International Journal of Social Science Research and Review

http://ijssrr.com
editor@ijssrr.com
Volume 6, Issue 4
April, 2023
Pages: 590-596

Asset Deprivation for Money Laundering Criminal Actors Based on Corruption Results

Mukhsinin; Joko Setiyono

Master of Law, Faculty of Law, Diponegoro University, Indonesia

E-mail: mukhsininsuyoto@gmail.com

http://dx.doi.org/10.47814/ijssrr.v6i4.1197

Abstract

Efforts to recover assets from Corruption Money Laundering is one of the studies of anti-corruption communities in the world. Through the Draft Asset Confiscation Law that has been initiated by the government, it is hoped that efforts to recover assets resulting from crime can be streamlined for the benefit of law enforcement. The concept adopted in the Asset Confiscation Draft Law is actually very basic and also has very clear objectives, but in its presentation of course there are still gaps that can be criticized and debated, for example in relation to Human Rights only for the common good both society as a subject those who are subject to law and also law enforcement officials (APH) as executors of legal substances that have been determined by the State. The research method used is the normative legal method in the form of library research conducted by collecting primary, secondary and/or tertiary legal materials. The material collection technique used in this study was a literature study. The collected materials were analyzed qualitatively and to classify legal materials, the authors used content analysis. The results of this study are that the Asset Confiscation Bill is in line with human rights (HAM).

Keywords: *Asset Confiscation; Money Laundering; Human Rights*

Introduction

Criminal money laundering is a type of criminal with an economic motive that in the mode of execution is more complex than the conventional criminal economy. In recent years, crimes involving money have emerged in both the banking and non-banking areas, as well as illegal money laundering for incentives and protection against illicit money.

Money laundering is done to change the results of crimes such as corruption, narcotics crime, gambling, smuggling, and other ACTS of wealth that he knows or is suspected of being the result of a crime in order to conceal or disguise the origins of wealth and thus seem to be legitimate property. The laundered money from evil, in turn, was reused to commit similar crimes or to develop new ones (Sutedi,

2008). Consequently, money laundering not only jeopardizes the stability and integrity of economic and financial systems but also jeopardizes the foundation of social, national, and united life based on the grund norm or norm's fundamental stats of pancasila and the constitution of the republic of Indonesia in 1945.

The recommendable returns on the financial losses in corruption cases is still considerable throughout the year 2021. In the Indonesian record corruption watch (icw), the amount of state losses resulting from corruption crimes involving 1,404 defendants reached Rp 62.9 trillion. However, the amount of state reductions that the judges' council imposed on deduction payment was only about 2.2 percent or the equivalent of Rp 1.4 trillion. For one thing, this condition is due to the fact that the accused of corruption is also being framed for criminal money laundering. Of the 2021 total defendants, only 12 of whom law enforcement is charged with money laundering. It suggests that both the public prosecutor and the judges have no learned perspective from the economic aspect (Kompas.id).

Even criminal corruption is said to be a violation of the social and economic rights of the community, and it is necessary to classify criminal corruption asa crime of extraordinary magnitude. That is out of any other cases that could be categorized as criminal money laundering. A sizable number should receive special attention in the treatment effort. (Hikmawati, 2022).

The restructuring of criminal assets, in Indonesia's legal system, is not new. Some criminal provisions have provided the possibility of further seizure and seizure. The terms are found in the penal code (criminal law) regarding additional crimes. In addition to criminal enterprise, the stipulations for assessments of criminal assets are governed by the law outside the law in 2010's no. 8 act on the prevention and elimination of money laundering crimes.

Asset restructuring measures have also been agreed upon by the international community through the chapter V of the united nation convention against incentives. According to the 2006 uncac law on rationing the UN convention on corruption, Indonesia has an obligation to implement the provision for the liquidation of its assets. This is important, given that criminal assets are often outside the country's borders, which would be difficult for restructuring or restructuring assets.

