

The Juridical Analysis of the Urgency of Ratifying the Draft Law on Asset Forfeiture in Indonesia

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Abstrak

This research has the purpose of providing a juridical analysis of the urgency of ratifying the asset confiscation law in Indonesia. This article emphasizes normative juridical research with a case study approach, statutory approach, as well as empirical approach to understand the asset confiscation draft law as norms that apply to society. The type of data analyzed in this article are mainly secondary data from the Indonesian law, books, news, previous research, and journals related to money crime and asset confiscation draft law. Previous research found that Indonesia's corruption Perception Index reached its lowest point of 34 out of 100 last year, indicating that corruption and money crime continue to occur even after a multitude of efforts to combat corrupt practices. Hence, the Indonesian law system requires an extraordinary effort to cope with this extraordinary crime, specifically through the asset confiscation law. Several indicators discovered from this research reveal the urgency of this law. The asset confiscation law would be a solution to the problems of economic crimes in Indonesia through its function as a social control to achieve legal objectives, namely justice.

Keywords: corruption, money crime, asset confiscation law, urgency.

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1. Introduction

Corruption can be defined as unethical behavior, such as money laundering, bribery, and others.¹ In Indonesia, acts of corruption frequently occur across various sectors and levels of government, involving policymakers, both within the government and civil society.² In early 2023, Transparency International reported the results of the Corruption Perception Index (CPI), which is used as a composite parameter to assess corruption in the public sector. A score of 0 signifies high corruption, while 100 signifies very clean. The Deputy Secretary-General of Transparency International Indonesia stated that Indonesia's CPI in

¹Ngainun Naim, "Kamus Besar Bahasa Indonesia," in *Kamus Besar Bahasa Indonesia*, *Kamus Besar Bahasa Indonesia* 3, no. 3 (2007).

²Nunung Nugroho, "Kebijakan Penanggulangan Tindak Pidana Korupsi Dalam Dalam Dinamika Keadilan Restoratif," *Jurnal Ilmiah Dunia Hukum* 3, no. 1 (2019), <https://doi.org/10.35973/jidh.v3i1.1355>.

2022 was scored at 34/100, ranking Indonesia 110th out of 180 surveyed countries. This score represents the worst score recorded since 1955.³

Indonesia has ratified the outcomes of an international convention organized by the United Nations in 2003 to combat corruption. Many of the points from this international convention have been incorporated into Law No. 7 on the Ratification of the United Nations Convention Against Corruption. However, there is one point from this international convention that has yet to be ratified, namely the draft law on asset forfeiture.

Article 54 of the United Nations Convention Against Corruption suggests that countries should be able to seize assets without a criminal charge for individuals who cannot be prosecuted due to reasons such as death, fleeing, absence, or other relevant circumstances.⁴ Asset forfeiture in Indonesia is already regulated under Article 10(b) of the Indonesian Criminal Code (KUHP) and Law No. 31 of 1999, amended by Law No. 20 of 2001 on the Eradication of Corruption. However, asset forfeiture can only occur when the original offense has been proven in court. This has been a hindrance in recovering the proceeds of corruption or money laundering, as research has concluded that handling such cases is challenging due to the diverse modus operandi employed by perpetrators.⁵

With the enactment of the Asset Forfeiture Act, even if a suspect in a criminal case has not been apprehended, assets acquired through criminal activities can be seized by the state and used for the benefit of the state. Furthermore, if a state official's wealth cannot be substantiated or is disproportionate to their income, under this law, their assets can be processed without awaiting a judicial process for forfeiture

Indonesia was recently abuzz with the statement made by Prof. Mahfud MD, the Chairman of the Money Laundering (TPPU) Committee, where it was alleged that suspicious transactions amounting to IDR 349 trillion were discovered within the Ministry of Finance during the period of 2009-2023. Subsequently, he elaborated during a joint press conference with the Ministry of Finance on March 20, 2023, that this discovery does not necessarily indicate an act of corruption but rather a case of money laundering involving suspicious

³Reza Pahlevi, "Indeks Persepsi Korupsi Indonesia (2021)," *Databoks*, 2022.

⁴Philippa Webb, "The United Nations Convention against Corruption," *Journal of International Economic Law* 8, no. 1 (2005), <https://doi.org/10.1093/jielaw/jgi009>.

