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Law Enforcement On Confiscation Of Corporate Assets As An Effort To Recover State Finances In Criminal Acts Of Corruption

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ABSTRACT

Asset forfeiture in corruption is an important legal enforcement instrument that aims not only to punish perpetrators but also to recover state financial losses. Perpetrators of corruption crimes are not only individuals but also corporations, both legal and non-legal entities. The research problems in this study are: how the regulation of corporate asset forfeiture as an effort to recover state financial losses in corruption crimes is formulated and how the enforcement of corporate asset forfeiture is carried out as a means of recovering state financial losses in corruption crimes. The theories employed in this study include law enforcement theory and asset forfeiture theory. This research applies a normative juridical method with an approach based on legislation, legal doctrines and relevant case studies. The results show that corporate asset forfeiture is a strategic measure which has to be a priority in the law enforcement agenda against corruption. Although Indonesia already has several legal instruments governing asset forfeiture, in reality, the implementation is still hindered by various challenges, such as regulatory, institutional and inter-agency coordination. Law enforcement often emphasizes the ultimum remedy approach, resulting in criminal sanctions against corporations to be overlooked and replaced by administrative sanctions. In fact, criminal prosecution of corporations is not only important as the state's measure to penalize crime, but also serves to restore state financial losses through seizure and confusion of illegal profits. This study recommends strengthening regulations through the enactment of the Asset Forfeiture Bill, enhancing the capability of law enforcement officers in understanding the concept of corporate crime and establishing a special agency to handle asset forfeiture professionally and transparently.

Keywords: Confiscation, Corporate Assets , State Finances, Criminal Acts Of Corruption

INTRODUCTION

The issue of corruption eradication has always been a topic of interest in legal research. The eradication of criminal acts of corruption, which has been ongoing since the reform era until now, has not been effectively implemented, resulting in the realization of clean government (good governance) falling short of expectations.

Until now, corruption has often been associated with individual perpetrators, such as public officials or civil servants. However, as time goes by, corporations can also become perpetrators of corruption, either directly or through the actions of their managers. This has been recognized in the Indonesian legal system. The recognition of corporations as perpetrators of corruption reflects the modern reality of economic crime, where legal entities are used as tools to commit organized crime, including corruption.

According to Article 1 number 10 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes: "A corporation is a group of people and/or organized assets, whether a legal entity or not."

In the Criminal Code and the Corruption Crime Law, corporations can be held criminally responsible, even though they do not have a physical form like humans,

because they are considered legal subjects who can "carry out acts" through their managers or representatives.

Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with No. 20 of 2001 (Corruption Law) through Article 20 Paragraph (1) allows for criminal charges against corporations as perpetrators. This paragraph does indeed open up options for prosecution and sentencing for criminal acts of corruption committed by or on behalf of a corporation, the sentencing of which is, firstly, to the management only; secondly, to the corporation only; or, thirdly, to the management and the corporation.

Money laundering (TPPU) and corruption are closely intertwined, with corruption often serving as the predicate crime. The proceeds of corruption are often concealed or disguised through a series of financial transactions that fall under the category of money laundering.

The need to return state assets from corruption stems from the increasing number of corruption cases committed by both individuals and corporations, which has not been matched by the return of these assets. According to Indonesia Corruption Watch (ICW) data for 2021, state losses from corruption reached Rp 62.9 trillion, but only around 2.2 percent, or Rp 1.4 trillion, were recovered. In 2022, Rp 48.7 trillion was recorded as state financial losses, but only 7.3%, or Rp 3.8 trillion, was recovered. Based on monitoring of corruption verdict trends in 2023, state losses from corruption in Indonesia reached Rp 56 trillion, with only Rp 7.3 trillion recovered. This means that the rate of asset recovery remains very low compared to the total losses experienced by the state.

Asset confiscation in corruption crimes is a crucial law enforcement instrument aimed not only at punishing the perpetrators but also at recovering state financial losses. Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001, reads:

(1) In addition to additional penalties as referred to in the Criminal Code, additional penalties include:
   a. confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing such goods;
   b. …..
   c. ….
   d. *etc.*.

