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Asset Freezing and Seizure as Instruments of Corruption Law Enforcement from The Perspective of Maqashid Sharia

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Abstract
Corruption is an extraordinary crime that erodes the very foundations of national and state life. The freezing and seizure of corruptors' assets have become important instruments in the enforcement of anti-corruption law. This study aims to analyze the strategy of corruption law enforcement through asset freezing and seizure from the perspective of Maqashid Sharia. The research method used is normative legal research with a qualitative approach. Primary data were obtained from laws and government regulations, while secondary data were sourced from books, scientific journals, and articles. The results of the study show that asset freezing is a crucial step to prevent the spread and concealment of assets obtained from corruption. The main challenges in its implementation include the expertise of corruptors in hiding assets, the leniency of legal sanctions, and the lack of obligations to return illicit wealth. Asset forfeiture without conviction (Non-Conviction Based Asset Forfeiture or NCB) is recognized as a more effective method in addressing the limitations of conventional criminal asset forfeiture. NCB allows the seizure of assets without requiring a prior criminal conviction. From the perspective of Maqashid Sharia, asset freezing and seizure in corruption crimes emphasize the importance of justice, public interest (maslahah), and the protection of wealth. Freezing and seizing corrupt assets are considered in line with the principles of Maqashid Sharia because they can recover state losses, provide a deterrent effect to corruptors, and preserve societal welfare. Thus, this study concludes that asset freezing and seizure can serve as effective and legitimate instruments of corruption law enforcement from the Maqashid Sharia perspective. Their application must uphold the principles of justice, public benefit, and the protection of property.
Keywords: ***Asset Blocking, Asset Forfeiture, Corruption, Maqashid Syariah, Law Enforcement.***

INTRODUCTION

The rise of corruption cases in Indonesia has marked the existence of a chronic disease that continues to eat away at the fabric of the nation (Herdani et al., 2022). Although various efforts have been made to eradicate it, the fact that cannot be ignored is the continued increase in the frequency of corruption cases (Faozi et al., 2023). To overcome this problem, strict law enforcement is considered as one of the key factors (Salamor, 2023). Strong law enforcement not only provides a deterrent effect for perpetrators of corruption, but also has the potential to prevent future corruption (Citranu, 2023). Adoption of asset blocking and forfeiture measures into effective law enforcement instruments (Tuahuns, 2021). Asset blocking aims to prevent criminals from hiding or transferring the proceeds of corruption, while asset forfeiture serves to recover the assets and return them to the state (Djufri et al., 2020; Prasetyo et al., 2023).

In the Indonesian jurisdiction, the conception of assets covers various dimensions regulated by a number of laws and regulations, including the Civil Code, the Money Laundering Law, and the Corruption Eradication Law. The definition of assets in the Civil Code, as explained in Article 499, confirms that assets or property involves every item and right that can be controlled by property rights. The property is divided based on its form and nature, including embodied and immaterial objects, as well as movable and immovable objects.

In the Money Laundering Law (Law No. 8/2010), the definition of wealth includes all forms of objects, both movable and immovable, acquired directly or indirectly. This definition summarizes wealth in all its forms, including material and immaterial assets, which can be identified as the object of money laundering actions.

Furthermore, asset forfeiture in the Corruption Eradication Law (Law No. 31 of 1999, amended by Law No. 20 of 2001) is regulated in Article 18 paragraph (1), which stipulates that asset forfeiture is carried out against the guilty person and the goods that have been confiscated, with the aim of recovering state losses and preventing corruption perpetrators from benefiting from criminal acts. The forfeiture process is considered an additional punishment in accordance with the provisions of Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001.

With these provisions, Indonesian law firmly establishes the concept of assets in various contexts, ranging from general property (Civil Code), money laundering prevention efforts (Money Laundering Law), to corruption eradication (Corruption Eradication Law). As a solid legal basis, this definition forms the foundation for prevention and enforcement efforts against corrupt practices and money laundering in Indonesia.

In addition, the relevance of Maqashid Sharia in the context of corruption eradication is also highlighted. Maqashid Sharia, which consists of five main objectives in Islamic law, involves the protection of religion, soul, mind, offspring and property. The eradication of corruption can be interpreted as an effort to protect these aspects, in line with the moral and ethical values emphasized by Maqashid Sharia. Dealing with the rampant cases of corruption in Indonesia therefore requires a holistic approach that includes strict law enforcement, the application of instruments such as asset blocking and forfeiture, and an understanding of moral and ethical values, as affirmed by Maqashid Sharia. Only through collaboration and shared commitment can Indonesia move towards eradicating corruption and creating an environment of cleanliness and integrity.

In this research, there are several relevant previous studies, namely first M. Ainun Najib in his journal “Polemics over the Ratification of the Draft Law on Asset Forfeiture in Indonesia”. This study explains that starting from the lack of approval of the Draft Law on Asset Forfeiture, there is great doubt about what the House of Representatives really wants. It appears that the DPR, seemingly ignoring the worsening problem of corruption, delayed the passage of the Asset Forfeiture Bill, raising questions as to whether the DPR had forgotten its core duties and functions. In this context, this journal reveals the controversy surrounding the delayed approval of the Asset Forfeiture Bill into law. This research is qualitative in nature and describes the phenomenon of the long discussion process of the Asset Forfeiture Bill. The data used in this study were obtained from books, journals, and several statements published in newspapers. The conclusion of the research shows the urgency of passing the Asset Forfeiture Bill considering the increasingly severe level of corruption. In addition, the obstacle does not lie in the substance of the Asset Forfeiture Bill, but rather in the concerns of DPR members who feel threatened by the bill. Therefore, the bill was not passed immediately, resulting in DPR members forgetting their main duties, functions, and oaths (Najib, 2023).

