Confiscation of Corruption Crime Assets by the Indonesian Attorney General as an Action to Recover State Financial Losses

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Abstract*—Addressing corruption, which is seen as an egregious offense, necessitates a thorough and effective strategy. Corruption not only undermines public finances but also infringes upon the social and economic rights of the people. The regulation of asset seizure in relation to corruption crimes is stipulated in Article 18, Article 19, Article 38, and Article 38B of Law Number 20 of 2001, which pertains to amendments made to Law Number 31 of 1999, focusing on the eradication of corruption crimes. This study assesses the legal measures concerning the seizure of assets acquired through corrupt practices by the Attorney General's Office of the Republic of Indonesia, with the aim of recovering financial losses incurred by the state. The research methodology employed is a normative legal approach, utilizing conceptual analysis to evaluate the efficacy and efficiency of asset seizure. The research demonstrates that the Attorney General's Office assumes a strategic function within the criminal justice system, specifically in the management and implementation of court rulings. Nevertheless, difficulties arise when the seized assets are inadequate to compensate for the financial losses incurred by the state as a result of corruption. The research findings emphasize the necessity of implementing supportive rules for asset seizure, which should include more stringent criminal measures to enhance the prevention and elimination of corruption. Cost-benefit analysis is employed to assess the effectiveness of asset confiscation, guaranteeing that the procedure yields optimal advantages for the society and minimizes overall state losses. The research findings highlight the significance of implementing a thorough legislative framework, streamlined asset confiscation procedures, and uniform sentencing methods to effectively combat corruption. Suggestions encompass enhancing asset recovery procedures, fine-tuning sentencing rules, and incorporating cost-benefit analysis into policy development to maximize the effectiveness of anti-corruption endeavors.

***Keywords*—Confiscation of Assets; Corruption Crime ; RI Prosecutor's Office.**

I. INTRODUCTION

There is an opinion that corruption is considered an extraordinary crime or "extraordinary crime," so it is often considered a crime that is outside the law ("beyond the law") because it involves high-level economic crime perpetrators ("high level economic") and high-class bureaucracy. Both economic and government bureaucrats are at the top ("high-level bureaucratic").[1] Corruption is an exceptional crime due to its systematic execution by educated persons who hold influential positions in both politics and the economy within society. The ramifications of illegal acts of corruption are substantial and enduring for the broader community. In addition to causing harm to the nation's finances or economy, corruption also infringes upon the social and economic rights of individuals.

The management of criminal instances of corruption has primarily prioritized the quantity of cases addressed by law enforcement, although it has failed to address the repercussions of these actions. The expenses associated with managing corruption cases are substantial.[2] The present shift in law enforcement's perspective on criminal acts of corruption entails not only the incarceration of corruption perpetrators but also aims to restore the initial state of affairs by recovering state finances affected by corruption. In addition to the financial

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losses suffered by the state due to corrupt activities, there have been expenses associated with the management of corruption cases, including the investigation, inquiry, prosecution, and execution phases.

Nevertheless, those responsible for engaging in corrupt activities have never been held accountable for the financial burden associated with addressing their illegal conduct. This includes the seizure of their assets to compensate for the financial losses suffered by the state and the expenses incurred in combating corruption. Corruption adversely impacts individuals by utilizing government funds to address corruption-related matters. The sanctions and fines placed on offenders of corruption are not proportional to the damages known as the "social costs of corruption." The consequences of a criminal act of corruption extend beyond the monetary value that is corrupted. They encompass the various expenses that the state incurs as a result of the corrupt behavior, such as the costs associated with prevention measures, legal processes, and the financial burden of sustaining the corruptor while incarcerated.

The Indonesian government has officially approved multiple United Nations treaties, including the Convention Against Corruption (UNCAC), which establishes regulations pertaining to the identification, detection, freezing, and confiscation of the profits and tools associated with illicit activities.[3] Indonesia formally approved the United Nations Convention against Corruption (UNCAC) by enacting Law Number 7 of 2006. This convention also governs asset recovery, mandating Indonesia to regulate the retrieval of assets obtained through illicit acquisition in criminal acts of corruption.

