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# CONFISCATION OF ASSETS IN THE CORRUPTION CRIME

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**ABSTRACT**

Corruption is an extraordinary crime so the punishment is the Primum Remedium. Economic Analysis of Law can be used to increase the efficiency of handling corruption crimes (TPK) to provide a level of efficiency and a deterrent effect. The purpose of this study is to determine the economic analysis of law in maximizing the looted assets from the crime of corruption. This research is based on judicial normative. The data were collected using the search method and literature review. Conclusion Based on the economic analysis of law, the shift in the orientation of punishment in criminal acts of corruption from corporal punishment to a combination of corporal punishment, large fines, confiscation of assets and impoverishment of perpetrators of criminal acts of corruption without diminishing the meaning of corporal punishment shows effectiveness and efficiency and will increase the deterrent effect for the perpetrator.

## INTRODUCTION

Corruption as an extraordinary crime so the punishment is *the Primum Remedium* (IndonesiaRe, 2019). Corruption as part of a criminal act with an economic motive is to get as much wealth as possible, so to kill and deter the crime by impoverishing the perpetrator as the most effective way to eradicate and prevent the act by seizing the results and instruments of the crime. Corruption also has an impact on the demand for redistributive policies, both individually and collectively (Hauk et al., 2022). This argument certainly does not reduce the meaning of corporal punishment against perpetrators of criminal acts. However, it must be admitted that merely imposing a corporal punishment has not been proven to have a deterrent effect on the perpetrators of the crime.

Data from the Monitoring Results of the 2020 Corruption Crimes Trial conducted by Indonesian Corruption Watch (ICW) shows that the total state financial losses due to corruption in 2020 reached IDR. 56.7 trillion, while the replacement money granted by the judge in his decision was only around IDR. 9 trillion. The amount of state losses due to corruption and its impact on all aspects of people's lives at large, but the assets resulting from the corruption of the corruptors are not touched by the law (News, 2021). Perpetrators of corruption in Indonesia are still dominated by the ranks of the bureaucracy. Based on ICW's monitoring report on the verdicts of corruption cases in the first semester of 2010, there were 119 corruption cases tried with a total of 183 defendants (Rahmayanti, 2018).

Donald Fariz in Rahmayanti details that out of 119 corruption cases, 103 cases with 66 defendants were tried in the General Court, while 16 cases with 17 defendants were tried at the

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Corruption Criminal Court. Based on the level of verdicts for corruptors, the sentences were in the range of 1-2 years, namely 38 defendants (22.89%). The total value of state losses in 2015 was IDR. 31.077 trillion with most of the modes used are budget abuse "Total budget abuse is 24% of 134 cases with a loss value of IDR 803.3 billion (Rahmayanti, 2018).

Based on various survey results, the level of governance effectiveness is reflected in the survey results measuring the level of corruption, if the level of governance effectiveness is high then the level of corruption is relatively low. In terms of strategy to eradicate corruption, logically it can be said that good governance can prevent corruption. Governance describes efforts to improve the system which is one of the mandatory steps in eradicating corruption in all sectors, public and private. As a prevention effort, governance must grow dynamically and be flexible to follow the needs of the community. This is in line with the understanding that efforts to eradicate corruption must be interpreted as a long-term challenge that must be addressed intelligently, enthusiastically and sustainably (Anti-Corruption Clearing House, 2016).

The history of eradicating corruption in Indonesia has experienced ups and downs, influenced by a mixture of public demands, political and business demands, and even international pressure, as well as various other interests. The earliest legal product in the criminal act of corruption was the Regulation of the Military Authority Number PRT/PM/06/1957, regulations and anti-corruption bodies were born and dissolved for various reasons (Anti-Corruption Clearing House, 2016).

The handling of corruption in Indonesia so far has not been effective, this is shown in the Indonesian corruption perception index (CPI), which has not changed much and even tends to stagnate, Krisin Erdianto in Oly Viana Agustine said that based on a survey released by Transparency International Indonesia (TII) in In 2017, Indonesia's Corruption Perception Index (CPI) score stood at 37 and was in position 96 out of 180 countries surveyed. Compared to 2016, the score of 37 has not changed at all, so there is a need for unusual legal remedies to in terms of preventing and eradicating corruption (Agustine, 2019). Thus, creating a negative stigma for the Indonesian state and nation in the international community. Responding to the corruption issue, Chaerudin, Syaiful Ahmad Dinar and Syarif Fadilah in Rihantoro Bayuaji stated that: "Various ways have been taken to eradicate corruption along with the increasingly sophisticated (sophisticated) modus operandi of corruption (Bayuaji, 2019).