⁵Syahmin, Malkian Elvani, and Henny Yuningsih, *Pengembalian Aset Negara Hasil Tipikor Melalui Kerjasama Timbal Balik Antar Negara, Laporan Penelitian Fundamental*, 2013.

transaction movements.⁶ During a meeting between the TPPU committee chairman and the Commission III of the Indonesian House of Representatives (DPR RI) to discuss the alleged money laundering, the TPPU committee chairman emphasized that uncovering TPPU cases often encounters difficulties in the enforcement process. In light of this, the TPPU committee chairman proposed to the members of the parliament to expedite the finalization of the Asset Forfeiture Act as a solution to this issue.⁷

The difficulties referred to by the chairman of the TPPU committee have arisen in cases of alleged money laundering carried out by the Indosurya savings and loan cooperative, which has resulted in significant financial losses to its customers, amounting to trillions of Indonesian Rupiah. Law enforcement authorities, in this case, the prosecution, encounter challenges in prosecuting money laundering offenses due to the limitation of conditions where they must first establish the underlying criminal offense. Indonesia Corruption Watch (ICW) has also expressed concerns regarding the TPPU. Research conducted by ICW in 2021 revealed that out of 1,403 corruption convicts, only 12 were also charged with money laundering offenses.⁸ This is primarily because the majority of law enforcement efforts are concentrated on the primary offenders, without considering passive participants. It is still vividly remembered how the corruption case related to the e-KTP project, involving former Chairman of the People's Representative Council of Indonesia, Setya Novanto, was handled. The state suffered an estimated loss of IDR 2.3 trillion due to this criminal act, yet the court imposed a sentence of only 15 years of imprisonment, a fine of IDR 500 million, and a five-year political disqualification. This case exemplifies the ineffectiveness of law enforcement strategies in dealing with corruption or money laundering offenses thus far.⁹

The current penal system for corruption and money laundering offenses primarily focuses on the suspects (follow the person) while neglecting the assets suspected to have been acquired through criminal activities (follow the money). This 'follow the person' system makes the prosecution of TPPU cases difficult

⁶KOMPAS TV, "Penjelasan Lengkap Mahfud MD Soal Transaksi Janggal Rp 349 Triliun Di Kemenkeu" (Indonesia, 2023).

⁷KOMPAS TV.

⁸Wildan Noviansah, "ICW Sebut TPPU Di RI Ibarat Gunung Es, Ungkit Kasus Rafael Alun," Detik.com, 2023, <https://news.detik.com/berita/d-6651650/icw-sebut-tppu-di-ri-ibarat-gunung-es-ungkit-kasus-rafael-alun>.

⁹Dewi Nurita, "Bareskrim Sebut 15 Pucuk Senjata Dito Mahendra Tidak Ada Kaitannya Dengan Kasus TPPU Nurhadi," Tempo.com, 2023, <https://nasional.tempo.co/read/1711183/bareskrim-sebut-15-pucuk-senjata-dito-mahendra-tidak-ada-kaitannya-dengan-kasus-tppu-nurhadi>.

and provides suspects with opportunities to conceal their tracks.¹⁰ This systematic error not only hinders the TPPU prosecution process but also allows suspects to evade accountability and manipulate their ill-gotten wealth. Furthermore, law enforcement in such cases becomes increasingly challenging as the perpetrators make maximum efforts to disguise their illegitimate wealth as if it originated from legitimate businesses or enterprises, even though these assets are the proceeds of crime, concealed with the assistance of gatekeepers.¹¹

In reality, the study on the Asset Forfeiture Bill has been ongoing for a long time. The government has been formulating this bill for approximately 10 years, and it has yet to see the light of day. The Asset Forfeiture Bill was included in the legislative priority list in 189 bills for the 2015-2019 Prolegnas period and 248 bills for the 2020-2024 Prolegnas period. Unfortunately, this law has never been prioritized for annual enactment.¹² This indicates that over two legislative terms of the Indonesian House of Representatives (DPR RI), the Asset Forfeiture Bill has not been considered an urgent matter for immediate approval.

In his address commemorating World Anti-Corruption Day in 2021, President Joko Widodo discussed the Asset Forfeiture Act, also known as asset recovery. The President emphasized the urgency of enacting the Asset Forfeiture Act to safeguard state assets and as an early preventive measure against the risk of corruption. International cooperation regarding the handling of such cases has also been pursued with several countries to trace assets resulting from criminal activities concealed abroad. This has been manifested through mutual legal assistance agreements in criminal matters. Through the official channel of the Ministry of Law and Human Rights, Prof. Mahfud MD, in a press update on September 16, 2022, officially announced the submission of the draft Asset Forfeiture Act to the Indonesian House of Representatives (DPR). He also emphasized the importance of promptly enacting this law, noting that it would not harm anyone except corrupt individuals.¹³ In early March 2023, the Corruption Eradication Commission (KPK) and the President took similar steps by urging the DPR to expedite the passage of the bill into law. The KPK hopes

¹⁰Muhammad Reza Adiwijana, "Pembebanan Pembuktian Dalam Tindak Pidana Pencucian Uang," *Media Iuris* 3, no. 1 (2020), <https://doi.org/10.20473/mi.v3i1.18416>.