Emphasizes that corruption is not just about punishing individual perpetrators, but also about recovering state losses through asset recovery. Corporations, as legal entities, cannot be protected from criminal liability, especially when proven to have profited from corruption or used it as a means of laundering corrupt proceeds.

Several decisions concerning the confiscation of assets carried out by corporations that have permanent legal force:

1. Decision Number 55/Pid.Sus-TPK/2021/PN Jkt.Pst. on behalf of the defendant PT. CC, which states that the Defendant PT. CC will be subject to additional penalties in the form of:

   Confiscation of the assets of the Defendant PT. CC for the State in the amount of the Management Fee that has been received, namely Rp. 17,021,465,251.66 (seventeen billion twenty-one million four hundred sixty-five thousand two hundred fifty-one rupiah and sixty-six cents);
2. Decision Number 56/Pid.Sus-TPK/2021/PN Jkt.Pst. on behalf of the Defendant PT. PAAM, which states that an Additional Criminal Sentence has been imposed on the Defendant PT. PAAM in the form of confiscation of the Defendant's assets/wealth PT. PAAM for the State in the amount of the Management Fee that has been received, namely Rp. 18,081,024,718.34 (eighteen billion eighty-one million twenty-four thousand seven hundred and eighteen rupiah and thirty-four cents) by taking into account evidence in the form of cash deposited/deposited during the investigation stage in the amount of Rp. 746,882,901.00 (seven hundred forty-six million eight hundred eighty-two thousand nine hundred and one rupiah);
3. Decision Number 4/Pid.Sus-TPK/2022/PN Jkt Pst.on behalf of Defendants PT. NK and PT. TS, which states that Defendant II PT. TS continues to manage business assets in the form of Public Fuel Filling Stations/SPBU, Fishermen's Fuel Filling Stations/SPBN and Bulk LPG Transportation Filling Stations/SPPBE, then deposit the profits from these business assets into the KPK RI escrow account until the decision of the a quo case has permanent legal force;

LITERATURE REVIEW

a. Law Enforcement Theory

According to Lawrence Meir Friedman, a legal sociologist from Stanford University, there are three main elements of law enforcement theory, namely: (Lawrence, 2009)

1. Legal Structure In Lawrence Meir Friedman's theory, this is referred to as a substantial system that determines whether or not the law can be implemented. Substance means the product produced by people within the legal system, which includes the decisions they issue, the new rules they draft, and also includes living law, not just existing rules. As a country that still adheres to the Civil Law System or the Continental European system (although some laws and regulations have also adopted the Common Law System or Anglo-Saxon), it is said that law is written regulations, while unwritten regulations are not stated as law. This system influences the legal system in Indonesia. One of its influences is the existence of the principle of legality in the Criminal Code. Article 1 of the Criminal Code states that "no criminal act can be punished if there is no regulation that regulates it." Therefore, whether or not an act can be subject to legal sanctions depends on whether the act has been regulated in legislation.

2. Legal Substance: In Lawrence Meir Friedman's theory, this is referred to as a structural system that determines whether or not the law can be implemented properly. The legal structure based on Law Number 8 of 1981 includes; starting from the Police, Prosecutor's Office, Courts, and Criminal Execution Agencies (Lapas). The weak mentality of law enforcement officers results in law enforcement not running as it should. Many factors influence the weak mentality of law enforcement officers, including a weak understanding of religion, economics, non-transparent recruitment processes, and so on. Therefore, it can be emphasized that law enforcement factors play a crucial role in the functioning of the law. If the regulations are good, but the quality of law enforcement is low, there will be problems. Likewise, if the regulations are poor but the quality of law enforcement is good, the possibility of problems arising is still open.
3. Legal Culture According to Lawrence Meir Friedman, legal culture is a person's attitude toward the law and the legal system—their beliefs, values, thoughts, and expectations. Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or abused. Simply put, the level of public compliance with the law is one indicator of its functioning. The relationship between the three elements of the legal system itself is powerless, like mechanical work.