Evidence is very important in the process of imposing a criminal offense for the defendant. However, the authors see that there are weaknesses in the evidentiary process in the criminal justice system in Indonesia. For the purposes of proof, it is necessary to have physical evidence or real evidence to explain the fact that a crime has occurred. Evidence can be obtained through mandatory action, namely confiscation which is an absolute thing in the investigation process. Confiscation aims to establish evidence as a priority to be submitted before evidence at trial. This is because the evidence is absolute to accept or not the case to be submitted to the trial (Soemarno, 2021).

Article 38 (1) of the Criminal Procedure Code (KUHP) stipulates that confiscation can only be carried out by investigators with the permission of the head of the district court. Article 1 point 16 kuhap also stipulates that, for reasons of evidence, investigators are authorized to confiscate property in investigation, prosecution and trial. Along with modernization and the emergence of various modus operandi, it is often difficult for investigators at the confiscation level to collect all evidence and evidence. As a result, the public prosecutor received a case file and incomplete evidence, even though it had met the minimum evidence and the public prosecutor stated P-21. This situation has an effect on the failure of the judicial process so that the defendant is free from the demands of the public prosecutor. This will result in the professionalism of the public prosecutor in defending his charges.

The public prosecutor as the party representing the public interest and the victim will at the same time be required to account for it, both accountability from the professional aspect and the juridical aspect which will affect the development of the public prosecutor concerned. The act of confiscation is one of the actions that is a very important part in a legal process, according to Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) in Article 1 number 16 states that: "Confiscation is a series of actions by an investigator to take over and or keep under his control movable or immovable objects, tangible or intangible for the purpose of proof in investigation, prosecution and trial".

The construction of the criminal law system that has been developed recently in Indonesia is still aimed at uncovering the criminal acts that occurred, finding the perpetrators and punishing the perpetrators of criminal acts with criminal sanctions, especially "imprisonment" both imprisonment and confinement. Meanwhile, the issue of developing international law, such as the issue of confiscation and confiscation of proceeds from criminal acts and instruments of criminal acts, has not yet become an important part of the criminal law system in Indonesia (Ramelan, 2012). In the Economic Analysis of Law Efforts to increase the risk or punishment for perpetrators and recipients of bribes need to be made to provide a level of efficiency and a deterrent effect.

There is a conflict of legal norms in the application of Article 38 paragraphs (1) and (2) of the Criminal Procedure Code where the authority to confiscate is not fully attached to the investigator but is also attributively owned by the Public Prosecutor as Dominus Litis as mandated by Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended into Law Number 11 of 2021 concerning amendments to Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Because the Public Prosecutor is an integral part of the criminal justice system as an integral and inseparable part of the law enforcement ecosystem (Sugiharto, 2012).

Based on the authority they have, the Public Prosecutor not only acts as a Public Prosecutor before the court but more broadly the Public Prosecutor has the authority to control a case where the investigation process is part of the pre-prosecution stage (Supit, 2016). Thus, it becomes an inseparable unit in the prosecution process. because the investigation is a series of prosecution processes as in Article No. 14 (Undang-Undang No. 8 Tahun 1981 Tanggal 31 Desember 1981 Tentang Hukum Acara Pidana, 1981), the Public Prosecutor has the position and responsibility in taking action since the investigation stage in realizing the legal objectives to form an order of justice, certainty and benefit in the democratic life of the nation and state.

However, another matter regulated in the Elucidation of the Draft Law of the Criminal Procedure Code Article 15 Paragraph (3) is that at the request of the public prosecutor, investigators may carry out certain legal actions in terms of confiscation of evidence that has not been confiscated at the time of the investigation. This of course causes a blurring of norms because the Public Prosecutor cannot carry out confiscation actions independently even though it is the Public Prosecutor who will prove the material truth of the elements of unlawful acts based on the object of confiscation (Undang-Undang No. 8 Tahun 1981 Tanggal 31 Desember 1981 Tentang Hukum Acara Pidana, 1981).

Whereas based on the Administrative and Technical Guidelines for General and Special Criminal Courts through the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 dated April 4, 2006 concerning the Enforcement of Book II of Guidelines for the Implementation of Duties and Administration of the Court, it provides space for Judges as long as If it is necessary to give permission and or approval to confiscate, the judge may grant the investigator's request and or order the case to the investigator through the Public Prosecutor to carry out the confiscation (Mari, 2008).

