



## Fair Law in Money Laundering with the Origin of Corruption with the Concept of Asset Seizure

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### ABSTRACT

Money laundering is a guarantee to get the results of criminal acts establish the economic responsibilities of a country and especially of tact currency exchange rates will be more difficult. Glassy from this, the achievement of assets becomes important because the method of approach used to be known as "following the money". The concept of Internal Revenue money from the perspective of Justice. This study is the norm or research doctrinaire, also referred to as dogmatic research with a conceptual approach and legislation. The study found that the achievement of assets in laundering money has actually been seized in Indonesia in the form of criminal forfeiture based on Criminal Code and code of Criminal Procedure, civil forfeiture and administrative forfeiture under the PPTPPU law, but in setting and implementation there is still a law that can used by criminals to return the proceeds of their crimes, so as not to get a sense of Justice, harming the state and society completely money kidnapping victim. Based on the perspective of Justice derived from the fundamental principle of Justice states that justice should not be contested the culprit. This underlies the need for consideration of regulatory responsibility foreclosure of assets, especially related to civil / in foreclosure rem by reformulating unity in the UU PPTPPU. In addition, liability claims can also be made through legislation that specifically addresses the achievement of assets with a train of thought that is not just limited to the assets in the account user creation service providers only, but includes all assets associated with evil. Maintaining health against certain infectious diseases is also good it needs to be organized to increase the sense of justice for society and the state.

## INTRODUCTION

The process of money laundering, always have a connection with financial service providers. Money laundering is a crime that harms the interests of society, and can lead to economic instability of a country and economically not benefit the country. The acquisition of assets in handling money laundering is critical because of its enforcement perspective using an approach known as "follow the money" to find the circulation of money associated with a crime or violation of the law. This paradigm consider assets and money as the lifeblood of crime.

Asset seizure has been studied by many researchers, especially to assess the opportunities for asset seizure in criminal acts corruption as a principal crime. Positive Criminal Law Indonesia, especially about corruption crimes, has recognized the criminal sanctions of deprivation of property, namely Law No. 31 of 1999, article 18, paragraph 1, letter a. However, sanctions is still placed as an additional type of criminal, which is real and must be dropped according to the type of sentence. Placement of asset forfeiture being an additional punishment in Indonesian corruption cases when viewed from the perspective of social justice has not been able to restore the lost balance of society as a result of corruption.

There are two common types of deprivation, which are civil and criminal. The expropriation of civil assets (in rem) only requires that there is a possibility the cause of the property is tainted by a crime, without punishing the owner criminally. Regarding criminal expropriation (in personam), the government confiscates property objects as part of a criminal verdict. In the common law system, particularly in the United States, there are three ways to deprive assets are criminal forfeiture, administrative forfeiture, and civil forfeiture. In Indonesia itself the seizure of assets in money laundering is regulated through Law No. 8 of 2010 on prevention and Eradication Money Laundering. However, the current Indonesian legal system focuses on perpetrators of crimes, who are punished with imprisonment, confinement, and fines. Additional is not the appropriation of assets resulting from the crime. Thus, this system does not provide a deterrent effect against criminals because they remain they can enjoy the assets they get from their crimes. From justice perspective, one of the main functions of law is to protect the interests of public and realize Justice. Justice is harmony rights and obligations established by law. Concept the principle of Justice states that crime should not

benefit crime, or a person may not be able to illegal activities.

This study was conducted based on the argument that the seizure of assets for money laundering has been regulated in Indonesia, but in practice has not describe justice for the state and society, as victims of perpetrators Money Laundering, where the act causes losses that hinder national progress and reduce public welfare. This is due to the existing arrangements still have not touched some of the problems, namely if the criminal is lost, run away, the criminal becomes ill soul, and the heir does not exist or the heir is not found, then the state will suffered significant financial losses. In addition, if the asset is not placed in criminal confiscation. Based on the above statement, the purpose this study is to analyze how the seizure of assets of criminal acts money laundering should be viewed from the perspective of justice so that it can better protect the public interest and does not provide benefits to criminals.

