

The Urgency of Asset Forfeiture Bill in Preventing Corruption Acts as an Effort to Address Structural Poverty in Indonesia

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ABSTRACT

According to the Transparency International report, Indonesia has Southeast Asia's 5th highest corruption index. Indonesia has dealt with more than 1,310 corruption cases from 2004 to 2022. Indonesia is also the 73rd poorest country based on the World Population Review. Specifically, according to data from the Central Bureau of Statistics, in 2022, 26.36 million Indonesians were still below the poverty line. The Asset Forfeiture Bill is currently being discussed by the governor and is expected to be able to resolve the structural poverty caused by corruption. This study aims to determine the urgency of the Asset Forfeiture Bill in preventing and dealing with corruption. The type of method used in this research is normative juridical research with a conceptual, statute, and case approach. The legal materials of this research consist of primary and secondary legal materials. The method of collecting legal materials is by taking an inventory of laws and literature that will be analyzed descriptively and prescriptively. The results of this study indicate that the Asset Forfeiture Bill has an impact in providing a deterrent effect on corruptors that will also solve the structural poverty issue in Indonesia.

Keywords: *Law, Corruption, Poverty*

INTRODUCTION

Pancasila has an extraordinary moral view contained in every precept. Pancasila is an attitude and concrete steps that all elements of the nation must take. The practice of Pancasila values as the nation's way of life can make Pancasila an ideology of resistance to all forms of criminal acts, including corruption which is already so acute. Based on data from Transparency International, Indonesia has a corruption perception index with score of 34 on a scale of 0-100 (Transparency International, 2021). This score makes Indonesia the 5th most corrupt country in Southeast Asia. Corruption certainly has a tremendous impact on the welfare of the nation. Apart from violating the rule of law, corruption violates the values and norms of human rights in UU 39/1999.

In the long run, the culture of corruption in Indonesia will affect the country's economic growth. A high level of corruption will make it difficult for the state to finance state spending due to a high budget deficit. This condition will then increase the poverty rate in Indonesia, primarily based on reports from the Indonesian Corruption Watch (ICW) state losses due to corruption cases during 2020-2021 to reach 119.67 trillion (Indonesian data, 2022). Besides that, based on Agency Data Center for Statistics, the poverty index in Indonesia in September 2022 was 26.36 million people (Badan Statistik Indonesia, 2022). This data aligns with the World Population Review data, which shows that Indonesia is in the 73rd position of the poorest country in the world by gross national income RI is 3870 USD per capita in 2020 (CNN Indonesia, 2022).

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Related to this discourse, the government should provide real solutions to practices of natural solutions to corrupt practices that have taken root in Indonesia. The government then presented the concept of the Asset Forfeiture Bill as an effort and a new concept in handling corruption cases with the model of the impoverishment of corruptors, where assets will be confiscated and entered into the state treasury so that they can compensate for losses suffered by the state. The Asset Forfeiture Bill has always been included in the National Legislation Program since 2012, but until now, it has yet to be ratified.

Thus, it is necessary to look for the urgency of the presence of the Asset Forfeiture Bill in preventing and overcoming structural poverty. This research is fundamental considering a large number of corruption and poverty rates, which are expected to be able to find a remedy for the root causes of corruption and poverty through the presence of this Asset forfeiture Bill.

Based on the above, several problem formulations will be examined by the author in this study, including:

1. What is the urgency of implementing the concept of asset forfeiture?
2. What is the impact of implementing the Asset Forfeiture Bill related to eradicating poverty in Indonesia?

LITERATURE REVIEW

Several previous studies form the basis of the authors doing this research. First, namely, a journal entitled "Forfeiture and Forfeiture of Assets Resulting from Corruption as an Effort to Impoverish Corruptors" written by Dessy Rochman Prasetyo (Prasetyo, 2016). This study reveals that the prevention and eradication of corruption must be balanced with efforts to restore assets coupled with crimes that lead to the impoverishment and impoverishment of corruptors. No specific provisions specifically regulate asset forfeiture, even though there are many benefits from implementing the asset forfeiture concept to impoverish corruptors.

The second is a journal entitled "Effectiveness of Maximum Punishment Decisions for Perpetrators of Corruption Crimes in the Context of Poverty Alleviation" by Oksidelfa Yanto (Yanto, 2017, p. 17). This research reveals that the effectiveness of punishment through a judge's verdict will determine the fate of the people to move away from the brink of permanent poverty. Corruption can make it difficult for people to access education and health and enjoy facilities and infrastructure in the form of infrastructure, causing people to experience prolonged suffering, causing them to live below the poverty line.