The Eradication of Corruption Crimes Law, also known as Law Number 31 of 1999, with its latest amendment in Law Number 20 of 2001, governs the imposition of supplementary penalties such as the seizure of both movable and immovable assets that have been utilized or acquired through corrupt activities. This includes companies that are owned by individuals convicted of corruption. When a criminal act of corruption occurs, the procedure include seizing the assets acquired through corrupt methods and any substitutes for these assets. Furthermore, the wrongdoer is obligated to provide a sum of money equal to the value of the assets obtained through the act of corruption. Nevertheless, the implementation of this alternative currency is hindered by numerous impediments in carrying out the judge's ruling.

If the seizure of all assets that are believed to have been acquired through criminal acts of corruption is insufficient to compensate for the losses incurred by the state. In addition to the financial damages made by the state due to corrupt criminal activities, there are also expenses associated with managing the case from the first inquiry to the final execution. Nevertheless, the expenses associated with corruption have never been imposed on those responsible by seizing their assets to compensate for the financial losses and costs borne by the state. The researcher's objective is to investigate the execution of efficient asset seizure by the Prosecutor's Office of the Republic of Indonesia with the purpose of recovering state monetary damage caused by acts of corruption.

II. LITERATURE REVIEW

A. Asset Confiscation by the Attorney General's Office of the Republic of Indonesia

The Attorney General's Office of the Republic of Indonesia is a government agency that has the responsibility of exercising judicial authority and state power in the field of prosecution and other legally-based responsibilities. This statement is based on Article 1 of Law Number 11 of 2021, which concerns the modification of Law Number 16 of 2004 about the Attorney General's Office of the Republic of Indonesia. Article 30A of this law confers upon the Attorney General's Office the authority to undertake measures to monitor, seize, and return assets obtained via unlawful activities, as well as other assets, to the state, victims, or rightful owners.[4] The Attorney General of the Republic of Indonesia has issued Regulation Number 7 of 2020, which modifies the Asset Recovery Guidelines outlined in Regulation Number PER-027/A/JA/10/2014. This new regulation pertains to asset seizure. The justification for this act clarifies that the Attorney General's Office, as a law enforcement agency, is widely recognized as the main institution in the criminal justice system. The main function of the Attorney General's Office is to supervise and administer investigations, litigate cases, and enforce court judgments that have legally binding authority (res judicata). Moreover, the Attorney General's Office has the duty and authority to oversee any seized evidence during the prosecution process, with the aim of validating the case and conducting legal processes.

B. Criminal Law Policy Regarding Asset Forfeiture in Corruption Crimes

Soedarto states that the objective of legal politics is to establish rational regulations that are in line with certain circumstances and conditions. Legal politics refers to a state's policy implemented through its authorized institutions to produce desirable and deemed appropriate regulations that convey societal values and achieve desired goals.[5] According to Solly Lubis, legal politics refers to a political strategy that creates the appropriate legal norms to regulate different parts of society and the state. Legal politics, as defined by Mahmud M.D., refers to the governmental policies concerning the creation and enforcement of national laws. This concept also encompasses the comprehension of how politics exerts influence on law by examining the power dynamics involved in the formulation and implementation of the legislation itself. In this situation, the law should not be

regarded only as a collection of imperative articles. Nevertheless, it is important to recognize that this subsystem is heavily influenced by politics, both in shaping its content (articles) and in implementing its rules.

When considering criminal law policy about asset forfeiture in corruption crimes, the legal politics surrounding the enforcement of laws related to corruption crimes revolve around determining if the current legislation adequately allows for law enforcement actions in asset forfeiture.[6] If it fails to fulfill this requirement, the attempts to address corruption crimes through asset forfeiture will not be achieved. The Law on the Eradication of Corruption Crimes, specifically Law Number 31 of 1999 on the Eradication of Corruption Crimes as modified by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption Crimes, contains regulations pertaining to asset forfeiture in Articles 18, 19, 38, and 38B. Nevertheless, as stipulated in these paragraphs, asset forfeiture is designed to provide compensation equal to the value of the assets acquired through the fraudulent activity. The quantity of the substitute currency corresponds to the magnitude of the financial deficit suffered by the state. Hence, it is unfeasible to carry out asset forfeiture for the purpose of recuperating state financial losses and other incurred losses resulting from the state's management of corruption crime cases on their own.