The second is Oly Viana Agustine in her research “The Asset Forfeiture Bill as an Opportunity and Challenge in Corruption Eradication in Indonesia”. The research explained that eradicating corruption has become one of the reform agendas in an effort to create a clean and free state governance. Since ancient times, the government has taken various steps, including the establishment of the Corruption Eradication Commission and the regulation of corruption in its own legal regulations, outside the Criminal Code. These two instruments are expected to be the foundation for combating corruption in Indonesia. However, it is important to consider other instruments that may accelerate efforts to eradicate corruption in Indonesia. The results show that the draft asset forfeiture law has a special mechanism to return state assets obtained through corruption without the need to wait for a court decision, so that it can create a deterrent effect on corruption perpetrators. However, the implementation of asset forfeiture still faces obstacles due to the lack of political will from lawmakers. Therefore, it is recommended that the Government and the legislature intensify discussions and immediately pass the draft law on asset forfeiture as a concrete step in fighting corruption (Agustine, 2019).

The third is Sigit Prabawa Nugraha in his journal “Policy on Asset Forfeiture from Corruption Crimes”. This study explains that the development of corruption crimes has now led to criminal acts related to the concealment of assets originating from corruption crimes, which often involve money laundering mechanisms. In Indonesia, the mechanism for seizing assets resulting from corruption is regulated in the Criminal Code, Criminal Procedure Code, Law No. 20 of 2001 in conjunction with Law No. 31 of 1999 concerning Eradication of Corruption, and Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering. In addition, there are international legal instruments, such as UNCAC which has been ratified by the Government of Indonesia through Law Number 7 of 2006 on April 18, 2006, to strengthen efforts to seize assets from corruption crimes. To increase the effectiveness in handling assets from corruption crimes, Indonesia needs regulations that have stronger legal force and special mechanisms related to the confiscation of assets and wealth suspected of being obtained from corruption. Therefore, it is recommended that the Government and the legislature immediately push for the discussion and ratification of the Draft Law on Asset Forfeiture as a concrete step in addressing this issue (Nugraha, 2020).

The fourth study is by Heri Joko Saputro and Tofik Yanuar Chandra in their journal "Urgency of Recovering State Financial Losses Through Asset Freezing and Confiscation as a Strategy for Enforcing Corruption Law." The research explains that one of the elements in corruption crimes is the financial loss incurred by the state. Regarding this financial loss aspect, both the old Corruption Law, namely Law No. 3 of 1971, and the new one, namely Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes, establish the principle that the perpetrators of corruption must compensate or return the state’s financial losses (Asset Recovery). The process of asset recovery becomes an important action to prevent the state from continuously suffering losses and to ensure that criminal punishment (imprisonment) is not the only measure taken. In this study, a descriptive qualitative method is used to depict the actual conditions without manipulating or treating the variables being studied. The research findings indicate that policy formulation and concrete steps are needed, considering that the asset recovery procedure includes tracking, freezing, blocking, confiscating, seizing, maintaining/managing, and returning the taken assets or proceeds of crime to the victim or the state. Tracing assets suspected of originating from stolen state funds, such as money or savings in the perpetrator's accounts, as well as other items, needs to be done as an initial step before asset freezing and confiscation (Saputro & Chandra, 2021).

Based on the four literatures above, it shows that asset blocking and seizure is a way to overcome the problem of corruption in Indonesia, but none of the above studies discuss from the perspective of Islamic law which aims to achieve the goals of the benefit of the people or maqashid sharia. Therefore, this research is considered relevant and important in responding to the need to explore aspects of Islamic law in efforts to enforce corruption law in Indonesia.

METHOD

This research uses normative legal research. According to Prof. Dr. Suteki, S.H., M. Hum and Galang Taufani, S.H., M.H in his book explain that normative legal research is research that examines the applicable legal norms and analyzes them systematically to answer the legal problems raised (Suteki & Galang Taufani 2018). The research approach used is a qualitative approach. According to Prof. Dr. Sugiyono in his book explains that a qualitative approach is a research approach that produces descriptive data in the form of words and not numbers (Sugiyono, 2021). The data analysis used is descriptive analysis. Descriptive analysis is an analysis that aims to describe the data that has been collected systematically and logically.

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The data collection techniques used are document and literature studies. Document and literature study is a data collection technique by studying documents and literature relevant to the research (Nazir, 2005). The data analysis technique used is qualitative analysis with deductive method. Qualitative analysis with deductive method is a data analysis technique that uses deductive reasoning to draw conclusions from general premises that have been determined. The results of the research are expected to provide conclusions about the effectiveness and validity of blocking and seizing assets in the perspective of Maqashid Sharia.