The conflicting norms that occurred between the application of Article 38 and Article 39 of the Criminal Procedure Code caused inconsistencies in the application of legal norms that were borne by the Public Prosecutor for the confiscation actions he carried out in the process of handling cases. For this reason, it is necessary to have uniform norms governing the authority of the public prosecutor in making confiscations based on the material burden of proof owned by the public prosecutor as an effort to optimize the authority of Dominus Litis owned by the Public Prosecutor and shorten the time in the process of completing the completeness of the case file.

The proceeds of a crime are assets that are directly or indirectly obtained from a crime ("Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offense). While the definition of property is all movable or immovable objects, both tangible and intangible ("Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets) (Ramelan, 2012). Therefore, this article explores the following research questions; How is the Economic Analysis of Law in Maximizing the Confiscation of Corruption Proceeds.

## METHOD

This research is based on judicial normative. Data were collected using search methods and literature review. The analysis is based on both primary and secondary legal sources related to this research, then classified and summarized and then concluded. The approach in this study uses a conceptual approach and a statute approach where the study is based on an analysis that is sourced from the provisions of the written legislation (Efendi & Ibrahim, 2016).

Analysis of the problem in this study uses the Economic Analysis of Law approach, namely an economic approach to legal thought in solving problems in the spoils of corruption. Economic analysis of law seeks to answer two basic questions about the rule of law. That is, what effect does the rule of law have on the behavior of the actors concerned? And is this effect of the rule of law socially desirable?

## RESULTS AND DISCUSSION

### A. The Economic Analysis of Law in Maximizing the Confiscation of Corruption Proceeds

The principle relating to the theory of economic analysis in law must contain the Principle of Efficiency which will create Wealth Maximization, namely increasing individual welfare without harming other parties which is not only based on justice but also based on social justice. Richard A Posner put it this way: "The efficiency is, by no means, a condition of zero sum game. It is more into the increases of individual wealth without causing loss to other parties. Wealth maximization, or in Posner term, in this context sees particular side of justice that includes more than distributive and corrective justice. Posner puts stress on "*pareto* improvement" wherein, the purpose of regulation of law brings valuable contribution to justice and social welfare (Ahmad & Machmud, 2018).

Richard A. Posner said that economics analysis of law is the application of economic principles as rational choices to analyze legal issues. Richard A Posner also stated that:"...as for the positive role of economics analysis of law, the attempt to explain legal rules and outcomes as they are rather than to change them to make them better". The role of economics analysis of law from the point of view of positivism is to explain the rules of law and their goals for change for the better, further added the efficiency theory of common as a system to maximizing the wealth of society" (Sulistyorini & Zulaekhah, 2018).

The level of social welfare is expected to be equal to the amount of utility expected by the individual. The utility a person expects depends on whether he or she is doing an adverse act, whether he or she is penalized, whether he or she is the victim of a loss that causes harm to others, and on his tax payments, which will reflect the costs of law enforcement, deductions in fines income. collected The more costs incurred in dealing with a risk, the level of utility decreases, if individuals are risk neutral, social welfare can be expressed simply as the gains derived from their actions, minus the losses incurred, and minus the costs of law enforcement. Within the scope of authority, enforcement authority is to maximize social welfare by selecting the enforcement of, or, equivalently, the likelihood of detection, as well as the level of sanctions, forms (fines, imprisonment, or a combination), and liability rules (strict or fault-based) (Posner, 1992).

Assume initially that fines are the form of sanction and that individuals are risk neutral. Then the optimal fine f is hp, the harm divided by the probability of detection, for then the expected fine equals the harm. This fine is optimal because, when the expected fine equals the harm, an individual will commit a harmful act if, and only if, the gain he would derive from it exceeds the harm he would cause. If individuals are risk averse, one might expect the optimal fine to be lower than in the risk-neutral case for two reasons. First, because risk-averse individuals are more easily deterred than risk-neutral individuals, the fine does not need to be as high as before to achieve any desired degree of deterrence. Second, lowering the fine reduces the bearing of risk by individuals who commit the harmful act. However, lowering the fine also increases the number of individuals who commit the harmful act and hence bear risk (Posner, 1992).

Polinsky and Shavell said that the optimal term could be such that there is either under deterrence or over deterrence, compared to socially ideal behavior. On the other hand, a relatively high term, implying over deterrence, might be socially desirable because it means that imprisonment costs are reduced due to fewer individuals committing harmful acts. (For reasons that we will discuss below and because of factors outside the model, our conjecture is that over deterrence is unlikely to be optimal (Posner, 1992).