III. METHOD

This study uses a normative legal approach to examine asset confiscation in corruption cases. The research focuses primarily on Law Number 31 Year 1999 concerning the Eradication of Corruption Crimes and its amendments, as well as other relevant legislation.[7] Normative legal analysis is conducted to examine legal provisions related to asset forfeiture, including the procedures for asset forfeiture according to applicable law. Meanwhile, a conceptual approach is employed to evaluate the effectiveness and efficiency of asset forfeiture to recover state financial losses, taking into account cost-benefit analysis as an evaluation tool. The focus on legal sources is primarily on Law No. 31 Year 1999 concerning the Eradication of Corruption Crimes and its amendments and draft laws related to asset forfeiture in corruption cases. Legal sources are analyzed by examining articles related to asset forfeiture, evaluating the implications and limitations of existing regulations, and considering aspects of justice and efficiency. The conclusion of this study indicates that asset forfeiture is a crucial strategy for recovering losses caused by corruption crimes. However, it must be based on a cost-benefit analysis to ensure its effectiveness and to consider other costs associated with handling corruption cases.

IV. RESULT AND DISCUSSION

The Attorney General of the Republic of Indonesia serves as the controller (*dominus litis*) in criminal cases and plays a crucial role as the core institution in the criminal justice system. This includes overseeing and carrying out control and execution functions, as explained by the researcher.[8] The execution of tasks pertaining to the handling of evidence for prosecution purposes should not be futile if the seized assets, which serve as evidence, do not sufficiently compensate for the losses incurred by the state as a result of corruption crimes. Therefore, it is imperative for the Attorney General's Office of the Republic of Indonesia to be equipped with legislation that provides support in this regard.[9] The regulation of asset seizure in relation to corruption crimes is stipulated in Article 18, Article 19, Article 38, and Article 38B of Law Number 20 of 2001, which pertains to amendments made to Law Number 31 of 1999, specifically addressing the eradication of corruption crimes. Article 18 governs supplementary measures to be taken against individuals involved in corruption, in addition to the primary criminal sanctions. These measures include the payment of restitution, the deprivation of specific privileges, and the public disclosure of the judge's ruling. The purpose of this action is to serve as a deterrence and recover the losses incurred by the state.[10] Article 19 furthermore governs the withdrawal of specific rights, in addition to the primary criminal sanctions, with the objective of deterring corrupt individuals from engaging in recurrent offenses and safeguarding the integrity of their positions or occupations. Article 38 governs the process of confiscating and seizing assets acquired by corrupt activities, with the aim of returning these assets to the state in order to compensate for the incurred damages. Article 38B outlines the specific steps involved in seizing assets owned by individuals accused of corruption, with the intention of establishing a well-defined and transparent legal structure while safeguarding the rights of possibly impacted parties. The primary objective of these articles is to enhance the legal framework for addressing and eliminating corruption, guarantee the restitution of state losses, and uphold public confidence in official institutions and positions.

The proposed legislation regarding asset confiscation in relation to illegal activities defines criminal assets as assets that the government can seize using forceful means in order to assume control and ownership of these assets, based on a conclusive and enforceable court ruling. Furthermore, this draft legislation allows for the confiscation of certain assets, specifically (a). Assets that are deemed excessive in relation to income or lack legitimate means of acquisition, and are suspected to be connected to illicit assets obtained after the implementation of this legislation; (b). Forfeited assets refer to items that have been obtained from the proceeds of crime or used in the commission of crimes.

To improve the efficacy of preventing and eliminating corruption offenses, the regulation incorporates distinct criminal provisions that deviate from prior legislation. These measures encompass defining minimal criminal threats, augmenting fines, and heightening the severity of the death penalty as a punitive action.[11] It also includes imprisonment penalties for perpetrators of corruption crimes who cannot pay additional penalties in the form of reimbursement for state losses. There are also victims of corruption crimes, which, in this case, are the general public. Therefore, to protect and defend the interests of the public, optimal sanctions are needed to fulfill justice in society. Muladi argues that the matter of sentencing becomes highly intricate as a result of attempts to take into account human rights factors and to ensure that the penal system is practical and effective.