Result and Discussion

Corruption Law Enforcement Strategy through Asset Blocking

Corruption, a problem that involves practices of abuse of power and misuse of public trust, can no longer be considered an issue that is limited to national borders (Baru & Sripeni, 2019). Today, corruption has become a transnational problem that reaches across borders and disrupts financial stability and public order in various parts of the world (Antariksa et al., 2023; Yuan et al., 2023). This phenomenon opens a new page in the complexity of the tasks of law enforcement officials, presenting significant challenges in tracking and recovering assets from corruption.

The difficulties faced in tracing and recovering assets misappropriated by perpetrators of corruption further complicate efforts to eradicate this crime (Tantimin, 2023). The expertise of corruptors in hiding and disguising the proceeds of their crimes is not only limited domestically, but has also extended to the transnational dimension (Nurillah & Nashriana, 2020; Santos & Firmansyah, 2021). This is a substantial obstacle for law enforcement officials in carrying out their duties to uncover and recover affected state finances.

The expertise of corruptors in hiding and disguising the proceeds of their crimes is not only limited domestically, but has also extended to the transnational dimension.The difficulties faced in tracing and recovering assets misappropriated by perpetrators of corruption further complicate efforts to eradicate this crime.This phenomenon opens a new page in the complexity of the tasks of law enforcement officials, presenting significant challenges in tracking and recovering assets from corruption.Today, corruption has become a transnational problem that reaches across borders and disrupts financial stability and public order in various parts of the world.Corruption, a problem that involves practices of abuse of power and misuse of public trust, can no longer be considered an issue that is limited to national borders.Corruption Law Enforcement Strategy through Asset Blocking (Febriani & Lasmadi, 2020; Julianai & Lubis, 2020; Purwadi, 2016). This phenomenon highlights the failure of the legal system to create an effective sanction system that provides consequences commensurate with the acts of corruption committed.

In the author's opinion, there are several main challenges in enforcing corruption law, namely:

1. The Expertise of Corrupt Individuals in Hiding Assets

   The main challenge in enforcing anti-corruption law involves the expertise of corrupt individuals in concealing the traces of their criminal assets. Corruption perpetrators have developed sophisticated strategies, not only at the domestic level but also in a transnational context. Asset concealment involves complex practices such as placement in fake business entities, ownership transfers, and the use of international banking networks. This makes efforts by law enforcement agencies to trace and identify these assets increasingly complicated and requires cross-border collaboration.

2. The Leniency of Legal Sanctions and the Lack of Obligation to Return Assets

   The legal sanctions imposed on corruption perpetrators tend to be lenient, creating a gap that allows offenders to evade the consequences that should be appropriate. Prison sentences of several years without a significant obligation to return the embezzled assets create an imbalance between the benefits gained from corruption and the risks of punishment faced. As a result, corruption offenders do not feel compelled to change their behavior and may even continue to enjoy the fruits of their corruption after being released from prison.

3. The Difficulty in Proving Corruption Crimes Materially

   The third challenge arises from the difficulty in proving corruption crimes materially. The formal and technical nature of corruption offenses often makes them difficult to identify and convincingly prove in court. At times, the lack of usable evidence results in many corruption defendants successfully avoiding legal charges. The material aspects of corruption crimes highlight the need for more advanced and collaborative investigative approaches to ensure that sufficient evidence can be gathered to support legal proceedings. In this context, enhanced international cooperation and the utilization of technology become crucial elements in overcoming the difficulty of proving corruption crimes.

In facing the complexity of corruption cases, law enforcement officials need to implement advanced, data-driven strategies to ensure effectiveness in asset tracking and the preparation of restitution payments. Profiling and asset tracing are critical steps in the investigation of corruption crimes. Profiling involves in-depth analysis of the suspects' behavior, financial transactions, and business footprints. By understanding these patterns, law enforcement can identify assets that may have been hidden or transferred. Asset tracing, in turn, is a technique for tracking these assets, including investigations into ownership, transfers, and investments made by corruption perpetrators.

In efforts to prepare restitution payments, data support becomes a key element. Financial data, transaction records, and asset-related information form the foundation necessary to determine the value of state losses that need to be compensated by the perpetrators. The use of technology and information systems becomes vital, enabling law enforcement to access and analyze information quickly and accurately.

These steps not only involve gathering evidence for trial but also preparing a solid foundation for the restitution process. Proper preparation requires close collaboration between law enforcement officials, financial forensic experts, and financial institutions. Additionally, cross-sector and cross-border cooperation is crucial to addressing the transnational complexity of these efforts. The importance of law enforcement efforts based on data and restitution preparation lies in their ability to impose real consequences on corruption perpetrators. By detailing asset trails, accurately determining state losses, and ensuring appropriate restitution obligations, law enforcement can ensure that justice is restored and the deterrent effect on corruption offenders is significantly enhanced.

According to the literature review, the asset recovery mechanism is an important component in efforts to address the impact of corruption and restore state finances (Mariana et al., 2022; Miladmahesi, 2020; Siburian & Wijaya, 2022; Verawati & Yudianto, 2022; Yustrisia, 2022). There are three main channels that can be used to recover assets suspected to be the proceeds of corruption: the criminal channel, the civil channel, and the administrative or political channel:

1. Criminal Channel

   The criminal channel can be pursued in two ways First, Asset Confiscation Without Criminal Prosecution. This option grants law enforcement officials the authority to seize assets suspected of being derived from corruption without the need for prior criminal proceedings. Therefore, if there is sufficient evidence regarding the ownership of assets linked to corruption, confiscation can be carried out immediately. This is a proactive step to prevent corruption assets from being further used or misused.