Imposing fines may, in fact, be costly, due to the need for adjudication and fine collection. Were we to take this into account, the main effect on our conclusions would be that the optimal expected sanction would be higher because harmful acts would cause not only direct harm but also, if detected, additional administrative costs. However, any legal costs borne by the actor are already included in his calculus, so they do not affect the optimal expected sanction). Becker, Polinsky and Shavell in Posner said that we note that when the method of enforcement involves investigating particular acts after they have been committed (rather than auditing or monitoring, such as when police walk a beat), raising the probability of apprehension may, in some ranges, involve lower costs on account of greater deterrence, which reduces the number of acts that need to be investigated to maintain a given probability of detection (Posner, 1992).

**1. Regulations related to Corruption Crimes**

The Government of Indonesia's efforts to prevent corruption subsequently issued Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption, but it turned out to be a lot of failure. This failure is partly due to the various institutions established to eradicate corruption that do not carry out their functions effectively, weak legal instruments, coupled with law enforcement officials who are not really aware of the serious consequences of corruption (Saputra, 2017).

Vettori, F. M Suseno in Refki Saputra said that the paradigm shift in the way of overcoming crime by imprisonment becomes the proceeds of crime (going for the

money), in this case by cutting directly to the center of the crime (head of the serpent) using the concept of deprivation criminal and civil cases as a first step, because the method of imprisonment gradually began to meet failure after failure the paradigm of law enforcement at that time was no longer limited to the pursuit of perpetrators, but also through the pursuit of illegal 'profits' (confiscate ill-gotten gains). Fancois Noel Babeuf (1760-1797) as the first person to voice the ideals of socialism, that ethically what is stolen from the people should be confiscated as much as possible because the proceeds of crime are something that the perpetrators of crime should not always have, and therefore must returned to the rightful (Saputra, 2017).

Arrangements regarding the seizure of assets can be found scattered in the Criminal Code, Criminal Procedure Code, Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law no. 20 of 2001 (Corruption Act), Law no. 8 of 2010 concerning the Crime of Money Laundering (UU TPPU), Law on Mutual Legal Aid (UU MLA), Supreme Court Regulation No. 15 of 2014 concerning the additional penalty of substitute money in the crime of corruption, and the Prosecutor's Office Regulation no. 9 of 2019 concerning Amendments to the Attorney General's Regulation Number -027/A/JA/10/2014 concerning Guidelines for Asset Recovery. Disseminating regulations related to saving state assets from the proceeds of economic crimes has resulted in less than optimal seizure of assets resulting from criminal acts, and has not been able to present a model of law enforcement that is just for the whole community (News, 2021).

**2. Asset Recovery for Corruption Crime**

The low of maximum fine for perpetrators of corruption - as part of an extraordinary crime - a maximum fine of IDR. 1 billion for perpetrators of corruption is certainly very low when we compare it with other crimes. For example, narcotics crime with a maximum fine of IDR 10 billion as stipulated in Article 113, Article 114, Article 116, Article 133, and Article 137 of the Narcotics Law. Likewise, the maximum fine for money laundering is IDR 10 billion as stipulated in Article 3 of the Money Laundering Law (News, 2021).

In addition to the small amount of fines, it also has an effect on the amount of KPK PNBP deposits to the State Treasury, where the KPK's performance in returning assets or assets resulting from corruption has decreased dramatically in the last two years. This can be seen from the return on assets resulting from corruption in 2019 reaching IDR. 468.81 billion, a decrease compared to 2018 which reached IDR 600.25 billion. Likewise, last year it was only IDR 294 billion (Ekonomi, 2021). The regulation regarding compensation for state losses as regulated in Article 18 letter b of the Anti-Corruption Law is also not optimal. The additional punishment in the form of giving replacement money which can be substituted with an extension of imprisonment for a length of time that does not exceed the maximum penalty of the main criminal sentence actually provides an opening for corruptors to extend their prison term instead of paying replacement money (News, 2021).

**3. Efforts to Handle Corruption Crimes**

The first legal principle in relation to law enforcement is the protection of human rights, while the second is related to the principle of justice, in which the principle of justice that is relevant to our national condition is the principle (theory) of justice with dignity. It is necessary to be aware by all parties, that currently the State of Indonesia is incessantly carrying out the eradication of corruption, because corruption is not a crime that is positioned as a serious crime. However, it does not mean that the state in carrying

out law enforcement to eradicate corruption ignores these 2 (two) major theories, namely human rights and justice with dignity (Bayuaji, 2019).