In handling corruption cases that have occurred so far, the articles most commonly used are Article 2 and Article 3 of Law Number 31 of 1999 and Article 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Indeed, in this Law, Article 18 paragraph (1) letter b mentions the existence of additional penalties in the payment of reimbursement money, which is as much as possible equal to the assets obtained from corruption crimes. The provision of reimbursement money is intended so convicted corruptors can return the financial gains they have obtained from corruption. However, the provision of reimbursement money faces many obstacles that complicate its implementation in judicial decisions.[12] The problems mentioned are arrears that occur in payment obligations for reimbursement money, the inability of convicted corruptors to pay reimbursement money on the grounds of not having sufficient wealth, and also the unpreparedness of law enforcement officials themselves to execute the collection of reimbursement money or seize the assets owned by convicted corruptors for subsequent auctioning to obtain an amount of money that can cover the expected reimbursement.[13] What if all assets believed to have been acquired through corrupt activities have been confiscated, but the total value of these assets is insufficient to compensate for the losses already suffered by the state? Aside from the financial losses suffered by the state as a result of corruption, the state has also allocated funds to cover the costs associated with investigating, prosecuting, and carrying out corruption cases. Thus far, the individuals responsible for corruption have not been held accountable for the financial consequences of their actions, as their assets have not been seized to compensate for the losses suffered by the state or to reimburse the expenses incurred in prosecuting corruption cases. The loss, known as the "social cost of corruption," is not proportional to the penalties and fines imposed on individuals involved in corrupt activities. The social cost of corruption refers to the negative consequences that arise from corrupt activities, which place a financial burden on the state. These impacts manifest in the form of the actual sum of money that is corrupted and the various expenses that the government incurs as a result of such corrupt conduct. These expenses encompass the cost of implementing measures to prevent corruption, the expenses associated with legal proceedings against corrupt individuals, ranging from investigation to prosecution, and even the cost of maintaining corrupt individuals in prison.

The primary objective of criminal law enforcement is twofold: to punish individuals who commit criminal acts and deter them from engaging in such behavior again, and to compensate victims for the financial damages they have incurred as a result of these acts. This responsibility falls under the dominus litis principle, which designates the Attorney General of the Republic of Indonesia as the public prosecutor's office. The Attorney General's role encompasses not only prosecuting offenders but also executing court judgments..[14] Conversely, the Attorney General, in their role as the state's legal advisor and representative, is responsible for offering legal advice, support, services, and protection. They also enforce civil rights on behalf of the state and the public, particularly in cases involving financial or material harm, with the aim of restoring the affected parties to their original state. The Attorney General of the Republic of Indonesia has the authority to recover losses incurred by the state as a result of criminal acts. This authority is derived from the position, function, duties, and responsibilities of the Attorney General as the public prosecutor and state attorney. It is exercised through the functions of investigation, prosecution, and execution of final court decisions.

The Indonesian Attorney General's Office (AGO) initially conducts the asset tracing function as part of the asset forfeiture process. The Attorney General's Office (AGO) employs a mechanism of asset forfeiture that involves a systematic process of asset tracing. This process entails searching for, requesting, obtaining, and analyzing information to ascertain or reveal the origin, existence, and ownership of assets held by individuals accused of engaging in corrupt activities. The Intelligence division within the AGO conducts this activity based on the interests of other law enforcement divisions. Additionally, the recently established Asset Recovery Agency (BPA) serves as a supporting division to ensure the success of law enforcement, as mandated by Article 30A of the Attorney General's Law.[15]