Third, the journal entitled "Application of Asset Forfeiture as an Additional Criminal in Eradicating Corruption Crimes in Indonesia" was written by Rosalinda Jati and Beni Harmoniharefa (Jati & Harmoniharefa, 2021). This research directs asset forfeiture as an additional crime. This research reveals that there are two ways to implement asset forfeiture, first through criminal prosecution and second through civil lawsuits. Therefore, the Asset Forfeiture Bill is an ideal legal regulation in Corruption Crimes. It is a necessary breakthrough in strengthening the legal system through asset forfeiture without a court decision with the Non-Conviction Based Forfeiture system.

Based on these three studies, corruption has a significant impact on poverty. However, here the author will focus more specifically on the urgency of asset forfeiture in preventing and dealing with poverty as the implementation of one of the Sustainable Development Goals (SDGs) goals.

METHODOLOGY & DATA

This research will use the normative juridical method through a literature study. Thus, the source of data used is secondary data, namely in the form of primary and secondary legal materials. Primary legal materials are obtained from various laws and regulations, jurisprudence, and international agreements related to the author's topic. Secondary legal materials will be obtained from the results of research, arguments, and theories from various scholars.

DISCUSSION

A. The Urgency of Asset Forfeiture Implementation

The 2003 United Nations Covenant Against Corruption (UNCAC) provisions formally introduced the model for eradicating corruption in international matters. What has become quite significant from the UNCAC in the corruption eradication model is mandating member countries to seek the forfeiture of assets resulting from crime. This kind of forfeiture is regulated in Article 54 paragraph (1) letter c UNCAC, which requires all state parties to consider taking the necessary actions so that the forfeiture of corrupt assets is possible without criminal proceedings in cases where the corruptor cannot be prosecuted for reasons of death, expiration, escape, and other cases.

As a follow-up to UNCAC, the United Nations Office on Drugs and Crime (UNODC) and the World Bank formed a joint program to enhance international cooperation in implementing efforts to recover assets resulting from corruption, namely Stolen Asset Recovery (StAR). Star is one of the breakthroughs in international law that establishes the basis for returning assets resulting from crime (especially corruption) in developing countries (Ariawan, 2014). The StAR explains various legal mechanisms that can be taken to achieve asset recovery, namely:

- a) Domestic criminal prosecution and conviction-based forfeiture
- b) Non-Conviction based (NCB) forfeiture
- c) Private civil actions, including formal insolvency proceedings
- d) Administrative forfeiture
- e) Other avenues, such as taxation, fines, and compensation orders in criminal trials

Indonesia, as a country that is a party to UNCAC as formalized in Law no. 7 of 2006, while considering national sovereignty, is required to take steps to implement the provisions of the UNCAC and adopt one of the methods of confiscating assets contained in the StAR. The Draft Asset Forfeiture Bill has been around since the second term of President Susilo Bambang Yudhoyono's leadership, initiated by the Financial Transaction Reports and Analysis Center (PPATK) in 2003, which was included in the National Legislation Program (Prolegnas). Unfortunately, for nearly two decades, the Asset Forfeiture Bill has been delayed again by discussion, especially at its ratification. However, the academic text of the bill already exists, and it has been listed from all sides, which will fully support the country's economic recovery from an economic standpoint.

In its design, the model of the Asset forfeiture Bill in Indonesia uses Non-Conviction Based (NCB) forfeiture or the concept of asset forfeiture without crime. This NCB is explicitly stated in Article 1, Point 3 of the Asset Forfeiture Bill, which states the definition of In Rem deprivation, which means an act by the state to take over assets through a court decision based on more robust evidence and without being based on punishment of the culprit.

Forfeiture carried out in confiscating assets resulting from corruption has a specific character. The specificity of these characters is manifested in their use. Non-Conviction Based Asset Forfeiture can only be carried out when criminal remedies are no longer possible to be used to seek to recover state losses due to criminal acts of corruption in the state treasury. It is different from the punishment in terms of the assets produced being taken by force by the state. So both descendants and other people who take advantage of the results will feel a deterrent from the actions that are by themselves. The Asset Forfeiture Bill has regulated such a concept regarding the system and mechanism of forfeiture with comprehensive and transparent regulations regarding the management of assets that have been confiscated with the definite objective of realizing accountable, professional, and transparent positive law. Holding punishment against the perpetrators is one of the proper steps because the state's genuine "fear of impoverishment" is included in the form of fear of corruptors in this country.