   Second, Voluntary Asset Return. In this situation, the involved parties, including the corrupt individuals, have the option to voluntarily return assets suspected of being the proceeds of corruption. This voluntary action can be seen as a constructive form of cooperation within the legal process. Voluntary return may offer certain incentives to the corruption perpetrators to recover part or all of the assets they obtained unlawfully.

2. Civil Channel

   This mechanism involves the return of assets through the civil channel, where the party harmed by the corruption crime can file a civil lawsuit. In civil court proceedings, the court may decide to return assets suspected to be the proceeds of corruption to the harmed party as compensation for the losses they have suffered. The civil process allows the affected party to obtain justice and restore their rights that have been taken away by the corruption crime.

3. Administrative or Political Channel

The asset recovery process through the administrative or political channel involves the authority of administrative agencies or decisions made by political figures who have the power to take action. This step may include administrative handling by government institutions with relevant authority or political decisions that involve national or international considerations. These decisions must ensure that the recovery process adheres to the principles of justice, transparency, and accountability.

Each asset recovery channel has its own advantages and challenges. The selection of the appropriate channel must take into account the case's context, the sustainability of the legal process, and the protection of the defendant's human rights. By implementing asset recovery mechanisms proportionally and in line with legal principles, efforts to recover assets from corruption crimes can be carried out more effectively and fairly. Thus, the fight against corruption is not only limited to punishing perpetrators but also includes the recovery of assets that can benefit the state and society.

The asset recovery process in the context of corruption crimes involves several stages and powers held by investigators, focusing on tracing, identifying, and forcibly seizing assets related to the crime. Investigators have the authority and responsibility to trace the wealth of suspects, including identifying suspicious assets. This effort includes profiling and asset tracing, where assets related to corruption crimes are identified and traced through various financial footprints.

Furthermore, the use of coercive measures becomes an essential tool in ensuring the effectiveness of asset tracing. Investigators have the authority to conduct searches and seize items related to corruption crimes. These actions are aimed at detecting the suspect's and/or their family’s wealth that does not align with their profile, suspected to be the result of corruption. The outcomes of these tracing and identification efforts are not only used as evidence in court but may also indicate money laundering associated with the crime.

The importance of cross-sector cooperation and inter-institutional collaboration is central to the asset recovery process. This cooperation involves providing data support to investigators in preparing compensation payments. Such collaboration includes the exchange of information between agencies to ensure that all aspects related to assets resulting from corruption are uncovered thoroughly. Therefore, the asset recovery process in corruption crimes requires close coordination between law enforcement agencies and various relevant sectors. With an integrated approach, it is hoped that this effort can have a more significant impact on restoring state finances and taking action against corruption perpetrators.

Asset recovery, as an integral part of anti-corruption strategies, faces specific challenges in Indonesia. These challenges not only follow legal complexities but also involve practical aspects in implementing asset recovery. One of the main challenges relates to the asset recovery strategy itself. This process involves several steps, from asset tracing to forced seizure, and requires cross-sector cooperation. The involvement of various stakeholders demands effective coordination and the implementation of a well-thought-out strategy. This challenge becomes even more significant as assets resulting from corruption are often carefully hidden through complex channels.

Additionally, the concept of impoverishing corruptors as a strategic idea presents its own challenge. While some corruption perpetrators are fined, many prefer custodial sentences, making it difficult to recover state losses. The concept of impoverishing corruptors emphasizes that perpetrators must be financially obligated to return the losses they caused. While this idea could be an effective instrument, its implementation requires a strong legal framework and efficient law enforcement mechanisms.

Moreover, issues in the asset recovery strategy also arise from the ineffectiveness of legal sanctions. The sanctions imposed on corruption perpetrators tend to be lenient, with prison sentences often not creating the deterrent effect intended. In this context, asset recovery should not only serve as a restorative action for state finances but also as a sanction that provides a more significant deterrent effect. By understanding and addressing these challenges, Indonesia can strengthen its national asset recovery strategy as part of its anti-corruption efforts. A holistic approach, involving cross-sector collaboration, strengthening the legal system, and implementing the concept of impoverishing corruptors, can help overcome these obstacles and guide Indonesia toward a more effective and just law enforcement system.

Globalization presents significant challenges to efforts to recover state wealth resulting from corruption crimes. In this era, corruption perpetrators have extraordinary access and the ability to hide and transfer assets across borders. Asset recovery becomes difficult due to complex financial channels and the inability to effectively engage international jurisdictions.

The role of the prosecution is crucial in addressing these difficulties, particularly through the use of civil legal instruments. These instruments include various approaches such as civil in rem forfeiture, civil lawsuits, and international cooperation to trace, identify, and recover assets involved in corruption crimes. As a law enforcement agency, the prosecution has a specific responsibility to ensure that assets accumulated through corrupt practices are returned to the state by using all possible efforts in accordance with civil law (Ramadhan, 2022; Syaifulloh, 2019; Yohanes et al., 2023).