Once the intelligence division of the Indonesian Attorney General's Office (AGO) acquires data and information about the source, existence, and ownership of assets from individuals suspected of engaging in corrupt activities, it is subsequently transferred to the appropriate departments. These departments include the Special Crimes Division, specifically the Deputy Attorney General for Special Crimes, as well as the Attorney General's Office and the District Attorney's Office, depending on the origin of the request to trace the assets. Subsequently, the acquired data and information might be utilized to confiscate assets or freeze accounts associated with acts of corruption. The legal basis for this blockage is stipulated in Article 29, paragraph (4) of

Law Number 31 of 1999, which pertains to the eradication of corruption. Investigators or public prosecutors initiate the blocking process by requesting banks, owned by individuals involved in corruption crimes or associated with them, to block the accounts. Blocking is applied to all categories of savings accounts, encompassing checking accounts, deposits, deposit certificates, saves, and other variations, such as custodianship, securities, interest, dividends, bond interest, or profits derived from such savings. The tracing, blocking, and seizure efforts are aimed at preventing the transfer of assets to third parties or their transfer in order to maximize the recovery of state financial losses. Additionally, these efforts serve to supplement the evidence in proving the defendant's guilt in court. Subsequently, once accounts or savings have been identified and restricted, the Indonesian Attorney General's Office can proceed with asset forfeiture. This involves the transfer of ownership rights to assets from individuals or corporations under the control of the Indonesian Attorney General's Office, facilitated by the Asset Recovery Agency, in accordance with court orders and decisions.

Moreover, when dealing with corruption issues, the accused individual is required to provide restitution in order to compensate for the financial losses incurred by the state. The exact amount of these losses must be determined beforehand. If this action is not completed within a period of one month following the final ruling of the court, the prosecutors have the authority to confiscate their possessions and sell them at an auction in order to compensate for the restitution. It is important to highlight that the responsibility to provide compensation is limited to the extent of the financial damages suffered by the state. Therefore, the defendant is not required to pay an amount beyond the state's losses. An additional issue occurs when the individual responsible for corruption lacks adequate resources to fulfill the reparation. The individuals are subject to incarceration for a period that does not surpass the highest punishment for the primary offense as specified in this legislation, and the length of the sentence is established in the court's ruling. The state incurs additional costs when corrupt individuals opt for replacement incarceration instead of making restitution, which further disadvantages the state. This particular case presents a challenge in the process of collecting financial losses suffered by the state, which includes losses resulting from corruption and other expenses related to the management of corruption cases, sometimes referred to as "social costs of corruption." The measurement of the social cost of corruption utilizes the Social Cost of Crime framework developed by Brand and Price in 2000. In Indonesia, the concept of the societal cost of corruption has been implemented, albeit with certain modifications. The social cost of corruption include both apparent and implicit expenses. Explicit costs encompass corruption anticipation costs, reaction costs, and consequence costs that are openly acknowledged. Implicit corruption costs, on the other hand, refer specifically to the hidden costs resulting from corruption consequences. Assuming that the expenses associated with the societal consequences of corruption outweigh the responsibility to compensate corrupt individuals for the losses incurred by the state. Therefore, there has been a manifestation of inefficiency, or to put it differently, the state is still experiencing a deficit.

Therefore, asset forfeiture against corruptors needs to be conducted with attention to efficiency. Such asset forfeiture can only be achieved through economic analysis of the law, which fundamentally considers the legal costs sacrificed and the benefits perceived by law enforcement, especially for Indonesian society itself. The basic concept is efficiency, which involves analyzing legal rules, in this case, associated with laws on the eradication and prevention of corruption, focused on the efficiency of outcomes resulting from the rules, such as reducing corruption, fulfilling expected sanctions for all parties, and especially returning state losses.[16] Posner's rational choice theory suggests that when someone decides rationally on how to act, they will consider all possible reactions from others. Rational individuals act strategically.

According to Harkiristuti Harkrisnowo in the Inaugural Oration titled "Reconstruction of Sentencing Concepts: A Challenge to the Legislative and Sentencing Processes in Indonesia," a parameter for determining new criminal sanctions can only be created if there is prior agreement on what should be the basis for sentencing considerations. Harkristuti Harkrisnowo states that determining the proportion of criminal penalties based on parameters and the seriousness of the crime is crucial for consistency, both at the legislative level and implementation at the judicial level later on.