The Asset Forfeiture Bill is ideal if the government wants to apply it in Indonesia because of the characteristics of corruptors who are not afraid of being jailed but afraid of being poor. Moreover, until now, the asset forfeiture model is only contained in the Supreme Court Jurisprudence and needs to be regulated concretely in law. The non-regulation of the asset forfeiture model as a form of corruption settlement is a legal vacuum in Indonesia. So, to overcome this, it needs an in-depth analysis regarding the Asset forfeiture Bill to be passed immediately to fill in the weak corruption law in Indonesia.

The draft Asset Forfeiture Bill also contains the procedure for acquiring illicit assets by searching, requesting, obtaining, and analyzing the data obtained to uncover the origins of assets that are equivalent to the net income of the offender. After tracing steps have been carried out, and allegations of improper assets belonging to corruptors have been found, according to the Asset Forfeiture Bill, a freeze will be held, freezes criminal assets so that they are not transferred to other parties. This action is done because it is not uncommon for perpetrators to circulate money resulting from corruption in such a way to other countries, so it is difficult for the Indonesian government to trace it. The blocking action here is carried out as an effort to prevent the transfer of assets resulting from corruption to other countries.

Apart from blocking, there are steps to confiscate assets regulated in the Asset Forfeiture Bill. The forfeiture was carried out based on a warrant for the forfeiture of assets as a form of collateral for assets. After blocking and confiscating, the last step is asset forfeiture which can be taken if the suspect or defendant dies, runs away, becomes permanently ill, whereabouts are unknown, or has been terminated free of all lawsuits. Forfeiture of assets is based on a court decision with permanent legal force. It can still

be used as evidence in prosecuting perpetrators of criminal acts, in which case forfeiture of assets will not eliminate the authority to carry out criminal prosecutions.

The Asset Forfeiture Bill also regulates the agencies tasked with carrying out these legal actions, namely through investigators consisting of officials from agencies who, according to the law, have been given the authority to seek and collect evidence so that criminal acts become clear. After being examined by the investigator, the management is also listed, with storage, security, maintenance, appraisal, transfer, use, utilization, supervision, and return if the evidence obtained is sufficient to state to the investigator that the assets are not the proceeds of crime.

Not only that, the concept of confiscating assets neatly packaged in the Asset Forfeiture Bill explains that assets that have been conserved in the form of grants that become personal wealth and generate economic benefits will be confiscated by the state. Over time, there may be changes in the minimum value of the asset's price to be confiscated along with the prison sentence imposed. The existence of assets that are not balanced with income and sources of additional wealth can be referred to as unbalanced assets, which the perpetrator must prove if they own them without involving hot money that they have managed. Another concept that supports the passing of the Asset Forfeiture Bill due to its existence also stipulates that if the return of assets abroad is rejected, a replacement will be made with a nominal equivalent to the assets in Indonesia.

The presence of the Asset Forfeiture Bill will transmit powerful signals to the general public not to fall into the world of corruption, and the state will regain ownership of it through forfeiture carried out according to the applicable procedures. Thus, the concepts contained in the Asset Forfeiture Bill include details of forfeiture which are ready for discussion, and it is hoped that it will be ratified soon. Because the deterrent effect on perpetrators is primary, and people's welfare is paramount.

B. The Impact of The Asset Forfeiture Implementation For Poverty Alleviation

Poverty is a multidimensional development problem closely related to social, economic, and cultural aspects. Therefore, it will be difficult for *the lower middle* class to escape poverty (Pinem et al., 2019, p. 2).

Structural poverty is often seen as a symptom that persists in society; for example, structural poverty is a phenomenon that is built-in to a social group suffering from a lack of facilities, capital, mental attitude, or business spirit needed to escape from poverty. The bonds of poverty (Pinem et al., 2019, p. 2).

According to Chambers, structural poverty is poverty caused by low access to resources that occurs in a socio-cultural and socio-political system that does not support poverty liberation but often causes poverty to flourish (Adawiyah, 2020, p. 4). Widyastuti stated that a child born into a low-income family would likely become poor too (Widiastuti, 2014).

