Confiscation Of Assets From Corruption With The Implementation Of The Law On Prevention And Confiscation Of Money Laundering In Indonesia

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Abstract. *Asset forfeiture is an important instrument in combating corruption in Indonesia. The Anti-Money Laundering Law provides a strong legal basis for seizing assets resulting from corruption. Corruption is an act against the law, harming state finances, benefiting oneself or others. Perpetrators of corruption use various efforts to hide and disguise the origin of the proceeds of corruption by placing, disguising and mixing with legal funds. This journal discusses the application of the Anti-Money Laundering Law in the confiscation of assets resulting from corruption, legal basis, procedures, challenges and solutions. Article 38 B of the Anti-Corruption Law is one of the important instruments in the seizure of assets resulting from corruption. Asset forfeiture procedures include submission of a request, examination of the request, judge's decision, and implementation of the judge's decision. Challenges in the application of the Anti-Money Laundering Law for the confiscation of assets from corruption include difficulty of proof, slow process, and lack of human resources for law enforcement. Solutions to overcome these challenges include increased coordination between agencies, capacity building of law enforcement officials, and socialization of the Anti-Money Laundering Law to the public. Asset forfeiture is an important instrument in the fight against corruption in Indonesia. Serious efforts from the government and all elements of society are needed to overcome challenges and realize effective corruption eradication.*

Keywords: *Asset Forfeiture, Corruption, Money Laundering Crime.*

1 Introduction

Transparency International has released the results of its Corruption Perceptions Index (CPI) for 2023, the Corruption Perceptions Index is a composite indicator to measure perceptions of public sector corruption on a scale of zero (highly corrupt) to 100 (very clean) across 180 countries[1]. Transparency International's latest report shows that Indonesia's corruption perception index (CPI) was recorded at 34 points on a scale of 0-100 in 2023. This decline in CPI also lowered Indonesia's global CPI ranking, which

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in 2023 was ranked 115th. In the previous year, Indonesia's CPI was ranked 110th in the world[1].

Corruption is an illegal act that harms state finances, hampers economic growth, decreases the investment climate, increases poverty and social inequality in society. Corruption can also reduce the level of happiness of the people in a country[2]. Corruption in Indonesia has a devastating impact on the economy, democracy, politics, law, governance and social systems. Corruption must be seen as an extra ordinary crime that requires extraordinary efforts to eradicate it. The eradication of corruption is a series of prevention and eradication measures through coordination, supervision, monitoring, investigation, prosecution, and examination in court, and increasing community participation in the eradication of corruption[3].

With the background of the above description, eradicating corruption in Indonesia by only applying imprisonment for perpetrators has not been effective, efforts to seize and return the proceeds of corruption crimes to the state by applying the Law on Prevention and Seizure of Money Laundering Crimes to impoverish corruptors and restore state finances are more effective in providing a deterrent effect for corruptors. In this journal, we will discuss the issue of seizing assets from corruption by applying the law on prevention and seizure of money laundering to optimize the handling of corruption in Indonesia.

2 Research Method

This research is included in descriptive analytical research, namely the data obtained will be described by providing a description of legal issues especially regarding halal product guarantees and halal certification regulation. The research method used is the analysis of Halal Product Guarantee Law and literature studies to evaluate the existing legal framework and its implementation in practice concerning halal product guarantees and halal certification.

Results and Discussion

Types of corruption crimes in the form of; bribery, extortion, gratuities, fraudulent acts, conflict of interest in the procurement of goods and services and other motivations for corruption are always related to money. Corruption is always correlated with money and authority. The main goal of corruptors is to obtain as much wealth as possible, an effective way to eradicate and prevent corruption by confiscating the proceeds of corruption to create a deterrent effect. The construction of Indonesian criminal law still aims to uncover criminal acts that occur, punishing the perpetrators with criminal sanctions of "corporal punishment" imprisonment or confinement. The perpetrators are sentenced to prison, but the proceeds of corruption do not return to the state and are not impoverished, so the handling of corruption is not optimal[4].

The development of international law on asset forfeiture from economically motivated crimes is an important part of the criminal law system. Corruption in Indonesia has increased in quantity and intensity. The trend of corruption followed by

money laundering aims to disguise the proceeds of crime by using the proceeds of corruption for activities that do not violate the law[5]. The crime of corruption is an Extra Ordinary Crime that endangers and impacts the progress and development of Indonesia so that it needs to be handled optimally in order to realize good governance[6].