Asset forfeiture using the Cost-Benefit Analysis (CBA) approach is employed. This approach is used to assess the legal costs sacrificed and the benefits gained. This approach will calculate how much cost will be sacrificed from a judge's policy in making decisions and the benefits obtained from that policy, namely from the judge's decision. Thus, we can assess whether the sanctions in corruption laws can accommodate the goals of eradicating and preventing corruption.[17] If we use a traditional (fundamental approach) approach, the function of criminal law will always be directed primarily to uphold and protect moral values. In this case, guilt will always be the main factor in sentencing conditions. This case is usually closely related to retributive theories of sentencing. Whether restitution penalties have adequately compensated for the financial losses incurred by the state due to the committed corruption is a matter of debate. The terminology of Cost-Benefit Analysis is often assumed to be part of procedures for assessing policy implementation in the context of public policy. In general, cost-benefit analysis is a method to identify the functions of policymakers and select the best policies to implement based on specific criteria.[18] The Cost-Benefit Analysis method is based on the economic analysis

of law, grounded on the keyword efficiency. Efficiency in the Economic Analysis of Law is identified with justice. Justice will be achieved if the implementation of a policy is interpreted as providing greater efficiency to society as a benefit (cost < benefit). If the opposite occurs (cost > benefit), then inefficiency arises; in other words, injustice to society directly occurs when that policy is implemented. The Cost-Benefit Analysis method can tell us whether a policy should or should not be implemented. If a policy passes the cost-benefit analysis, it must be implemented.[19] If the policy fails, it must be rejected. However, this method requires meeting the demand for efficiency as the sole requirement. Many writings and textbooks on cost-benefit analysis provide data and information in formulating a policy rather than providing policies. One significant advantage of implementing the Cost-Benefit Analysis method is to test and verify the data and information used to form a policy. Cost-benefit analysis is implemented as a method that can be used to seriously, impartially, objectively, and rationally calculate a law formulation. The main goal of CBA is to evaluate the law concerning external methods: legal costs and benefits. CBA quantifies legal objectives. Its primary goal is to maximize benefits and minimize costs. Using this method in asset forfeiture allows for the recovery of state financial losses, not only focusing on the actual state financial losses based on calculations by authorized institutions but also the other costs involved in handling corruption cases by the Indonesian Attorney General's Office.

V. CONCLUSION

The research findings underscore the significant role of the Attorney General of the Republic of Indonesia in criminal justice, particularly in their authority and responsibility in controlling and executing tasks related to criminal cases. However, challenges arise when more than assets seized as evidence is needed to cover the state's losses from corruption crimes. Supportive lawmaking is imperative to manage this issue. The draft law on asset confiscation associated with crimes outlines various assets subject to confiscation, aiming to regain state control over criminal assets based on court rulings. Specific criminal provisions, including increased penalties and fines, enhance efforts to prevent and eliminate corruption offenses, reflecting a stronger deterrent. However, challenges persist in enforcing penalties, particularly in ensuring perpetrators adequately reimburse state losses. The social cost of corruption, encompassing various financial burdens on the state, underscores the need for effective sanctions to ensure justice and deterrence, thereby emphasizing the severity of corruption offenses and the importance of their prevention. Asset confiscation procedures, guided by efficiency considerations, necessitate an economic analysis of the law to balance legal costs and benefits. Implementing Cost-Benefit Analysis (CBA) in asset forfeiture allows for a comprehensive assessment of policy outcomes, ensuring optimal resource utilization and maximizing societal benefits.

Furthermore, sentencing considerations in corruption cases should prioritize consistency and fairness, aligning with parameters agreed upon beforehand. The application of rational choice theory and retributive sentencing principles informs sentencing decisions, emphasizing the importance of proportionality and seriousness of the offense. In conclusion, the research underscores the importance of comprehensive legal frameworks, efficient asset forfeiture procedures, and consistent sentencing practices in combating corruption effectively. Recommendations include strengthening asset recovery mechanisms, refining sentencing guidelines, and integrating cost-benefit analyses into policy formulation to optimize outcomes in corruption eradication efforts.

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