## METHOD

The research method used in this paper is a type of normative research by using the type of approach to legislation (the Statute Approach), where a problem that exists in this paper can be seen from the example of the case and can be associated with legislation so that we know the rules that govern it.

## RESULTS AND DISCUSSION

### A. Asset forfeiture money laundering in Indonesian positive law

Money laundering is regulated in Law No. 8 of 2010 (Prevention and Eradication of Money Laundering Act/UU PPTPPU) which then some of its provisions revoked by the Indonesian Criminal Code renewal. Criminal acts such as corruption, abuse of narcotics and psychotropic substances, illegal trade, bribery, embezzlement are core crimes that initiate money laundering . Money laundering includes elements of placement, transfer, transfer, spending, payment, materialization, custody, alteration, exchange for currency, securities, or other goods that are the result of a criminal offense or are considered criminal acts. Also included is the crime of money laundering, which is an act with the intention of hiding, or disguising the origin of wealth so that it appears as legitimate wealth (UU PPTPPU). Such provisions can be a public description of money laundering activities, that IS, crimes include adding money to the financial system, diverting property derived from criminal

acts, or using goods or money derived from criminal acts against the law. All these crimes are committed with the aim of obtaining benefits and can harm or harm national or even international interests.

Asset forfeiture arrangements in Indonesia consist of criminal forfeiture, civil dispossession, and administrative dispossession. Criminal deprivation is an act conducted through criminal justice so that the seizure of assets is carried out simultaneously with proof of whether the defendant actually committed a criminal offense. A new deprivation may be made after the court establishes the defendant guilty through the decision that has been inkraht. In the criminal law system Indonesia, it is as one type of additional criminal (Criminal Code and criminal code Updates). Under these provisions, the seizure of goods is carried out or money based on a court decision or determination of a judge. This deprivation can only be done against the property of the perpetrator who was found guilty, obtained from criminal acts or intentionally used to commit acts criminal. If the goods or money taken are handed back to the convict, deprivation can be subsumed into confinement, which must take place a minimum of one day and a maximum of six months.

Penal Code renewal states that additional criminal including consisting of seizure of certain goods and / or bills. If the tree is not cut down sufficient to achieve the purpose of conviction, additional criminal penalties may be imposed. The imposition is for any criminal act in the Indonesian criminal law that aims to harm a convicted person who has been proven to have committed a criminal offense through a binding court decision, so as not to enjoy the results crime . Seizure of certain goods can only be done with the verdict of the panel of judges who have been inkraht van gewijsde in criminal law provisions Indonesia. Practice existing mechanisms in the Criminal Procedure Code takes time old. The time required in a case until the verdict of the inkraht court van gewijsde can be months, even years. A long time ago it was easy criminals hide the wealth they acquire and use in crime. Therefore, the initial purpose of the seizure of assets, which means depriving goods produced by the crime, failed because the perpetrator then attempt to escape the asset.

Civil asset expropriation is done not against the case tried in a criminal court. The subject does not need to be proven to have committed a criminal offense so if the money they get is suspected of coming from a criminal offense, the state can make a seizure of assets by suing the property or tort in

rem. Fletcher N. Baldwin, Jr. states that, due to deprivation civil take advantage of the reverse burden of proof and have the ability to conduct expropriation immediately after the alleged relationship between criminal acts and assets, then the model of civil forfeiture is very important to apply in Indonesia. In addition, in civil forfeiture, addressed to goods or money is not a criminal or criminal, so that state assets can still be taken even if the perpetrator dies or has not been examined or disconnected panel of judges criminal case. It seems that this approach is then used, and now known by another term, "seizure of assets without conviction" or "expropriation of assets without conviction". Civil forfeiture has been

regulated in the PPTPPU law, namely in Article 67 of the PPTPPU law and further regulated through the Perma of the Republic of Indonesia Number 1 of 2013 related to technical handling. Assets that can be seized under these provisions are only assets that are on service user accounts at financial service providers. It is impossible to seize other assets, including movable and immovable property. This causes difficulties in handling TPPU cases because of the assets owned by suspects tppu perpetrators with DPO status can be transferred or used for property moving or not moving so that it is not included in the account blocked, including its contents.