According to Sosiawan, the role of the Anti-Corruption Convention (UNCAC) and related laws is crucial in strengthening efforts to prevent and combat corruption crimes in Indonesia. The ratification of the Anti-Corruption Convention in 2003 reflects Indonesia's commitment within the international framework to eradicate corruption. This convention provides a legal foundation for concrete measures to tackle corrupt practices and serves as a basis for the formation of regulations at the national level (Sosiawan, 2020).

Law No. 7 of 2006 on the United Nations Convention Against Corruption strengthens a more detailed legal framework related to the criminalization of certain acts, such as illegal enrichment, bribery, and abuse of power. This law provides a strong legal basis for enforcing UNCAC domestically.

Furthermore, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes serves as a legal instrument complementing efforts to prevent and combat corruption. This law provides a comprehensive legal foundation for addressing money laundering, which is often closely linked to corruption practices. Key measures in asset confiscation in Indonesia include strategic legislative initiatives, such as:

1. Draft Law on Corruption Crimes of 2009. This draft marked the government's efforts to strengthen the legal framework related to asset confiscation in corruption crimes. This initiative reflects proactive steps in combating corruption through a more effective legal approach.
2. Preparation of the Draft Law on Asset Confiscation in Criminal Acts of 2008. This draft aims to detail the mechanisms and procedures for asset confiscation involved in criminal acts. Focusing on the civil aspect (in rem forfeiture), this preparation reflects a push to enhance the state's legal capacity to recover assets derived from corruption crimes.

Through Non-Conviction Based Asset Forfeiture (NCB Asset Forfeiture)

The concept of Non-Conviction Based Asset Forfeiture (NCB Asset Forfeiture) is a legal mechanism that allows for the return of state assets that have been taken by criminals. This concept is integrated into the United Nations Convention Against Corruption, 2003, which has been ratified by the Indonesian government. As a consequence of this ratification, Indonesia, as a rule-of-law country based on democratic principles, recognizes the supremacy of law and that every individual is equal before the law. The purpose of the Non-Conviction Based Asset Forfeiture (NCB) concept is to understand the mechanism of asset forfeiture without a criminal conviction, as an alternative to address difficulties in seizing assets of corruption perpetrators that have been transferred, transformed, or hidden (Saputro & Chandra, 2021).

The limitations of asset forfeiture in the context of conventional criminal law involve several issues that affect the effectiveness of law enforcement. First, in cases where asset forfeiture is applicable, the implementation is limited to situations where the perpetrator has been legally and convincingly declared guilty of a crime through a court decision that has become final (inckracht). While this approach aligns with the principles of justice, difficulties arise when the perpetrator is able to transfer or hide the proceeds of the crime, particularly when they flee to another country that is unwilling or unable to extradite them back to Indonesia. For example, cases such as that of the defendant Djoko S. Candra or prominent corruption cases like Edy Tansil highlight these challenges (Saputro & Chandra, 2021).

Second, difficulties in executing asset forfeiture pose a significant obstacle. Even though the whereabouts of the perpetrator are known, they cannot be executed, and their assets or wealth remain in Indonesia, where they can continue to benefit from their ventures. This creates challenges for the Indonesian government in executing forfeiture due to diplomatic limitations. In such cases, despite law enforcement efforts, the limitations in carrying out the execution provide a loophole for criminals to continue avoiding legal consequences and enjoy the proceeds of their crimes (Saputro & Chandra, 2021).

Third, diplomatic limitations become a critical aspect in asset forfeiture efforts. Challenges in the extradition process or international cooperation hinder law enforcement, especially when the perpetrators are outside Indonesia's jurisdiction. Although the Indonesian government may have information about the whereabouts of the perpetrators, diplomatic constraints make it difficult to bring them before an Indonesian court. As a result, the asset forfeiture process in such cases faces significant difficulties, allowing the perpetrators to continue enjoying the proceeds of their crimes without effective legal intervention (Saputro & Chandra, 2021).

Non-Conviction Based Asset Forfeiture emerges as a solution to overcome the limitations of asset forfeiture that relies on criminal conviction. This approach brings several advantages, outlined as follows:

a. "In Rem" vs. "In Personam" Approach

Non-Conviction Based Asset Forfeiture emphasizes the "in rem" approach, which focuses on the direct forfeiture of criminal assets without depending on the conviction of the individual (in personam). Therefore, the applicability of asset forfeiture does not rely on a criminal conviction, enabling more effective legal action to address challenges that may arise in conventional criminal processes.

b. Applicability Without Conviction

Non-Conviction Based Asset Forfeiture allows for asset forfeiture without the need for a prior conviction. In other words, the forfeiture process is not directly linked to a court ruling declaring someone guilty. This opens the door to addressing the difficulties in confiscating the assets of perpetrators of corruption crimes that may have been transferred, transformed, or hidden.

c. Comprehensive Mechanism: Tracing, Blocking, Seizure, and Trial

Non-Conviction Based Asset Forfeiture involves a series of stages, including tracing, blocking, seizure, and trial procedures in court. This mechanism provides a comprehensive framework for identifying, tracking, and reclaiming assets derived from criminal activities. As such, asset forfeiture success can be achieved through a coordinated and efficient approach, from tracing to the trial process.