The crime of money laundering is a follow-up crime to the original crime, it must be understood that there will be no money laundering without the original crime[6]. The crime of origin in the Law on Money Laundering is regulated in Article 2, consisting of 23 types of criminal offenses plus all criminal offenses that carry a sentence of 4 years or more[7]. In the investigation, assets allegedly originating from the proceeds of the crime of origin should be found, the investigation process will find evidence of the crime of origin related to the act of money laundering crime regulated in Article 3, Article 4, and Article 5. The application of the Anti-Money Laundering Law in prosecution and court examinations must have evidence of the crime of origin and be proven together with the money laundering crime in this case that "assets that are known or reasonably suspected of originating from a criminal offense as referred to in Article 2 paragraph (1).

The crime of origin as one of the elements of ML must be proven, thus there must be evidence that the assets are indeed derived from criminal acts and it must be stated which crimes are related to money laundering. This understanding is important in relation to the principle of no money laundering without predicate offense. The crime as referred to in article 2 paragraph (1) as a crime (predicate offense) and money laundering or TPPU as a follow up crime, and predicate offense and money laundering. Article 3 formulates "Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currency or securities or other actions on assets that he knows or reasonably suspects are the proceeds of a criminal offense.

Based on this thinking, the handling of crimes with economic motives must be carried out using a fair approach for the community through returning the proceeds and instruments of criminal acts to the state for the benefit of the community. The Government of Indonesia has ratified several United Nations conventions, including the International Convention on the Suppression of the Financing of Terrorism and the Convention against Corruption, which stipulate provisions relating to efforts to identify, detect, and freeze and confiscate the proceeds and instruments of criminal acts. As a consequence of the ratification, the Indonesian government must adjust the existing legislative provisions with the provisions in the convention[8].

Several criminal provisions in Indonesia already regulate efforts to confiscate and seize the proceeds and instruments of criminal acts[9]. Asset forfeiture can be carried out after the perpetrator is proven in court to have committed a criminal offense, but the investigation of the crime of origin and the crime of money laundering can be carried out simultaneously. The provisions of the applicable corruption law also still raise several problems, among others, the substitution of the requirement to pay restitution with corporal confinement, the length of which does not exceed the maximum sentence of the principal crime, creates an opportunity for perpetrators of corruption to choose to extend the period of corporal punishment compared to having to pay restitution[10].

The paradigm error related to restitution for corruption crimes is also contained in Article 18 paragraph (1) of Law No.31 of 1999 as amended by Law No.20 of 2001 concerning the eradication of corruption crimes that "the payment of restitution in an amount equal to the property obtained from corruption crimes[11].

Efforts to recover stolen state assets through corruption tend not to be easy to do. Corruptors have unusually broad and hard-to-reach access in hiding and laundering the proceeds of their corruption crimes. The problem becomes even more difficult for recovery efforts due to the safe haven of the proceeds of crime that transcends the borders of the country where the corruption crime itself was committed[12].

Asset forfeiture research shows that in addition to the absence of Stolen Asset Recovery (StAR) procedures and mechanisms, there are also several obstacles that have been experienced in returning assets from corruption. These obstacles include[13]:

(1) obstacles in the investigation,
(2) legal systems between different countries,
(3) inadequate facilities and infrastructure owned by Indonesia,
(4) it is not easy to cooperate with other countries both in the form of extradition and MLA agreements,
(5) dual criminality problem,
(6) errors in prosecution in relation to restitution and erroneous verdicts by judges.,
(7) Central Authority issues

These obstacles must be overcome immediately to optimize the recovery of state losses through the creation of a special civil procedure law for corruption cases, which breaks out of the conventional procedural law[14]. Civil lawsuits need to be placed as the main legal remedy in addition to criminal remedies, not just facultative or complementary to criminal law, as stipulated in the Corruption Eradication Law. Therefore, a progressive concept of state financial recovery is needed, for example by harmonizing with the 2003 United Nations Convention Against Corruption (UNCAC).

Efforts to recover state money are also hampered by the characteristics of corruption crimes whose proof is very detailed and takes a long time. Meanwhile, on the one hand, corruptors' efforts to hide the proceeds of corruption have been carried out since the corruption occurred. The average time span of 2 to 3 years to resolve a corruption case provides a very loose time for the perpetrator to eliminate traces of the assets obtained from corruption.

Changes in strategy can be seen from changes in legislation, the establishment of institutions authorized to deal with corruption issues and cooperate with the police and prosecutors, ratify the United National Again Corruption (UNCAC) Countries that have signed and ratified UNCAC, cooperate with countries that are considered as places of storage of assets from corruption, sign Mutual Legal Assistance (MLA). *The United National Against Corruption* (UNCAC) is designed to ensure that each State Party recognizes other State Parties as having equal legal standing to bring civil actions and other direct means to recover illegally acquired property that has fled abroad.