Administrative deprivation is an act that let the state taking over assets without involving judicial institutions . Expropriation administratively, it is regulated in Article 34-36 of the PPTPPU law. In accordance with the provisions of, the Directorate General of Customs and Excise must make a report every cash entering or exiting the customs area of Indonesia in the form of rupiah, foreign exchange, and the form others, such as checks, traveler's checks, promissory notes, or bilyet giro, without customs notification. Due to transaction value restrictions, cash carriers may attempt to avoid customs inspection. UU TPPU has not discussed what technical done to prevent the carrying of cash reports across borders.

Criminal, civil, and administrative forfeiture of assets for money laundering actually, it has been regulated in Indonesian positive law. However, in regulation and implementation there are still legal fractures that can be utilized by criminals. This resulted in the purpose of punishment that is not limited to perpetrators in a repressive manner through a maximum of criminal threats, but also for preventive criminal acts through tracing and return of assets resulting from the act criminal has not yet

been reached. With the purpose of conviction has not been achieved against money laundering, then legal justice for the state and society as victims of money laundering crimes have not yet materialized.

### **B. Concept Of Justice In The Seizure Of Assets Money Laundering In Criminal Acts Of Corruption Origin**

Legal purpose conventional consists of Justice, expediency, and legal certainty. Ethical flow who wants the law to create Justice divides justice into two type, namely retributive justice (provide justice by looking at the portion), and cumulative justice (equal justice without looking at the portion). Then flow utilitarianism, where Jeremy Bentham as one of the leaders of this flow

said the purpose of the law is to guarantee as much happiness as for as many people as possible. In addition, there is also a dogmatic-normative flow which emphasizes certainty based on law and considers the law to be autonomous which only comes from acts that cannot be interpreted beyond sound rules. In response to these three streams, Gustav Radbruch wanted priority the three purposes of the law. The first legal objective to be achieved is justice, only then expediency and legal certainty . Legal justice is commensurate with public justice. Good relationships, equality, and not putting yourself first is a sign of Justice. This is a basis of morality, truth, and justice in life, and therefore binding on every individual, both members of society and rulers. Law as a result, is the most effective tool to achieve a prosperous life and fair.

The theory of community justice is that the legal goal for justice is a "good society". The role of law to realize the actual justice this is known as substantive justice. All citizens should be given equal rights to the system of freedoms. Economic and social differences need to be regulated for people the weakest (The incapable) are protected and open jobs and positions for everyone based on the principle of an honest or decent game . One of the main functions of the law is trying to realize justice and protecting the interests of society . In particular, related The most basic principle of justice is actually the seizure of property resulting from crime. Peter Alldridge supports this idea by stating that "crime does not pay", anyone should not benefit from illegal actions. Alldridge later stated that based on this idea, asset recovery through an asset forfeiture-forfeiture mechanism can be justified.

When viewed in terms of justice, the most fundamental principle of justice in seizure of

proceeds of crime has not been implemented properly because there are still possibility for perpetrators of crimes to benefit from the process such. This is evidenced by the analysis of the provisions in the positive law Indonesia as previously described. State and Society of course suffer the consequences of crimes including money laundering crimes. The need for expansion scope of seizure of non-criminal assets in rem forfeiture or civil forfeiture, which actually has been regulated in the act PPTPPU, but still limited to the contained in the user's account in the Financial Services Provider.