¹¹Budi Saiful Haris, "Penguatan Alat Bukti Tindak Pidana Pencucian Uang Dalam Perkara Tindak Pidana Korupsi Di Indonesia," *Integrasi* 2, no. 1 (2016).

¹²DPR RI, "Program Legislasi Nasional," Program Legislasi Nasional, 2023, <http://www.dpr.go.id/uu/prolegnas>.

¹³CNN Indonesia, "Jokowi Harap RUU Perampasan Aset Tindak Pidana Rampung 2022," CNN Indonesia, 2022, <https://www.youtube.com/watch?v=cNPB5cNe5QQ>.

that this bill will be included in the priority program for 2023 to maximize efforts in combating corruption offenses.¹⁴

The originality of this research is based on several previous studies that have a similar topic, specifically focusing on the Draft Law on Asset Forfeiture in Indonesia. In this regard, the author examines research conducted by Refki Saputra of the Faculty of Law, Bung Hatta University, in 2017, titled "Challenges in the Implementation of Non-Conviction-Based Asset Forfeiture in the Draft Asset Forfeiture Bill in Indonesia." In this article, it was concluded that the current criminal legal mechanisms in Indonesia are insufficient to recover losses incurred from economic crimes such as corruption and money laundering. The article also concluded that asset forfeiture is a revolutionary concept that needs to be implemented to confiscate the proceeds of crime. Additionally, the author also reviews research conducted by Irwan Hafid of the Faculty of Law, Islamic University of Indonesia, Yogyakarta, in 2021, titled "Asset Forfeiture Without Conviction in the Perspective of Economic Analysis of Law." In this work, it was concluded that existing legislation does not comprehensively regulate asset forfeiture resulting from economic crimes, and there are still many deficiencies that need to be addressed. The article also explains how the primary goal of economic crime perpetrators is to maximize profit, making asset forfeiture a solution to combat economic crimes.

Based on the originality as outlined, this article will attempt to provide a legal analysis of three main points, which include: First, the purpose and urgency of enacting the Asset Forfeiture Bill; Second, the systematic operation of non-conviction-based asset forfeiture; Third, an analysis of the Asset Forfeiture Act as a legal product with a social control function. From the readings and understanding of previous research, there has not been an in-depth study that comprehensively analyzes the Draft Law on Asset Forfeiture from a legal perspective, including its purpose, urgency, operational system, and its role in social control, as examined in this article. The key difference that sets this research apart from previous studies is that previous researchers tended to focus on comparing existing economic crime regulations with the proposed Asset Forfeiture Bill as a solution to the ineffectiveness of current legislation in combating economic crimes. The systematic framework and legal principles of the Asset Forfeiture Bill, as well as its role as a legal product with a social control function, have not been explored in previous studies.

¹⁴Candra Yuri Nuralam, "Jokowi Sepakat RUU Perampasan Aset Segera Dituntaskan," *Media Indonesia*, n.d., <https://mediaindonesia.com/politik-dan-hukum/562469/jokowi-sepakat-ruu-perampasan-aset-segera-dituntaskan>.

2. Research Method

The type of research conducted in this study is legal research, as defined by Soerjono Soekanto, involving the process of inquiry that includes methods, systematic analysis, and specific doctrines or thoughts aimed at understanding a legal phenomenon and seeking solutions to the issues under investigation.¹⁵ The research methodology employed in this article is normative legal research. Normative legal research is understood as library research or document study, as it centers on written norms and legal documents as its primary sources.¹⁶ In general, normative legal research focuses on normative legal cases involving the products of legal behavior, such as the study of draft laws conceptualized as norms applicable within society.¹⁷ In this article, normative legal research is used to comprehend the regulations related to non-conviction-based asset forfeiture in Indonesia.

Secondary data serves as the primary data source in this research. Secondary data is collected from legislation, articles, journals, and books related to the topic of non-conviction-based asset forfeiture in Indonesia, and it undergoes periodic selection processes to ensure the accuracy of the gathered data. Subsequently, this data is processed through steps of data classification and systematic logical organization.¹⁸ The results obtained from legal materials or legal data are qualitatively analyzed in a descriptive manner, presenting the legal content, analyzing the processed data concerning asset forfeiture, and drawing conclusions to find solutions to the issues under investigation.