In the common law system, there are two types of asset forfeiture that have developed, which are:

a. Ordinary Common Law Forfeiture

Ordinary common law forfeiture occurs after a court ruling related to a serious crime. Forfeiture is considered a consequence of the offense and is in personam, meaning that the forfeiture can be applied to all real and personal property owned by the convicted individual after the court ruling. In the case of Non-Conviction Based Asset Forfeiture, the applicability of asset forfeiture does not depend on a conviction but can be carried out based on tracing and proving the connection between the assets and the crime, thus avoiding the limitations that may arise in conventional criminal processes.

b. Statutory Forfeiture (Civil Forfeiture)

Statutory forfeiture refers to forfeiture that does not require a court ruling. This forfeiture is limited to property used in committing the crime and is known as civil in rem forfeiture, where the property itself is at fault, not the individual. Civil forfeiture, which serves as a significant model for recovering the proceeds of corruption in Indonesia, uses the reverse burden of proof and allows for faster seizure once a connection between the assets and the crime is suspected. Moreover, civil forfeiture is a legal action against the assets, not the defendant or suspect, so state assets can be saved even if the perpetrator has died or is unreachable by law. For example, the corruption cases involving defendants Djoko S. Candra and Edy Tansil, which were difficult for the Indonesian government to execute due to diplomatic limitations.

Cases such as those of Djoko S. Candra and Edy Tansil provide a concrete illustration of the complexities of asset forfeiture in the context of the common law system. Although there were court rulings declaring both defendants guilty, limitations in the execution process and diplomatic involvement became obstacles in implementing asset forfeiture. Civil forfeiture becomes important in this context as a mechanism that allows asset forfeiture without being overly dependent on a conviction, making it a more effective way to overcome the challenges faced in law enforcement against corruption crimes.

Non-Conviction Based Asset Forfeiture introduces the concept of the reversal of the burden of proof, which has a significant impact on asset forfeiture efforts in criminal activities. The reversal of the burden of proof in Non-Conviction Based Asset Forfeiture cannot be legally challenged and does not violate Human Rights. While it often involves a reversal of the burden of proof, this does not contradict the fundamental principle "he who alleges must prove his allegation" or the principle of "presumption of innocence." This reversal of the burden of proof affirms the legitimacy of ownership of an asset, explaining how the perpetrator acquired ownership. With the perpetrator’s inability to prove legitimate ownership, there is a strong presumption that the asset is the result of criminal activity.

In the Non-Conviction Based Asset Forfeiture mechanism, proving ownership of assets becomes the main focus. This process involves a series of stages, from tracing to trial, where the party suspected of owning assets resulting from crime must prove the legality of its ownership. This creates a strong legal basis for seizing and forfeiting assets without prior conviction.

The reversal of the burden of proof in Non-Conviction Based Asset Forfeiture has a significant impact on economic crimes. Perpetrators of crimes must consider the serious consequences regarding the ownership of assets suspected to be proceeds of crime. With this mechanism in place, economic crime becomes less profitable because the asset forfeiture process can proceed without having to wait for a lengthy court ruling. Thus, Non-Conviction Based Asset Forfeiture becomes an effective instrument in combating economic crimes and recovering state assets that have been harmed.

Non-Conviction Based Asset Forfeiture in Indonesia involves several stages that include legal processes and the involvement of relevant parties. The following are the steps:

a. Blocking, Seizure, and Court Determination Stages

The process begins with the tracing and blocking of assets suspected to be proceeds of crime. Next, the assets are seized through a seizure process requested from the court. The court then issues a determination regarding the status of the assets, declaring whether the assets can be considered tainted property or not. This process creates a strong legal foundation for continuing the asset forfeiture.

b. Third-Party Right to Contest

Third parties have the right to contest the asset forfeiture conducted by the authorities. After the court determination, the assets that have been declared as tainted property will be published for approximately 30 days. During this period, third parties who believe they have a right to the assets can file an objection with the court. They must prove ownership of the assets with valid evidence to contest the forfeiture.

c. Effectiveness as a Deterrent Against Crime

Non-Conviction Based Asset Forfeiture is effective as a deterrent against crime. With this mechanism, criminals must consider the risk of losing assets obtained from crime without having to wait for a conventional court ruling, which might take a long time. The ability to quickly take legal action against assets suspected to be linked to criminal activity can be a key factor in preventing criminals from enjoying the proceeds of their crimes.

Asset recovery plays a crucial role in the context of national development, creating a strong legal foundation to ensure justice and sustainable development. The concept of asset recovery involves returning the value of assets obtained through criminal activities to the victims and the state. This includes an integrated process for handling assets obtained from crime, from tracing to returning them to the affected parties. Asset recovery is not just an effort to restore the financial losses of the state, but also ensures justice for the victims of crime.

Asset recovery has significant urgency in the context of national development. In addition to providing financial restoration, asset recovery also contributes to strengthening the supremacy of law. The return of stolen assets not only strengthens the state's finances but also creates a stable foundation for long-term development. Asset recovery also has the potential to increase public trust in the legal system and government.

Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001, imposes serious criminal penalties on corruption offenders. The threats of imprisonment, fines, and payment of replacement money serve as instruments to reduce corruption. Although the word "may" in the law presents a potential financial loss to the state, this situation is considered as a completed crime, even if the potential loss has not yet materialized. These threats of punishment become an important factor in creating compliance with the law and supporting effective asset recovery efforts.