This needs to be an important concern of the state considering that the State of Indonesia as a democratic country is not a country that has absolute power so that there are limits to its authority, as well as having to consider legal elements where these elements are characteristics of the rule of law. One of the elements in question is that the law is obliged to meet juridical, sociological, economic, moral, philosophical, and modern requirements. The law must also always aim to achieve goodness, justice, truth, order, efficiency, progress, prosperity, and legal certainty - The values of justice in Pancasila (Bayuaji, 2019).

Based on this civilized justice, confiscation should only be carried out on assets that are truly proven to have originated from criminal acts of corruption, which are ultimately used for the benefit of the state. Even the state cannot confiscate someone's assets that have never been proven guilty, because basically the Dignified Justice Theory provides a juridical meaning that the seizure of assets of perpetrators of corruption, both through the legal instruments of the Anti-Corruption Law and the Money Laundering Law, cannot solely use the spirit of "eradicating corruption". which relies on public opinion, but must continue through the due process of law in which the proof of the perpetrator's guilt must be prioritized (Bayuaji, 2019).

## B. Maximizing the Confiscation of Assets Related to Crime

The mechanism for confiscation of assets resulting from criminal acts can only be carried out after a court decision has permanent legal force. Confiscation efforts carried out by filing investigators, as well as examination of files by the State Attorney and also announcements of confiscation of assets (Liputan6, 2021). This becomes an obstacle in efforts to recover state financial losses. The trial process of a corruption case takes months and even years to obtain a court decision that has permanent legal force, this condition provides an opportunity for corruptors to hide their assets so that they are difficult to trace by law enforcement officials (News, 2021).

Agustinus Pohan said that the existing systems and mechanisms, both in the Anti-Corruption Law and other laws and regulations, have not been able to support the return of assets resulting from corruption. The United Nations Convention against Corruption (UNCAC) in 2003 regulates efforts to confiscate (recover) assets resulting from crimes that have received worldwide attention. Corruption is not only a national problem but also an international problem. Not a few state assets that are corrupted are then taken away and hidden in financial centers in developed countries which are protected by the legal system in force in that country as a place to store assets resulting from corruption. Countries participating in the signing of the UNCAC have an obligation to encourage the implementation of the provisions for the seizure of assets within the scope of domestic law in their countries. Asset confiscation is expected to be effectively implemented to increase efforts to eradicate corruption by providing a deterrent effect (Agustine, 2019).

Ramelan in Refki Saputra states that non-conviction-based (NCB) confiscation is a tool or means – which is able to transcend differences in the legal system – to seize assets resulting from corruption in all jurisdictions. Indonesia as a state party to UNCAC as formalized in Law Number 7 of 2006, while still taking into account national sovereignty, is required to take steps to implement the provisions of the convention. Regarding asset confiscation without criminal prosecution, Indonesia has proposed a bill to the DPR since 2012 until now. However, the Asset Confiscation Bill has not been ratified until now. This

method of in rem confiscation of assets through the NCB Asset Forfeiture is a revolutionary concept in seizing the proceeds of crime. The process, which is more effective because it bypasses several legal principles and also lowers the standard of evidence in criminal cases, is considered to have the potential to deal with the principles of a fair trial (due process of law) as well as property rights (Saputra, 2017).

Purnawing M. Yanuar, Juniadi Soewrtojo, Romli Atmasasmita in Rahmawati According to an estimate by Transparency International (TI), the amount of funds lost due to bribery in the procurement of government supplies. is at least four hundred billion dollar around the world. The pattern of criminal acts of corruption is based on behavior or actions that are immoral, unethical or unlawful for personal and or group interests that are detrimental to state finances, so to eradicate corruption, in addition to optimizing criminal law, must also use the means of civil law. The civil process is carried out in recovering state financial losses using the civil forfeiture regime (Rahmayanti, 2018).

However, Bayuaji, Rihantoro said that in the confiscation of assets resulting from a criminal act, the due process of law must be prioritized, in which the proof of the perpetrator's guilt must be prioritized (Bayuaji, 2019). Civil forfeiture is applied on a domestic scale, namely filing a civil lawsuit to confiscate or confiscate or expropriate assets resulting from crimes that are in the country. If the assets resulting from the crime are located abroad, some countries that use civil forfeiture domestically apply it extra-territorially (Rahmayanti, 2018) or by using the Law on Mutual Legal Aid, Mutual Legal Assistance in Criminal Matters. If the assets resulting from the crime are located abroad, some countries that use civil forfeiture domestically apply it extra-territorially or by using the Law on Mutual Legal Aid, Mutual Legal Assistance (MLA) in Criminal Matters is a form of international cooperation according to UNCAC 2003 in addition to the extradition treaty. Arrangements regarding MLA have also been promulgated in Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. In this Law, there are efforts to confiscate and block assets resulting from criminal acts, as set out in Article 1 Paragraph (5) (Santos, 2021).