3. Research Results and Discussion

3.1. The Purpose and Urgency of the Asset Forfeiture Bill

The advancement of information and technology has facilitated corrupt individuals and money launderers in concealing the proceeds of their crimes. These nefarious behaviors have become increasingly intricate, especially over the past few years.¹⁹ Furthermore, strategies for concealing assets have grown more sophisticated, with perpetrators becoming increasingly adept at stashing ill-gotten gains overseas. A concrete example

¹⁵Susanti, "Soerjono Soekanto, Pengantar Penelitian Hukum, Jakarta: UI Press, 1986, Hal. 3," *UIB Repository*, 2018.

¹⁶ Soerdjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 2001.

¹⁷Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, 2004.

¹⁸S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris*, 2018.

¹⁹ Marfuatul Latifah, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia," *Jurnal NEGARA HUKUM* 6, no. 1 (2015).

of such behavior is evident in the case of Gayus Tambunan, which resulted in substantial losses to the state amounting to Rp. 106.7 trillion and USD 18,000,000. Out of this significant loss, only Rp. 2.08 trillion was recovered by the state.²⁰ This case serves as a stark reminder of the challenges the state faces in reclaiming assets stolen by criminals. Indonesia's criminal legal system explicitly addresses money laundering and corruption, but it primarily focuses on the main offenders. Moreover, the sanctions applied to perpetrators are limited to imprisonment or fines of specific amounts. Consequently, progressive steps by the government are needed to expedite the discussion and enactment of the Asset Forfeiture Act. Currently, prosecutors must possess strong evidence that the seized assets are the proceeds of a crime, which poses a limitation and complicates legal proceedings in cases of this nature.²¹

In international principles, there are two types of asset forfeiture, which are categorized as in personam forfeiture and in rem forfeiture.²² In personam forfeiture, which has been the prevailing practice in Indonesia, pertains to criminal forfeiture directed at the individual primary wrongdoers. Asset forfeiture must be a court decision to be executed. This form of forfeiture primarily focuses on imposing criminal sanctions rather than recovering state assets lost or stolen by the perpetrators. In contrast, in rem forfeiture is defined as civil forfeiture, NCB asset forfeiture, and civil forfeiture. The focus of this principle is on the lost assets, not just the wrongdoer. This type of forfeiture has separate procedures from the criminal justice process, with the aim of proving whether an asset owned by the perpetrator is not the result of criminal activity. Currently, in rem forfeiture does not exist in Indonesia and efforts are being made to enable more effective handling of corruption or money laundering cases.

Considering the series of corruption and money laundering cases in Indonesia, it can be concluded that the in personam forfeiture, which has been the practice, has not been successful in recovering state losses or

²⁰Ridwan Arifin, Indah Sri Utari, and Herry Subondo, "Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia," *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, no. 1 (2017), <https://doi.org/10.15294/ijcls.v1i1.10810>.

²¹Marfuatul Latifah, "Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia (the Urgency of Assets Recovery Act in Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 6, no. 1 (2016).

²²Barbara Vettori, *Tough on Criminal Wealth: Exploring the Practice of Proceeds from Crime Confiscation in the EU*, *Tough on Criminal Wealth: Exploring the Practice of Proceeds from Crime Confiscation in the EU*, 2006, <https://doi.org/10.1007/978-1-4020-4129-7>.

reducing the corruption index in Indonesia. Law enforcement agencies must take different approaches than before. In rem forfeiture introduces a new method for law enforcement to focus on the seizure of assets derived from criminal activities. In reality, it is challenging to prosecute when law enforcement is solely focused on individual perpetrators. This is because in money laundering cases, the primary wrongdoer is often elusive and typically channels their funds under someone else's name. Furthermore, assets funded and sustained by the proceeds of crime must be returned to the state, as the gains of criminal activity should not remain in the possession of the criminals.

Former head of PPATK, Dian Ediana Rae, has identified six crucial reasons why the discussion and enactment of the asset forfeiture law should be carried out promptly:²³

1. The low success rate in combating economic crimes is attributed to sanctions that do not have a deterrent effect on perpetrators. Even if offenders are detained and convicted, without asset forfeiture, they can still enjoy the proceeds of their crimes after their release from prison or payment of fines.
2. Economic crimes continue to evolve with the advancement of information and technology. Economic criminals have become increasingly adept at circumventing law enforcement to safeguard the proceeds of their crimes.
3. The return of state losses has not been maximized. Existing sanctions have not been optimal in efforts to recover state assets or finances that should be used for the benefit of the public.
4. A crucial provision of the asset forfeiture law is that asset forfeiture does not rely on the criminal conviction of the offender.
5. Money laundering offenders can be prosecuted under Law No. 8 on the Prevention and Eradication of Money Laundering Crimes of 2010. However, practical obstacles are still frequently encountered because this law is considered less comprehensive in terms of asset forfeiture resulting from money laundering activities.