Poverty is a multidimensional issue that includes political, social, economic, assets, and access. This results in people experiencing poverty being excluded from the decision-making process that concerns themselves. More than that, all the work/business they do needs access, including adequate information to various vital resources needed to improve their living standards (Widiastuti, 2014). Scholars have

conducted lots of research regarding the impact of corruption on poverty. The results of their research suggest that corruption greatly influences poverty.

The Center for Education and Training, Ministry of Trade of the Republic of Indonesia, revealed that there will be many benefits if the Indonesian state is free from corruption (M. Simamora & MSM (Young Widyaishwara), 2018). Some of them are:

1) There is no poverty

The low level of corruption will significantly affect a country's economic growth (Lutfi et al., 2020, p. 5).

2) Children have the right to education.

If a country is free from corruption, it is hoped that the allocation of 20% of the State Revenue and Expenditure Budget (APBN) for education can be used as well as possible with adequate supervision (Juanda, 2021, p. 13).

3) Guaranteed public health.

APBN allocation in providing public health services can be maximized. One form of the current government's efforts is to form BPJS for Health, even though the allocation is relatively small compared to other countries (Kurniawan et al., 2022).

4) Beautiful Environment.

The government can build a social environment that is environmentally friendly and beautiful. For example, as a means for the community to gather and socialize, such as parks and sports facilities that anyone can use, it has extraordinary environmental benefits such as maintaining the balance of the water system in nature, preventing erosion, soil erosion, and maintaining air quality (Handini et.al., 2021, p. 3).

5) Convenience of public transportation.

One form of infrastructure is public transportation, which will change people's habits to use public transportation, which is expected to reduce the level of congestion (Hidayah & Masduqie, 2022, p. 7). Reducing the level of congestion will increase economic efficiency in terms of this is one of distribution (Said et al., 2021, p. 2). Transportation costs will be lower, followed by falling prices, and goods will become more affordable.

Denmark and Finland are two countries that Indonesia should emulate. The Corruption Perceptions Index (CPI) has noted that Denmark has an index of 88 out of 100, and Finland has an index of 85 out of 100 (Petrenko & Zverhovskaya, 2019).

These two countries have the same legal concept as Indonesia, namely Civil Law. These two countries, besides implementing asset forfeiture, also implemented criminal penalties. The application of this country is convenient; besides that, it also highly upholds integrity and honesty, which have become fundamental values in the two countries.

The two countries have joined The European Union (EU) Asset Recovery Offices (ARO), which is a facility established by European Union countries to help track and identify criminal assets so that there is no financial benefit from a crime, especially transnational crime—organized (transnational-organized crime).

Corruption is an organized transnational international crime, expressly formulated in the 2003 UN Convention Against Corruption Preamble (Siswanto, 2013, p.

C. The establishment of this ARO is to eradicate all transnational organized crime by recovering and confiscating assets

The two countries apply the principle of forfeiture of assets, and the results are shocking. Namely, their corruption indicators are low. In addition, these two countries also have a Gross Domestic Product (GDP), which tends to be high, so they are the happiest countries (Harumi & Bachtiar, 2022, p. 11). This is because GDP is the factor that has the most overall impact on happiness (Nguyen, 2022).

CONCLUSION

The high level of corruption in Indonesia impacts various social sectors, and the most severe is in the public welfare sector. Corruption is one of the factors for the high poverty rate in Indonesia and the difficulty of alleviating Indonesia from structural poverty. The Asset Forfeiture Bill comes as a regulatory concept that addresses concerns about the high rate of corruption that is sustainable with the common welfare and development of the country. The Asset Forfeiture Bill, which has a Non-Conviction Based model, provides a regulatory scheme for asset forfeiture without punishment for perpetrators and focuses on the impoverishment of perpetrators. The Asset Forfeiture Bill has detailed how to track assets, block assets, confiscate assets, confiscate assets, and manage assets.

To resolve the discourse on structural poverty caused by corruption, from a sociological approach, it can be identified from the impact of this bill on society that will guarantee economic welfare, access to education, health, and environmental preservation, to ensure infrastructure facilities. Furthermore, it can be seen because of the comparative effort that Denmark and Finland, which have high levels of social welfare and low levels of corruption, both have asset forfeiture laws in their countries and are members of The European Union (EU) Asset Recovery Offices (ARO).

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