Confiscation using civil forfeiture is faster after it is suspected that there is a connection between assets and criminal acts, so that state assets can be saved even though the suspect has fled or died. The principle of civil forfeiture is "the right of the state to return to the state for the welfare of the people". This can be minimized by using civil forfeiture because the object is the asset, not the corruptor, so that the illness, disappearance or death of the corruptor is not an obstacle in the trial process. In proving through civil forfeiture a potential alternative, potential, because it is more effective in efforts to recover assets (Rahmayanti, 2018).

Mohammad Yusuf in Toetik Rahayuningsih said that the concept of asset forfeiture without conviction or nonconviction based (NCB) asset forfeiture - This provision is one of the efforts to recover assets, especially in revealing unnatural wealth. In some jurisdictions NCB Asset Forfeiture this is also referred to as civil forfeiture, in rem forfeiture or objective forfeiture, is an action against the asset itself (e.g. State vs. $100,000) and not an action against an individual (in person), NCB Asset Forfeiture is a separate action from criminal proceedings and requires evidence that a property is tainted (stained) by a criminal act (Rahayuningsih, 2013).

NCB Asset Forfeiture is very useful for now, because what is being sued is the asset, not the owner. If using a criminal regime, unclaimed assets will be difficult to retrieve, because in general confiscation in criminal law is always related to the perpetrator. So that if within a certain period of time the confiscation is carried out, no party objected, the State

can immediately confiscate the unclaimed assets. However, NCB Asset Forfeiture also has weaknesses (Rahayuningsih, 2013).

Mohammad Yusuf, Bismar Nasution in Toetik Rahayuningsih said that to file a lawsuit against NCB Asset Forfeiture requires its own expertise, especially in identifying the assets to be sued and looking for evidence to prove the allegation that the asset has a relationship with an asset. Another weakness is regarding the limitations in taking assets from corruptors. In general, NCB is a lawsuit to obtain compensatory or remedial damage, not punitive as adopted in the criminal forfeiture regime so that not all losses suffered by the government from a crime can be replaced with this instrument. The latest developments on asset confiscation regulations are related to efforts to optimize the confiscation of assets resulting from crimes. The Supreme Court issued Supreme Court Regulation (PERMA) No.1 of 2013 concerning Procedures for Settlement of Applications for Confiscation of Assets in the Crime of Money Laundering (TPPU) and Other Crimes. The purpose of the establishment of the regulation is to avoid the potential use of money in the practice of money laundering and other criminal acts (Rahayuningsih, 2013).

This regulation helps PPATK to handle assets by first seeking permission from the district court. In the future, PPATK will also announce the existence of unclaimed accounts with the intention that parties who feel they have and want to admit the accounts get information. After a party confesses and objects to the confiscation of his account, the court handling the case can prove the truth of the ownership of the account by appointing a single panel of judges. However, if after the court announces the number of unclaimed accounts and no party acknowledges it, the PPATK can immediately carry out the confiscation. Furthermore, the money will be declared as state property (Rahayuningsih, 2013).

The Criminal Procedure Code (KUHAP) also contains a definition of confiscation and confiscation of evidence in investigation, prosecution and court. Meanwhile, confiscation is an action by a judge in the form of an additional decision on the main crime as stated in Article 10 of the Criminal Code, namely revoking the right of a person's ownership of objects. Based on the judge's determination, objects resulting from criminal acts can be confiscated and then can be damaged or destroyed or can even be used as state property. (Article 156 the Criminal Code) (Agustine, 2019).

The mechanism for confiscation of assets is also contained in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and Law Number 46 of 2009 concerning Courts for Criminal Acts of Corruption. Where in Article 18 letter (a) of the Anti-Corruption Law states that "The confiscation of tangible or intangible movable goods or immovable goods used for or obtained from a criminal act of corruption, including the company owned by the convict where the corruption crime was committed, as well as the price of the goods that replace the goods." (Article 18 letter a of the Corruption Law). Based on the article, the act of confiscation of assets has been regulated and used as a sanction against perpetrators of criminal acts of corruption, in terms of efforts to return the proceeds of crime (Agustine, 2019).