²³Rofiq Hidayat, "6 Alasan Mendesaknya RUU Perampasan Aset Tindak Pidana," Hukum Online, 2022, <https://www.hukumonline.com/berita/a/6-alasan-mendesaknya-ruu-perampasan-aset-tindak-pidana-lt603746add2caa/?page=1>.

6. Even if perpetrators flee, suffer permanent disabilities, pass away, or are acquitted of all charges, with the asset forfeiture law, assets suspected to have been obtained from criminal activities can still be pursued.

The low success rate in the prosecution of corruption or money laundering crimes should serve as a significant warning. From the existing cases, money laundering perpetrators have become more adept at concealing their assets. In fact, money laundering offenders are more afraid of impoverishment than facing prosecution or paying court-imposed sanctions. Sanctions and the forfeiture of ill-gotten gains must be reevaluated by the government with a focus on economic recovery to ensure that planned programs can proceed smoothly without stalled projects resulting from corruption or money laundering activities.

One characteristic of economic crimes is that assets acquired through illegal activities can circulate and generate even greater illegal profits for the perpetrators. With the Asset Forfeiture Bill, assets suspected to have been obtained through criminal means and unexplained assets can be seized directly by the Prosecutor without going through a court process until the offender can prove otherwise. This represents a progressive and resolute step in addressing corruption and money laundering crimes. While it may not eliminate economic crimes entirely, the Asset Forfeiture Act ensures that the state's economic conditions are safeguarded through the complete reimbursement of state losses as a form of asset rehabilitation. Indirectly, the Asset Forfeiture Act sets a preventive boundary that discourages corruption and money laundering crimes from occurring. Without the Asset Forfeiture Act, offenders appear to be exempt from the obligation to compensate for their criminal gains because they are only subject to criminal sanctions, such as imprisonment or fines, as determined by laws that do not adequately correspond to the losses incurred by the state.

3.2. Systematics of the Implementation of the Asset Forfeiture Law in Indonesia

Comprehensive regulations regarding non-conviction-based asset forfeiture can be observed in several international conventions that have been implemented concerning economic crimes of this nature. The United Nations Convention Against Corruption, the United Nations Convention Against Transnational Organized Crimes, and the Financial Action Task

Force are manifestations of some international conventions that specifically include provisions on non-conviction-based asset forfeiture. Efforts to realize the point of asset forfeiture without conviction aim to narrow the space for economic criminals to hide their assets abroad. Several positive legal provisions in Indonesia have regulated how asset forfeiture processes occur in Indonesia, but almost all of them must go through the judicial mechanism. Here are some examples of regulations related to asset forfeiture:

1. Article 10 of the Criminal Code²⁴
2. Law No. 31 on Corruption Crimes of 1999, amending Law No. 20 on Corruption Crimes of 2001, Article 18, Article 19, Article 38B, Article 38C²⁵
3. Law No. 8 on Criminal Procedure Law of 1981, Article 194 Paragraph (1)²⁶

In Article 10 of the Criminal Code, it is explained that asset forfeiture is only an additional sanction with the primary focus still being the punishment of the offender with physical penalties, in this case, imprisonment. Law No. 31 on Corruption Crimes of 1999, Article 18 and Article 19, broadly discusses additional criminal explanations that include asset forfeiture. However, in point (3), this regulation provides a loophole for economic criminals to hide behind an appearance of inability, leading to the substitution of sanctions with imprisonment. Article 38B and Article 38C also contain provisions regarding asset forfeiture. Unfortunately, the mechanism of this regulation is relatively difficult because law enforcement cannot easily confiscate assets suspected to be proceeds of crime. Law enforcement officials need to grapple with the issue of proof before they can confiscate wealth that is suspected to have been obtained through criminal means. Ideally, the burden of proof should be placed on the perpetrator, so that the prosecution of economic crimes can proceed effectively and efficiently. Thus, the focus of proof would no longer be on proving that the wealth originated from criminal activities, but rather, the owner of the wealth would need to prove that it is genuinely their legal property acquired through legitimate means.