Structure is likened to a machine, substance is what the machine does and produces, while legal culture is whatever or who decides to activate and use it. Therefore, according to Lawrence Meir Friedman, the success or failure of law enforcement depends on the three elements above.

b. Asset Forfeiture Theory

According to Peter Alldridge, a British legal scholar who is widely known in the field of criminal law, particularly in relation to money laundering, taxes, corruption and legal evidence, the confiscation of criminal assets is actually rooted in a very fundamental principle of justice, where a crime should not provide benefits to the perpetrator (crime should not pay) or in other words, a person should not profit from the illegal activities he does. (Refki S, 2017)

Theoretically, Asset Confiscation is a legal remedy that can resolve cases related to corruption and prevent acts that actually result in state losses due to arbitrary actions by individuals, known as Abuse of Power. (Andrianto F, 2020)

Asset confiscation is a permanent act, and thus differs from confiscation, which is a temporary act. The confiscated items will be determined by a decision as to whether they will be returned to the rightful owner, confiscated for the state, destroyed, or remain under the prosecutor's control. (Rihantoro B, 2019)

RESEARCH METHODS

The theories used in this research are law enforcement theory and asset forfeiture theory. This research employs a normative juridical method with an approach to legislation, legal doctrine, and relevant case studies.

RESULTS AND DISCUSSION

Regulations regarding the confiscation of corporate assets as an effort to recover state finances in criminal acts of corruption.

In the Indonesian legal system, corporations are recognized as legal entities that can have rights and obligations and are responsible for their actions, including criminal acts. The recognition of corporations as legal entities is affirmed in Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, which states that corporations include both incorporated and unincorporated entities that carry out business activities and are legally responsible for their actions.

In legal thought, the recognition of corporations as criminals aligns with the **views** of Subekti and Sudikno Mertokusumo, who state that legal entities have rights and obligations like humans and act legally independently. Therefore, corporations can be subject to criminal sanctions if they meet the elements of criminal law specified in the law. (R Subekti, 2005)

From the perspective of the theory of justice, criminalization of corporations that commit corruption must pay attention to the principles of justice (gerechtigheid), benefit (zweckmassigkeit) and legal certainty (recht zekerheids) as stated by Lilik Mulyadi, which is based on modern criminal law politics to guarantee measurable and accurate justice. (Lilik Mulyadi, 2021)

The recognition that corporations can be perpetrators of criminal acts is reflected in Article 20 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which emphasizes that criminal sanctions can be imposed on corporations and/or their managers.

As a legal entity, a corporation has a separate status from its management, including in terms of asset ownership. Therefore, if the assets originate from crimes such as corruption, the state has the authority to seize the assets as a form of state financial recovery. (Yahya H, 2016)

The primary purpose of establishing a corporation is to seek profit, but in practice, there are deviations when that profit is obtained through violations of the law. This underscores the need for stricter regulations regarding corporate accountability. (Munir, 2003)

In the context of business law, Munir Fuady stated that corporations provide a legal mechanism for the sustainable accumulation of large amounts of capital, but they must be run professionally and based on the principle of legal prudence. (Munir, 2003)

On the other hand, when a corporation is used as a means to commit criminal acts of corruption, such as in the case of PT Corfina Capital, then the legal force inherent in the status of a legal entity must be used to demand criminal accountability and confiscation of its assets.

The PT Corfina Capital case shows that the investment manager acting as the Jiwasraya mutual fund manager colluded with external parties and managed the

funds non-independently, violating the POJK and the TPPU Law, and was therefore found guilty under Articles 2 and 3 of the Corruption Eradication Law.

In addition, PT Pool Advista Aset Manajemen (PAAM) was also proven to have received investment funds from Jiwasraya and handed them over to external parties without professional selection, violating the principle of fiduciary duty and resulting in state losses of Rp2.14 trillion.

Both cases demonstrate a common pattern of corporate crime: namely, manipulation of power, violation of the principle of prudence, and systematic collusion with third parties to obtain illegitimate benefits.

The case of PT Nindya Karya and PT Tuah Sejati in the port project in Sabang shows another form of corporate corruption through tender manipulation, falsification of project progress reports, and distribution of funds from inflated project budgets to state officials.

PT Nindya Karya's actions directly caused state losses of more than Rp94 billion and were subject to criminal sanctions in the form of compensation and confiscation of assets, in accordance with the provisions of Article 18 of the Corruption Law in conjunction with Articles 55 and 65 of the Criminal Code.