Corruption places the act of confiscation of assets not only as a criminal sanction, in the event that an act of confiscation of assets can be carried out against a defendant who dies before a decision is handed down against him by obtaining strong enough evidence that the person concerned has committed a criminal act of corruption, the judge on the demands of the public prosecutor stipulate acts of confiscation of previously confiscated goods, as stated in Article 38 paragraph (5) of the Anti-Corruption Law (Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi, 1999).

Suharyono said that it was assumed that there were several reasons that were hampered by the ratification of the Asset Confiscation Bill, as follows: (Antikorupsi, 2008)

1) Still taking into account the act of confiscation of assets so as not to conflict with Article 28-H paragraph 4 of the 1945 Constitution, which protects a person's private property rights.
2) There is no institution for storing confiscated assets that can guarantee the return of assets to the state. Although currently there is an asset depository institution belonging to the Ministry of Law and Human Rights,
3) Concerns about the mixing of confiscation of assets with assets that are not the result of criminal acts of corruption.
4) Legal protection for third parties who buy assets from corruptors.

Based on the above reasons, the author assumes that the Bill on Asset Confiscation proceeds from acts of corruption does not conflict with Article 28-H paragraph 4 of the 1945 Constitution, because every person whose property is confiscated must be given the opportunity to prove backwards, that the assets he has obtained are not the proceeds of corruption. Furthermore, protection for third parties who purchase assets resulting from corruption are not ensnared by law, where buyers with good intentions must be protected by law as long as the person concerned does not know the origin of the assets. Where based on Article 1491 of the Civil Code it is stated that the seller is obliged to bear the object that is the object of the sale and purchase transaction, as the seller's obligation for the benefit of the buyer, namely control over safe and peaceful objects based on Article 570 of the Civil Code where the seller is the owner and authorized to the object and is free from hidden defects as well as guarantees in Article 1491-1493 of the Civil Code (Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek Voor Indonesie) Staatblad Tahun 1847 Nomor 23, 1847) see (Isnaeni, 2015).

With an economic approach to law, the author sees that government governance is not optimal the level of penalties and fines is low so that the level of corruption tends to stagnate and increase. If it is seen that there are still many levels of state losses due to corruption, prosecution can be carried out criminally and civilly to restore state losses so that they can be used for development. With the punishment related to financial securities in the form of confiscation of assets suspected of being related to criminal acts and unfair transactions, the perpetrators think twice about committing corruption. In the economic analysis of profit and loss, if the application of criminal sanctions is *primum remedium*, besides that, regulations regarding asset seizure are needed so that the perpetrators feel maximum suffering, considering that the purpose of cooperatives is related to economic problems, the profits obtained illegally must be confiscated for the state.

## CONCLUSION

Based on the economic analysis of law, the shift in criminal orientation in criminal acts of corruption from corporal punishment to a combination of corporal punishment, large fines, confiscation of assets and impoverishment of perpetrators of criminal acts of corruption without diminishing the meaning of corporal punishment against perpetrators of criminal acts shows effectiveness and efficiency and will increase the deterrent effect for perpetrators, in accordance with the economic approach to the law where the costs incurred exceed the expected profits from the results of corruption carried out and for the state. Confiscation it can replace state financial losses that can be used for the welfare of its citizens. This approach emphasizes that legal regulation is a change for the better, in this case, Indonesia and Indonesian society in general.

## REFERENCES


Agustine, O. V. (2019). RUU Perampasan Aset Sebagai Peluang dan Tantangan dalam Pemberantasan Korupsi di Indonesia. *Hukum Pidana Dan Pembangunan Hukum*, *Vol. 1*(No.2). Google Scholar

Ahmad, S., & Machmud, A. (2018). Accountability and Productivity Enhancement of Wakaf Under Government Regulation 25 of 2018. *The Ethical Problem of Development and Utilization of Scientific Invention" Universitas Al Azhar Indonesia*. Google Scholar

Anti-Corruption Clearing House. (2016). Tantangan Governansi Dalam Menyelesaikan Masalah Korupsi Di Sektor Publik & Sektor Swasta. In *Acch.Kpk.Go.Id*.

Antikorupsi. (2008). *Rancangan Aturan Perampasan Aset Hasil Korupsi Terganjal Konstitusi*.