Return of assets is a new punishment objective in the criminal law to eradicate corruption and money laundering, asset recovery is the process of perpetrators of crimes being deprived, confiscated, deprived of their rights from the proceeds of criminal

acts[15]. The return on assets emphasizes three factors, namely; First, returning assets means seizing and revoking State property rights, second, the assets seized are the proceeds / profits obtained from corruption, third, the purpose of returning assets is to prevent them from being used to commit other criminal acts. Handling corruption crimes must be accompanied by implementing money laundering crimes to guarantee the return of State losses.

In Indonesia, several criminal provisions already provide for the possibility to confiscate and forfeit the proceeds and instruments of criminal acts. However, forfeiture can only be carried out after the perpetrator has been proven in court legally and convincingly to have committed a criminal offense. There are various possibilities that can prevent the completion of such an enforcement mechanism, such as the absence or death of the perpetrator or other obstacles that prevent the perpetrator from undergoing examination in court or not finding sufficient evidence to file charges in court and other reasons.

Another issue that makes it difficult to maximize the return of corruption crimes to the state is that the Anti-Corruption Law has limited the amount of restitution that can be imposed to the same amount as the money obtained from corruption crimes or as much as can be proven in court. In addition to the obstacles in the legal paradigm of Corruption Eradication, efforts to recover state funds are also hampered by the characteristics of corruption crimes whose proof is very detailed and takes a very long time. Efforts to suppress crime by relying on the use of criminal provisions also still leave other obstacles. There are several criminal offenses or violations of the law that cannot be prosecuted using criminal provisions. For example, at present, material unlawful acts that result in losses to the state cannot be prosecuted under the provisions of the crime of corruption.

States Parties that have signed and ratified UNCAC, as victims of corrupt practices, have the right to recover the proceeds of corruption that have been sent abroad. Article 53 of UNCAC is designed to ensure that each State Party recognizes other State Parties as having equal legal standing to bring civil actions and other direct means to recover property that has been illegally obtained and fled abroad. In this regard, it includes, among others:

(1) as a plaintiff in a civil action, where the State Party should review the requirements for access to the Court where the plaintiff is a foreign state, as in many jurisdictions this may trigger jurisdictional and procedural issues.
(2) as the state should be recovered from the damage caused by the criminal offense (corruption). Receipts from corruption should be recovered only by reason of confiscation, and State Parties are required to enable their courts to recognize the rights of victims of State Parties to receive compensation. This is relevant to offenses (criminal acts) that have caused harm in another State Party.
(3) as a third party claiming ownership rights in a confiscation procedure, either civilly or criminally. As the victim state may not be aware of the exact procedure to be followed, the State Party needs to inform the victim state to follow the applicable procedure and prove its claim.

In order to return the proceeds of corruption to the state, it seems that the provisions contained in Law No. 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption (TIPIKOR Law) are not sufficient, in this case with regard to the application of restitution sanctions (restitution) or fines. These provisions are not easy to be applied by judges and are often not implemented because the perpetrator prefers punishment or substitute confinement or because the condition of the convicted person's property is insufficient[16].

3 Conclusion

The Crime of Money Laundering is regulated in Article 2, which consists of 23 types of crimes and adds all crimes that carry a sentence of 4 years and above. In order to be able to conduct investigation, prosecution, and examination in court against Money Laundering Crime, it is not mandatory to prove the original criminal offense first. To prove the existence of money laundering crime as stated in Article 3, Article 4 and Article 5, in this case is that "the assets that are known or reasonably suspected of originating from a criminal offense as referred to in Article 2 paragraph (1). The crime of origin as among the 23 types of crimes is corruption, where corruption is regulated in Law Number 21 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption. This understanding is important in relation to the principle of no money laundering without predicate offense. The crime as referred to in article 2 paragraph (1) as a crime (predicate offence) and money laundering or TPPU as a follow-up crime, and predicate offence and money laundering.

The effort to return stolen assets (stolen asset recovery) feels more complicated if the place of hiding assets exceeds the jurisdiction of state power, at least requiring time, access, and international cooperation with the country where the assets are hidden. There are two fundamental things related to asset recovery, namely; Determining what assets must be accounted for confiscation and determining the basis for confiscating an asset. Asset return is a new criminalization goal in the criminal law to eradicate corruption and money laundering, asset return is the process of perpetrators of crimes being deprived, deprived, deprived of their rights from the proceeds of crime. Handling corruption crimes must be accompanied by implementing money laundering crimes so that it is easier to guarantee the return of State losses, but all of this requires the seriousness and willingness of law enforcement officials to do so.

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