From a criminal liability perspective, the three cases above demonstrate that corporations fulfill the elements specified in the Corporate Criminal Liability Doctrine, namely: unlawful acts, structural ties to the perpetrator, and profits obtained by the corporation. (Muladi, 2002)

However, even though criminal fines and asset confiscation are imposed, the value of the confiscated assets often does not reflect the full amount of state losses, as reflected in the case of PT PAAM which only managed to return ±0.88% of the total state losses.

Peter Alldridge states that asset forfeiture is an effective tool for breaking the economic incentives for crime, and should be used as part of a comprehensive legal system, including a non-conviction-based asset forfeiture (NCB) model. (Peter A. 2003)

Indonesia has not fully implemented the NCB approach, even though in many cases, such as PT Corfina and PT PAAM, the main perpetrators fled assets abroad or hid them, so that state financial recovery was not optimal.

Asset confiscation against corporations is not only relevant as punishment, but also as a strategy to prevent organized and systematic corporate crime, as well as a form of restorative justice for the state that has suffered losses.

To increase the effectiveness of corporate asset confiscation, Indonesia needs to establish a special law on Asset Confiscation, as well as strengthen coordination between institutions such as the Corruption Eradication Commission (KPK), the Financial Transaction Reports and Analysis Center (PPATK), the Prosecutor's Office, and the courts in tracing and confiscating assets resulting from criminal acts.

Only by strengthening regulations, updating legal approaches, and improving a legal culture that rejects impunity for corporate criminals can the ultimate goal of recovering state finances from corruption be optimally achieved.

The concept of law enforcement for confiscation of corporate assets as an effort to recover state finances in criminal acts of corruption.

As a legal entity, a corporation not only has the right to perform legal acts but also bears legal responsibility, including for criminal offenses. This responsibility arises from the principle that a legal entity is a legal subject subject to sanctions for the actions or omissions of parties acting on its behalf. This corporate responsibility encompasses civil, administrative, and criminal matters, depending on the nature of the violation committed by the company's internal structures or agents. (Romli A, 1993)

Romli Atmasasmita explained that the doctrine of corporate criminal liability is a strong basis for establishing criminal responsibility for corporations. This view holds that the actions of perpetrators who are part of an organization can be considered acts of the corporation as a whole. Therefore, proving the unlawful act and the relationship between the perpetrator and the corporation are the primary requirements for criminalizing a corporation.

Under Indonesian law, corporate criminal liability can be categorized as strict liability, vicarious liability, and identification liability. The strict liability model holds the corporation responsible without requiring proof of fault, as long as a violation of the law is proven. This is widely applied in environmental and consumer protection cases.

In contrast, vicarious liability holds a corporation responsible for the actions of its employees if those actions are carried out in the course of their duties and provide a benefit to the corporation. In identification liability, the actions of high-ranking corporate officials, such as the CEO, are considered acts of the corporation itself. This model is commonly used in common law countries like the United Kingdom and Canada. (Muladi, 2002)

One case study that illustrates the application of corporate criminal liability is the case of PT Corfina Capital. In case No. 55/Pid.Sus-TPK/2021/PN Jkt.Pst, the company was found guilty of unlawful enrichment and money laundering, resulting in state losses of hundreds of billions of rupiah.

In the case of PT Pool Advista Asset Management, the judge ruled based on Decision Number 56/Pid.Sus-TPK/2021/PN Jkt.Pst that the company violated the principle of prudence and handed over control to an external party. This violated POJK No. 43 of 2015 as well as the Capital Market Law and the Money Laundering Law, and therefore the corporation was found jointly liable. (Andi H, 2008)

Meanwhile, in the case of PT Nindya Karya and PT Tuah Sejati, the court found the two corporations jointly guilty of corruption in a dock construction project in Aceh. They were ordered to compensate the state for substantial losses. This case demonstrates the direct application of criminal sanctions against corporations by the Corruption Eradication Commission (KPK), a progressive legal breakthrough, as outlined in Decision No. 4/Pid.Sus-TPK/2022/PN.Jkt.Pst.