Expansion of the range of asset seizure can be done by reformulation provision of asset seizure either in the act PPTPPU or separately regulated special. Need to set a new mechanism so that the goods or money produced of the crime, as well as the means of committing the crime can be taken without having to relate with the punishment of criminals or perpetrators of crimes. This method has been used in some countries through the procedure of civil suits against the object. This system proven effective in stopping economic crimes involving large finances. This range expansion is also intended as a consequence of self-binding forms Indonesian government that raises the rights and obligations, so it is necessary change the current legislation to comply with the rules set out in the international instrument.

Expansion of the range in rem forfeiture from that currently provided for in the act PPTPPU is first related to property seized other than those in the account service users at financial service providers only, but also related with crime, covering:

1. Property from crime or resulting indirectly or directly from crimes, including grants or alterations to one's own property, persons other, or a business entity, whether in the form of income, capital, or financial benefits others resulting from such property;
2. Property that has been known or expected to be used to commit a crime or criminal acts;
3. Additional property which is owned by criminals or perpetrators of criminal crimes as substitute goods or money that has been taken by the government; or
4. treasure in the form of goods or money findings that have been known or estimated derived from evil.

The assets are at least Rp 100,000,000. 00 in relation to deeds criminal or crime that the threat of imprisonment for 4 (four) years or more. The value can be changed in accordance with government regulations . With the expansion of this

arrangement then against other assets, such as other movable or immovable assets including digital currencies expropriation can be carried out.

Expansion of the range in rem forfeiture needs to be done against the criteria of condition to determine when assets can be seized, this is as a consequence of application of civil asset forfeiture addressed to non-suspect assets or accused. Condition criteria are expanded to be if the perpetrator of the crime prolonged illness, death, flight, or disappearance; offender released of the claim because it can not be held criminally liable by court; the criminal case fails to be heard; or if the subject matter has been decided inkracht by a panel of judges found guilty, but then known property owned by the crime has not been declared seized. In addition to the assets already mentioned, including assets that are not balanced with income or goods for money that can not be accounted from which it was obtained and suspected to be related to crime or criminality. Assets that it can also be used to create or generate crime.

Related to encumbrances resulting from crime, third parties have assets derived from the proceeds of crime will be harmed if the asset seized by investigators as evidence at trial during the time that can not be sure, even when the process is over. Third-party losses will be more large if the seized assets are expropriated to restore state losses . The Vienna Convention and the Money Convention Laundering prohibits the seizure of goods belonging to third parties in good faith, this especially true for third parties who are often disadvantaged from the foreclosure process conducted in the framework of criminal investigation. Therefore, the TPPPU Act has actually set that both in stages investigation (for example, examination and temporary termination of the transaction) and after a valid verdict of the judge, the party in good faith can make efforts law by applying for a letter of objection.

Such arrangements need to be strengthened to protect third parties in good faith. Resistance which is then called objection is an attempt any person who feels aggrieved has the right to the blocking and / or seizure of assets. The right to object that the blocked and/or confiscated assets are his legitimate property or are not criminal assets. The objection may be accompanied by a request for compensation whose amount of compensation does not exceed the amount of the asset Criminal acts are blocked or confiscated based on the valuation of the assets of the criminal act. Clarity of asset condition criteria that can conducted seizure of such

assets may clarify the current regulatory conditions in the UU PTPPU.

## CONCLUSION

The concept of justice in money laundering by the method of asset seizure to provide a sense of justice to state and society it is necessary to expand the reach of civil / in rem forfeiture by reformulating the provisions of asset seizure both in the act PTPPU as well as in legislation that specifically regulates the appropriation assets. The expansion of the range is also intended as a consequence form government of Indonesia's commitment to international instruments give rise to rights and obligations, so the need to reformulate the current legislation here. The range of settings in it is not only for the assets that are on the account users of financial services companies but against any assets related follow criminal with certain qualifications so that for movable or immovable goods other related criminal acts may be committed forfeiture of assets.

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