Asset recovery is often faced with theoretical barriers related to the philosophy of criminal law. The view that criminal law, which focuses on retributive justice, is the only appropriate method for recovering state losses presents a challenge. Efforts to address obstacles in asset recovery include concrete measures such as asset tracking, data support for investigators, and reversal of the burden of proof. Asset tracking is key in uncovering assets related to corruption crimes. Data support provides a solid foundation for preparing the payment of replacement money. The reversal of the burden of proof plays a central role in determining the legality of asset ownership, providing a strong presumption that the asset comes from a criminal act if the perpetrator cannot prove otherwise.

Asset recovery also faces challenges from the evolving modus operandi of corruption perpetrators. Handling strategies must be continuously updated to address more sophisticated criminal methods. Preventive measures, such as enhanced data security and tracking of suspicious financial transactions, become crucial in responding to the evolving modus operandi of corruption perpetrators.

The asset forfeiture system in Indonesia involves a legal framework consisting of the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes. These form the legal foundation for implementing asset forfeiture, providing a comprehensive legal basis to address corruption crimes. The asset forfeiture mechanism in Indonesia is also closely linked to the regulation of Corruption Crimes (TIPIKOR). The articles that regulate asset forfeiture are found within this legal framework, providing a specific legal basis to tackle corruption and seize assets related to those crimes.

The Perspective of Maqashid Sharia in the Blocking and Forfeiture of Corruption Crime Assets

The perspective of Maqashid Sharia in asset freezing and seizure in the context of corruption crimes becomes relevant because Maqashid Sharia provides a normative framework in Islam aimed at achieving human welfare in both this world and the Hereafter. There are five main objectives in Maqashid Sharia: *Hifdz an-Nafs* (Protection of Life), *Hifdz al-'Aql* (Protection of Intellect), *Hifdz al-Din* (Protection of Religion), *Hifdz al-Nasl* (Protection of Lineage), and *Hifdz al-Maal* (Protection of Wealth). In the context of asset freezing and seizure in corruption crimes, Maqashid Sharia serves as the foundation for several goals:

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First, Maqashid Sharia helps prevent crime and protect the wealth of the state. Corruption harms the wealth of the state and the people, and asset freezing and seizure of illicit wealth from corruption can become an instrument to prevent and combat corruption.

Second, Maqashid Sharia can realize justice and equality. Corruption creates inequality and injustice in society, and freezing and seizing assets derived from corruption can help achieve justice by ensuring that corruptors do not enjoy the proceeds of their crimes.

Third, Maqashid Sharia can protect public welfare. Corruption obstructs development and the well-being of society, and asset freezing and seizure of corruption proceeds can help recover state losses and fund programs beneficial to the community.

Fourth, Maqashid Sharia helps apply the principles of accountability and transparency. Freezing and seizing corrupt assets can increase accountability and transparency in the management of state finances, building public trust in the government. Key points related to Maqashid Sharia in asset freezing and seizure involve the need for justice and proportionality, protection of the rights of innocent third parties, transparency and accountability in the process, and the use of the proceeds from seized assets for the benefit of society. Examples of the application of Maqashid Sharia in corruption cases include asset freezing before a final court ruling, asset forfeiture even if the corruptor has passed away, and using the proceeds of asset forfeiture for beneficial community programs.

Therefore, asset freezing and seizure become vital instruments in combating corruption and protecting state wealth. The Maqashid Sharia perspective provides a normative foundation to ensure the fair, effective, and welfare-oriented implementation of these instruments, thus helping to create a better law enforcement system in the fight against corruption.

The foundation of the Qur'anic evidence regarding the Blocking and Forfeiture of Assets is as follows:

1. QS. Al-Baqarah ayat188
   تَعْلَمُونَ وَأَنتُمْ ٱلْإِثْمِبِ ٱلنَّاسِ أَمْوَٰلِ مِّنْ فَرِيقًا لِتَأْكُلُوا۟ ٱلْحُكَّامِ إِلَى بِهَآ وَتُدْلُوا۟ ٱلْبَٰطِلِبِ بَيْنَكُم أَمْوَٰلَكُم تَأْكُلُوٓا۟ وَلَا
   It means: *"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]."*

   This verse prohibits the act of unjustly taking another person's wealth, including through corruption. The forfeiture of assets derived from corruption can be seen as an effort to uphold this prohibition.
2. QS. An-Nisa' ayat 10
   سَعِيرًا وَسَيَصْلَوْنَ ۖ نَارًا بُطُونِهِمْ فِى يَأْكُلُونَ إِنَّمَا ظُلْمًا ٱلْيَتَٰمَىٰ أَمْوَٰلَ يَأْكُلُونَ ٱلَّذِينَ إِنَّ
   It means: "*Indeed, those who consume the wealth of orphans unjustly are only swallowing fire into their bellies, and they will be burned in a Blaze (Hellfire).*"

   This verse prohibits the act of consuming the wealth of orphans unjustly. Corruption can be analogized to consuming the wealth of orphans, as both harm the vulnerable. The forfeiture of assets derived from corruption can be seen as an effort to protect the rights of the weak.
3. QS. Al-Maidah ayat 38
   حَكِيمٌ عَزِيزٌ ٱللَّهُوَ ۗ ٱللَّهِ مِّنَ نَكَٰلًا كَسَبَا بِمَا جَزَآءًۢ أَيْدِيَهُمَا ٱقْطَعُوٓا۟فَ ٱلسَّارِقَةُوَ ٱلسَّارِقُوَ
   It means: "*As for the male thief and the female thief, amputate their hands in recompense for what they have committed as a deterrent punishment from Allah. And Allah is Exalted in Might and Wise*."