Regarding theoretical aspects, Lawrence M. Friedman emphasized that law enforcement consists of three pillars: legal substance, legal structure, and legal culture. In the corporate context, substance includes the Corruption Eradication Law,

the Money Laundering Law, and the Financial Services Authority Regulation (POJK); structure includes the Corruption Eradication Commission (KPK), the Prosecutor's Office, and the courts; and legal culture encompasses law enforcement's awareness of the urgency of criminalizing corporate entities.

In the case of PT Corfina, although individual officials have been prosecuted, the corporation remains liable because the actions were committed for and on behalf of the company. This aligns with the theory of identification liability, which views the misconduct of high-ranking officials as a reflection of the corporation's will.

A similar incident occurred at PT Pool Advista. Although only management personnel were sanctioned, the corporation should also be held accountable for directly benefiting from the crime. The theory of vicarious liability is highly relevant to analyzing this responsibility.

The PT Nindya Karya case is a positive exception. In this case, the Corruption Eradication Commission (KPK) boldly named a corporation as a suspect and demanded the recovery of state finances through asset confiscation. This is an ideal form of law enforcement based on the strict liability model, without considering malicious intent.

Asset confiscation, as stipulated in Article 18 of the Corruption Eradication Law and Article 3 of the Money Laundering Law, is a crucial mechanism for recovering state finances. The verdict against PT Corfina, for example, confiscated illegal management fees of over Rp17 billion and several of the company's physical assets.

According to Peter Alldridge, restitution for losses resulting from criminal acts must be achieved not only through criminal prosecution but also through asset recovery, using either a criminal forfeiture or non-conviction-based forfeiture approach. This concept encourages the state to continue recovering assets even if the perpetrator has not been convicted.

In practice, the NCBF approach is urgently needed in Indonesia, particularly in cases where the perpetrator has died or fled. Unfortunately, Indonesia currently lacks specific legislation governing asset confiscation without criminal prosecution.

An independent asset recovery agency is needed to handle the tracking, freezing, management, and return of criminally obtained assets. This agency should work across sectors and have full authority over criminal assets across jurisdictions.

To support this law enforcement, it is also necessary to strengthen the reverse burden of proof system as regulated in a limited manner in Article 37A of the Corruption Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. Corporations or individuals who are unable to prove the origin of assets must be deemed to have assets derived from criminal acts and subject to confiscation.

International cooperation through mutual legal assistance is also a crucial pillar in asset recovery, as much of the proceeds of crime are held abroad. Indonesia needs to actively participate in international legal cooperation to access cross-border assets, as stipulated in Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters (MLA).

Although normatively there has been progress, in practice law enforcement

against corporations still faces challenges such as weak awareness of legal culture, slow judicial processes and the lack of courage among law enforcement officers in prosecuting legal entities as perpetrators of crimes.

Therefore, the ideal concept for future law enforcement must combine elements of criminalization, asset confiscation, and restorative justice, emphasizing the restitution of state losses. Corporations should not only be punished but also directed to return assets obtained illegally.

By comprehensively implementing the principles of corporate criminal liability, supported by a robust asset recovery system, anti-corruption efforts involving corporations can achieve their desired effectiveness. This step is key to creating a healthy business climate and clean governance.

CONCLUSION

1. Regulations regarding the confiscation of corporate assets in the Indonesian legal system have been accommodated in several statutory instruments such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 8 of 2010 concerning Money Laundering (TPPU), and Supreme Court Regulation No. 13 of 2016. Although normatively corporations can be held criminally responsible and their assets can be confiscated, there are no specific comprehensive and operational regulations regarding asset confiscation, especially non-conviction-based asset forfeiture. This results in ineffectiveness in maximizing state loss recovery.
2. The concept of law enforcement regarding the confiscation of corporate assets as perpetrators of corruption remains suboptimal. In practice, law enforcement officials tend to use an ultimum remedium approach, resulting in corporations being more frequently subject to administrative sanctions than criminal ones. However, criminalization and confiscation of corporate assets are crucial to provide a deterrent effect and restore state finances. Structural, substantial, and cultural barriers to legal enforcement also weaken its effectiveness.

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