One of the breakthroughs that emerged was the concept of non-intrinsic (NCB) or known as the concept of asset depletion. In Indonesia, the provision for the restructuration of assets has been established under article 10 of criminal code, article 3 and article 18 of the law no. 31 of 1999. Fundamental differences that should be understood in the concept of nonmonetary based (NCB) as well as current dispossession, that asset devaluation as governed in the book of criminal law and corruption penal law is a punishment that is administered in a judge's decision after a court process (Sutedi, 2015).

In practice, the system and mechanism for assessments across several regulations have not been optimal in implementation, since it has not been able to create a judicial law enforcement model for all societies. This is seen in the criminal money laundering that has a maximum fine of Rp.10,000,000 as arranged in article 3 of the 2010 law no. 8 of 2010 on the prevention and elimination of money laundering crimes.

Some studies suggest that the difficulty of assessing criminal asset assessment efforts is caused by a lack of instruments in criminal asset assessment efforts, with no adequate international cooperation and a lack of understanding of criminal asset assessment mechanisms by law enforcement officers, and the length of time it takes for the state to collect criminal assets, that is, after obtaining a court ruling with a enforceable regularity (Latifah, 2017).

The seizure of alleged wealth from criminal possession to the elimination of money laundering is a positive contribution in terms of achieving the central purpose of the investigative process, which is to

collect evidence on the basis of evidentiary evidence in court. Furthermore, confiscation of this wealth will also provide the defendant with legal certainty in order to maintain his right by proving the origins of these treasures not of criminal record (Kurnia, 2017)

The biggest challenge for introspecting the law on the downsizing of these assets in the asset assessment act is how to explain this approach that separates the relationships of the resulting assets from the perpetrators. Although the aim is not at all to eliminate criminal law proceedings, at times this realization may simply be to pursue the wealth of the crime at all costs. It is intended solely to undo damage done by crimes committed and to minimize violations of human rights (Saputra, 2017). In the Constitution. the appropriation of this asset is considered by some societies to be out of harmony with human rights (human rights) concepts.

Formulation of the Problem

The author will discuss how the plundering of money-laundering assets caused by the corrupt human rights perspective (HAM) has been affected?

Research Methods

The method of research used in this study is that of normative law or doctrinal law study. In this study laws are conceptualized as what is written in the legislation and in the law in book. In this text, as presented by Peter mahmud marzuki, a study and an analysis are using the approach of the law approach (conceptual approach), conceptual approach (analitycal approach), the analogcal approach (hystorical approach) and the hystorical approach (hystorical approach). The nature of the research writings used in this study isa descriptive description with application of content analysis (Marzuki, 2005).

Discussion

The universal declaration of human rights is proclaimed as a general standard of welfare attainment for all people and all nations. The declaration includes all the rights within political and social and cultural rights. As such, the state will be required to make every effort to promote human rights, both normative and administrative. The state is an abstract personification, and it is the government that stands as a legal entity representing the interests of the state. As a legal entity representing national interests, the government makes a deed through the medium of the individual acting in the capacity of the state apparatus (Kasalang, 2012).

The concept of human rights in the pancasila is described in the 1945 law and the assertion of human rights in several chapters on human rights. Even human rights are not included in the universal declaration of human right, the self-determination right, the natural resources, and the mission rights. Some human rights embodied in the constitution of 1945:

a. The right to equal positions of law and government (chapter 2 verse 1)
b. The right to make a worthy living (chapter 27 verse 2)
c. The right to freedom of association and assembly (chapter 28)
d. Right to freedom of speech (chapter 28)
e. Right to freedom of religion (chapter 29 verse 2)
f. The right to instruction (chapter 31)

Indonesia's attitude and views on human rights are strongly included in the rule of MPR-RI XVII/MPR/1998 on human ak for the first time was explicitly defined in the form of the human ak. The plaque consists of an opening and torso containing x chapters and 44 chapters. In the opening that the indonesians are, in effect, acknowledging, recognizing, and valuing human ak. In this measure are united in human duty as individuals, members of the family of the community, nations and nations and peoples of the world.