²⁴S.H. Prof. Moeljatno, *KUHP (Kitab Undang-Undang Hukum Pidana)*, 2021.

²⁵Ahmad Rustan Syamsuddin, "Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang Dan Jasa," *Jambura Law Review* 2, no. 2 (2020), <https://doi.org/10.33756/jlr.v2i2.5942>.

²⁶Prof. Moeljatno, *KUHP (Kitab Undang-Undang Hukum Pidana)*.

Asset forfeiture without conviction is included in the positive law of Indonesia under Law No. 8 on the Prevention and Eradication of Money Laundering. Article 67 Paragraph (2) states:²⁷ "In cases where the alleged perpetrator of a criminal act is not found within 30 (thirty) days, the investigator may submit a request to the district court to decide whether the Wealth shall be declared as state assets or returned to the rightful owner."

In general, the Asset Forfeiture Bill changes the criminal law doctrine, which previously emphasized physical punishment (imprisonment). At least three doctrines have changed: First, the defendant is not only the perpetrator but also assets acquired through crimes can be charged; Second, a change in the justice system for such criminal acts, where a civil justice system will be used; Third, the court's decision does not impose criminal sanctions, as used for other criminal offenders. Furthermore, there are three core contexts in the asset forfeiture bill; the first is unexplained wealth, also known as unreasonable wealth, asset forfeiture procedural law, and how an asset can be managed effectively. The basic understanding of unexplained wealth is one form of procedure in prosecution regulated in the asset forfeiture system, or crimes affiliated with corruption or money laundering offenses, where law enforcement authorities no longer have to prove the origin of that wealth or asset.²⁸

Recently, the social media posts of certain officials within the Ministry of Finance have come under public scrutiny due to them flaunting a lavish lifestyle, which can be considered one of the indicators of unexplained wealth. Furthermore, another factor that can serve as an indicator of unreasonable or unexplained wealth is the presence of suspicious transactions and discrepancies between the assets owned and those declared in the State Officials' Wealth Report (LHKPN). The use of the unexplained wealth approach is aimed at individuals with wealth that cannot be accounted for or is unreasonable in nature, characterized by: wealth that does not align with the individual's take-home pay; ownership

²⁷Adrian Formen Tumiwa, "Tindak Pidana Pencucian Uang Dalam Perspektif Undang-Undang No 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang," *Lex Crimen* 7, no. 2 (2018).

²⁸Ana Fauzia and Fathul Hamdani, "Pembaharuan Hukum Penanganan Tindak Pidana Korupsi Oleh Korporasi Melalui Pengaturan Illicit Enrichment Dalam Sistem Hukum Nasional," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022), <https://doi.org/10.56370/jhlg.v3i7.249>.

of unusually high-end luxury goods; and the possession of concealed cash.²⁹

Regarding asset forfeiture procedural law, there are some differences compared to the criminal procedural law that has been known until now. Several regulations in Indonesian criminal procedural law govern the asset forfeiture procedure under the condition that law enforcement must first prove that the assets or wealth in question originate from criminal activities. This is in contrast to asset forfeiture procedural law. In practice, asset forfeiture procedural law does not require law enforcement to prove that the suspected wealth or assets come from criminal proceeds. This is undoubtedly beneficial as a preventive measure to prevent the failure of achieving legal objectives and serves as a deterrent to individuals from engaging in similar criminal activities.³⁰ When indications arise that wealth or assets are the proceeds of a crime, law enforcement authorities have the right to promptly take action or seize the assets in question. In this regard, it is emphasized that in cases where there are indications that the state has suffered losses due to the actions of the perpetrators, there should no longer be a need for further proof.³¹

Furthermore, extraordinary enforcement in the form of a reverse burden of proof system is needed to combat corruption and money laundering, which can be categorized as extraordinary crimes. This reverse burden of proof system places the burden on the suspect or defendant to demonstrate that their assets or wealth were acquired through legitimate means. Without this systematic approach, prosecutors will face difficulties in proving corruption or money laundering offenses. The reverse burden of proof can also assist law enforcement agencies in proving what may have been concealed or kept secret by the suspected perpetrators. In the reverse burden of proof system outlined in the asset forfeiture bill, the legal focus is more centered on the assets rather than the individual perpetrator. This shift in focus inevitably changes the legal proceedings related to such cases, which were previously handled through criminal procedural law but now shift to civil

²⁹Diky Anandya Kharystya Putra and Vidya Prahassacitta, "Tinjauan Atas Kriminalisasi Illicit Enrichment Dalam Tindak Pidana Korupsi Di Indonesia: Studi Perbandingan Dengan Australia," *Indonesia Criminal Law Review* 1, no. 1 (2021).

