonesia is not only due to a lack of foresight and lack of firmness of existing laws and regulations, but the implementation and progressivity of law enforcement officers as an inseparable part of law enforcement to eradicate corruption in Indonesia also affects the success in fighting corruption. In fact, if you pay close attention, Indonesia has made many

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efforts to eradicate corruption for a long time and throughout Indonesia's history as evidenced by the emergence of various laws and regulations to eradicate corruption.[8]

Indonesia as a state party to UNCAC as formalized in Law Number 7 of 2006, while still taking into account national sovereignty, is required to take steps to implement the provisions of the convention. Regarding asset confiscation without criminal prosecution, Indonesia has made it a proposed legal product for the Draft Law to the DPR since 2012 through the preparation of an Academic Document. When viewed in general terms, the content of the Draft Law on Asset Confiscation is considered very revolutionary in the law enforcement process against the proceeds of crime. This can be seen at least from 3 (three) paradigm shifts in criminal law enforcement. First, the party accused of a crime, not only as a legal subject as a criminal, also concerns assets obtained from the proceeds of crime. Second, the judicial mechanism for criminal acts used is a civil court mechanism. Third, the court's decision is not subject to criminal sanctions as imposed on other criminals.[9]

The criminal law policies that should be normalized in the Law on the Eradication of Criminal Acts of Corruption are related to legal norms that clearly and firmly regulate the criminal position of confiscation of assets resulting from corruption as part of the main crime, standards or calculations to determine losses to the state and the agencies responsible for it. has the authority to determine state losses due to criminal acts of corruption, and accelerate the confiscation of property belonging to corruption suspects.

The current laws and regulations in Indonesia are less applicable to be implemented in an effort to maximize stolen asset recovery. Thus, the Draft Law on Asset Confiscation which adopts the concept of Non-Convicted Based Asset Forfeiture needs to be promulgated immediately. The Law on Asset Confiscation that is promulgated needs to contain the basis for a lawsuit for in rem seizure of assets and a Non-Conviction Based Asset Forfeiture mechanism that can run side by side with criminal justice so that it can maximally and effectively recover state losses. This application, of course, needs to be done with a note that the assets have been declared tainted by the court as an effort not to injure the property rights of third parties.[10]

Based on this, the seizure of assets by the state through civil law mechanisms can be carried out if the court has handed down a decision that has permanent legal force, therefore it must be carried out carefully, because if the confiscation is not related to a criminal act of corruption, it has the potential to violate human rights.

4. Conclusion

Based on the results of the study, it is shown that the potential for violations of human rights to confiscate assets is still very possible because at the legislative level there is a vagueness of norms and legal vacuums, so that the purpose of the deterrent effect on perpetrators of criminal acts of corruption has not run optimally. Therefore, so that law enforcement against criminal acts of corruption can truly be realized and be able to achieve its essential goal, namely the successful return of state losses, the position of criminal sanctions for confiscation of corruption assets must be strengthened from additional criminal sanctions that are facultative in nature making it part of the criminal justice system. imperative and which must be carried out by perpetrators of criminal acts of corruption through the decision of the Panel of Judges. Therefore, The author is of the view that the confiscation of assets in cases of criminal acts of corruption must be formulated from a theoretical, juridical, philosophical and practical perspective as a justification so that it can be applied both at the level of legislation policy and its application. So that the potential for the seized assets will not exceed the amount of the corrupted assets.

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