Jimly asshiddiqie argued that when the constitution of the republic of Indonesia of 1945 was altered by adding a xa chapter entitled human rights, all of Indonesia's people constitutionally accepted the concept of human rights asa concept consistent with the pancasila ideology. As a result, all debate over the human rights concept (human rights) that occurred during the struggle for freedom is lost, and there is no longer any debate over whether human rights should be included in the constitution of the republic of Indonesia 1945 (Sabon, 2014). When compared with other countries' constitutions, it is an achievement for the human rights fight in Indonesia, since few countries in the world include a separate and specific part on human rights in their constitutions.

The argument is often presented, under section 28 h (4) the constitution of the republic of Indonesia of 1945: "Everyone is entitled to private property and property rights by no one under arbitrary control" and the article 29 paragraph (1) of the 1999 human rights act (1) states: "everyone has the right to personal protection, family, honor, dignity, and possession." The above two rules provide a tangible guarantee of personal property.

Human rights get the power of the law in its administration, both within the international and national framework of law. Indonesia is plagued by these rights after the reformation, with the establishment of No. XVII/MPR/1998 on human rights and act number 39 in 1999 on human rights as well as other sets of laws as rational rule.

The formulation of human rights embodied in these positive laws is expected to reduce human rights abuses in the homeland, as the terms of these laws bind the state or the color of the state. The presence of human rights legislation constitutes a preventive effort to prevent human rights abuses. Nevertheless, in this matter the goodwill of governments and peoples to respect human rights is far more important.

State obligations and responsibilities within a human-rights approach framework can be seen in the three forms:

1. To Respect

It is the responsibility of the state not to interfere to govern its citizens when exercising their rights. The state has an obligation not to act on human rights.

2. To Protect

The state's obligation to act actively to guarantee the protection of the human rights of its citizens. The state would be obliged to take measures to prevent violations of all human rights (rights) by a third party.

3. To Fulfil

The state is obliged to take legislative, administrative, legal, and other actions to fully realize human rights. The obligation to honor, protect and fulfill each of the elements incumbent to conduct, where countries must conduct certain steps to achieve the achieving of a right, and the obligation to produce results, requiring countries to achieve certain substantive standards (Purwanti, 2020).

Given the above, of course, restrictions should not be arbitrary, one of its requirements that the human rights restrictions should be regulated in a law-level product (Avie, 2015). Then, when a closer look is noted, that the plundering of assets in the bill for the dispossession of assets has clearly defined the limitation associated with the seizure of assets. Boundary in the bill for asset assessment on past14 verse (1) that reads:

Asset plundering is done in terms:

a) The suspect or defendant dies, escapes, permanent illness, or remains unknown; or
b) The defendant was exempted from all lawsuits.

Looking at the sounds of the drafted act act act, limited to the deceased suspect or defendant, escaped, permanently ill, or unknown. Where it is judged one by one that the suspect or defendant who has passed away from human rights, a person who dies can no longer be subject to the law in penal law, the provision of section 28 h (4) section of the state of the republic of Indonesia 1945 cannot be considered asan excuse to protect the property of the suspect and the accused by the state.

Then an escaped suspect or defendant, a person who flees has expressly rejected the rule of law in the country of Indonesia. Then a legal subject would have no right to ask for protection under article 28 h (4) section the constitution of the republic of Indonesia 1945. Where, as is known, the laws of one after another constitute a system (a system) and also hierarchically, lesser laws always have their basis (Manan, 2004).

Therefore, the escaped suspect or defendant who is not known to exist should be subject to this appropriateness. This was based on m. yahya harahap's opinion which basically stated a guarantor a person involved in legal matters because his guarantee of escape or escape could be seized (harahap, 2006). This too is in line with the addensibility of the minister of justice number. M.14-PW.07.03/1983 the figure of 8 letter j determined that the guarantor would be seized by his goods to make up for the money that the guarantor had to endure by judicial decree (Hadi, 2012).

On the draft act this asset appropriation is also concerned for the interests of the third party where in chapter 17 it reads:

Chapter 17 verse (1):

"Before there is a pending seizure of assets that have gained a firm legal standing, the minister may grant temporary permission to the third party who has used or used the asset on the following conditions:

a. Does not alter physical assets
b. It was not rerouted or used
c. Done maintenance and maintenance
d. Is not used to doing anything against the law".