³⁰Peter Jeremiah Setiawan, "Sistem Beban Pembuktian Dinamis: Paradigma Kebijakan Kriminal Dan Hak Asasi Manusia," *Jurnal Majelis* 02, no. Februari (2019).

³¹Vicko Taniady and Novi Wahyu Riwayanti, "Reformulasi Beban Pembuktian Terbalik Berlandaskan Asas Presumption of Guilt Terhadap Kasus TPPU Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 1, no. 2 (2021), <https://doi.org/10.15294/ipmhi.v1i2.53702>.

procedural law due to the different legal subjects involved. However, it should be noted that the asset forfeiture law does not entirely eliminate the prosecutorial authority in criminal cases against the perpetrators.³²

This reverse burden of proof system will also reduce the criminogenic factors that drive individuals to commit crimes, considering the obligation to provide clear proof of their owned assets. This has a positive impact on the efforts to recover state assets. The asset forfeiture bill also establishes criteria for asset forfeiture, which leads to tracing, freezing, and confiscation. In this process, perpetrators have the right to file a cassation process conducted in accordance with civil procedural law, with the provision that the cassation decision is final, and once an asset is decided for forfeiture in cassation, it cannot be contested again by the perpetrator.

The third core context is how the management of seized assets can proceed effectively. From a law enforcement perspective, the processing of seized assets has so far been the responsibility of the executive function, in this case, the prosecutor's office, which is tasked with executing all court decisions. The prosecutor's authority to process seized property is stipulated in Law No. 8 concerning the Criminal Procedure Code, Year 1981, Article 273 Paragraphs 3 & 4. Article 273 Paragraph 3 states, "If the court decision also determines that the evidence is seized for the state, except as provided for in Article 46, the prosecutor shall transfer the property to the state auction office and within 3 (three) months, it shall be sold at auction, the proceeds of which shall be deposited into the state treasury for and on behalf of the prosecutor." Article 273 Paragraph 4 also states that "The time period referred to in paragraph 3 may be extended for a maximum of 1 (one) month." Based on this legal regulation, prosecutors are granted the authority, within a specified period, to process or authorize the sale of seized assets to the state auction office and deliver the proceeds to the state treasury. As asset managers, the Minister of Finance issued Ministerial Regulation No. 145/PMK.06/2021, which governs the authority of the Ministry of Finance, the Corruption Eradication Commission (KPK), the Attorney General, and military auditors in the management of seized assets.

In these regulations, the leaders of the Corruption Eradication Commission (KPK), the Attorney General, and military auditors are mandated as

³²Sigit Prabawa Nugraha, "Kebijakan Perampasan Aset Hasil Tindak Pidana Korupsi," *National Conference For Law Studies*, 2020.

administrators of seized assets, tasked with managing, securing, and providing recommendations or proposals on how seized assets should be handled. The Ministry of Finance, in accordance with its role as the manager of seized assets, has the duty to make decisions and sign approval letters for the recommendations or proposals submitted by the administrators of seized assets regarding how seized assets should be managed. On paper, this procedure appears to be one that should be executed effectively. In reality, however, many problems have been found in the system that has governed the management of seized assets.³³ Firstly, there are limitations to the authority of asset managers, in this case, the Ministry of Finance, as their function is merely administrative and authorizing, resulting in a relatively narrow scope of action in managing seized assets, which depends on each proposal suggested by one of the asset administrators. Secondly, there is no clear legal basis that grants authority for asset management to the KPK, the prosecutor's office, and military auditors. Thirdly, concerns are raised regarding the management of seized assets. Based on the issues discussed above, a law on asset forfeiture is needed as a solution because it contains detailed regulations regarding the authorities responsible for regulating and managing seized assets, whether from law enforcement agencies or the potential establishment of an independent affiliated body or institution with a focus on seized assets.

3.3. Asset Forfeiture Law as a Legal Product with Social Control

The concept of "Law is a tool of Social Engineering" was proposed by Roscoe Pound, who argued that the law plays a vital role in fulfilling the function of social control.³⁴ He believed that the law does not create an interest but rather discovers it within social life and secures it. Roscoe Pound added that one of the functions of the law is to be a juridical framework that regulates human behavior. In other words, the rules contained in the law impose limitations on human actions, and violations of these rules lead to consequences. With consequences for the rules in the law, positive moral values within society are reinforced through the law's coercive nature. From this, the position of the law as binding and coercive

³³Frans Jomar Karinda, Kristiawanto Kristiawanto, and Mohamad Ismed, "Upaya Pemulihan Aset Pelaku Tindak Pidana Korupsi Guna Mengoptimalkan Kerugian Keuangan Negara," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 9, no. 6 (2022), <https://doi.org/10.15408/sjsbs.v9i5.27688>.