Bayuaji, R. (2019). *Prinsip Hukum Perampasan Aset Koruptor Dalam Perspektif Tindak Pidana Pencucian Uang* (N. A. Daim (Ed.); Cetakan Pe, Vol. 148). Laksbang Justisia. Google Scholar

Efendi, J., & Ibrahim, J. (2016). *Metode Penelitian Hukum: Normatif dan Empiris* (Pertama). Prenadamedia Group. Google Scholar

Ekonomi, B. I. K. (2021). *Aset Hasil Rampasan Kasus Korupsi Terus Merosot*. Insight.Kontan.Co.Id.

Hauk, E., Oviedo, M., & Ramos, X. (2022). Perception of corruption and public support for redistribution in Latin America. *European Journal of Political Economy*, 102174. Scopus

Indonesiare. (2019). *Ultimum Remedium dan Primum Remedium Dalam Sistem Hukum Pidana Indonesia*. Indonesiare.Co.Id.

Isnaeni, M. (2015). *Perjanjian Jual Beli* (Cetakan I). PT RevkaPetra Media.

Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie) Staatblad Tahun 1847 Nomor 23, Pub. L. No. Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie) (1847).

Liputan6. (2021). *Tak Kunjung Selesai, RUU Perampasan Aset Tindak Pidana Jadi PR Pemerintah dan DPR*. Liputan6.Com.

Mari. (2008). *Pedoman Teknis Administrasi dan Teknis Peradilan Perdata Umum dan Perdata Khusus Buku II* (2007th ed.). Mahkamah Agung RI. Google Scholar

News, D. (2021). *Nasib Malang RUU Perampasan Aset*. Detiknews.Com.

Posner, R. A. (1992). *Economic Analysis of Law* (Ed. 4). Little Brown & Company. Google Scholar

Rahayuningsih, T. (2013). Perampasan Aset Hasil Tindak Pidana Perbankan Dalam Rangka Pemberantasan Tindak Pidana Pencucian Uang. *RechtIdee*, *vol.8*(2). Google Scholar

Rahmayanti. (2018). Urgensi Civil Forfeiture Untuk Meningkatkan Pengembalian Kerugian Keuangan Negara. *Jurnal Ilmu Hukum Prima Indonesia(IHP)*, *Vol.1*(No.1), 1–6. Google

Scholar

Ramelan. (2012). Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana. In *BHMN*. Google Scholar

Santos, R. (2021). Prosedur Pelaksanaan Mutual Legal Assistance Tehadap Pemulihan Ases Hasil Korupsi Yang Dilarikan Ke Luar Negeri (Procedures for the Implementation of Mutual Legal Assistance to Recover Assets Resulting from Corruption that are Rushed Abroad). *Jurnal Hukum Lex Generalis*, *Vol.2*(No, 1), 40–56. Google Scholar

Saputra, R. (2017). Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Nonconviction Based Asset Forfeiture) Dalam Ruu Perampasan Aset Di Indonesia. *Integritas*, *Vol. 3*, 115–130. Google Scholar

Soemarno. (2021, June). Meminimalisir Bolak- Baliknya Berkas Perkara Antara Penyidik Dan Jaksa (P.16). *Komisi Kejaksaan RI*, 1 Accessed January 15, 2022.

Sugiharto. (2012). Sistem Peradilan Pidana Indonesia Dan Sekilas Sistem Peradilan Pidana Di Beberapa Negara. In *ISSN 2502-3632 (Online) ISSN 2356-0304 (Paper) Jurnal Online Internasional & Nasional Vol. 7 No.1, Januari – Juni 2019 Universitas 17 Agustus 1945 Jakarta* (Vol. 53, Issue 9). Uninssula Press. Google Scholar

Sulistyorini, I., & Zulaekhah, S. (2018). Economic Analysis of Law Pada Perubahan Kebijakan Kontrak Karya Menjadi Ijin Usaha Pertambangan Khusus (IUPK): Studi Kasus Pt. Freeport Indonesia. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, *17*(2), 70–79. https://doi.org/10.31941/pj.v17i2.544 Google Scholar

Supit, A. A. (2016). Prapenuntutan dalam KUHAP dan Pengaruh Berlakunya Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indoneisa. *Lex Crimen*, *V*(1), 99–106. Google Scholar

Undang-Undang No. 8 Tahun 1981 tanggal 31 Desember 1981 Tentang Hukum Acara Pidana, (1981).

Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi, Pub. L. No. Lembaran Negara RI Tahun 1999 Nomor 140, Tambahan Lembaran Negara RI Nomor 3874 (1999).