Chapter 17 verse (2)

"Any expense of care, taxes, bill accounts, and other expenses required during use or use of assets as referred to in the verse (1), charged to the third party using or using the asset."

Chapter 17 verse (3)

"Further requirements concerning the requirements and ordinances of granting a third party as in verse (1) are governed by the ministry's rules."

The draft asset assessment act has established a mechanism for disapproving assets decision, and there is also a provision that regulates the use of assets for a third party during the absence of a court ruling on the asset assessment. Indonesia is a country based on law, should uphold a legal system that guarantees certainty of law and protection of human rights, a legal state is one that stands above the laws that guarantee equality, liberty, and justice to its citizens. As a logical consequence, the civilizing, national, and national ordinances must adhere to the norms of the law, whether written in the positive law or living and thriving within society (Lilik, 2004).

The state should equality (equality) of each individual including independence for its equality. This is quanon's condition, given that the legal state was born asa result of individual struggles to rid itself of the constraints and arbitrary actions of a ruler. On this basis the sovereign must not abuse the individual and its power should be restricted (Gatama, 1993).

Conclusion

The concept adopted in the draft law for the disappropriation of this asset has actually been highly based and it has a very clear purpose, but certainly in its representation there is yet another loophole that can be criticized and debated, nothing more than that it is intended for the common good, both society asa subject of law and law enforcement enforcement as the executioners of the established order. In this case the bill for asset seizure has been in accordance with human rights as found in the constitution of the republic of Indonesia, 1945, as well as the 1999 article 39 on human rights act.

References

Gautama Sudargo. *Pengertian Tentang Negara Hukum*, Bandung: Alumni. 1983.

Harahap M Yahya. *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan,* Jakarta: Sinar Grafika. 2006.

Kasalang R. J. *Tanggung jawab negara dalam memenuhi hak masyarakat atas air, dalam to promote: Membaca perkembangan wacana hak asasi manusia di Indonesia,* Yogyakarta: Pusham UII. 2012.

Lilik Mulyadi. *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, Bandung: Alumni, 2004.

Manan Bakir. *Teori dan Politik Konstitusi*, Yogyakarta: FH UII Press. 2004.

Marzuki Peter Mahmud. *Penelitian Hukum,* Jakarta: Kencana. 2005.

Sabon Max Boli. *Hak Asasi Manusia,* Jakarta: Universitas Atmajaya. 2014.

Sutedi Adrian.*Tindak Pidana Pencucian Uang*. Bandung: PT. Citra Aditya Bakti. 2008.

Sutedi Ahmad. *Seluk-Beluk Tindak Pidana Pencucian Uang,* Jakarta: Pustaka Utama Grafiti. 2013.

Beni kurnia. *Pengaturan perampasan harta kekayaan pelaku tindak pidana pencucian uang di Indonesia,* UBELAJ Volume 2 nomor 2. Tahun 2017.

Johan Avie. *Training POLMAS dan HAM Bagi Taruna Akademi Kepolisian DEN 47*. Tahun 2015.

Marfuatul Latifah. *Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana,* Volume 6 Nomor 1. Tahun 2017.

Puteri Hikmawati. *Pengembalian Kerugian Keuangan Negara Dari Pembayaran Uang Pengganti Tindak Pidana Korupsi, Dapatkah Optimal? Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, Volume 10 Nomor 1. Tahun 2022.

Refki Saputra, *Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture)* Dalam RUU Perampasan Aset Di Indonesia, Integritas Volume 3 Nomor 1. Tahun 2017.

https://www.kompas.id/baca/polhuk/2022/05/22/icw-sebut-hanya-22-persen-kerugian-negara berhasil-dikembalikan. Diakses 15 Maret 2023.

Ilman Hadi. Konsekuensi Penjamin Jika Tersangka/Terdakwa Melarikan Diri, Hukum Online, 15 Juni 2012, diakses 18 Maret 2023.

Maidah Purwanti, Kewajiban dan Tanggung Jawab Negara dalam Pemenuhan Hak Asasi Manusia, BPHN, 2020, diakses 18 Maret 2023.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (http://creativecommons.org/licenses/by/4.0/).