³⁴Sai Abhipsa Gochhayat, "'Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy," *SSRN Electronic Journal*, 2012, <https://doi.org/10.2139/ssrn.1742165>.

in controlling societal life can be understood. In practice, the law's function as social control cannot be separated from the roles of the government, legislation, and law enforcement agencies. Laws must be comprehensive to effectively carry out social control. When laws fail to address existing issues, the law's function as social control cannot be achieved. As seen in several positive Indonesian laws that regulate corruption and money laundering crimes, there are still gaps for offenders to exploit and take advantage of unregulated areas within the law. This fact contributes to the ongoing challenge of social control over corruption and money laundering behavior.

The law's function in achieving social control is more attainable when it receives full support from the public. Voluntarily, the public will comply with a legal regulation if they are aware that the law contains principles of justice. This can be seen in the numerous reports made by the public, especially through social media, regarding the extravagant lifestyles of state officials. The public tends to become more critical, aware, and vigilant about this issue.³⁵ Even the Deputy Chairman of the Corruption Eradication Commission (KPK) requested assistance from netizens to help trace the assets of state officials and make this phenomenon go viral, as a form of public social control over officials' behavior. Furthermore, with the Asset Forfeiture Law in place, positive moral values such as anti-corruption attitudes and vigilance against deviant behavior by officials can be reinforced due to the law's coercive nature. The full support from the public, considering that the asset forfeiture law provides a solution to the complex issues of corruption and money laundering, demonstrates that law indeed discovers interests within social life and secures those interests. In this context, this support is based on the critical ability of the public to envision justice through the enactment of the Asset Forfeiture Law, which becomes a juridical framework regulating human behavior and protecting human interests. Regardless, questions may arise about whether the Asset Forfeiture Law is constitutional and whether it represents the spirit of the nation. In the end, it must be remembered that the primary purpose of the law is to regulate and strive for justice, which is also one of the principles of the nation encapsulated in Pancasila's fifth principle.

³⁵Lizabeth A. Crawford and Katherine B. Novak, "Deviance and Social Control," in *Individual and Society*, 2018, <https://doi.org/10.4324/9781315269313-9>.

4. Conclusion

4.1. Summary

Corruption and Money Laundering crimes have become extremely alarming issues in Indonesia. Based on research conducted by ICW and other research institutions, Indonesia is currently in a precarious position concerning these crimes. The legal system in Indonesia still primarily focuses on physical punishment and fines, which have yet to deter offenders effectively. Law enforcement agencies also face challenges in investigating corruption and money laundering cases due to the absence of concrete legislation that provides them with more latitude in handling economic crime cases. Economic crimes can be categorized as extraordinary crimes that require extraordinary efforts, and this necessitates the enactment of an Asset Forfeiture Law. Three main components regulated in the asset forfeiture law are unexplained wealth, asset forfeiture procedural law, and the management of crime proceeds. The reverse burden of proof system also addresses the difficulties faced by law enforcement agencies, as the burden of proof is shifted to the defendants rather than the law enforcement authorities. This asset forfeiture law will also intricately govern the management of confiscated assets. The Asset Forfeiture Law will facilitate one of the functions of the law, which is social control, as described by Roscoe Pound in terms of Law as a Tool of Social Engineering. This can be observed through the role of the law in regulating and constraining economic crime perpetrators to prevent them from reoffending. With the existence of the Asset Forfeiture Law, positive moral values within society, such as rejecting corruption and being critical of deviant behavior among officials, can be strengthened due to the law's coercive nature. Full support from the public for the Asset Forfeiture Law also reflects society's position in carrying out its social control function, especially concerning community leaders and government officials.

4.2. Recommendations

Considering the complexity of economic crime issues in Indonesia, it is imperative for the Government, especially the DPR, to promptly include this bill in the priority National Legislation Program (Prolegnas) to ensure that the stages, including planning, drafting, deliberation, and enactment, can be carried out expeditiously. Through the enactment of the Asset Forfeiture Law, law enforcement agencies will be empowered to combat economic criminals effectively. As long as there are unexplained assets,

these assets can be seized by law enforcement agencies. Public support for the government in expeditiously passing the asset forfeiture law, which would address the concerns of the people, is also a supporting factor to ensure that the social control functions of the law can be implemented promptly.

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