   This verse explains the punishment for theft, which is the amputation of the hands. Corruption can be categorized as theft because it involves taking the property of others unlawfully. The forfeiture of assets resulting from corruption can be seen as one form of punishment for the corrupt individuals.
4. QS. Al-Anfal ayat 75
   عَلِيمٌۢ شَىْءٍ بِكُلِّ ٱللَّهَ إِنَّ ۗ ٱللَّهِ كِتَٰبِ فِى بِبَعْضٍ أَوْلَىٰ بَعْضُهُمْ ٱلْأَرْحَامِ وَأُو۟لُوا۟ ۚ مِنكُمْ فَأُو۟لَٰٓئِكَ مَعَكُمْ وَجَٰهَدُوا۟ وَهَاجَرُوا۟ بَعْدُ مِنۢ ءَامَنُوا۟ ٱلَّذِينَوَ
   It means: "*And those who believed afterward and emigrated and struggled with you, they are of you. And those of kinship are more entitled to inheritance in the Book of Allah. Indeed, Allah is Knowing of all things."*

   This verse explains the virtue of those who strive with their wealth and themselves in the path of Allah. The forfeiture of assets resulting from corruption can be seen as one form of jihad in the path of Allah, as it aims to protect the wealth of the state and its people.
5. QS. Al-Hasyr: 7
   ٱلْأَغْنِيَآءِ بَيْنَ دُولَةًۢ يَكُونَ لَا كَىْ ٱلسَّبِيلِ ٱبْنِوَ ٱلْمَسَٰكِينِوَ ٱلْيَتَٰمَىٰوَ ٱلْقُرْبَىٰ وَلِذِى وَلِلرَّسُولِ فَلِلَّهِ ٱلْقُرَىٰ أَهْلِ مِنْ رَسُولِهِۦ عَلَىٰ ٱللَّهُ أَفَآءَ مَّآ
   ٱلْعِقَابِ شَدِيدُ ٱللَّهَ إِنَّ ۖ ٱللَّهَ ٱتَّقُوا۟وَ ۚ ٱنتَهُوا۟فَ عَنْهُ نَهَىٰكُمْ وَمَا فَخُذُوهُ ٱلرَّسُولُ ءَاتَىٰكُمُ وَمَآ ۚ مِنكُمْ
   It means: "*Whatever booty (fai-i) Allah has given to His Messenger from the people of the towns, then it is for Allah, for the Messenger, for the near relatives, for the orphans, for the poor, and for the wayfarer, so that it does not circulate only among the rich from among you. And whatever the*

Messenger gives you, take it; and whatever he forbids you, abstain from it. And fear Allah. Indeed, Allah is severe in punishment."

This verse explains the distribution of war booty. The forfeiture of assets obtained from corruption can be analogized to war booty, as both are acquired unlawfully. The distribution of the proceeds from the forfeiture of assets to the rightful parties can be seen as one form of justice and equitable distribution.

The Quranic evidence above shows that Islam condemns corruption and supports efforts to combat it. The forfeiture of assets obtained from corruption can be seen as one legitimate instrument in fighting corruption and upholding justice.

Conclusion

This study presents three main findings. First, the strategy of corruption law enforcement through asset freezing is considered a crucial step to prevent the dissemination and concealment of assets derived from corruption. The primary challenges in implementing this strategy include the expertise of corruptors in hiding assets, the leniency of legal sanctions, and the lack of obligations to return illicit wealth. Efforts to enhance the effectiveness of asset freezing include the implementation of profiling and asset tracing, the preparation of substitute payment mechanisms with accurate data, and strengthening cooperation among law enforcement agencies and relevant sectors.

Second, asset forfeiture without conviction (Non-Conviction Based Asset Forfeiture or NCB) is recognized as a more effective method in overcoming the limitations of conventional criminal asset forfeiture. NCB allows the confiscation of assets without the need for a prior criminal conviction. The advantages of NCB include its effectiveness, a comprehensive mechanism for tracing, freezing, seizing, and adjudicating assets, as well as the application of the concept of reversal of the burden of proof. In Indonesia, NCB involves stages of asset blocking, seizure, and court adjudication, provides third parties the right to contest, and has proven effective as a deterrent against crime.

Third, from the perspective of Maqashid Sharia, asset freezing and seizure in corruption cases emphasize the importance of justice, public welfare (maslahah), and the preservation of wealth. Freezing and seizing corrupt assets are seen as aligned with the principles of Maqashid Sharia because they can restore state losses, provide a deterrent effect on corruptors, and uphold societal welfare. The application of Maqashid Sharia in this context involves a fair and transparent process, protection of third-party rights, and the utilization of seized assets for the benefit of society.

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